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Judiciary, Corrections, and Juvenile Justice

G-7 Mental Health and the Criminal Justice System

Considerations for incarcerated and detained persons with mental health issues have become increasingly common in the criminal justice system in Kansas. An overview of recent legislation and available services, including crisis intervention, mental health courts, and Kansas Department of Corrections (KDOC) mental health services, follows.

Recent Legislation

Crisis Intervention Act—2017 Senate Sub. for HB 2053

The 2017 Legislature passed legislation related to the care and treatment of persons with mental illness and problems with substance abuse through Senate Sub. for HB 2053, also known as the Crisis Intervention Act (Act). The Act outlines requirements for the use of emergency observation and treatment (EOT) in a “crisis intervention center” (center), defined as an entity licensed by the Kansas Department for Aging and Disability Services that is open 24 hours a day, 365 days a year; equipped to serve voluntary and involuntary individuals in crisis due to mental illness, substance abuse, or a co-occurring condition; and uses certified peer specialists. EOT does not mean the person loses any civil right, property right, or legal capacity, except as ordered by a court. Admission alone does not create a presumption that a person is in need of a guardian or conservator, or both.

An individual may be admitted voluntarily or involuntarily based on the belief and factual circumstances supporting the belief that the person needs EOT due to mental illness or substance abuse and he or she is likely to cause harm to self or others if not immediately detained. Law enforcement can transport a person needing EOT to a center, and the center cannot refuse to accept a person for evaluation if the center is within the officer’s jurisdiction.

The person’s need for EOT must be evaluated within 4 hours after admission by the head of the center and no later than 23 hours after admission by a different behavioral health professional. If the head of the center determines the need for EOT exists after 48 hours, the head of the center must file an affidavit to that effect for review in the district court in the county where the center is located. If the head of the center determines the need for EOT

exists after 72 hours, the head of the center must immediately file a petition to find appropriate placement for the person.

The Act outlines the rights of every patient being treated in a center and requires the head of the center to advise any person in custody of his or her rights under the Act.

Senate Sub. for HB 2053 was supported by law enforcement agencies around the state after the agencies encountered frequent issues with the detention and custody of mentally ill persons. Several mental health advocacy groups were also in support of the bill. The bill was the product of a Judicial Council Advisory Committee created to study 2016 HB 2639, a bill which would have enacted the Emergency Observation and Treatment Act.

Juvenile Crisis Intervention Centers—2018 House Sub. for SB 179

The 2018 Legislature created and amended law to establish juvenile crisis intervention centers and procedures for admission of juveniles to such centers. For more information on 2018 House Sub. for SB 179, see article [G-5 Juvenile Services](#) in this Briefing Book.

Competency to Stand Trial—2018 HB 2549

The 2018 Legislature amended law related to the competency of a defendant to stand trial, expanding the list of places where a defendant may be committed for evaluation and treatment. The bill provides a court, in both misdemeanor and felony cases, may commit a defendant to the state security hospital or any appropriate state, county, or private institution or facility for a psychiatric or psychological examination and report to the court for determination of competency to stand trial. The bill also provides if a defendant is found incompetent to stand trial, the court must commit the defendant for evaluation and treatment to any appropriate state, county, or private institution or facility.

Under prior law, a defendant charged with a felony could be committed only to a state security

hospital or any county or private institution for examination and report to the court and, if found incompetent to stand trial, could be committed only to a state security hospital or any appropriate county or private institution for evaluation and treatment. Under prior law, a defendant charged with a misdemeanor could be committed only to any appropriate state, county, or private institution for examination and report and, if found incompetent to stand trial, could be admitted only to these same institutions for evaluation and treatment.

The proponents of 2018 HB 2549 expressed the need for more flexibility in conducting competency evaluations to reduce strain on the state security hospital and to reduce incarceration time in county jails.

Kansas Department of Corrections Mental Health and Behavioral Health Services

KDOC facilities provide comprehensive health care through private companies under contract with KDOC. Each facility provides 24-hour mental health care for inmates, including on-site crisis intervention, use of designated hospital rooms or appropriate health facilities, and emergency on call mental health professional services when the emergency health facility is not located nearby. Mental health services are provided to inmates based upon psychiatric assessments. Specific programs and services are outlined below.

Larned Correctional Mental Health Facility

Historically, Larned Correctional Mental Health Facility has housed the most severely mentally ill adult male inmates within KDOC, along with a significant number of inmates with behavioral disorders that make them an unacceptable risk for housing in another facility. The Central Unit serves as a transitional unit for inmates who are not able to function in the general population of a traditional correctional institution for mental health reasons, but are not in need of psychiatric hospitalization. Inmates are assigned to this facility by mental health staff at other correctional institutions. In

May 2017, KDOC announced plans to convert the 150-bed maximum-security Central Unit to a medium-security unit to house certain offenders aged 18-25 with high recidivism potential. The 150 mental health inmates previously housed in Central Unit were subsequently transferred to El Dorado Correctional Facility (EDCF) in the summer of 2017. Those inmates will be housed within the behavioral health unit at EDCF (<http://www.hutchnews.com/cedbf438-576e-5a94-afd9-64b04ebc0d9b.html>).

Larned State Hospital

At Larned State Hospital, 115 beds are reserved for KDOC offenders who need a higher level of psychiatric care. There, inmates are provided mental health care and treatment in either the acute care or the residential rehabilitation program (RRP). The purpose of RRP is to provide psychiatric rehabilitation and vocational services to adult males referred from KDOC with the intent of preparing these individuals for successful reintegration into the community or back into KDOC services as determined on an individual basis.

El Dorado Correctional Facility

Fundamental Lessons in Psychology (FLIP). Directed at segregation inmates, FLIP consists of various psychological topics including: anger management, anxiety, assertiveness, cognitive self-change, depression, general mental health, grief, loss and forgiveness, men's issues/adjustment and self-esteem.

Behavior Modification Program (BMP). BMP is a program designed to deal with transitioning segregation inmates in a stratified behavior modification program based on increased steps of privileges for demonstrated appropriate behavior and program compliance. The nine-month, cognitive-based program integrates inmates in a three-step process that includes portions of Thinking for a Change, Motivation for Change, PAD (Positive Attitude Development), and anger management programs. An additional three months of monitoring under intensive supervision is required under the program.

Ellsworth Correctional Facility

A variety of services are available, including mental health group counseling, intensive groups, individual counseling, psychiatric intervention, crisis intervention, psychological evaluations, activity therapy, discharge planning, and tele-psychiatry, to assist in the management of inmates on psychotropic drugs and on-call services. In addition, mental health professionals provide staff instruction on the assessment and management of the inmate population.

Norton Correctional Facility

The Behavioral Health Department provides individual and group therapy for inmates, including therapy groups for anger management and dialectical behavior therapy, and covering topics such as lifestyle changes, relationships, and parenting.

Alternative Sentencing Courts

Alternative sentencing courts are established as an alternative to incarceration for persons with mental health issues, substance abuse issues, or both, who are convicted of misdemeanors. These courts offer treatment, support, and counseling. Many times, those who suffer from mental health disorders also suffer from addiction to drugs, such as opioids. For some mental health courts, diagnosis of a major mental health disorder is required for participation. However, if the participant is also addicted to drugs, treatment for that addiction will coincide with treatment for the underlying mental health disorder. Kansas has not established a statewide program for drug treatment courts. However, the cities of Kansas City, Lawrence, Topeka, and Wichita have developed their own municipal- or county-level programs.

Wyandotte County sets aside a "care and treatment" docket for those who would benefit from the program. Judges can decide to mandate outpatient treatment or order a trip to Osawatimie State Hospital. In Douglas County, the county commission developed a behavioral health program for its courts, which opened in January

2017. More than \$440,000 was set aside to fund the mental health court in 2016. The mission of the behavioral health court is to connect defendants with community support services and reduce criminal involvement of defendants who suffer from serious mental illness and co-occurring disorders, thereby enhancing public health and safety.

Topeka developed its alternative sentencing court in 2015 with a \$91,000 grant from the U.S. Department of Justice and \$25,000 from

the Kansas Health Foundation. The court provides treatment, rather than jail time, for those charged with misdemeanor offenses and who are mentally ill or addicted to drugs or alcohol. The City of Wichita developed its mental health court in 2009 with a federal grant. The program is said to have improved the quality of life for its graduates, diminished recidivism, and saved taxpayers millions of dollars (<https://www.khi.org/news/article/advocates-of-kansas-mental-health-courts-say-lives-improved-taxpayer-dollar>).

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