

**NUMBER**

#18-76-01

**DATE**

December 18, 2018

**OF INTEREST TO**

County Directors  
Human Services Supervisors  
and Staff

District Court Judges

County Attorneys

Chief Public Defenders

Direct Care & Treatment –  
Executive Directors and  
Site Directors

**ACTION/DUE DATE**

Effective upon publication.

**EXPIRATION DATE**

December 18, 2020

## Provisional Discharge of Direct Care and Treatment Patients

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**TOPIC**

Provisional discharge of individuals civilly committed as Mentally Ill after being found incompetent to stand trial in felony and gross misdemeanor cases.

**PURPOSE**

Provide information and instruction.

**SIGNED**

MARSHALL E. SMITH  
Health Systems Chief Executive Officer  
Direct Care and Treatment

**TERMINOLOGY NOTICE**

The terminology used to describe people we serve has changed over time. The Minnesota Department of Human Services (DHS) supports the use of "People First" language.

# I. Background

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The Department of Human Services (DHS) provides inpatient mental health treatment to individuals under civil commitment. A substantial number of individuals are civilly committed to the Commissioner of Human Services, primarily as Mentally Ill, after being found incompetent to stand trial in felony and gross misdemeanor criminal cases (“civilly committed defendants”). Minnesota law neither requires the Commissioner to provide competency education to such individuals nor authorizes the Commissioner to hold them in lieu of jail during criminal proceedings absent a need for treatment in a DHS facility.

In 2006, DHS voluntarily initiated a 25-bed pilot “Competency Restoration Program” to provide competency services for civilly committed incompetent defendants. By 2018, DHS is averaging 120 such patients each day in three different locations. As this program has grown, over-retention of patients who no longer need inpatient mental health treatment has been a growing issue and is a barrier to other individuals receiving access to such care.

The Minnesota Commitment and Treatment Act provides that provisional discharge of determinate commitments is in the discretion of the head of the treatment facility. Minn. Stat. § 253B.15, subd. 1. This bulletin communicates an effort to align practices with ethical and fiscal obligations for a patient’s mental health care needs by ensuring that county case managers are aware of the need to prepare for the provisional discharge of patients following a clinical determination that in-patient care is no longer necessary to meet an individual patient’s mental health needs.

## A. Provisional Discharge

If not already doing so for civilly committed defendants, county case managers will begin planning for provisional discharge at the time the individual is admitted to a DHS facility, even if this commitment is after a finding of incompetency.

### 1. Community placement

The county case manager will identify community placement options for individuals for whom the head of a treatment facility determines such placement is appropriate.

### 2. Provisional discharge to jail

DHS will provisionally discharge civilly committed defendants from a treatment facility to jail when the individual’s mental health needs do not require in-patient care and the individual’s conditions of release prevent community placement. The county case manager is responsible for communicating with the prosecuting attorney to address release conditions in preparing for any subsequent release from jail to a community setting.

### 3. Notification

In addition to the regular communications with county case managers during the course of the civilly committed defendant's inpatient treatment, DHS inpatient treatment staff will provide formal notice of provisional discharge to county case managers pursuant to Minnesota Statutes, section 253B.16, subdivision 2.

## B. Forensic Mental Health

DHS will no longer refer to its activities described herein as the "Competency Restoration Program (CRP)" and "Community Competency Restoration Program (CCRP)." DHS realigns the naming convention to more accurately describe the substantive effort of providing mental health services to individuals civilly committed after being found incompetent on felony and gross misdemeanor charges according to individual need in appropriate available treatment settings including Forensic Mental Health. Former CRP and CCRP staff and resources will continue to serve patients through the Forensic Mental Health component of the Forensic Services division of DHS Direct Care and Treatment. Competency restoration education services may be available to patients in DHS facilities secondary to primary mental health treatment.

## II. RESOURCES

For Forensic Mental Health questions:

Lisa Vanderveen-Nagel, Program Director, 507-933-5011.

For AMRTC program questions:

Jayne Lopuch, Director of Social Work, 651-431-5047.

Download the DHS-developed competency restoration curriculum at these links:

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7822-ENG> (teaching guide)

<https://edocs.dhs.state.mn.us/lfserver/Public/DHS-7822B-ENG> (workbook)

## Americans with Disabilities Act (ADA) Advisory

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