

Judicial Guide to Wis. Stat. ch. 971 Processes

1. Clerk's Guide to Wis. Stat. ch. 971 Processes:

Use this guide to determine which form to use and how to distribute the paperwork at the different phases of proceedings.

2. 971.14(2) Competency Exams:

- a. Language clarification (per order form CR-205): Inpatient-conducted in either MMHI or WMHI, Outpatient-jail (for in-custody) or another location (for out-of-custody) as designated by the examiner through Wisconsin Forensic Unit (WFU).
- b. Timeframe for examination: Inpatient (in one of the MHIs)-15 days after admission, Outpatient-30 days.
- c. Inpatient exams (conducted at either MMHI or WMHI) can only be ordered when the DHS contracted service provider (WFU) has attempted to conduct the exam on an outpatient basis (which can be in the jail), and was unable to render an opinion, so WFU is recommending an inpatient exam.
- d. If competency is being questioned as part of probation revocation proceedings, then the following language needs to be noted by #8 of form CR-205, under "Other". ***"Examiner shall have access to past and present records, as defined under §146.81 Wis. Stats."***

3. 971.14(5) Treatment to Competency:

- a. Make sure to note/discuss the medication recommendations from the WFU report regarding the involuntary use of medications. On the order form (CR-206) mark the appropriate boxes (#3, A or B) to support why this is necessary, and also mark the authorization (#7) on page two of the order form.
- b. Make sure to discuss if the court is specifically directing DHS to ***"Include a Sentence Enhancer/Modifier"*** in the commitment calculation, and if so, then this language needs to be noted by #9 of form CR-206, under "Other".
- c. If the commitment for treatment to competency is part of probation revocation proceedings, then the following language needs to be noted by #9 of form CR-206, under "Other". ***"Examiner shall have access to past and present records, as defined under §146.81 Wis. Stats."***
- d. Once the court receives a progress report indicating that the person is now competent, or is not competent and not likely to become competent within the statutory timeframe allowed under the commitment, the statute calls for the court to hold a competency hearing within 14 days of receiving the report. The person is to be transported from the facility (MMHI, WMHI or WRC) for the appearance.
- e. Upon receiving a progress report that the person continues to be opined as "not competent but likely to become", simply set another review hearing 90 days out and there is no need for a new order to be signed.
- f. There is no order form needed after a finding that competency has been restored, simply noting the stipulation or finding on the record and reinstating proceedings is sufficient to discharge the defendant from the commitment. If there is a finding of "not competent and not likely to become competent" form CR-280 can be used in the disposition of the commitment and/or case.

4. Outpatient Competency Restoration Program (OCRCP):

- a. Accepts referrals statewide and assesses on a case-by-case basis.
- b. Under Wis. Stat. § 971.14(5) when the court makes a finding of not competent, but likely to become competent, the court commits the person to DHS for treatment to competency restoration. The court can only refer/request that DHS consider whether the person is appropriate for OCRCP. The court can't order it. The determination of where/how the treatment will be provided is a DHS decision under the statute for the commitment.
- c. See DHS: Outpatient Competency Restoration Program processes.

5. **971.16 NGI Plea and Examination:**

The court may appoint at least one an examiner, which must be independent from DHS (not WFU or MMHI/WMHI). DHS has a list of independent examiners, which is available upon request. If the court or attorneys have not specified a specific examiner, the court can use this list to locate an examiner. However, the examiners are not appointed nor paid for by DHS.

6. **971.17 NGI Commitment:**

Upon a finding of NGI, the person is committed to DHS. Order form CR-271 should be completed immediately. Additional CR order forms will accompany the CR-271 depending on what course of action the court is taking next, for example:

- a. Certain that placement is needed in either MMHI/WMHI, CR-275 Order for Placement (and note as an “initial” placement)
- b. Certain that placement in the community is appropriate, CR-274 Order a Conditional Release Plan (to be completed within 21 days)
- c. Unsure of appropriate placement, request PDI (CR-272) or SME (CR-273)

*****In every situation, the CR-271 is needed first*****

7. **971.17(4) Petition for Conditional Release:**

*****The timeframe and process for CR Petitions on cases prior to 01/01/91 differ from the information provided below, please refer to the language in the older statutes*****

- a. The court appoints an examiner, which must be independent from DHS (not WFU or MMHI/WMHI). DHS has a list of independent examiners, which is available upon request. If the court or attorneys have not specified a specific examiner, the court can use this list to locate an examiner. However, the examiners are not appointed nor paid for by DHS.
- b. The court appoints an examiner within 20 days of receiving the petition, and the appointed examiner should submit the report to the court within 30 days of being appointed. The court shall then hold a hearing within 30 days of receiving the examiner’s report.
- c. If the court grants conditional release, the court orders the DHS contracted CR provider for your county to prepare and submit a CR Plan within 60 days.

8. **971.17 Petition to Revoke Conditional Release**

- a. The DOC agent initiates these proceedings, an ATR may be considered.
- b. Order form CR-276 applies to these types of proceedings.
- c. If client is revoked, a new placement order (form CR-275) is needed. Mark “subsequent” placement at the top of the form.

***Direct questions regarding these processes to the DHS/WCS Court Liaison Office:**

- Adam Oldenburg-DHS/WCS Court Liaison: 414-750-3519 or email: aoldenburg@wiscs.org
- Vicki Shequen-DHS/WCS Assistant Court Liaison: 414-303-7547 or email: vshequen@wiscs.org

(And/Or)

***Questions regarding competency exams:**

Wisconsin Forensic Unit: 414-278-4690 or email: staff@wiforensicunit.com

***Questions regarding the Outpatient Competency Restoration Program (OCRP):**

Behavioral Consultants, Inc.: 414-271-5577 or email: ocrp@bcwi.com

***Questions regarding NGI Commitments, PDI/SME’s, CR Petitions and CR Plans:**

Contact the DHS court liaison to determine the appropriate DHS contracted service provider for your county.

