*Hon. S. Anthony McCann*
*Secretary*
*Department of Health and Mental Hygiene*
*201 W. Preston Street*
*Baltimore, Maryland 21201*

*Hon. George Lipman*
*Judge, District Court of Baltimore City*
*Edward F. Borgerding Multi-Service Center*
*5800 Wabash Avenue*
*Baltimore, Maryland 21215*

October 25, 2006

The Honorable Ulysses Currie, Chair
Senate Budget & Taxation Committee
Miller Senate Office Building
3 West Wing
11 Bladen Street
Annapolis, MD 21401-1991

The Honorable Norman H. Conway, Chair
House Appropriations Committee
Lowe House Office Building, Room 120
Annapolis, MD 21401-1991

Re: 2006 Joint Chairmen's Report Operating Budget - Program Direction, M00L01.01, Page 106

Dear Chairmen:

As requested by the 2006 Joint Chairmen's Report, the Department of Health and Mental Hygiene (DHMH) and the Maryland Judiciary (Judiciary) jointly submit the following in response to your inquiry for an "estimate of the demand forensic placements have on State psychiatric hospitals, lengths of stay, barriers to appropriate movement of patients from State psychiatric beds back to the courts, programs to divert individuals with mental illness from contact with the criminal justice system, and any initiatives that would facilitate the movement of the forensic population between the two systems." Additionally, this report summary will demonstrate the ongoing collaborative process with the Judiciary and other participants within the criminal justice system for improving service systems for individuals with mental illness.

Pursuant to Title 3 of the Criminal Procedures Article, Ann. Code of MD, the DHMH has responsibility to conduct court-ordered evaluations of competency to stand trial and criminal responsibility, and to provide treatment of the individual upon a finding of not competent to stand trial or not criminally responsible (NCR) and dangerousness due to mental illness or mental retardation. The DHMH and the Mental Hygiene Administration (MHA) continue to have a good working relationship with the Judiciary in addressing the needs of individuals with mental

illness. Representatives of MHA meet regularly with representatives of the Judiciary, and a representative of the Judiciary serves on MHA's Advisory Council and Co-Chairs its Interagency Forensic Committee. In addition, the Judicial Conference Committee on Mental Health, Alcoholism and Addictions, which is composed of Circuit Court and District Court judges from different jurisdictions around the state, meets on a regular basis to discuss issues involving forensics and substance abuse. This Committee has provided a forum for ongoing dialogue with the Secretary and members of his cabinet about matters of mutual concern. Therefore, open lines of communication are maintained, which promote problem solving and information sharing. Currently, our efforts have resulted in many successful diversion programs at the state and local level.

**THE ESTIMATED DEMAND FOR FORENSIC PLACEMENTS IN STATE PSYCHIATRIC HOSPITALS**

*COMPETENCY*

Many years ago, with the agreement of the Judiciary, DHMH implemented a procedure by which individuals ordered for competency or criminal responsibility evaluations are initially screened, either on an outpatient basis in the community or in the local detention center. If the screener (psychiatrist or psychologist) has reason to believe the defendant is not competent or not responsible, the screener requests that the court order further evaluation at a DHMH facility. MHA facilities report that the majority of those defendants screened as possibly not competent to stand trial are seriously mentally ill when they arrive for their evaluations and, thus, are appropriate for admission. If upon completion of the evaluation, the court finds the defendant not competent to stand trial and dangerous to him or herself or to the person or property of others because of a mental illness or mental retardation, the court will commit the individual to the Department for inpatient care and treatment. The individual remains committed until such time as the court finds either the individual is competent to stand trial or is no longer a danger as a result of mental illness or mental retardation.

This past legislative session, as a result of a workgroup comprised of representatives of the Judiciary, DHMH, State's Attorneys, public defenders and the advocacy community, legislation was enacted to ensure more judicial oversight and timely reviews of the defendant's legal and clinical status. In addition, the new statute permits termination of court commitment upon the court's finding that the defendant's competency is not restorable. Of particular importance is the requirement that the Department develop and submit aftercare plans for each defendant who is believed by the Department to be competent, restored to competency, or incompetent but not dangerous with supportive services in the community.

*NOT CRIMINALLY RESPONSIBLE (NCR)*

If the defendant is found NCR by the court, the defendant is committed to the DHMH for

inpatient care or treatment. The court may order the defendant's release directly from court, with or without conditions, if the Department has issued an opinion that the defendant would not be a danger as a result of mental retardation or mental disorder, to self or to the person or property of others if released, with or without conditions, and the defendant and the State's Attorney agree to the release. A defendant released on conditions is, in effect, on probation, with violation of a condition resulting in rehospitalization. If the defendant is committed for inpatient care, the individual remains committed until the court finds the defendant would not be a danger as a result of mental retardation or mental disorder, to self or to the person or property of others if released, with or without conditions. It is not unusual for one found NCR to remain committed for inpatient care for several years.

The number of evaluation orders, both for competency and criminal responsibility, issued by the courts each year has remained relatively constant. Data collected since 1986 show an annual referral rate ranging from 1,105 (in 1999) to 1,673 (in 1986). Since 1989, the rate has fluctuated less than 20%. In 2005, there were 1,206 evaluations ordered. However, with the Judiciary's increased emphasis on early identification of arrestees with serious mental illness, and the existence of active jail diversion programs, which assist with early identification of defendants whose competence is questionable, the Judiciary anticipates an increase in the number of referrals. If this anticipated increase occurs, there will continue to be a need for readily accessible resources which may include in-patient hospital beds, appropriate discharge plans, and community services upon release.

**FORENSIC PATIENT LENGTHS OF STAY AT STATE PSYCHIATRIC HOSPITALS**

The length of stay for court-ordered individuals is generally longer than for civilly committed individuals. It is neither unusual nor unexpected for the length of stay to average twice as long for court-ordered individuals. This has been consistent for many years.

If an individual is committed for evaluation, additional days are required to complete a thorough evaluation. There may be a need to obtain and review previous hospital/treatment records or court records. Often if the individual is admitted for a competence evaluation and is willing to receive treatment during the evaluation phase, the hospital may request a postponement to attempt treatment. With treatment, the individual may be found competent to stand trial, and therefore avoid lengthy delays in the court process. Therefore, the effort to stabilize the defendant and restore competence is another reason for longer hospitalization than civil patients.

Individuals who are court-ordered for evaluation and/ or treatment may only be released with the consent of the court. Thus, delays occur due to the need to write reports, forward the reports to the court, and the need to have court hearings scheduled. In addition, if there is reason to believe that the defendant will be released to the community, either because competent or incompetent but not dangerous, the Department must complete an aftercare plan. Since the plan includes support services necessary to assist the defendant in successfully transitioning from the hospital

to the community and to maintain stability, it is extremely important. Development of an appropriate aftercare plan, which may include housing, and ensuring the availability of required services in the community, is a labor-intensive and time-consuming process. However, a good plan is essential to the effort to reduce future hospitalization and recidivism.

The Mental Health Court in Baltimore City, which handles more competency cases than any other jurisdiction in Maryland, has been able to expeditiously return defendants to court, when the Department notifies the court that, in the opinion of treatment staff, the status of the defendant has changed or that the evaluation has been completed and the aftercare plan is in place. According to recent statistics, most of the defendants are returned within one or two weeks. With the increased judicial oversight mandated by the new legislation, the Judiciary anticipates having a judge as contact person for all forensic matters in every jurisdiction and at both the District Court and Circuit Court level. The Department's goal of limiting the use of hospital beds to those people who require that level of care is shared by the Judiciary.

If a defendant is found NCR and committed to the Department, the length of stay is considerably longer than the stay of other forensic patients, including individuals who are civilly admitted. This is also predictable. In order for a defendant to be found NCR, a stringent standard must be met. In addition, that finding can potentially result in confinement in state psychiatric facilities for many years, and release is conditioned on compliance with a Conditional Release Order containing specific requirements and rules. Therefore, the NCR plea is usually reserved for violent and very serious crimes. It follows that even when treatment staff believes that a defendant would be safe in the community, it is difficult to locate community providers for these defendants. Once the commitment is ordered, the Judiciary is not involved with release other than reviewing and signing the Conditional Release Order, if the judge accepts the recommendation of the Administrative Law Judge. Therefore, any delay in the release of these defendants is beyond the control of the facilities and the Judiciary.

The recently operational Forensic Assertive Community Treatment Team (FACTT) program was developed by the Baltimore Mental Health Systems, Inc. (BMHS) and designed to provide intensive clinical services to individuals with chronic mental illness involved in the criminal justice system. Since the program began in May 2006, fourteen Baltimore City defendants found to be NCR and committed to DHMH, have been transitioned from Spring Grove Hospital Center to community-based programs. This innovative program has been able to enhance the structure available to existing programs to accommodate the hard-to-place defendants.

**BARRIERS TO APPROPRIATE TREATMENT OF PATIENTS FROM STATE PSYCHIATRIC BEDS BACK TO THE COURTS**

The Department and the Judiciary want to ensure that an individual’s (the defendant’s) illness is in sufficient remission so that the criminal conduct will not be repeated. The Judiciary is not likely to release the defendant without an appropriate discharge or conditional release plan.

However, barriers to release are higher for this population as these individuals have both the stigma of a mental illness and a criminal record. Thus, community placements and services are frequently not readily available. For some individuals the mental illness caused the illegal behavior and mental health treatment will lead to resolution of the behavior. For others, the illegal behavior exists and is independent of the co-occurring mental illness. Treating the mental illness for these individuals may not affect the criminal behavior.

A variety of reasons have been cited for delays in discharging an individual to the community:

- Nature of the crime (sex offender, fire setter), no community provider willing to serve.
- History of assaultive behavior.
- Patient rejects placement or treatment recommendations.
- No family available in state. Often a family member is the victim of the crime, thus return to family home is not available option.
- Requires intensive 24-hour supervision.
- No housing available.

The obstacle most frequently encountered and most difficult to overcome is the lack of sufficient housing options offering the level of care and security needed for individuals with a history of violence and a serious and persistent mental illness. This is particularly problematic for individuals with co-occurring substance abuse disorders. While the cost of specialized care for those who need it is not insignificant, the lack of availability is of even greater concern. When the safety of the individual in the community is contingent on the presence of certain support services and those services take time to obtain, the dilemma is obvious.

**PROGRAMS TO DIVERT INDIVIDUALS WITH MENTAL ILLNESS FROM CONTACT WITH THE CRIMINAL JUSTICE SYSTEM**

For those defendants who have been charged and brought before the court, several initiatives have been piloted to either make more efficient use of inpatient beds or to facilitate the coordination of mental health services. Many individuals with mental disorders encounter the criminal justice system as a result of behavior that is not considered a serious infraction. For those individuals, a diversion from the criminal justice system (before booking) to services in the mental health system may be a more appropriate goal. Frequently, facility staff working with the judicial system (bench and bar) may seek to dismiss charges when community services are in place for habilitative treatment or when the civil admission process is a viable alternative to criminal prosecution.

There are opportunities for diversion at a number of points along the continuum from pre-arrest, to post-booking and pretrial, to pre-sentence. The Department and the Judiciary have been actively involved in supporting and enhancing diversion initiatives. However, the success of

diversion efforts is largely dependent on the responsiveness of many different agencies, as well as the willingness and ability of the community to focus resources on the vulnerable and needy population of offenders with serious mental illness. Furthermore, diversion is only an option for individuals who can be safely treated in the community. There will always be the need for hospital treatment for those individuals with serious mental illness who would present a danger to themselves or others in the community.

**PRE-ARREST DIVERSION**

*CRISIS INTERVENTION TEAMS*: Police officers are the first responders to individuals with serious mental illness who have come into conflict with the law. The Department has been working with local core service agencies, National Alliance on Mental Illness (NAMI), and various law enforcement agencies to train officers in how to respond to an individual with a mental illness, or to coordinate teaming police officers with a clinical/crisis response organization. The goal is to avoid the arrest of an individual who may require mental health services, and to ensure that the responders and the individual remain safe. The Petition for Emergency Psychiatric Evaluation could be an appropriate vehicle to utilize the civil admission process and divert to hospitalization when appropriate. Crisis Intervention Teams (CIT) are in existence in the police departments of Baltimore City, Baltimore County, and Montgomery County.

*CRISIS RESPONSE*: Crisis response is a community-based service that provides a multi-disciplinary approach to addressing the immediate needs of an individual with mental illness who consents to treatment. The agency provides medically necessary services in the least restrictive setting as an alternative to emergency care interventions in an inpatient setting. Throughout the state, the MHA and local core service agencies have been developing and promoting the use of mobile crisis teams and crisis response units.

In Baltimore City, Baltimore Crisis Response, Inc. (BCRI) provides mobile crisis teams, operates crisis beds, and provides assistance to consumers in applying for public benefits. Similarly, there are re-entry programs, mobile treatment, and crisis response units available throughout various counties in Maryland, i.e., Baltimore, Montgomery, Harford, Prince George's, and Worcester counties.

Despite the efforts of CIT and crisis response programs, without the cooperation and

participation of partner agencies, the value of the programs for diversion from the criminal justice system is lessened. Prearrest diversion will only work if community resources are provided in a timely manner. In addition, inpatient services must be available for those individuals requiring that level of care. The civil admission/emergency petition process can be an effective diversion mechanism. However, unless the emergency rooms promptly relieve the police of the non-violent evaluee and include emergency petitions as a priority in the triage

system, there is a disincentive to use this form of diversion for the offender with mental illness. It has been reported to the Judiciary, that some hospitals require the police to wait several hours before the individual is evaluated. In addition, there needs to be assurance that hospital staff are appropriately trained regarding the evaluation process, the civil commitment criteria, and if appropriate, community resources if inpatient care is not required. The police and public have voiced concern whether short stays, especially in private hospitals, mean individuals are discharged before either psychiatrically stable, acquiring insight into their illness, or before proper discharge plans are developed and implemented. Thus, instead of providing the officer with a tool to obtain treatment in lieu of incarceration, the Petition for Emergency Psychiatric Evaluation as currently implemented is neither prompt nor ultimately successful in facilitating the use of the civil commitment process.

The individual's participation with crisis response services is voluntary, and in order for psychiatric services to be arranged or provided by crisis response programs, the individual must be willing to participate. However, individuals with serious mental illness often do not recognize the need for treatment and will not agree to accept the services offered. Crisis response services are not an option for these individuals.

**PRE-TRIAL DIVERSION**

Early identification is critical to effective pre-trial diversion. Another necessary component is a partnership that includes the local detention center, the contractors who provide medical and psychiatric services to detainees and inmates, and any other detention center staff providing care or services to the incarcerated individual with mental illness. The detrimental effects of incarceration upon the individual with serious mental illness have been well documented. Unless the defendant receives necessary medication and stabilization treatment, diversion, or even transitional or re-entry options will be sharply curtailed. If an individual with mental illness is incarcerated, it is to the advantage of the defendant, the public, the Department, the Judiciary, and every criminal justice agency to insure that defendants with mental illness receive mental health services while incarcerated and receive appropriate services upon release.

In an effort to identify individuals with a mental illness, confined in the Central Booking and Intake Facility/Baltimore City Detention Center (CBIF/BCDC), BMHS has established a database called DataLink, which was implemented in July 2006. This data system provides a list of newly admitted detainees to MHA's administrative services organization or MAPS-MD.

MAPS-MD cross-references the list with people receiving services in the Public Mental Health System prior to the incarceration. This information is then sent to BMHS where staff determines further intervention needs and develops a course of action. We hope this database lives up to its promise and will be of assistance in connecting the defendant, the community provider, and the detention center provider of psychiatric services, so the mentally ill detainee receives necessary and appropriate treatment while incarcerated and upon release.

Montgomery County has established an array of diversion services for individuals involved in, or at risk for involvement in, the criminal justice system. In recognition of the importance of this initiative, the county supplements funds that are available through other sources, including federal and state entitlements. The Montgomery County Police Department CIT works together with the local core service agency to divert appropriate, willing individuals with mental health crises, by utilization of mobile crisis teams and residential crisis services. There is also a range of services in the Montgomery County Detention Center, including a mental health unit, substance abuse treatment, and a re-entry program specifically for inmates requiring mental health services in the community upon discharge.

The Judiciary has collaborated with its criminal justice, mental health, and substance abuse partners to develop and implement mental health courts in the District Court of Maryland sitting in Baltimore City and Harford County. Prince George's County hopes to have a mental health court in the near future. These courts are established to provide diversionary alternatives for eligible participants by coordinating necessary services and monitoring compliance.

To assist the Baltimore City courts in arranging community-based case dispositions for defendants with serious mental illness, who meet the diagnostic and legal criteria, the State helps fund the Forensic Alternative Services Team (FAST) program. FAST is a group of licensed clinicians who work with the police, BCDC, State and defense, and community providers to coordinate treatment and housing. FAST also screens for participation in the mental health court. A FAST staff member is the mental health court coordinator who monitors the release of some defendants with minor records and non-violent charges, and provides clinical guidance to the mental health court probation and pretrial service agents who supervise defendants charged with more serious crimes and whose criminal record is more extensive than those eligible for FAST monitoring. The essential role played by FAST in the diversion efforts in Baltimore City has resulted in other jurisdictions seeking funding to replicate the program.

The literature is replete with support for the need for transitional or re-entry programs to assist the offender with mental illness upon release to the community after trial or sentence. One important part of any effective solution to the over representation of individuals with mental illness in jails and prisons is to insure that they are connected with appropriate community agencies when they are released and are enrolled in the federal entitlement programs that are specifically designed to provide the supports needed. These programs include federal disability

and health coverage through Medicare and Medicaid. By consent decree, New York has mandated the development of transitional plans for defendants with serious mental illness released from Riker's Island. Several initiatives have been established by MHA, which include: the Maryland Community Criminal Justice Treatment Program, the Shelter Plus Care Housing program, the Phoenix project, and the TAMAR programs.

**ANY OTHER INITIATIVES THAT WOULD FACILITATE THE MOVEMENT OF THE FORESIC POPULATION BETWEEN TWO SYSTEMS**

The Department and the Judiciary are exploring various options to further divert individuals with mental illness from contact with the criminal justice system, or facilitate the movement of the forensic population between the two systems. In an effort to assist individuals with mental illness get the help they need, which may divert them from the criminal justice system, DHMH, through MHA, will continue its collaborations with the judicial system to develop future initiatives that could result in:

> Continued partnerships between local mental health authorities and law enforcement agencies, corrections officials, and courts to promote mental health services as an alternative to incarceration for individuals who have mental disorders; and
>
> The promotion of coordinated re-entry programs for jail and prison inmates needing mental health services upon release to the community.

The Judiciary is committed to supporting local efforts to develop and implement fully staffed and equipped CIT programs capable of responding to all calls for services involving individuals with mental illness. In addition, in order to enhance the effectiveness of the use of the Petition for Emergency Psychiatric Evaluation as a diversionary tool, the Judicial Conference Committee on Mental Health, Alcoholism and Addictions plans to investigate the obstacles and initiate a collaborative effort to resolve the problems and facilitate civil admissions where appropriate.

Modeling programs in other states, the courts in Baltimore City are interested in exploring with partner agencies, both within the criminal justice, mental health, and substance abuse systems, as well as private agencies, advocates, consumers, and community groups, the establishment of a crisis intervention center. A crisis intervention center or unit within or closely affiliated with, a hospital where police can bring evaluees for emergency psychiatric evaluations is critical to diversion efforts. The unit/center would have the capability of conducting integrated screening, assessment, and planning for individuals with co-occurring mental illness and substance abuse disorders. For those people requiring psychiatric hospitalization, the center/unit would have the ability to accomplish this promptly. For those requiring medical detox, arrangements could be made for this service to be provided. Residential drug treatment would be available on demand for those found to need that level of service.

MHA, the Maryland Chapter of the National Association of Women Judges, the Department of Public Safety and Correctional Services, the Alcohol and Drug Abuse Administration, BMHS, and many other public, private, and private non-profit agencies, are actively working on the creation of a transitional/diversion program for pregnant women in the criminal justice system. Many, if not most, women offenders have a co-occurring mental illness and substance abuse disorder. The program envisioned would provide a wide range of services as well as integrated

assessment, planning, and treatment.

Discussions are underway to plan, schedule and conduct training for judges, states attorneys, public defenders, and other members of the criminal justice community on the new competency legislation and substance abuse commitments. In addition, the National Association of Public Forensic Hospitals has offered to assist the Baltimore City Mental Health Court in coordinating a training initiative by national experts for a diverse and broad group of attendees on trauma, the impact of trauma on victims, and programming for trauma victims. BMHS is working with the BCDC to train detention center staff on how to identify mental illness and how to manage the detainee with mental illness. Training and education will serve to improve the handling of cases involving the mentally ill defendant and will stimulate the creation of strategies to divert from the criminal justice system when it is appropriate and safe to do so.

Thank you for your continued interest in the Public Mental Health System and specifically in meeting the mental health needs of individuals adjudicated incompetent to stand trial or not criminally responsible.

If you have any questions, please contact Brian Hepburn, M.D., Executive Director, Mental Hygiene Administration at 410-402-8451 or the Honorable Charlotte M. Cooksey at 410-878-8316.

Sincerely,

George Lipman
Judge

S. Anthony McCann
Secretary

cc: The Honorable Robert M. Bell
The Honorable Charlotte Cooksey
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