

DHS Forensic Newsletter

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Provided by Wisconsin Community Services (WCS), supporting the Wisconsin Department of Health Services (DHS)

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Court Orders and Supporting Documentation

It is important DHS promptly receive court orders and/or supporting documentation. Please ensure paperwork is processed and distributed as soon as possible.

Due Date for Competency Examinations

When completing orders under Wis. Stat. § 971.14(2), note the due date of the competency report under number 8 on form CR-205. If the examination is to be conducted on an outpatient basis, which includes individuals who are currently in custody, DHS should be allowed 30 days to submit the report to the court. If DHS recommends the examination be conducted on an inpatient basis and the court approves the admission of the individual to one of the state mental health institutions for the inpatient examination, DHS will submit the report to the court within 15 days from the date of the admission to the mental health institute.

Scheduling Delays in Competency Hearings

There have been delays by courts scheduling a competency hearing outside the 14-day statutory timeframe, as outlined under Wis. Stat. § 971.14(5)(c). In addition, when courts defer on making a decision on the report during the competency hearing, a delay occurs in discharging the person from the commitment. This means the person remains a patient at the state mental health institute. Competency hearings should be scheduled as quickly as possible. These hearings should be set to allow time for the person to be picked up and transported to the jail prior to their court appearance. If the court defers a decision at the competency hearing, please reset the hearing for a decision in a timely manner.

Transportation for Competency Hearings

When the court schedules a competency hearing for an individual who is committed under Wis. Stat. § 971.14(5) and opined as competent or not competent and not likely to become competent by the treating state mental health institute, ensure the writ/order to produce is completed and distributed to the appropriate transportation/conveyance agency. If, at the time of the competency hearing, there is a question as to whether the individual was transported from the state mental health institute to the jail for the appearance, contact the state mental health institute admission office or WCS Court Liaison and Tracking Services prior to adjourning and resetting the hearing. Staff with the state mental health institute and WCS should be able to confirm if the individual was transported. There have been cases where the individual was transported to the jail, but not moved from the jail to the courthouse in time for their competency hearing.

Request for Order to Treat

When the court receives a progress report from the treating state mental health institute on an individual committed for competency treatment under Wis. Stat. § 971.14(5), there may be a request for an Order to Treat included in the opinion that the individual is not competent, but likely to become competent. In this case, the court should hold a hearing on the request to determine if the involuntary use of medication is necessary. This hearing should be held within 10 days of receiving the request. If the request is granted, an amended form CR-206 needs to be completed with the appropriate medication boxes checked.

New Orders, Changes in Wis. Stat. Ch. 971 Cases

When court orders change or additional orders are added in cases under Wis. Stat. ch. 971, email or call WCS Court Liaison and Tracking Services. Provide the name, case number, and legal status/title or number of the order form signed. It is not necessary to fax paperwork to WCS. Distribute the paperwork according to the instructions on the order form.

Competency Challenges Add Bed Days

From July 1 to September 30, 2018, the state mental health institutes discharged 91 people who had been committed for inpatient treatment for competency restoration under Wis. Stat. § 971.14(5). The progress report completed by or on behalf of DHS was challenged in 19 cases and doctor's testimony and/or a second independent opinion was requested. As a result, clients were held under DHS commitment for an additional 677 days. Please complete doctor's testimony and/or second opinions as soon as possible.

Competency Raised in Post-Conviction/Post-Sentence Cases

DHS would like to clarify its authority to complete competency evaluations and treatment to competency in revocation of supervision cases. This clarification is part of an ongoing effort to explain the limited ability of DHS to complete competency evaluations and remediation for individuals found in need of competency treatment. DHS has statutory authority relating to post-conviction competency proceedings under Wis. Stat. § 971.14(4). *State ex rel. Vanderbeke v. Endicott*, 210 Wis. 2d 502, (1997) and *State v. Daniel*, 2014 WI App. 46, 354 Wis. 2d 51, 847 N. W.2d 855. The Supreme Court in *State v. Debra A.E.* 188 Wis. 2d 111, (1994) and *Vanderbeke* instructed that Wis. Stat. § 971.14 does not apply in post-sentencing proceedings.

The parties recognize, and DHS agrees, that §§ 971.13 and 971.14, 1991-92, govern competency determinations only through the sentencing stage of a criminal trial. Although § 971.14(1)(a), 1991-92, mandating competency proceedings makes no explicit distinction between the defendant's pre-trial and post-sentencing status, the parties and the court agree that § 971.14 applies only to defendants who have not yet been sentenced. This conclusion follows from reading § 971.14 in its entirety and with § 971.13, as well as from the legislative history underlying these two sections.

As the Supreme Court has said Wis. Stat. § 971.14 does not apply and the statutes do not otherwise address this circumstance, DHS has no direct statutory role or responsibility in the conduct of these post-sentencing competency evaluations. DHS requests courts do not order DHS to complete orders for competency evaluation or treatment to competency on such cases since it is outside DHS authority to complete. In the absence of statutory authority to address competency, DHS requests that if courts continue to believe that treatment to competency is necessary, that the parties locate a willing and able community provider to offer those services. DHS is not able to be such a provider. DHS does contract for outpatient competency treatment with Behavioral Consultants, Inc., who may be one of other behavioral agencies willing to provide such a service.

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