



Mental Health Services in County Jails

Key Facts and Findings:

- Problems with service availability in Minnesota’s adult mental health system have persisted for years, limiting peace officers’ options for referring persons with mental illness they take into custody.
- The Department of Corrections has not collected reliable data from jails on the number of inmates assessed for mental illness. However, our surveys of sheriffs suggest that one-third of jail inmates may be on medications for a mental illness.
- State rules do not adequately address some important areas of jail-based services, including mental health assessment of inmates following admission to jail.
- Most sheriffs and county human services directors believe that jail inmates should have better access to psychiatric services, counseling, and case management than they now have. In addition, these officials widely believe that the number of beds in Minnesota’s mental health facilities—particularly secure inpatient beds—is inadequate to meet current needs.
- There is limited compliance with a state law that requires discharge planning for sentenced jail inmates with mental illness.
- Contrary to law, some Minnesota defendants deemed mentally incompetent to stand trial remain in jail while awaiting court action on their possible civil commitment to competency treatment. Many incompetent defendants do not ultimately receive treatment to restore their competency.

- A 2013 law (the “48-hour law”) that gives jail inmates priority for placement into Department of Human Services (DHS) facilities has not always worked as intended, and it has limited the access of other patients to the Anoka-Metro Regional Treatment Center.

Key Recommendations:

- The Legislature, DHS, and counties should fund and implement a more comprehensive set of community-based mental health services.
- DHS, with legislative support, should relocate some Anoka-Metro Regional Treatment Center patients who do not need hospital care so that this facility can better serve patients with challenging behaviors. The Legislature should fund DHS’s community behavioral health hospitals so they can use more of their licensed beds and provide a better resource for law enforcement.
- The Legislature should authorize a streamlined judicial process for individuals deemed incompetent to stand trial to be placed into treatment or referred to county social services. If the Legislature retains the current process, however, it should specify a time limit in law for incompetent inmates to remain in jail while awaiting commitment.
- The Legislature should amend state law to require mental health assessments of persons who remain in jail at least 14 days.
- The Legislature should amend state law to allow jails that have proper staffing and training to administer medications involuntarily, pursuant to a court order.

Weaknesses in community-based and jail-based mental health services place at risk the well-being of persons with mental illness taken into custody by law enforcement.

Report Summary

Minnesota's county jails house persons taken into custody by law enforcement who have not yet had a criminal trial. They also confine persons who have sentences of up to one year. Courts have ruled that jails may not show "deliberate indifference" to inmates with serious medical issues, including mental health problems.

The Minnesota Department of Corrections (DOC) requires jails to report information on the number of inmates referred for mental health evaluations. However, the data collected have not been complete or reliable, and we recommend that the department ensure better reporting. Lacking good information on how many jail inmates have mental illness, we solicited information from county sheriffs about their inmate populations. Their estimates suggested that at least one-third of jail inmates take medications for a mental illness.

Among persons who received publicly funded services in Minnesota for a serious mental illness in 2014, at least 18 percent had an arrest in 2013 or 2014, and at least 10 percent had a conviction in those years.

Limited availability of community and state-operated mental health services affects persons taken into custody.

In 1987, the Legislature passed the Minnesota Comprehensive Mental Health Act, and it set a target of full implementation by 1990. But, today, many mental health services remain unavailable—as indicated by the Department of Human Service's (DHS's) own analyses and by our surveys of county sheriffs and human services directors. As a result, law enforcement has limited options when they take someone with mental illness into custody, or when they seek treatment during or after an inmate's stay in jail.

Community hospital psychiatric beds are often full, partly because they have had problems discharging patients to state-run

psychiatric facilities. In 2015, it typically took more than 50 days for community hospitals to place someone in the Anoka-Metro Regional Treatment Center. A contributing factor is that jail inmates receive priority for placement at Anoka under a 2013 law (the "48-hour law"), limiting Anoka's ability to serve others. For example, 42 percent of Anoka's June 2015 patient population came to Anoka from a jail, up from 12 percent two years earlier. Nearly half of the patients in Anoka's "competency restoration" program (for persons deemed incompetent by a court to stand trial) did not require the hospital level of care that Anoka provides.

Meanwhile, DHS's smaller psychiatric hospitals have had significant staffing reductions, and they are now operating well below their capacity.

There is no single solution to improving community services for persons with mental illness who come into contact with law enforcement. As a first step, DHS, the Legislature, and counties should continue to address service availability problems in the state's mental health system. Second, the Anoka-Metro Regional Treatment Center needs to be available for patients who need inpatient mental health care in a secure setting. Transferring many of that facility's competency restoration cases to other locations would be helpful. Third, the Legislature should fully fund DHS's behavioral health hospitals so more of their beds are available in the communities they serve, including for persons taken into custody by law enforcement who have not been committed by a court to treatment.

Where possible, counties should formalize arrangements with community or state-run hospitals to help ensure that there will be places for persons who need inpatient care while in jail (or instead of going to jail).

State rules for jails inadequately address some mental health issues.

DOC has adopted rules that govern jail practices. These rules are consistent with

some standards adopted by the corrections profession, but there are important areas in which the rules and standards do not align.

For example, professional standards suggest that jails should assess the mental health of inmates within prescribed periods after admission; state rules have no such requirements. Professional standards recommend the development of treatment plans for inmates with mental illness, but state rules do not require this. We recommend that DOC update its jail rules. In some areas—like mental health assessment—we think the Legislature should amend state law to ensure prompt implementation of changes.

Services in jails for persons with mental illness are limited.

In surveys we conducted, a majority of Minnesota’s sheriffs and county human services directors said that jail inmates with mental illness should have better access to psychiatric services, counseling, and case management services.

DOC’s jail inspections have identified general issues that could affect inmates with mental illness. For example, 40 percent of jails’ most recent inspection reports cited problems with the jails’ ongoing checks on inmates’ well-being. Also, DOC often cited jails for inadequacies in staffing, training, and programming, which could adversely affect persons with mental illness.

Since 2000, there have been more than 50 suicides and 770 suicide attempts in Minnesota jails—some potentially preventable, according to DOC reviews. Litigation related to jails’ services for inmates with mental illness have been infrequent, but some settlements related to inmate suicides or self-harm have been large.

Some jail inmates do not comply with their prescribed medications. Minnesota law has provisions that allow for involuntary administration of antipsychotic medication in certain situations. The law does not explicitly

authorize these practices in jails, and jails rarely pursue this option. Further, state law only allows courts to authorize involuntary medication for individuals who have been court-committed to treatment (or for whom such commitments are under consideration). However, medications may help some individuals manage their illnesses so that commitments are unnecessary. We recommend that the Legislature consider statutory changes that would allow jails that have proper staffing and training to administer medications involuntarily at a court’s direction.

Inmates with complaints about mental health services have limited recourse. Just as there is a state ombudsman who investigates problems related to mental health services in human services facilities, we recommend that the Legislature consider establishing an ombudsman focused on investigating issues related to mental health services in correctional or detention facilities.

State law requires DOC to develop a “model discharge planning process” for certain jail inmates with mental illness. However, there has been limited compliance among counties with the law’s discharge planning requirements.

Incompetent defendants often remain in jail and are not always treated to restore competency.

Under state law, individuals may not be criminally tried if they lack the mental ability to consult with attorneys, understand court proceedings, or participate in their defense. Thus, courts have procedures for evaluating defendants, and courts may determine that individuals are “incompetent” to stand trial.

In Minnesota, unlike most states, a person deemed incompetent must subsequently go through a separate commitment process to be placed in treatment intended to restore competency. The median time for determining competency in cases we reviewed was 50 days, and this was followed by a median time of an

additional 20 days for a decision on civil commitment.

State law says that individuals who are awaiting court decisions on their commitment cannot be in jail, unless a court finds this necessary to protect the life of the individual or others. But we found that 63 percent of incompetent defendants we tracked were in jail while awaiting commitment decisions—typically for at least a week. Counties should develop placement options so that incompetent individuals awaiting civil commitment do not sit in jail.

Minnesota’s standard for civil commitment is higher than the standard for incompetency. We found that in most cases where someone was found incompetent, no commitment petition was filed or the court did not commit the person. These individuals may simply have been released from custody, and it is unclear whether their mental health issues were addressed.

We recommend that the Legislature create a special commitment process so that persons charged with felonies or gross misdemeanors who are found incompetent could be immediately placed by a court in competency treatment. Those deemed incompetent for misdemeanor charges would be referred to a county human services agency for follow-up.

We also recommend that DHS implement competency restoration services in a full

range of settings. Currently, nearly all such services are provided in DHS’s high-security inpatient facilities, which may not be necessary for all cases.

The “48-hour law” has not always worked as intended.

In 2013, the Legislature passed a law that required prompt placement of civilly committed jail inmates into DHS facilities. This law has mostly applied to persons deemed incompetent to stand trial and subsequently committed to treatment.

The law requires placements to occur within 48 hours, but it is unclear in law whether this is computed from the commitment order or DHS’s notification of the order. Courts have not always provided timely notification to DHS.

As of August 2015, about one-fourth of all individuals subject to the 48-hour law had not been placed within 48 hours of DHS’s notification of the order. There were various reasons for noncompliance; in some cases, the DHS commissioner chose not to comply due to concerns for staff and patient safety.

We recommend statutory changes to clarify how the 48-hour law should be administered, and to clarify whether there are circumstances in which DHS is not required to comply with the law.

Summary of Agencies’ Responses

In a letter dated February 17, 2016, Department of Corrections Commissioner Tom Roy said that OLA’s evaluation was “professional and thorough.” He said the department agrees with each of the OLA recommendations directed toward his agency, including those related to updates of statewide rules for jails and improved DOC oversight of certain jail-reported data.

In a letter dated February 22, 2016, Department of Human Services Commissioner Emily Piper said OLA’s report is “comprehensive” and makes “sensible recommendations.” She said a strong community mental health system is important for preventing incarceration of persons with mental illness, and she said 2015 legislative funding will help in this regard. Consistent with OLA recommendations, she said DHS is exploring ways to “free up” beds at its Anoka psychiatric hospital and provide more placement options for competency restoration treatment.

The full evaluation report, *Mental Health Services in County Jails*, is available at 651-296-4708 or:
www.auditor.leg.state.mn.us/ped/2016/mhjails.htm