

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

Statutory language regarding the DHS placement determination: Under WSS 971.14(5)(a)(1) a defendant who has been committed to the Department of Health Services (hereinafter referred to as “Department”) for treatment to competency restoration is considered to be in the ***custody*** of the Department, and the Department shall determine whether the defendant will receive treatment in an appropriate institution designated by the Department, or while under the supervision of the Department in a community-based treatment program under contract with the Department. The court may ***desire/intend*** that the defendant participate in the Outpatient Competency Restoration Program (OCRP), but it is the DHS contracted service provider for that program (i.e., Behavioral Consultants, Inc. that operates the OCRP) that is responsible for conducting the necessary assessment(s) and making the placement determination. The Department will provide additional documentation to the court regarding whether the defendant will be assessed for the program, if 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 WSS 971.14(2), the WFU examiner will indicate whether the defendant will be referred to BCI, for additional assessment to determine whether the defendant is appropriate for the 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, the Court will commit the defendant to DHS under WSS 971.14(5) and order treatment to competency. If the WFU competency evaluation specified a possibility for participation in the OCRP, the Court may contact the OCRP Program Coordinator (***beginning 1/1/13***) at (414)271-5577, either on or off the record, to schedule the initial intake assessment. If this attempt is unsuccessful, the Program Coordinator will secure the defendant’s current contact information and the OCRP staff will follow-up to schedule the appointment. In each case, the Court will complete the CR-206 Order form and fax this to the BCI office along with the Criminal Complaint and Examiners report. In cases where the court reaches determinations of incompetency based on ***evaluations by examiners outside of WFU***, and in which the court desires/intends defendants to be considered for consideration for OCRP, then this must be clearly indicated on the Order of Commitment for Treatment (Form CR-206). This document then must be forwarded to BCI via fax at (414) 271-6667.
3. ***BCI/OCRP:*** The OCRP assessment process will be initiated upon the Court making the Not Competent determination and BCI/OCRP 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 will be sent to notify the court if treatment will occur on an outpatient basis, through the OCRP, or inpatient at an MHI. This information will also be provided to the MHI Admission Coordinators. If the defendant is accepted into the OCRP, then treatment begins immediately. If the defendant is denied admission to OCRP, which requires that the defendant be admitted to the MHI for inpatient treatment, then the Department respectfully requests that the court conducts a hearing within 5 business days to check if the defendant has complied with voluntary admission. In lieu of a hearing or in a priority situation, the Department 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 that the court has

received the letter and to respectfully bring to the attention of the court the action/assistance the Department has requested.

2. **MHI:** The Department recognizes that the assessment process for the OCRP may take additional time, and this delays the initiation of the competency restoration treatment services. Therefore, the Department will treat a **denial** of admission to the OCRP as a 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 Department 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 Department will allow one additional business day, from the date of contact by the Admission Coordinator, 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 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 our department.
3. **Court:** We ask that the courts work within the best of their ability to comply with the timeframes we have established for this process, and act upon the requests of the department for Hearings and/or Warrants as needed. If the OCRP has been deemed as NOT an appropriate treatment option by the department, then it is in the best interest of the defendant and all parties involved with the case to ensure that the defendant is admitted to the MHI in a timely manner.

Statutory language regarding the DHS transfer authority: Under WSS 971.14(5)(a)(4) a defendant placed in the OCRP is considered in the **custody and control** of the department, subject to the conditions set by the department. If the department 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 the department will provide documentation to the court

Defendant transfer OCRP to Inpatient at MHI:

1. **BCI/OCRCP:** In the event a defendant is deemed **no longer** appropriate for the OCRP, which requires that the defendant be admitted to the MHI for continued treatment, then 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/OCRCP will also make a follow-up call to the court the next business day to confirm that the Court has received the letter, and also to respectfully bring to the attention of the court the action/assistance the Department has requested. The Department respectfully requests that the court conduct a hearing within 5 business days to check if the defendant is in custody, and if not, then we request that the Court remand the defendant into custody at the time of the hearing for transport to the MHI.

2. **MHI:** The Department would like to minimize the gap in the defendant receiving competency restoration treatment services and supervision, so our department 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 Department of any potential obstacles to admission (transportation), or non-compliance with the process (refusal or unresponsive to calls). The

Department will allow one additional business day, from the date of contact by the Admission Coordinator, 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 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 the Department.

3. *Court: We ask that the courts work to the best of their ability to comply with the timeframes we have established for this process, and act upon the requests of the Department for Hearings and/or Warrants as needed. If the OCRP has been deemed as NO LONGER an appropriate treatment option by the Department, further contact by the DHS community staff, including case management activities, will cease after 7 days. Therefore, it is in the best interest of the defendant and all parties involved with the case 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. This results in a significant amount of time for treatment, under the commitment, being lost. In some situations the Department may ask the Court to vacate the previous commitment Order, and once a defendant is arrested/remanded that the Court issue a new commitment Order, with the commitment date noted as the day the defendant was returned to custody. This allows the Department 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, the Department will ask the Court to vacate the commitment Order, and then revisit the competency question upon the apprehension of the defendant.

Communication: The Department will provide detailed and timely communication with our contracted providers, and with the Court, regarding the status on these types of cases. Once the Court has issued a warrant the Department contracted providers will follow-up with the sheriff to relay any additional information they may have, or acquire, regarding the location of the defendant or his/her schedule.

******Questions regarding the OCRP assessment process should be directed to the Program Coordinator, at BCI (414)271-5577.***

****** Questions regarding WSS 971.14(5) statutory process should be directed to: Adam Oldenburg, DHS Court Liaison, at WCS (414)239-7825 or Vicki Shequen, Assistant Court Liaison, at WCS (414)303-7547***