

DHS: Outpatient Competency Restoration Program (OCRP) **Assessment, Acceptance, Denial, and Transfer Processes**

Statutory language regarding the DHS placement determination: Under Wis. Stat. § 971.14(5)(a)(1) a defendant who has been committed to the Department of Health Services (DHS) for treatment to competency restoration is considered to be in the custody of DHS. DHS shall determine whether the defendant will receive treatment in an institution or while under the supervision of DHS in a community-based treatment program under contract with DHS. The court may desire/intend that the defendant participate in the Outpatient Competency Restoration Program (OCRP), but DHS contracted service provider for this program (Behavioral Consultants, Inc. or BCI) is responsible for conducting the necessary assessment(s) and making the placement determination. DHS will provide additional documentation to the court regarding whether the defendant will be assessed for the program and whether the defendant is accepted into the program, or if the defendant is denied for the program and requires inpatient treatment at one of the state mental health institutes (MHI).

Assessment of Defendants for Placement Determinations:

1. **Wisconsin Forensic Unit (WFU):** As part of the competency examination under Wis. Stat. § 971.14(2), the WFU examiner may recommend the defendant be referred to BCI for additional assessment to determine whether the defendant is appropriate for participation in OCRP. This information will be provided to the court as part of the competency examination.
2. **Court:** Upon making the determination of not competent but likely to become competent with treatment (NC/L), the court will commit the defendant to DHS under Wis. Stat. § 971.14(5) and order treatment to competency. In each case, the court will complete the CR-206 order form. Email this form as well as the criminal complaint and examiner's report to the DHS centralized email address (dhsmmhiadmissions@dhs.wisconsin.gov). There may be cases in which the court reaches a determination of not competent based on evaluations by examiners outside of WFU. If the court desires/intends the defendant to be considered for OCRP, indicate this on line 9 of the order of commitment (For CR-206).
3. **BCI/OCRP:** BCI/OCRP will initiate the assessment process upon receiving the order of commitment for treatment (Form CR-206).

Defendant accepted or declined OCRP:

1. **BCI/OCRP:** Upon completion of the assessment process, a letter is sent to notify the court whether the defendant has been accepted for treatment through OCRP. If the defendant is accepted into OCRP, treatment begins immediately.

If the defendant is denied by OCRP and a determination is made that s/he is to receive treatment on an inpatient basis at an MHI, this information is provided to the court and MHI admission coordinators. In such circumstances, DHS respectfully requests the court conduct a hearing within five (5) business days to check if the defendant has complied with voluntary admission. In a priority situation, DHS will request that a warrant be issued so that the defendant is remanded into custody and arrangements with the MHI can be made for prompt admission of defendant. BCI will also make a follow-up call to the court the next business day to confirm the court has received the letter, and to respectfully request the assistance of the court with the action DHS has requested.

2. **MHI:** DHS recognizes that the assessment process for OCRP may take additional time. There may be delays in the initiation of the competency restoration treatment services. As such, DHS will treat a denial of admission to the OCRP as a potential priority admission into the MHI. On the second business day after receiving the notice to proceed with admission, the admission coordinator will contact the defendant to schedule a tentative admission date. This will alert the admission

coordinator of any potential obstacles to admission (e.g., transportation) or non-compliance with the process (e.g., refusal or unresponsiveness of defendant to phone calls). The admission coordinator will allow one additional business day, from the date of contact, for the defendant to schedule the admission date. Any issue raised or lack of follow-through on behalf of the defendant that delays the scheduling of the admission will be noted in a letter to the court, including a request that the court issue a warrant so that the defendant may be placed in custody and transported to one of the MHIs for competency restoration. This will leave two (2) business days for the court to review the information from BCI and the MHI before the scheduled hearing that was set at the request of DHS.

3. **Court:** DHS asks that the courts work within the best of their ability to comply with the timeframes outlined for this process, and act upon the requests of DHS for hearings and/or warrants as needed. If the DHS determines OCRP is NOT an appropriate treatment option, it is in the best interest of the defendant and all involved parties to ensure that the defendant is admitted to the MHI in a timely manner.

Statutory language regarding the DHS transfer authority: Under Wis. Stat. § 971.14(5)(a)(4) a defendant placed in OCRP is considered in the custody and control of DHS, subject to the conditions set by the DHS. If DHS believes that the defendant has violated a condition, or that permitting the defendant to remain in the community jeopardizes the safety of the defendant or the community, then DHS will provide documentation to the court.

Defendant transfer OCRP to Inpatient at MHI:

1. **BCI/OCRP:** In the event a defendant is deemed no longer appropriate for OCRP, which requires that the defendant be admitted to the MHI for continued treatment, a letter will be sent to the court. The standard language in this letter is as follows:

"As required by the statutory language in 971.14(5), **I am requesting that the court issue an immediate arrest warrant and order to transport** so that (DEFENDANT'S NAME) may be safely secured and transferred to an inpatient setting to continue remediation treatment when bed space allows. To attempt to provide the court a reasonable timeframe to review and respond to this letter, **we will continue program involvement with the defendant in an effort to monitor and/or minimize risk to the community until (7 days from date of letter), at which time he will be formally discharged** from the Outpatient Competency Restoration Program."

BCI/OCRP will also make a follow-up call to the court on the next business day to confirm that the court has received the letter, and to respectfully bring to the attention of the court the action/assistance DHS has requested. DHS respectfully requests that the court conduct a hearing within 5 business days to check if the defendant is in custody. If not, DHS respectfully requests that the court remand the defendant into custody at the time of the hearing for transport to the MHI.

2. **MHI:** DHS would like to minimize the gap in the defendant's participation in competency restoration treatment services and supervision. Accordingly, DHS will treat a transfer as a priority admission into the MHI. Therefore, on the second business day after receiving the notice to proceed with admission, the admission coordinator will contact the defendant to schedule a tentative admission date. This will alert the admission coordinator of any potential obstacles to admission (transportation) or non-compliance with the process (refusal or unresponsive to calls). The admission coordinator will allow one additional business day, from the date of contact, for the defendant to schedule the admission date. Any issue raised, or lack of follow-through on behalf of the defendant that delays the scheduling of the admission, will be noted in a letter to the court including a request that the court issue a warrant so that the defendant may be placed in custody and transported to one of the MHI for competency restoration. This will leave two (2) business

days for the court to review the information from BCI/OCRCP and the MHI before the scheduled hearing that was set at the request of DHS.

3. Court: DHS asks that the courts work to the best of their ability to comply with the timeframes outlined for this process, and act upon the requests of DHS for hearings and/or warrants as needed. If DHS determines OCRCP is NO LONGER an appropriate treatment option, further contact by DHS community staff, including case management activities, will cease after seven (7) days. Therefore, it is in the best interest of the defendant and all parties involved to ensure that the defendant is admitted to the MHI in a timely manner.

Warrant Status: In these cases, there are frequent delays between when the court issues the warrant to when the defendant is actually arrested/remanded. Such delays result in a significant loss in the amount of time available for treatment under the commitment. In some situations, DHS may ask the court to vacate the previous commitment order. Once the defendant is arrested/remanded, DHS will request the court issue a new commitment order, with the commitment date noted as the day the defendant was returned to custody. This allows the maximum amount of time allowed under the commitment for treatment to competency restoration. In situations where the defendant remains in “warrant” status for an extended period of time, DHS will ask the court to vacate the commitment order and revisit the competency question upon the apprehension of the defendant.

Communication: DHS will provide detailed and timely communication with the contracted providers and with the court regarding the status on these types of cases. Once the court has issued a warrant, DHS contracted providers will follow-up with the sheriff to relay additional information regarding the location of the defendant or his/her schedule.

*****Questions regarding the OCRCP assessment process should be directed to the Program Coordinator at BCI at 414-271-5577.**

***** Questions regarding Wis. Stat. § 971.14(5) statutory process should be directed to: Adam Oldenburg, DHS Court Liaison at WCS 414-750-3519 or Vicki Shequen, Assistant DHS Court Liaison at WCS 414-303-7547.**