

Intersection between RCW 10.77 (Criminal Competency Procedures) and RCW 71.05 (Mental Illness/Involuntary Treatment)

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What we'll cover today

- Law enforcement's interaction with persons in crisis
- Washington's Involuntary Treatment System
- How a criminal case “flips” to become a civil commitment case
- Differing standards: criminal competency v. civil commitment, and what that means for your constituents or your clients
- 10.77 Pilot Project – lessons learned
- Opportunities/Next Steps

Law Enforcement's Interaction with Persons in Crisis

- Patrol response
- Resources available
- Crisis Response Unit
- Statistics

Washington's Involuntary Treatment Act - RCW 71.05

- Can the individual **care for themselves and safely live in the community?**
- What is the **least-restrictive** alternative available?
- Commitment typically begins with the initial **72 hour** detention & continues in successive stages of **14 days, 90/180 days.**

Who May be Civilly Committed?

- An individual who has a **mental disorder** and, **as a result** of the mental disorder,
 - the individual is '**gravely disabled**' or
 - presents a '**likelihood of serious harm**' to themselves or to others, and is in need of **involuntary** treatment.
- “Mental Disorder” is broad, includes
 - dementia
 - traumatic brain injury
 - developmental delay
 - drug-induced psychosis

Criminal Standard for Competency

- *Dusky v. United States, 362 U.S. 402 (1960)*
- A judge may find that a person facing a criminal charge is unable to be prosecuted if, because of their mental disorder
 - The person cannot understand the charge and court proceedings and/or
 - The person cannot work with an attorney to rationally assist in a defense.
- A person can have a criminal case dismissed due to a lack of competency, and may be referred for possible civil commitment.

How a 10.77 misdemeanor criminal
case “flips” to become a
71.05 civil commitment case:

Two Scenarios

Process for **non-serious** misdemeanors under RCW 10.77

When the court finds that a person charged with a ***non-serious*** misdemeanor is not competent:

- Court dismisses the criminal case and refers the person to Crisis and Commitment for evaluation by **DMHP**.
- Case has now “flipped” into the civil commitment process.
- DMHP evaluates the person in the jail for initial detention under 71.05 civil commitment criteria.
- DMHP may detain the person for 72 hours for evaluation and treatment.
- After 72 hours of initial detention, the hospital can petition the court to commit the patient for an additional 14 days.

Process for **serious (violent)** misdemeanors under 10.77

When the court finds that a person charged with **serious (violent)** misdemeanor is not competent and not restorable to competency

- Court dismisses the criminal case, refers the person to an **Evaluation & Treatment (E&T) facility** for evaluation for civil commitment.
- E&T Evaluator evaluates person in the jail for a 90 Day More Restrictive Order (MRO) under RCW 71.05 civil commitment criteria
- Evaluator makes determination regarding meeting the threshold for commitment and within 72 hours either:
 - Creates a safe less restrictive plan and petitions the judge to release the patient directly from jail to the community, or
 - Files petition for a 90 Day civil commitment (MRO)
- Patient is admitted to a local E&T facility for evaluation and treatment, pending the 90 day MRO hearing
 - At the hearing, patient may be placed on a 90 Day MRO, a 90 Day LRO, or released to the community with no hold

10.77 Workgroup Triage Pilot Project

- Historically, incompetent criminal defendants charged with serious offenses were placed at Western State Hospital (WSH) for the evaluation for civil commitment under RCW 10.77.
- As a result of capacity and staffing shortages beginning in 2012, WSH was unable to complete these evaluations.
- To address this issue, a Triage Pilot Project was launched in December 2013.
 - Mental health professionals from HMC completed an initial screening to determine whether the defendant was likely to meet the threshold for civil commitment .
 - For those likely to be committed, it was recommended that WSH conduct the evaluation. For those not likely to be committed, it was recommended that the evaluation take place locally
 - But due to lack of capacity, WSH was unable to accept referrals for evaluations.
 - As a result, a majority of these referrals were evaluated and placed locally.

10.77 Triage Project - Harborview Data

- Approximately 57% of all referrals already had outpatient services in place.
- 7% of referrals already on a Less Restrictive Order
- Of the total persons seen by the Triage Evaluators:
 - 60% received 90 Day petitions, 40% were “no-files.”
 - For the “no-files” the evaluator arranges a safe outpatient plan
- Average Length of Stay at HMC: 2-4 weeks
- 2% placed on a 90 Day Order to WSH (seen by HMC)
- 15% have previously been referred for involuntary treatment

10.77 Workgroup: Lessons Learned

- Diversion opportunities throughout the continuum
 - Identifying defendants **already connected to mental health services early**
 - Working with the Court and Jail Health
 - Coordinating with outpatient providers pre-hearing
 - Identifying patients on Less Restrictive Orders early
 - Evaluating for revocation
- Benefits of Keeping Patients Local
 - Local Evaluation and Treatment length of stay vs WSH
 - Efficient: ease of coordinating with local providers/placement resources
 - Cost effective: evaluating patients in the jail vs and emergency department/WSH. Avoids expensive evaluation in facility and transport costs.

Opportunities/*next steps*

- Assisted Outpatient Treatment: Figuring out the process and necessary resources
- Expanding funding for assertive outreach programs such as HOST, PACT, FISH
- Legislation that supports workforce development
- Diversion

Questions?

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