



Psych Examiner Services Judicial Workgroup

Statewide Competency Restoration Taskforce

Chief Judge Kathryn Messerich, 1st Judicial District
November 20, 2019





Minnesota Judicial Branch Psychological Services

Overview

- Minnesota Judicial Branch is appropriated money by the Legislature according to Minn. Stat. § 480.182 for mandated psychological or psychiatric exams in civil commitment cases and proceedings under Minn. R. Crim. P. Rule 20 (competency and defense of MI or CI).
- State Court Administrator's Office (SCAO) publishes Roster of Qualified Examiners (Roster) and payment schedule according to Minnesota Commitment and Treatment Act Rules 11 & 12



Minnesota Judicial Branch Psychological Services Overview (cont.)

- SCAO Psychological/Psychiatric Examiner Services Program
 - ✓ Ensures examiners listed on Roster meets statutory qualifications set in Minn. Stat. § 253.02, subd.7 and SCAO Policy 510(b) – Psychological/Psychiatric Examiner Services Roster Policy
 - ✓ Manages Examiner Invoicing System
 - ✓ Tracks program data, trends, and costs and reports back to Minnesota Judicial Council and other leadership groups



Workgroup Purpose

In December 2018, to better understand the driving factors of increasing exams and costs, the Minnesota Judicial Council convened a group of judges, attorneys, social services, court staff, and other public stakeholders to:

- 1) provide an analysis of the current process for responding to people suffering from mental illnesses in the criminal justice system, and
- 2) provide recommendations on how to more effectively respond to this court population and best utilize the limited financial resources allocated for Mandated exams.



Workgroup Purpose (cont.)

Objectives:

- Identify factors contributing to an increasing number of Rule 20 exams ordered by the court;
- Identify factors contributing to the increasing number of multiple exams (combined 20.01 and 20.02 and 20.04 exams);
- Identify factors leading to requests for 2nd exams in Civil Commitments and Rule 20 cases;
- Assess whether examiner reports are sufficiently informing court proceedings
- Provide to Judicial Council a written report with findings and recommendations on ways to best address the findings (e.g., statutory, rule, policy or practice changes)



Workgroup Members

Judicial Branch Members

CHAIR: Chief Judge Kathryn Messerich, 1st Judicial District
Judge Leonardo Castro, 2nd Judicial District
Katheryn Cranbrook, Psy.D., Chief Forensic Examiner, 4th Judicial District
Judge Annie Huseby, 9th Judicial District
Judge Sally Tarnowski, 6th Judicial District
Judge Heather Wynn, 10th Judicial District
Ellen Bendewald, SCAO, Research and Evaluation
Jessie Carlson, SCAO, Court Services Division
Deanna Dohrmann, SCAO, Legal Counsel Division
Connie Gackstetter, SCAO, Strategic Planning Division

Karen Jaszewski, SCAO, Legal Counsel Division
Lisa Jore, SCAO, Court Services Division
Paul Patterson, District Administrator, 10th Judicial District
Lindy Scanlon, Civil Commitment Administrator, 2nd Judicial District

External Members

Sue Abderholden, Executive Director, NAMI
Elliot Butay, Criminal Justice Director, NAMI,
Tim Carey, Asst. County Attorney, Ramsey County
Sarah Cory, Ramsey County
Dr. Chinmoy Gulrajani, Director, University of Minnesota Psychiatric Fellows Program
James Gabriel, Dakota County Corrections
Lisa Jones, Asst. County Attorney, Anoka County
Steve Kufus, Civil Commitment Defense Panel Attorney
Sharon Mahowald, Direct Care and Treatment Director, Department of Human Services
Megan Larison, Legal Counsel, Department of Human Services
Rick Mattox, Attorney
Emily Schug, Dakota County Social Services
Jim Scovil, Dakota County Corrections
Rex Tucker, Public Defender, Stearns County
Bill Ward, State Public Defender

➤ Workgroup met between January 2019 – November 2019



Workgroup Process

1. Data and Documentation Review

- Current policies and practices, court data, existing research, and past documentation of Branch issues, needs, and options for change.
- Current exam data trends (Rule 20 and commitment exams) and associated costs.

2. Visioning Sessions

- Established Principles to Guide Work – acknowledged the moral imperative to address people with mental illnesses within the system
- Conducted current state and future trends assessment
- Conducted stakeholder assessment
- Conducted opportunities identification and assessment
- Identified highest ranked and best combination of short and long term opportunities



Workgroup Findings

Findings from the Workgroups discussions confirm Minnesota continues to struggle when responding to people with mental illnesses in court proceedings. The Workgroup confirmed similar findings from the research provided above and also called out circumstances unique to Minnesota.

1. The number of adult criminal cases with an order for a competency evaluation (Rule 20.01 exam) increased by 73% from 2014 through 2018. During this same time period, the percent of cases with an order for a Rule 20.01 evaluation that had a subsequent finding of incompetency, ranged from 41% to 44%.
2. Between 2016 and 2018, the number of mandatory criminal cases with a finding of incompetency was 3,214. Only 41% of these cases directly resulted in commitment or a stay of commitment.



Workgroup Findings (cont.)

3. Minnesota continues to struggle to find a resolution to “gap” cases throughout the state. The Workgroup identified three scenarios that exist in Minnesota in which people with mental illnesses, who have entered into the criminal justice system, fall into a “gap” without access to treatment or care:
 - a) a person is found incompetent, but does not meet the standards for commitment;
 - b) a person is found incompetent and meets the standards for commitment, but is released from inpatient treatment facility when the individual is psychiatrically stable rather than restored to competency; and
 - c) an individual is deemed unable to be restored to competency and does not meet the standards for commitment or be held in jail. When these scenarios occur, often there is no continuum of care for the people suffering from mental illnesses or cognitive impairment, leading people to cycle through the criminal justice system.



Workgroup Findings (cont.)

4. It has been reported by examiners that defendants have been ordered to participate in Rule 20.02 exams without their knowledge and/or consent of the implied affirmative defense. Court data shows that in cases with at least one Rule 20.01 order almost half of those cases had a concurrent 20.02 exam ordered (within 30 days of the 20.01 order). Out of 4,052 Rule 20.02 exams ordered between 2016 and 2018, only 129 defendants (3%) were acquitted due to mental illness or cognitive impairment.
5. Courts and their justice partners are not always well-served by the forensic examination reports provided in legal proceedings under Minn. R. Crim. P. Rule 20 and civil commitment proceedings under Minn. Stat. §253B due to issues of poor quality, clarity of information, or limited access to necessary court and/or medical records.



Workgroup Findings (cont.)

6. Limited education and training on mental health issues is a challenge for the court and its justice partners when responding to cases impacted by people with mental illnesses. It can lead to case delays as new attorneys are involved in transitions from criminal to commitment proceedings.
7. Defendant and respondent's health is a continued concern during court proceedings. Deterioration of a patient's condition can be exacerbated by prolonged court proceedings or stays in jail.



Workgroup Recommendations

1) Judicial Branch Recommendations

- a) Cross-Disciplinary Training for Judges, Forensic Examiners Court Staff, and Justice Partners
- b) Establish more detailed communication processes between Judicial Branch and Dept. Human Services
- c) Revised language in Minn. R. Crim. P. 20.02 to reduce abundance of 20.02 exams
- d) Support the use of electronic records and remote communication technologies
- e) Established required elements for examiners reports
- f) Establish a Judicial Branch mental health advisory group



Workgroup Recommendations (cont.)

The Workgroup noted the court system is not designed to handle many of the factors contributing to the increase in legal proceedings impacted by people with mental illnesses.

2. Preventative Strategies as an Alternative to Rule 20

- a) Funded continuum of community-based services and treatment including housing.
- b) Assessments and treatment in jail settings
- c) Community and public services that support reduction of people with mental illnesses in criminal justice system
- d) Training of 911 dispatchers to divert mental health crisis emergencies to mobile response teams and encourage sheriffs to support divers.



Next Steps

- Findings and Recommendations presented to Minnesota Judicial Council in late 2019 or early 2020.