

## Task Force on Community Justice and Mental Illness Early Intervention

April 15, 2016



## Meeting Agenda

- Welcome and Review of Task Force Goals and Process
- The Criminal Justice Process for Persons with Mental Illness
- Stakeholder Meeting Summary
- Overview of Community Options
- Public Input
- Next Steps

## Task Force Goals

- To improve public safety and the treatment of people with mental illness in contact with the criminal justice system through appropriate evaluation, intervention, diversion, and supervision.
- To more effectively identify mental illness in people coming into contact with the criminal justice system, through improved training in local criminal justice systems, better use of screening tools and skills, and expanded response and diversion options in communities for law enforcement and the courts, all while holding offenders and government more accountable.
- To better allocate limited local resources in order to improve early intervention services and preserve limited jail and prison resources for violent, chronic, and career criminals.

## Task Force Process



**CRIME AND JUSTICE INSTITUTE**

**The Criminal Justice Process  
for Persons with Mental Illness**

April 15, 2016



Crime and Justice Institute at CRJ | Boston, MA | [www.crj.org/cji](http://www.crj.org/cji)

**Presentation Outline**

- Law Enforcement Contact
  - Arrest
  - Diversion
- Pre-adjudication
  - Detention
  - Competency
  - Not Guilty by Reason of Insanity Plea
  - Guilty but Mentally Ill Plea
- Adjudication and Sentencing
- Probation Supervision



6

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# Law Enforcement Contact



The slide features a dark blue header with the text "CRIME AND JUSTICE INSTITUTE". The main content area has a light blue background with a white curved shape on the right side and a vertical orange bar on the left. The title "Law Enforcement Contact" is centered in a dark blue font. The CRJ logo is in the bottom left corner.

## Law Enforcement Options

- Law enforcement has these options:
  - Arrest
  - Divert from the criminal justice system
    - Informal resolution
    - Referral to mobile crisis team or crisis intervention team certified law enforcement officer (§27A-10-21)
    - Emergency mental illness commitment (§27A-10)



8

The slide has a dark blue header with the title "Law Enforcement Options" in white. The content area is white with a light blue footer. The CRJ logo is in the bottom left corner, and the number "8" is in the bottom right corner.

## Law Enforcement Options: Referral to Mobile Crisis or CIT

- If law enforcement believes the person requires emergency non-medical intervention to protect them from physical harm to themselves or others, the officer may refer the person to the direct supervision of:
  - Member of a mobile crisis team, or
  - Crisis intervention team (CIT) certified law enforcement officer (§27A-10-21)



9

## Law Enforcement Options: Referral to Mobile Crisis or Crisis Intervention Team

- Mobile crisis team member or CIT officer may:
  - Resolve the intervention on a voluntary basis at:
    - A clinic or hospital
    - Person's home
    - Other location
  - With the assistance of any public or private community service that the person is willing to accept; and
  - Request the assistance of law enforcement for voluntary transfer of the person
- Direct law enforcement to proceed with the apprehension and transport to a regional facility for an emergency intervention and mental illness examination (§27A-10-21)



10

## Law Enforcement Options: Referral to Mobile Crisis or CIT

- Referral to mobile crisis or CIT does not limit law enforcement's discretion to make an arrest for a criminal offense
  - However, law enforcement must give priority to placing a severely mentally ill person who has also committed a misdemeanor offense in a mental health facility (§27A-10-22)



11

## Law Enforcement Options: Emergency Mental Illness Commitment

- Law enforcement may take the person in crisis into protective custody for a mental health evaluation without a warrant (§27A-10-3) if:
  - The person is alleged to be severely mentally ill; and
  - Immediate intervention is necessary for the protection from physical harm to self or others (§27A-10-1)
- This is commonly referred to as a “law enforcement hold”



12

## Law Enforcement Options: Emergency Mental Illness Commitment

- Severe mental illness is defined in SD statute as:
  - Substantial organic or psychiatric disorder of thought, mood, perception, orientation, or memory which significantly impairs judgment, behavior, or ability to cope with the basic demands of life
  - Intellectual disability, epilepsy, other developmental disability, alcohol or substance abuse, or brief periods of intoxication, or criminal behavior do not, alone, constitute severe mental illness (§27A-1-1)



13

## Law Enforcement Options: Emergency Mental Illness Commitment

- Law enforcement may transport to:
  - A regional facility
    - Jail may not be used for prehearing custody until the availability of other appropriate regional facilities has been explored and exhausted
    - May not remain in a jail for more than 24 hours on a mental illness hold alone (§27A-10-3)
  - Person must be examined by a Qualified Mental Health Professional (QMHP) within 24 hours of apprehension (§27A-10-6)



14

## Law Enforcement Options: Emergency Mental Illness Commitment

- After law enforcement transports the person to a regional facility
  - The officer, a physician, or other person with personal knowledge of the relevant facts must complete a petition (§27A-10-4)
- If petition is not filed within 24 hours of apprehension, the person must be released (§27A-10-1)



15

## Law Enforcement Key Takeaways

- Law enforcement has the discretion to divert
- Mobile crisis and crisis intervention teams are statutorily authorized diversion options, but are only available in certain parts of the state
- Statute prioritizes placement of people with severe mental illness who have committed misdemeanor offenses into mental health facilities
- Law enforcement may use the emergency commitment process to divert from the criminal justice system



16

# Pre-Adjudication



# Detention



## Detention Decision

- A defendant must be ordered released pending trial on personal recognizance or bond unless:
  - Such a release will not reasonably assure appearance of defendant or
  - Defendant may pose danger to any other person or community (§23A-43-2)



19

## Detention Decision: Conditions of Release

- Court or magistrate may impose conditions of release to assure appearance, including (but not limited to):
  - Placing in the custody of designated person or organization
  - Restrictions on travel, association, place of abode
  - Any other condition reasonably necessary to assure appearance (§23A-43-3)
- May consider a number of factors, including:
  - The nature and circumstances of the offense
  - The defendant's family ties, employment, financial resources, character and mental condition
  - The risk that the defendant will flee or pose a danger to any person or to the community (§23A-43-4)



20

## Jail Intake and Mental Health Services: Examples

- Minnehaha County
- Codington County

## Competency

## Competency: Definition

- Mentally incompetent to proceed
  - The condition of a person who is suffering from a mental disease, developmental disability, or psychological, physiological, or etiological condition rendering him mentally incompetent to the extent that the defendant is unable to understand the nature and consequences of the proceedings against him or to assist properly in his defense (§23A-10A-1)
- A person cannot be tried, sentenced, or punished for any public offense while mentally incompetent (§23A-10A-2)



23

## Competency: Motion for Hearing

- The prosecution, defense, or court may raise a motion for a hearing to determine competency
- The motion may be brought at any time after commencement of prosecution and prior to sentencing
- The court must order a hearing if there is reasonable cause to believe the defendant may meet the criteria for mental incompetence
- Prior to the hearing, the court may order a psychiatric or psychological examination and report (§23A-10A-3)



24

## Competency: Examination

- The competency exam must be performed only by a licensed or certified psychiatrist or clinical psychologist (or more than one examiner) (§23A-10A-3, §23A-46-1)
- A written report must accompany the competency exam that includes (§23A-10A-3, §23A-46-2):
  - Defendant's history and current symptoms
  - Description of tests performed and results
  - Examiner's findings
  - Examiner's opinions as to diagnosis, prognosis, and assessment of mental competence



25

## Competency: Finding of Incompetence

- If the court finds by a preponderance of evidence that the defendant is not competent, the court must commit the defendant to the custody of:
  - Human Services Center (HSC) or private facility
    - Facility must provide treatment for a reasonable period of time (not to exceed 4 months) to determine the likelihood of the defendant becoming competent in the foreseeable future (§23A-10A-4)



26

## Competency: Recovery

- Facility must notify the court if defendant recovers (certificate of recovery)
- The court must then hold a competency hearing
- If the court finds by a preponderance of evidence that the defendant has recovered, the defendant may be released and a trial date is set
- If the court does not make this finding, the defendant must be placed in a facility again (§23A-10A-4.1)



27

## Competency: Recovery

- No Recovery at 4 Months (§23A-10A-14)
  - If no recovery at 4-month mark, the facility must issue a report evaluating whether there is a substantial probability the defendant will become competent to proceed in the next year
  - The court must then hold hearing on likelihood of recovery
  - Court finding determines next steps
    - Reasonable likelihood of competency restoration within one year: defendant committed to a facility for an additional specified period of time, not to exceed 1 year or until the facility issues a certificate of recovery
    - No reasonable likelihood: review of defendant's condition to determine appropriate placement and order of commitment



28

## Competency: Recovery

- No Recovery at 1 Year (§23A-10A-14)
  - If 1 year has passed without a certificate of recovery being issued, facility must notify the court
  - The court holds a hearing to review defendant's condition and determine appropriate placement



29

## Competency: Recovery

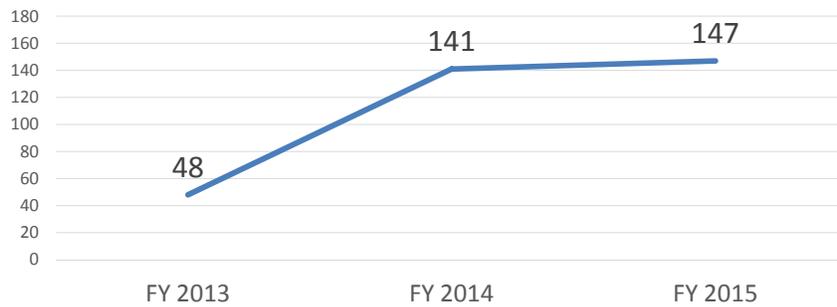
- Commitment Limits (§23A-10A-15)
  - Maximum commitment is the maximum penalty allowable for the most serious crime charged
  - Every 12 months after commitment, facility must notify the court if defendant is still in its care; court holds a hearing to review whether defendant has become competent
  - After expiration of the court's order or expiration of the longest time the defendant could have been sentenced—whichever is longer—the criminal charges shall be dismissed
  - Prosecutor may file a petition for involuntary commitment upon dismissal of charges if there is probable cause to believe defendant is a danger to himself or others



30

## Competency Evaluations Ordered Tripled from FY 2013 to 2015

Statewide Mental Competency Evaluations Ordered (FY2013-2015)



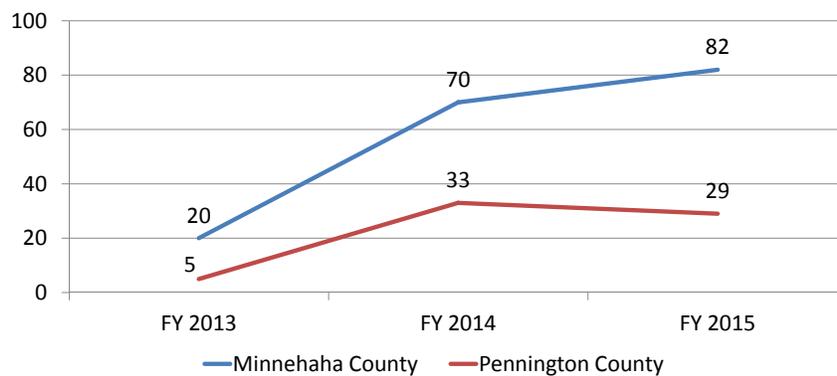
Source: Unified Judicial System



31

## Minnehaha and Pennington Counties Drove the Growth in Evaluations

Competency Evaluations Ordered in Minnehaha and Pennington Counties (FY2013-FY2015)

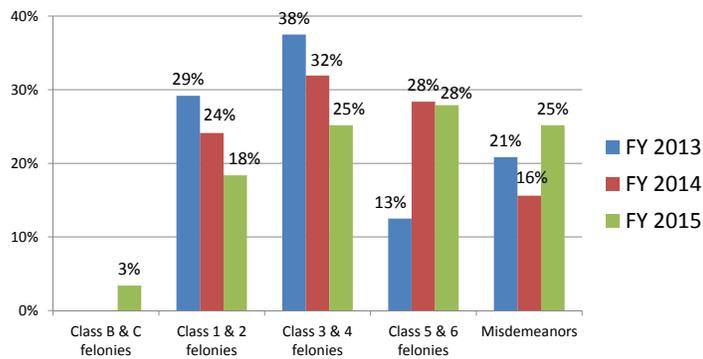


Source: Unified Judicial System

32

## An increasingly larger proportion of competency evaluations are ordered for lower level offenses

**Competency Evaluations Ordered, by Offense Type (FY2013-FY2015)**

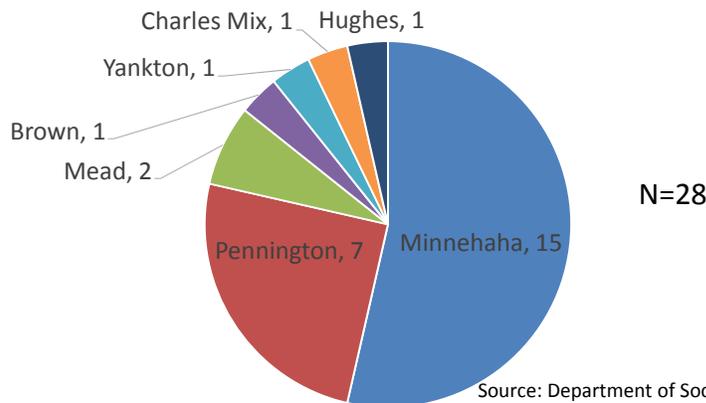


Source: Unified Judicial System

33

## More than Half of Evaluations Conducted by HSC were for Minnehaha County

**Forensic Evaluations Performed by HSC, by Requesting County (FY 2015)**



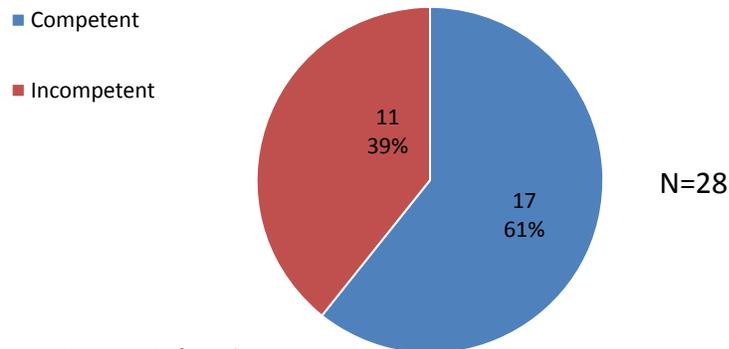
Source: Department of Social Services



34

## 6 in 10 Evaluated at HSC Were Found Competent to Stand Trial

Result of Competency Assessment for Defendants Evaluated at HSC (FY 2015)



Source: Department of Social Services



35

## Competency: Key Takeaways

- Competency process is used to determine ability of the defendant to understand the nature and consequences of the proceedings and aid in own defense
- Prosecution, defense, or court may raise a motion for a hearing any time after commencement of prosecution and prior to sentencing
- Exams can be performed by a psychiatrist or psychologist
- A finding of incompetence results in commitment for the purpose of restoration of competency



36

## Competency Key Takeaways

- Number of competency evaluations ordered tripled over the last 3 fiscal years
- The growth in evaluations was driven by the two largest counties
- An increasingly larger proportion of competency evaluations are ordered for lower level offenses
- 6 in 10 evaluated at HSC were found competent to stand trial

## Not Guilty by Reason of Insanity Plea

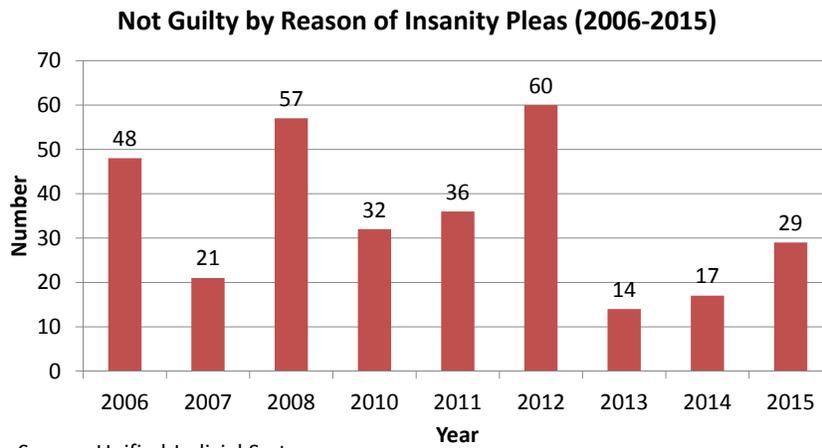
## Not Guilty by Reason of Insanity

- Insanity is defined in statute as:
  - The condition of a person temporarily or partially deprived of reason, upon proof that at the time of committing the act, the person was incapable of knowing its wrongfulness, but not including an abnormality manifested only by repeated unlawful or antisocial behavior (§22-1-2)

## Not Guilty by Reason of Insanity: Exam

- Exam performed by a psychiatrist only (§23A-10-4)
- Written report must accompany the exam
  - Includes the defendant's history and current symptoms, description of tests performed and results, the examiner's findings, the examiner's opinions as to diagnosis, prognosis, and an assessment as to whether defendant was insane at the time of the offense (§23A-46-2)

## Pleas of Not Guilty by Reason of Insanity are Rare



Note: 2009 is not shown as one case included 276 pleas

41

## Guilty but Mentally Ill Plea



42

## Guilty but Mentally Ill: Definition

- The defendant committed the offense but was mentally ill at the time of the offense (§23A-25-13)
- Mental illness is defined as:
  - Any substantial psychiatric disorder of thought, mood or behavior which affects a person at the time of the commission of the offense and which impairs a person's judgment, but not to the extent that the person is incapable of knowing the wrongfulness of such act
  - Mental illness does not include abnormalities manifested only by repeated criminal or otherwise antisocial conduct (§22-1-2)



43

## Guilty but Mentally Ill: Plea and Exam

- The court may not accept a plea of guilty but mentally ill until the defendant has been examined by a licensed psychiatrist and the court has the report (§23A-7-16)
  - Starting July 1, 2016, licensed psychologists may perform this exam (SB 79)



44

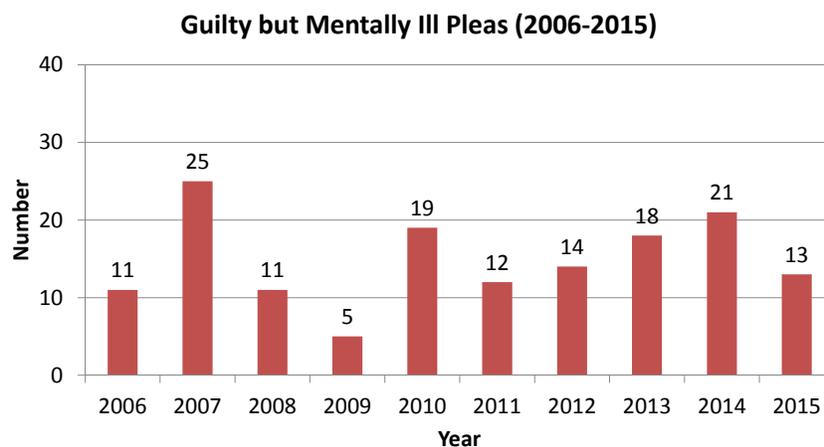
## Guilty but Mentally Ill: Hearing

- The court must hold a hearing on the defendant's mental condition
- If there is a factual basis on which the court can conclude the defendant was mentally ill at the time of the offense, the plea is accepted (§23A-7-16)



45

## Guilty but Mentally Ill Pleas are Rare



46

## Key Takeaways

- Pleas of Not Guilty by Reason of Insanity and Guilty but Mentally Ill are rare
- Effective July 1, 2016, exams for Guilty but Mentally Ill may be completed by either a psychiatrist or psychologist



47

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## Adjudication and Sentencing



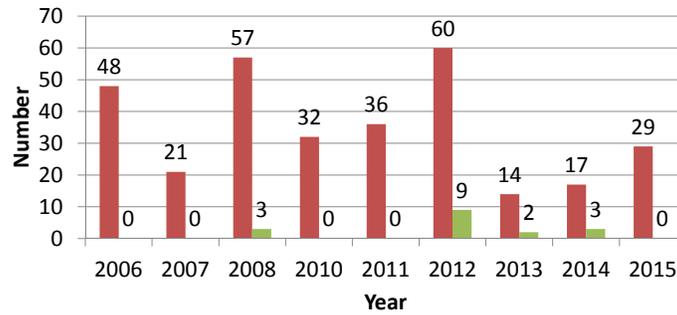
## Adjudication Options

- Possible Outcomes at Trial:
  - Not Guilty
  - Special Verdicts
    - Not Guilty by Reason of Insanity
    - Guilty but Mentally Ill
  - Guilty

## Special Verdicts

## Not Guilty by Reason of Insanity Dispositions are Rare

Not Guilty by Reason of Insanity Pleas and Dispositions (2006-2015)



Source: Unified Judicial System ■ Plea ■ Disposition



Note: 2009 is not shown as one case included 276 pleas; none of those pleas resulted in a disposition of not guilty by reason of insanity

51

## Not Guilty by Reason of Insanity: Sentencing

- A defendant found not guilty by reason of insanity shall be committed until eligible for release (§23A-26-12)



52

## Not Guilty by Reason of Insanity: Pre-hearing Exam

- The court may order a psychiatric or psychological exam prior to a commitment hearing (§23A-26-12.1)
- This exam must include:
  - The defendant's history and current symptoms, description of tests performed and results, the examiner's findings, the examiner's opinions as to diagnosis, prognosis, and an assessment as to whether the person is suffering from a mental disease or defect as a result of which he is in need of custody for care or treatment in a suitable facility (§23A-46-2)



53

## Not Guilty by Reason of Insanity: Commitment Hearing

- At the hearing, the defendant must prove that release would not create a substantial risk of bodily injury to another person or serious damage of property of another due to a present mental illness or defect (§23A-26-12.3)
- Standard defendant must meet:
  - Clear and convincing evidence:
    - For offenses involving bodily injury to, or serious damage to the property of, another person or involving a substantial risk of such injury or damage
  - Preponderance of evidence:
    - Any other offense (§23A-26-12.3)



54

## Not Guilty by Reason of Insanity: Commitment

- If the defense does not meet its burden, the court shall order the defendant be committed to HSC for treatment (§23A-26-12.4)
- Committed until:
  - The person's mental condition is such that his release, or his conditional release under a prescribed regimen of medical, psychiatric, or psychological care or treatment, would not create a substantial risk of bodily injury to another person or serious damage to property of another (§23A-26-12.4)



55

## Not Guilty by Reason of Insanity: Release

- When the facility certifies the defendant has recovered:
  - The court shall order discharge; or
  - Hold a hearing on whether defendant should be released on motion of prosecution or its own motion (§23A-26-12.5)
- The court may:
  - *Order Discharge* if release would no longer create a substantial risk of bodily injury to another or serious damage to property of another; or
  - *Order Conditional Release and Compliance with Treatment* if his release under a prescribed regimen of medical, psychiatric, or psychological care or treatment would not create such risk; the court may modify or eliminate regimen at any time (§23A-26-12.5)



56

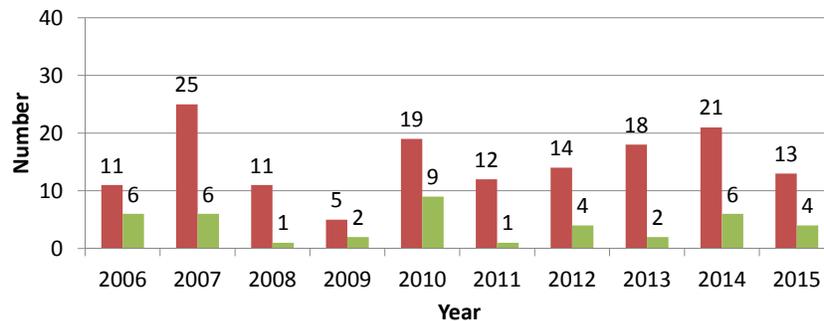
## Not Guilty by Reason of Insanity: Failure to Comply with Conditions

- Facility must notify prosecution and court if defendant fails to comply conditions of release (§23A-26-12.6)
- Upon this notice or probable cause that defendant has failed to comply, defendant may be arrested and subject to a court hearing (§23A-26-12.6)
- The court may re-commit the defendant to a facility if, in light of noncompliance, continued release would create a substantial risk of bodily injury to another person or serious damage to property of another (§23A-26-12.6)



## Guilty but Mentally Ill Dispositions are Rare

Guilty but Mentally Ill Pleas and Dispositions (2006-2015)



Source: Unified Judicial System

■ Plea ■ Disposition



## Guilty but Mentally Ill: Sentencing

- If a defendant pleads or is found “guilty but mentally ill,” the court shall impose any sentence which could be imposed for a regular guilty verdict (§23A-27-38)

## Guilty but Mentally Ill: Sentencing

- State Penitentiary (§23A-27-38)
  - Defendant must undergo further examination and may be given treatment that is psychiatrically indicated
  - If treatment is available, it may be provided through DSS facilities and, with consent of DSS, the defendant may be transferred for treatment
- Probation (§23A-27-40)
  - The court must make treatment a condition of probation upon recommendation of a psychiatrist
  - The court may order continual reports
  - Failure to continue treatment is grounds for probation revocation

## Guilty Adjudications: Pre-sentence Investigation and Sentencing



61

## Presentence Investigation (PSI)

- May be ordered at the discretion of the court to guide decision at sentencing
- Includes questions about:
  - The offense and defendant's version of the incident
  - Criminal history and prior sentence
  - Family information and history
  - Education, military history, employment, religion
  - Income and assets
  - Alcohol and drug use
  - Emotional, personal, and medical history
  - Defendant's recommendations to the court with respect to sentencing



62

## Presentence Hearing on Mental Condition

- Motion must be filed within 10 days after guilty finding and prior to sentencing
- Motion for hearing may be raised by defense, prosecution, or the court
- The court must grant a hearing if there is reasonable cause to believe that the defendant may presently be suffering from a mental disease or defect for which he is in need of custody for care or treatment in a suitable facility (§23A-27-42)



63

## Presentence Hearing on Mental Condition

- Prior to the hearing, the court may order a psychiatric or psychological examination
- The report should contain:
  - Whether the person is suffering from a mental disease or defect and is in need of custody for treatment (§23A-46-2(d))
  - Recommendation as to how the mental condition of the defendant should affect the sentence (§23A-46-2(e))
  - If no custody for care is required, the sentencing alternatives appropriate for the defendant's treatment (§23A-27-43)



64

## Presentence Hearing on Mental Condition

- At hearing, judge must determine:
  - Whether the defendant is presently suffering from a mental disease or defect; and
  - Whether, in lieu of being sentenced to imprisonment, the individual should be committed to HSC for care or treatment
- Commitment is for a provisional sentence: the maximum term authorized by law for the offense (§23A-27-45)



65

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## Probation Supervision



## Probation Supervision

- Probation is under the Unified Judicial System (UJS)
  - 7 circuits, each with Court Service Officers (CSOs) responsible for probation supervision
- Supervision levels
  - Intensive
  - High
  - Medium
  - Low
  - Administrative
  - Case Service Monitoring
- No specialized caseloads for probationers with mental illness



67

## Probation Supervision: Assessments

- No mental health screens or assessments conducted by CSOs
- Supervision levels and service referrals are driven by a risk and needs assessment
  - UJS uses the Level of Service Inventory-Revised (LSI-R)
  - CSOs may use certain items on the assessment to:
    - Help determine need for referral for a mental health evaluation
    - Assist in case planning



68

## Probation Supervision: Assessments

- LSI-R Emotional/Personal Domain
  - Moderate interference
    - Definition of Interference – Inability to handle life's stressors, and to function in every day life
  - Severe interference, including active psychosis
    - Indications of a possible serious mental health problem
  - Past and present mental health treatment
    - Structured mental health treatment with a psychiatrist, psychologist, or mental health worker
    - Medication monitoring by medical or mental health professional
  - Psychological assessment indicated
    - Assessed and diagnosed or exhibiting certain behaviors



69

## Probation Supervision: Case Planning

- Court Services uses an Adult Change Plan
  - Guided by the LSI-R results and input from treatment providers
  - When referrals are made for mental health evaluations, the provider generally provides sufficient information to the CSO to assist in the change plan



70

## Probation Supervision: Conditions

- Obey the law
- Subject to sanctions grid
- May or may not need to maintain employment
- Permission prior to change of phone #, job, schooling, or residence
- Remain in SD
- No firearms
- No missed appointments with CSO
- Advise employer of probation status
- Allow CSO to have picture for ID & recordkeeping
- No gang affiliation
- Successfully complete evaluations, counseling, treatment directed by CSO



71

## Probation Supervision: Violations

- Guided by Supervisory Response Grid
  - Suggests appropriate responses to violations based on severity of the violation and the probationer's risk level
  - Applies to all probationers
- CSOs have discretion on how violations are handled



72

## Probation Supervision: CSO Training

- No special mental health trainings required for CSOs
- Yearly training often includes a presentation related to mental health issues

## Probation Key Takeaways

- No mental health screeners or mental health assessments are done by Court Services
- LSI-R results may guide referrals for mental health evaluations and case planning
- CSOs have discretion to respond to violations

## Next Steps

- Continue the system review to understand the problems facing South Dakota
  - What does the data tell us?
- Explore the research principles that should guide our work

## Upcoming Meetings

<u>Date:</u>	<u>Time:</u>	<u>Location</u>
May 26 <sup>th</sup>	10am-3pm CT	Ft. Pierre- AmericInn Conference Center
June 14 <sup>th</sup>	10am-3pm CT	Sioux Falls- Sheraton Hotel and Conf Ctr
July 11 <sup>th</sup>	10am-3pm MT	Rapid City- Ramkota Conference Ctr
August 18 <sup>th</sup>	10am-3pm CT	Ft. Pierre- AmericInn Conference Center
September 22 <sup>nd</sup>	10am-3pm CT	Pierre- Red Rossa Conference Room
October 14 <sup>th</sup>	10am-3pm CT	Pierre- Red Rossa Conference Room