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May 15, 2013 Joint Committee on Finance Paper #360

Forensic Units at Mendota Mental Health Institute (DHS -- Care Facilities and Quality Assurance)

[LFB 2013-15 Budget Summary: Page 255, #1]

CURRENT LAW

Competency Examinations and Treatment to Competency. Under 971.14(2) of the statutes, when ordered by a court to do so, the Department of Health Services (DHS) is required to evaluate the competency of a defendant. The court may also require that the evaluation be done on an inpatient basis, which the Department is required to complete within 15 days, unless, for good cause, the facility or examiner appointed by the court cannot complete the examination within this period and requests an extension.

After the evaluation is completed, the Department submits a report of its findings to the court, which then holds a hearing to determine whether the individual is competent to stand trial. Under 971.14(5) of the statutes, if the court determines the defendant is not competent but is likely to become competent if provided with appropriate treatment, the court must suspend the proceedings and commit the defendant to the custody of DHS for treatment for a period not to exceed 12 months, or the maximum sentence specified for the most serious offense with which the defendant is charged, whichever is less. Days spent in custody for treatment to competency are considered days spent in custody for credit toward the defendant's sentence.

DHS is required to provide the court with updates of the defendant's progress toward competency three months after commitment, six months after commitment, nine months after commitment, and within 30 days prior to the expiration of the commitment. If DHS indicates in one of these reports that either the defendant has been treated to competency, or that the defendant cannot be treated to competency within the remaining commitment time available, the court holds another hearing to determine the defendant's competency. The trial proceedings commence if the court determines the defendant is competent. If the court determines the

defendant is not competent and cannot be treated to competency within the remaining commitment period, the proceedings are suspended and the defendant is released and immediately committed to a treatment facility.

Mental Health Institutes. DHS operates two inpatient mental health facilities, the Mendota Mental Health Institute (MMHI) in Madison and the Winnebago Mental Health Institute (WMHI) near Oshkosh. MMHI has ten forensic units with a total of 201 adult forensic beds. Two of MMHI's forensic units are admissions units, one with 20 beds and the other with 19 beds. WMHI has four forensic units with a total of 122 beds. WMHI's forensic admissions unit has 44 beds. "Forensic" patients are patients who have been charged with a crime and there is some reason to believe that a mental illness was involved. Each of the mental health institutes also accepts non-forensic civil patients for treatment and emergency detentions under Chapter 51 of the statutes. MMHI has 33 beds for civil commitments and WMHI has 47 beds.

Base funding for MMHI is $72,426,800 ($45,334,600 GPR and $27,092,200 PR) and 738.43 positions (476.18 GPR positions and 262.25 PR positions). Base funding for WMHI is $53,447,300 ($30,732,700 GPR and $22,714,600 PR) and 604.86 positions (360.41 GPR positions and 244.45 PR positions). The state pays for the treatment of individuals who are determined to be not guilty by mental disease or defect, competency evaluations, and treatment to competency services. Counties pay the full cost of treatment for non-forensic patients between ages 22 and 64 and the non-federal share of MA costs for MA-eligible individuals under age 22 and MA-eligible individuals 65 years of age or older.

GOVERNOR

Provide $5,884,100 GPR in 2013-14 and $6,689,600 GPR in 2014-15 and 73.00 GPR positions, beginning in 2013-14, to staff two 20-bed forensic admissions units at MMHI. DHS opened the first unit on April 15, 2013, and intends to open the second in October, 2013. Both units would replace vacant civil units and do not require remodeling. The bill would provide funding to support 30.5 unit staff and 6.0 ancillary staff for each unit. The funding that would be budgeted for these units in the bill is summarized in Table 1.

TABLE 1

Funding for Two Forensic Admissions Units at Mendota MHI

Expenditure Category	2013-14	2014-15	Biennial Total
Salary	$3,398,500	$3,884,000	$7,282,500
Fringe Benefits	1,594,100	1,821,800	3,415,900
Supplies and Services	153,800	183,800	337,600
One Time Start-up Costs	88,600	0	88,600
Food	76,800	89,800	166,600
Variable Non-Food Costs	572,300	710,200	1,282,500
Total	$5,884,100	$6,689,600	$12,573,700

DISCUSSION POINTS

1. The average daily population (ADP) for the 323 forensic beds at the two mental health institutes was 311 in 2011-12 and increased to 322 by March, 2013. Of these 323 beds, 83 were admissions units, which had a combined ADP of 86.8 patients. When there are not enough forensic beds to admit forensic patients, DHS places individuals on a wait list ("admissions list"), and admits these individuals as beds become available. DHS occasionally places forensic patients in a civil unit when no forensic beds are available. The average number of individuals on the admissions list increased from 4.8 in September, 2010, to 45.7 individuals in March, 2013, and the average wait time on the list increased from 9.2 days in calendar year 2009 to 21.2 days in calendar year 2012. DHS attributes this increase to a rise in the number of mentally ill individuals who have been charged with crimes.

2. The admissions list only includes individuals that have been court-ordered for a competency evaluation, treatment to competency, or have been determined not guilty by reason of mental disease or defect. Competency can be raised for anyone charged with a crime, regardless of the severity of the offense. The individuals on the admissions list are ordered based on the date of the court-ordered evaluation or treatment. DHS then prioritizes individuals that appear to be too suicidal or violent to remain in a county jail and individuals who need to be admitted to meet the 15-day requirement for competency evaluations.

3. DHS opened the first of the two proposed admissions units on April 15, 2013. As of May 7, 2013, patients already filled 19 of the 20 beds in the unit. The average number of individuals on the admissions list fell from 45.7 in March, 2013, to 29.9 in April, 2013. DHS indicates that, even with the first unit open, the length of time an individual may wait on the admissions list is approximately 30 days, although it depends on the severity of the individual's situation.

4. DHS was able to staff the first admissions unit in 2012-13 by using GPR available due to position vacancies, to fund PR positions from the MHIs' civil units. DHS indicates that, while it is able to fund the unit for two and a half months in 2012-13 by reallocating savings due to vacancies, it cannot support these units in this manner on a permanent basis. Further, although DHS has been using PR position authority to staff the new forensic admissions unit, these positions cannot be used for this purpose in the future. The forensic units are funded with GPR and should be staffed with GPR positions. DHS indicates that the PR positions are needed to operate additional beds in the civil units, which were also over capacity as of March, 2013, by 15 beds in the adult units and by 13 beds in the juvenile units.

5. Table 2 shows the staffing for each of the new admissions units. The number and type of positions are the same for both units. Table 2 also shows the annualized GPR cost for the type and number of positions. DHS would place four psychiatric care technicians on the morning and evening shifts, and one technician on the night shift. To account for sick days and vacations, a total of eight psychiatric care technicians would be assigned to the morning and evening shifts, and two technicians would be assigned to the night shift. The Governor's recommended staffing levels for the two new admissions units are identical to the staffing levels at the current admissions units at the MHIs.

TABLE 2

Annualized Staffing for Each Forensic Admissions Unit

Unit Staffing	GPR Positions	Annual Cost
Psychiatric Care Technician	18.0	$1,072,600
Nurse Clinician 2	4.0	390,600
Nurse Clinician 3	1.0	114,700
Nurse Supervisor	1.0	127,800
Office Operations Associate	1.0	48,200
Psychiatrist	1.0	281,400
Psychologist	1.0	112,800
Social Worker	1.5	114,900
Occupational Therapist	1.0	98,900
Recreational Therapist	1.0	80,800
Unit Staffing Sub-Total:	30.5	$2,442,700
Ancillary Positions		
Psychiatric Care Technician	2.0	$119,200
Recreation Therapist	1.0	80,800
Teacher	1.0	89,500
Correctional Officer (perimeter)	2.0	120,700
Ancillary FTE Total:	6.0	$410,200
FTE Total:	36.5	$2,852,900

6. DHS is required by statute to complete court ordered competency evaluations within 15 days of the court order, unless, for good cause, the facility or examiner appointed by the court cannot complete the examination within this period and requests an extension. In that case, the court may allow one 15-day extension of the examination period, for a total examination period of 30 days. DHS indicates 98% of competency evaluations are completed within the first 15 days and the remaining 2% are completed within the 30-day timeframe.

7. Individuals who require treatment to competency services at the MHIs make up the majority of individuals and the largest source of growth for the admissions list.

8. In cases where an individual is court-ordered for treatment to competency at the MHIs, the individual returns to the county jail more stable than when they left the county jail. The MHIs assess the amount and type of medications the individual is taking and, if necessary, create a new medication regimen. If staffed to do so, the county jail continues the new regimen when the individual returns to the jail, which is intended to reduce the likelihood of another crisis situation in the future.

9. Table 3 shows the forensic admissions list from September, 2010, through April, 2013. The number of individuals on the admissions list increased rapidly from September, 2010, through January, 2011, until DHS increased the admission unit bed capacity from 70 beds to 83

beds beginning in January, 2011. The number on the admissions list fell for two months after the increase in the admissions beds, but increased again from March, 2011, through August, 2011, until another drop in September, 2011, reduced the population almost in half. The number of individuals on the forensic admissions list grew steadily since September, 2011. By March, 2013, it was five times longer than it was in September, 2011.

TABLE 3

Number of Defendants on the Forensic Admissions List

	2010-11	2011-12	2012-13
July		17.8	27.9
August		17.9	30.6
September	4.8	9.2	31.3
October	6.3	10.5	31.5
November	9.1	10.6	26.4
December	12.0	15.5	29.7
January	20.5	16.3	33.0
February	15.4	16.8	40.4
March	12.4	16.3	45.7
April	12.9	20.0	29.9
May	15.7	19.6	
June	15.8	23.2	

10. Table 4 shows the average length of time that individuals remained on the admissions list for calendar years 2004 through 2012.

TABLE 4

Average Number of Days on the Forensic Admissions List

Calendar Year	Average Days on Admissions List
2004	8.6
2005	15.9
2006	27.0
2007	19.2
2008	21.9
2009	9.2
2010	10.1
2011	15.0
2012	21.2

11. The Legislature and DHS have taken a number of steps over the past five years to address the growth in the forensic admissions list. 2009 Wisconsin Act 20 included a provision to

require court hearings to be held within 14 days of receipt of a DHS competency-to-stand-trial report. Before this change, some beds at the MHIs would be occupied by individuals waiting for a court hearing after their evaluation was complete. Also in 2008, DHS formalized the tracking of the timeliness of competency evaluations at the MHIs and developed the Outpatient Competency Restoration Program (OCRP). OCRP allows individuals who have been court-ordered for treatment to competency to receive treatment in the community, rather than in an inpatient setting at the MHIs. In 2010, DHS consolidated vacant minimum security treatment beds at MMHI and WMHI to create a medium-security admissions unit at MMHI.

12. DHS completed a total of 1,167 court-ordered competency evaluations in 2011-12. Of this total, 1,108 evaluations (or 95%) were completed on an outpatient basis and 59 were completed at the MHIs.

13. In 2011-12, 35.2% of evaluated defendants were found incompetent to stand trial and 217 defendants were admitted to the MHIs for treatment to competency after their evaluation. In 2010-11, 167 defendants were admitted to the MHIs for treatment to competency. The length of treatment needed to restore competency is dependent on the individual and the level of treatment they need. DHS indicates the average length of treatment needed to restore competency is approximately 90 days.

14. New admissions beds at MMHI may benefit counties by reducing the costs counties incur by holding severely mentally ill patients in county jails while patients wait for treatment at the MHIs. Inmates with severe mental illness are more likely than other inmates to require separate housing, expensive medications, and the attention of jail staff. Since an individual court-ordered to receive a competency evaluation or treatment to competency is committed to the care of the Department, county jails have no legal responsibility to hold these individuals. County jails have agreed to hold these individuals, at county expense, until a bed at the MHIs is available. The cost per day to house an individual at a county jail can vary significantly from county to county, but can be under $100 per day for some counties.

15. While individuals wait for their inpatient competency evaluation, they remain at the county jail. County jails do not have the physical infrastructure, sufficient staffing, or legal authority to provide these individuals the treatment they need to be restored to competency. As previously indicated, DHS already treats individuals to competency in the community when this is appropriate. The individuals that would be affected under this item are those for whom outpatient treatment is not appropriate.

16. The MHIs are designed, staffed, and operated as treatment facilities for individuals with severe mental illness. The MHIs have padded rooms for individuals who may try to hurt themselves by striking hard surfaces. They can also obtain a court order to involuntarily administer psychotropic medications to patients that refuse treatment. The MHIs have psychiatrists on staff every day and many psychiatric care technicians that can monitor the patients in-person and work with them one-on-one. Staff at the MHIs is specially trained to work with mentally ill patients. The MHIs also offer treatment programming designed to return the individual to competency.

17. Whereas the MHIs are staffed to serve mentally ill individuals exclusively, county

jails are primarily intended to promote public safety. Some county jails may have a small number of mental health professionals to assess the mental health of the entire inmate population and a psychiatrist that offers services at the jail a couple of days a week. However, many county jails do not provide these services. County jails that do not have mental health staff work with their county mental health crisis teams. As shown in Table 1, for each of the new 20-bed units at MMHI, DHS is requesting 18.0 psychiatric care technicians. These positions would provide more hours of specialized care than individuals would receive in county jails.

18. Security personnel at county jails may or may not be trained in the best ways to interact with individuals with severe mental illness. In some instances, security personnel and other inmates may antagonize the inmate with mental illness, worsening their condition. Individuals who jail staff determines are dangerous may be placed on administrative confinement or segregation for the safety of themselves or others. Although necessary, the isolation required by administrative confinement and segregation may exacerbate a severely mentally ill person's condition.

19. The attachment shows the number of forensic admissions for any reason in calendar year 2012, by county. However, not all of the individuals identified in the attachment were waiting for a competency evaluation or for treatment to competency services. Some admissions might have been for individuals already determined not guilty by mental disease or defect.

20. When a court orders a competency evaluation, the court proceedings remain on hold until the evaluation is completed and the defendant is either determined competent or is treated to competency. As a result, the shortage of admissions beds at the MHIs also leads to delays in the defendant's trial.

21. DHS indicates that the shortage in forensic beds at the MHIs and the long admissions list makes DHS vulnerable to lawsuits from individuals, or their families, that have been court-ordered to the Department's custody for treatment to competency. While these individuals are waiting in county jails for treatment, their mental and physical conditions may worsen, which can have negative long-term health and psychological effects. The state would face the greatest risk of lawsuit if someone committed suicide while waiting for treatment at a county jail. As mentioned previously, although the county jails are holding these individuals, the Department is legally responsible for their care and well-being.

22. Defendants have the right to efficient criminal proceedings and appropriate treatment in a reasonable amount of time. Based on this premise, the current number of people on the admissions list (even after the opening of the first unit), and the potential legal liability for the state regarding the safety of these individuals, the Committee could approve the Governor's recommendation to fund both 20-bed admissions units at MMHI (Alternative 1).

23. Alternatively, the Committee could authorize staff for one unit and determine the effect of the new unit in reducing the admissions list prior to authorizing a second unit (Alternative 2). However, the current admissions list suggests the need for both units. Further, additional legislation would be needed to provide funding to support the costs of a second unit.

24. Finally, the Committee could delete the item. DHS would remain liable to potential

lawsuits and the lack of available admission beds would continue to delay court proceedings and treatment for defendants. If funding for both units was deleted from the bill, DHS indicates it would stop admitting individuals to the unit that is already open. The unit would remain open until all of the patients currently in the unit could either be transferred to another unit or were treated to competency and discharged from MMHI.

ALTERNATIVES

1. Approve the Governor's recommendation.

2. Approve funding for one of the two proposed forensic admissions units at the Mendota Mental Health Institute. Reduce funding in the bill by $2,522,400 GPR in 2013-14 and $3,344,800 in 2014-15 and 36.5 GPR positions beginning in 2013-14.

ALT 2	**Change to Bill**	
	Funding	Positions
GPR	- $5,867,200	- 36.50

3. Delete provision.

ALT 3	**Change to Bill**	
	Funding	Positions
GPR	- $12,573,700	- 73.00

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Attachment

ATTACHMENT

All Forensic Admissions to the MHIs in Calendar Year 2012, by County

County	Mendota	Winnebago	Total
Adams	0	1	1
Barron	1	1	2
Bayfield	0	1	1
Brown	6	8	14
Buffalo	1	0	1
Chippewa	1	3	4
Clark	0	1	1
Crawford	0	1	1
Dane	26	8	34
Dodge	4	0	4
Door	1	0	1
Douglas	1	1	2
Dunn	2	0	2
Eau Claire	7	3	10
Fond du Lac	3	5	8
Grant	2	0	2
Green	2	0	2
Green Lake	1	1	2
Iron	0	1	1
Jackson	1	0	1
Jefferson	3	4	7
Kenosha	6	3	9
La Crosse	5	3	8
Langlade	2	0	2
Lincoln	1	0	1
Marathon	4	2	6
Marinette	1	1	2
Milwaukee	72	40	112
Monroe	1	2	3
Oconto	1	2	3
Oneida	1	0	1
Out of State	8	1	9
Outagamie	5	6	11
Ozaukee	1	2	3
Polk	2	1	3

County	Mendota	Winnebago	Total
Portage	2	1	3
Racine	19	7	26
Rock	2	5	7
Rusk	0	1	1
Sauk	0	1	1
Shawano	2	3	5
Sheboygan	8	7	15
St. Croix	0	2	2
Taylor	1	1	2
Walworth	5	1	6
Washburn	1	3	4
Washington	1	1	2
Waukesha	6	3	9
Waupaca	0	1	1
Waushara	1	2	3
Winnebago	4	6	10
Wood	9	2	11
Total	233	149	382