

DEPARTMENT OF COMMUNITY HEALTH
MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES

(By authority conferred on the department of mental health by sections 1 to 4 of Act No. 80 of the Public Acts of 1905, as amended, section 33 of Act No. 306 of the Public Acts of 1969, as amended, and sections 114, 130, 136, 157, 206, 244, 498n, 498r, 842, 844, 908, and 1002a of Act No. 258 of the Public Acts of 1974, as amended, being sections 19.141 to 19.144, 24.233, 330.1114, 330.1130, 330.1136, 330.1206, 330.1244, 330.1498n, 330.1498r, 330.1842, 330.1844, 330.1908, and 330.2002a of the Michigan Compiled Laws)

PART 10. CRIMINAL PROVISIONS

SUBPART 1. TRANSFER OF PRISONERS

R 330.10008 Aftercare for former prisoners.

Rule 10008. The department of corrections shall offer aftercare reintegration and community-based mental health services to a person leaving prison. If the prisoner accepts the offer, the community mental health program serving the area where the prisoner will reside shall tender an intake appointment date which shall be scheduled within 3 weeks of separation from prison, if the department of corrections has done both of the following:

- (a) Made a referral of the person leaving prison to the program 4 weeks before separation from the prison.
- (b) Provided the name and address of the department of corrections staff person to contact concerning the person leaving the prison.

History: 1979 AC; 1981 AACS.

R 330.10009 Aftercare for parolees.

Rule 10009. (1) A community mental health program shall provide aftercare reintegration and community-based mental health services to a prisoner about to be paroled to the area served by the program if the department of corrections requests such services be provided for a prisoner about to be paroled, if the request is in writing to the director of the county community mental health program serving the community where the prisoner is to be paroled, if the request is made 4 weeks in advance of parole, and if the request includes the date of parole. The request shall be accompanied by a report which shall include, at a minimum, all of the following:

- (a) The current mental status of the prisoner.
- (b) A description of the prisoner's adjustment and performance within department of corrections.
- (c) A review of the prisoner's past history of psychiatric problems and treatment.

(d) The current medications or other treatment modalities presently being provided to the prisoner by the department of corrections.

(e) An assessment of the parolee's willingness to participate in county community mental health programs.

(2) Upon receipt of the written notification and report described in subrule (1) of these rules, the community mental health program shall make an intake appointment date for the prospective parolee not later than 3 weeks following the date of the prisoner's parole. At the appointment, the community mental health program shall review the report and shall have the prisoner evaluated by clinical staff to determine what plan of follow-up care and treatment is needed. It shall be the responsibility of the prisoner to present himself or herself to the community mental health program for this evaluation appointment and any other appointment scheduled during the parole period. Upon failure to appear at a scheduled appointment, notification of that failure shall be made to the parole officer.

(3) After review of the report forwarded by the department of corrections or after an intake appointment, if the community mental health program serving the area where the parolee will reside has made an assessment that its program may be insufficient for the particular parolee, then the community mental health director shall do both of the following:

(a) Contact the director of the department for assistance.

(b) Give notice to the department of corrections of the assessment of possible program insufficiency and of the request for assistance from the department.

(4) If there is no community mental health program serving the area where the parolee is to reside, the department of corrections shall provide information of the situation to the director of the department who shall be responsible for locating other available community-based mental health services which are sufficient for the particular parolee.

(5) Copies of all requests for aftercare services to parolees shall be forwarded by the department of corrections to the director of the department.

History: 1979 AC; 1981 AACS.

R 330.10011 Commingling.

Rule 10011. (1) Before commingling a prisoner with other recipients of mental health services, the director of the center shall cause a full and thorough evaluation of the available physical facilities and of the prisoner to be made. The evaluation of the prisoner shall determine the prisoner's dangerousness and escape propensity, the treatment plans that are appropriate, and the recommended treatment modalities.

(2) The evaluation of the prisoner shall include, but not be limited to, a mental status evaluation, a physical status evaluation, and a full review of the prisoner's history.

(3) The director shall consult with the department of corrections concerning the security risks presented by the prisoner if a prisoner is to be commingled at the center or at any other facility of the department. The opinion of the department of corrections with regard to the security risks presented shall be heavily relied on.

History: 1979 AC; 1981 AACS.

R 330.10013 Administrative hearing.

Rule 10013. (1) Before an approved transfer between facilities of the department of mental health is acted upon, the director of the hospital in which the prisoner is currently residing shall notify the prisoner in writing, not less than 7 days before transfer, of the facts of the approved transfer and of the right to object, except if the transfer is necessitated by an emergency as determined by the hospital director and as documented in hospital records. Under emergency circumstances, the transfer shall occur as soon as necessary and appropriate notices shall be made not more than 24 hours after transfer.

(2) The transfer may occur before the expiration of the 7-day period if the prisoner approves of the transfer in writing.

(3) If the prisoner requests a hearing regarding the need and appropriateness of the transfer, the facility shall ensure completion, on a form prescribed by the department, of a request for administrative

hearing and shall submit the request form to the Administrative Tribunal, Department of Mental Health, Lewis Cass Building, Sixth Floor, Lansing, Michigan 48926.

(4) The standard governing the determination on the appropriateness of the transfer shall be the same as that used under R 330.4011. The administrative hearing held under this rule shall be pursuant to the act, these rules, and chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being S24.271 et seq. of the Michigan Compiled Laws.

History: 1979 AC; 1981 AACCS.

R 330.10014 Voluntary hospitalization of a locally incarcerated person.

Rule 10014. (1) A person who wishes voluntary hospitalization for mental health services and who is incarcerated in a place of detention operated by a political subdivision of the state shall give notice of the desire for transfer to the personnel operating the place of detention.

(2) The detention official charged with the care and custody of such an incarcerated person, or that official's designees, shall assist in the preparation of a written evaluation report by a physician or a mental health professional of the local community mental health program. The

report shall contain a statement of all of the following:

(a) The incarcerated person's desire for voluntary hospitalization and the person's ability to consent.

(b) The incarcerated person's current legal status and potential for dangerousness.

(c) The mental health status and the mental health service needs of the incarcerated person.

(d) The services currently available to the person at the place of detention.

(3) If a community mental health program has a signed service integration agreement covering inpatient services for the type of mental health services needed by the incarcerated person, the determination of the need for hospitalization, clinical

suitability, and the means of admission shall be pursuant to that agreement and the accompanying procedure agreements.

(4) If a community mental health program does not exist or if the program does not have a signed service integration agreement covering inpatient services, the report shall be forwarded to the regional department of mental health hospital or center for developmental disabilities for immediate preadmission examination and screening.

(5) If an incarcerated person requests hospitalization, but is also in need of the most restrictive and highly structured hospital setting which is not available at the regionally designated hospital or center for developmental disabilities, the report and the incarcerated person shall be transported to the center for forensic psychiatry for preadmission screening.

History: 1979 AC; 1981 AACS.

SUBPART 2. FORENSIC EXAMINATIONS

R 330.10055 Definitions.

Rule 10055. For the purposes of this subpart:

(a) "Certified forensic examiner" means a social worker, psychologist, or psychiatrist who is specially trained as a forensic clinician and who is certified by a director as having met the qualifying standards set forth in R 330.10056.

(b) "Consulting forensic examiner" means a psychologist or psychiatrist who is specially trained as a forensic clinician and who is certified by a director as having met the qualifying standards set forth in R 330.10057.

(c) "Director" means the administrative head of the examining facility or that person's authorized representative.

(d) "Examining facility" means the center for forensic psychiatry or an agency officially certified by the department to perform examinations related to the issue of incompetency to stand trial and the defense of insanity.

(e) "Qualified personnel" means either of the following:

(i) For the purposes of performing forensic examinations related to the issue of incompetency to stand trial, a certified forensic examiner or consulting forensic examiner.

(ii) For the purposes of performing forensic examinations related to the issue of the defense of insanity, a consulting forensic examiner.

History: 1979 AC; 1981 AACS; 1988 AACS.

R 330.10056 Certified forensic examiners; qualifications.

Rule 10056. (1) An applicant for certification as a certified forensic examiner shall demonstrate to the examining facility attainment of the following educational, licensing, and experiential requirements:

(a) For social workers, both of the following:

- (i) A master's degree or Ph.D. in social work from an accredited program in a curriculum substantially clinical in nature.
- (ii) State of Michigan certification as a certified social worker.
- (b) For psychologists, both of the following:
 - (i) A master's degree or Ph.D. in psychology from an accredited program in a curriculum substantially clinical in nature.
 - (ii) A State of Michigan license or limited license as a psychologist.
- (c) For psychiatrists, both of the following:
 - (i) A State of Michigan license to practice medicine or osteopathic medicine.
 - (ii) Completion of not less than 2 years of residency in an accredited psychiatry program.
- (d) Familiarity with relevant literature and federal and Michigan cases pertaining to incompetency to stand trial.
- (e) Knowledge of the court system, legal process, mental health law, and criminal law.
- (f) Knowledge of relevant clinical and ethical issues pertinent to expert witness testimony and forensic practice.
- (g) Observation and discussion of 5 examinations related to the issue of incompetency to stand trial with a certified or consulting forensic examiner.
- (h) Performance of 5 examinations related to the issue of incompetency to stand trial conducted under the direct supervision of a certified or consulting forensic examiner, including attorney contacts, analysis of collateral material, and preparation of the cosigned court report.
- (i) Observation and discussion of expert testimony presented by a certified or consulting forensic examiner.
- (j) Performance in a mock trial as an expert witness under the observation and critique of a certified or consulting forensic examiner.
- (k) Performance in court as an expert witness under the observation and critique of a certified or consulting forensic examiner.
- (2) The examining facility may allow substantially similar experience to meet all or any of the requirements in subdivisions (g) to (k) of subrule (1) of this rule.

History: 1988 AACCS.

R 330.10057 Consulting forensic examiner; qualifications.

Rule 10057. (1) An applicant for certification as a consulting forensic examiner shall demonstrate to the examining facility attainment of the following educational, licensing, and experiential requirements:

- (a) For psychologists, all of the following:
 - (i) A Ph.D. degree from an accredited psychology program in a curriculum substantially clinical in nature.
 - (ii) A State of Michigan license or limited license.
 - (iii) Certified forensic examiner status.
- (b) For psychiatrists, all of the following:
 - (i) A State of Michigan license to practice medicine or osteopathic medicine.
 - (ii) Board certification or board eligibility in psychiatry.

(iii) Certified forensic examiner status.

(c) Familiarity with relevant literature and federal and Michigan cases pertaining to the defense of insanity and the issues of diminished capacity and guilty but mentally ill.

(d) Knowledge of the court system, legal process, mental health law, and criminal law.

(e) Knowledge of relevant clinical and ethical issues pertinent to expert witness testimony and forensic practice.

(f) Observation and discussion of 5 examinations related to the defense of insanity with a consulting forensic examiner.

(g) Performance of 5 examinations conducted under the direct supervision of a consulting forensic examiner related to the defense of insanity, including attorney contacts, analysis of collateral material, and preparation of the cosigned court report.

(h) Observation and discussion of expert testimony of a consulting forensic examiner.

(i) Performance in a mock trial as an expert witness under the observation and critique of a consulting forensic examiner.

(j) Performance in court as an expert witness under the observation and critique of a consulting forensic examiner.

(2) The examining facility may allow similar experience to meet any of the requirements in subdivisions (f) to (j) of subrule (1) of the rule.

History: 1988 AACCS.

R 330.10058 Certification of examining facility.

Rule 10058. (1) To attain certification as an examining facility, an agency shall apply to the center on forms provided by the center. The forms shall require all of the following information:

(a) The applicant's proposed service district.

(b) The maximum number of referrals to whom the applicant proposes to provide service on an annual basis.

(c) The proposed period of time, which shall not be less than 1 year, that the applicant will provide forensic examination services.

(2) The center shall acknowledge receipt of the application and, within 90 days of such receipt, shall do 1 of the following:

(a) Grant certification.

(b) Deny certification.

(c) Grant a nonrenewable provisional certification for a period of up to 1 year.

(3) An applicant which meets all of the following requirements shall be certified:

(a) Has an adequate number of qualified staff to maintain a continuum of timely service to the courts located within the proposed service district.

(b) Provides an assurance that qualified staff will participate in a continuing program of inservice education pertinent to forensic clinicians.

(c) Demonstrates financial commitment by the applicant's funding source of adequate funding for the service period.

(d) Demonstrates adequate support staff, equipment, and ancillary resources necessary to meet the proposed service demand.

(4) The granting of provisional certification or the denial of certification shall be accompanied by a listing of the documented deficiencies and the required corrective actions.

(5) An examining facility shall be decertified and released from further obligation by the center 1 year after written notice to the center that the examining facility has decided to terminate service. The department may waive any part of the 1-year notice period.

(6) The center shall periodically review an examining facility to assure compliance with these rules and professional licensing and certification requirements. An examining facility that fails to meet such requirements shall be placed either on provisional status for a period of time not to exceed 1 year or be decertified. The center shall send written notice of any determination of noncompliance. The notice shall contain a statement of deficiencies that led to the determination of noncompliance.

(7) An examining facility that has been decertified may reapply for certification in accordance with this rule.

(8) An examining facility that has been placed on provisional status shall be decertified upon a determination by the center that cited deficiencies have not been corrected within the specified time.

(9) An examining facility that has been placed on provisional status shall be recertified upon a determination by the center that cited deficiencies have been corrected within the specified time.

(10) Any determination or action taken by the center under this rule concerning certification of an examining facility may be appealed by the examining facility to the director of the department pursuant to chapter 4 of Act No. 306 of the Public Acts of 1969, as amended, being S24.271 et seq. of the Michigan Compiled Laws.

History: 1988 AACCS.

R 330.10059 Forensic examination.

Rule 10059. (1) When a defendant is examined on an outpatient basis, the examining facility shall direct qualified personnel to conduct the examination at either the place of detention or at the examining facility. The examination shall be completed in 1 day, unless further information is needed, in which case the examining facility shall determine the place additional examinations shall be performed as expeditiously as possible.

(2) If a defendant is to be brought from a place of detention for outpatient examination, the examining facility shall notify the sheriff and the sheriff shall transport the defendant to the examining facility for the examination and wait until the conclusion of the examination whereupon the sheriff shall return the defendant to the place of detention.

(3) If a defendant who is ordered to undergo an examination is on bail or otherwise at liberty pending trial, the examining facility shall notify defense counsel and the court of the time and place of the outpatient examination. The defendant shall be responsible for making himself or herself available for the examination at the designated time and place.

(4) If a defendant fails to make himself or herself available for the examination at the designated time and place, the examining facility shall notify the court, the prosecuting attorney, and defense counsel.

(5) If the defendant is on bond or otherwise at liberty pending trial and qualified personnel determine, after initiating an examination, that the examination must be completed on an inpatient basis, such personnel shall notify the court, the defense and prosecuting attorneys, and the forensic center and request an immediate order for inpatient examination.

(6) When a defendant is to be examined on an inpatient basis, the director shall direct certified personnel to complete the examination as expeditiously as possible.

(7) Psychotropic medication and physical treatment during the 60-day evaluation and examination period shall be administered and prescribed in accordance with subpart 3 of part 7 of these administrative rules.

(8) As soon as administratively possible after completion of an examination, qualified personnel shall transmit the report required by law to the court, defense counsel, and prosecuting attorney.

History: 1979 AC; 1988 AACCS.

R 330.10061 Inpatient rights.

Rule 10061. (1) Within 24 hours of admission, the director shall inform the person of his rights and privileges as a resident of the facility.

(2) Rights and privileges shall be the same as those of other residents of a facility, except that security precautions appropriate to the conditions and circumstances of a resident may be taken to limit freedom of movement.

(3) Security precautions shall be in accordance with department administrative rules, policies, and procedures governing the rights of residents to mental health facilities.

History: 1979 AC.

R 330.10065 Testimony.

Rule 10065. A certified examiner shall be permitted by the director adequate time to testify if required by subpoena.

History: 1979 AC.

R 330.10067 Custody.

Rule 10067. Custody shall be the responsibility of the examining facility only during the period of inpatient evaluation.

History: 1979 AC.

R 330.10071 Discharge.

Rule 10071. (1) After completion of an inpatient evaluation, a defendant shall be discharged by the director of the center.

(2) If a defendant is not on bail or otherwise at liberty pending trial, he shall be discharged only to the custody of a peace officer requested by the center to return the defendant to jail or similar place of detention or to another person authorized in writing by the committing court to take custody of the defendant. A defendant shall be discharged to his own custody if on bail or otherwise at liberty pending trial.

History: 1979 AC.

R 330.10079 Treatment of persons found incompetent to stand trial.

Rule 10079. (1) Upon receipt of a court order committing a defendant to undergo treatment to achieve competency to stand trial, a hospital, facility, or other agency of the department providing treatment shall comply with department administrative rules and procedures for inpatient or outpatient treatment and with the following:

(a) When a court commits a defendant to the department to undergo treatment to render him competent to stand trial, placement by the department of the defendant for inpatient or outpatient treatment at a department hospital, facility, or agency, shall be made on the basis of a recommendation made by the center for forensic psychiatry.

(b) When a defendant is committed to the department, or otherwise ordered for treatment and the department is appointed medical supervisor of treatment, the director of the hospital facility or agency providing treatment shall perform the duties of medical supervisor of treatment.

(c) A medical supervisor of treatment shall submit the written report required by law to the court, prosecuting attorney, defense counsel, and the center, every 90 days and whenever he is of the opinion either that the defendant is no longer incompetent to stand trial or that there is not a substantial probability the defendant will obtain competence to stand trial within the time limits. In the report, the medical supervisor of treatment may also state an opinion as to the defendant's need for modified treatment to render him competent to stand trial.

(2) Mental health services shall be directed only toward the restoration of a defendant's competency to stand trial unless the defendant consents to additional services.

(3) A defendant ordered to undergo treatment at a department hospital, facility, or agency shall be discharged by the director upon recommendation of the treating clinician, or after 1 or more of the following:

(a) When the director is notified in writing by a committing court or by the prosecutor that charges against a defendant have been dropped.

(b) After certifying a defendant is competent to stand trial and upon release of the defendant to the custody of a peace officer or his own custody if on bail or otherwise at liberty pending trial.

(c) After 15 months from the date of the treatment order or 1/3 the maximum sentence the defendant would have received if he had been found guilty of the charge, whichever is lesser.

(d) Upon a court order directing the medical supervisor of treatment to discharge a defendant to another treatment agency or person.

(e) Upon transfer of a patient to another treatment agency or facility.

(4) If a defendant is to be discharged or released because of expiration of the treatment order or dismissal of the charges, the medical supervisor of treatment may file a petition prior to discharge, asserting that the defendant is a person requiring treatment or that the defendant meets the criteria for judicial admission with the probate court of the defendant's county of residence. Accompanying a petition asserting that a defendant is a person requiring treatment shall be 2 certificates, 1 of which shall have been executed by a psychiatrist.

(5) Whenever a medical supervisor of treatment is of an opinion that a defendant will not attain competence to stand trial within the time limit, he shall examine the defendant to form an opinion as to whether the individual meets the criteria as a person requiring treatment or for judicial admission. He shall report to the court the findings of the examination and the facts in reasonable detail upon which they are based, and include this in his written report to the court. Where appropriate, the medical supervisor of treatment shall also provide the necessary medical certificates.

History: 1979 AC.

SUBPART 3. DISPOSITION OF PERSONS FOUND NOT GUILTY BY REASON OF INSANITY

R 330.10085 Admission.

Rule 10085. Upon presentation of a court order, a person acquitted of a criminal charge by reason of insanity shall be admitted to the center for forensic psychiatry for a thorough examination and evaluation for a period not more than 60 days from the date of the order.

History: 1979 AC.

R 330.10087 Examination.

Rule 10087. (1) A person admitted under this part shall be assigned a chief clinician who shall perform a clinical evaluation as soon as administratively possible.

(2) As soon as practical after the completion of the chief clinician's evaluation, the person shall be examined by 2 authorized examiners who shall examine the person to form independent opinions as to whether the individual meets the criteria as a person requiring treatment or for judicial admission.

(3) If the person is alleged to be mentally ill, the authorized examiners shall be 2 physicians, not less than 1 of which shall be a psychiatrist. If the person is alleged to be mentally retarded, the authorized examiners shall be 2 physicians or 1 physician and 1 psychologist.

(4) Upon completion of the examination of a person believed to be a person requiring treatment, each examiner shall execute a medical certificate as prescribed by the department for use in probate court proceedings, and file them with the director of the center. If the person is alleged to be mentally retarded the examiners shall submit a written report stating whether the person meets the criteria for judicial admission. The authorized examiners may submit other pertinent information or recommendations and include them as an addendum to the medical certificates or report.

(5) The director of the center shall review the case record and the examiners' medical certificates or report, and based upon that review, shall file a summary report, in addition to any medical certificates, with the court, prosecuting attorney, and defense counsel. The summary report shall contain:

(a) An opinion as to whether the person meets the criteria as a person requiring treatment for judicial admission, based upon the authorized examiners' medical certificates or report.

(b) Recommendations for treatment, including psychotropic medications.

(c) Where appropriate, recommendations for treatment placement at a specific department, hospital, or facility, based upon the person's treatment and supervision needs.

(d) Other facts, recommendations, or opinions pertinent to the examinations and evaluation.

History: 1979 AC.

R 330.10089 Emergency treatment.

Rule 10089. Psychotropic medications and physical treatment during the 60-day evaluation and examination period shall be administered only in accordance with department administrative rules.

History: 1979 AC.

R 330.10091 Resident rights.

Rule 10091. (1) Within 24 hours of admission, the director shall inform the person of his rights as a resident of the center. He shall have the same rights and privileges as other residents of a facility, except that security precautions appropriate to the condition and circumstances of a resident may be taken limiting freedom of movement.

(2) Security precautions shall be in accordance with department administrative rules governing rights of residents of mental health facilities.

History: 1979 AC.

R 330.10093 Custody.

Rule 10093. During the 60-day examination and evaluation period, the person shall not leave the custody of the center without the approval of the director of the center and notification of the court.

History: 1979 AC.

R 330.10095 Discharge.

Rule 10095. The director shall discharge a person admitted under this section after 1 of the following:

(a) Upon the expiration of the 60-day examination and evaluation period, if a petition has not been filed with a probate court by a prosecuting attorney.

(b) When a person is released to the custody of a peace officer for transport to a probate hearing, or at the conclusion of a probate court hearing held at the center, if an individual is found not to be a person requiring treatment or meeting the criteria for judicial admission.

(c) When the person is ordered by the probate court to some other hospital, facility, or agency for treatment.

History: 1979 AC.

R 330.10097 Consultation.

Rule 10097. (1) When a person is ordered by the court to be hospitalized, admitted to a facility, or otherwise to receive treatment, the person shall not be discharged or placed on leave without prior consultation with the center.

(2) Consultation shall include exchange of written opinions between the center and the institution, agency, or professional person providing services and requesting discharge or leave for a person.

(3) An institution, agency, or professional person providing treatment shall file a report with the center for forensic psychiatry proposing plans for discharge or leaves.

(4) Upon receipt of a report proposing a discharge or leave, as soon as administratively possible, but not later than 30 days from the receipt date of the requesting report, the center shall submit a response to the institution, agency, or person requesting consultation. The center's response shall include an evaluation and recommendation based on the report and may include an examination of the person either, at the discretion of the forensic center, at the center or the facility or agency providing services. The center may request further information, the request explaining the need for the additional information.

(5) When the center does not concur with the proposed course of action, the requesting institution, agency, or professional person may file additional reports with the center or after any exchange of opinions may ask for a review of the matter by the director of the department.

(6) When a review is requested, the institution, agency, or professional person providing services shall send copies of the proposing reports and the center's responses to the director of the department. The director of the department shall either approve or disapprove the proposed course of action. Written approval or disapproval and an

explanation of the reasons shall be sent to the agency, institution, or professional person requesting the proposed course of action and to the center.

History: 1979 AC.

SUBPART 4. CRIMINAL SEXUAL PSYCHOPATHS

R 330.10099 Criminal sexual psychopaths.

Rule 10099. (1) A person committed as a criminal sexual psychopath may be paroled to the community pursuant to department policies and procedures by the director of a facility if there are reasonable grounds to believe the person has recovered from the psychopathy and is not a menace to the safety of himself or others.

(2) A person committed as a criminal sexual psychopath who has been on parole in the community for a continuous period of not less than 2 years without recurrence of the criminal sexual psychopathic behavior which led to the original commitment shall be discharged by the director of a facility in accordance with section 942 of the act.

History: 1979 AC.