

CF OPERATING PROCEDURE  
NO. 155-38

STATE OF FLORIDA  
DEPARTMENT OF  
CHILDREN AND FAMILIES  
TALLAHASSEE, March 31, 2021

Mental Health/Substance Abuse

PROCEDURES FOR POST COMMITMENT DIVERSION OF INDIVIDUALS ADJUDICATED  
INCOMPETENT TO PROCEED OR NOT GUILTY BY REASON OF INSANITY

1. Purpose. This operating procedure describes a standardized process for the post commitment diversion to alternative community-based treatment services, for appropriate individuals committed to the Department of Children and Families pursuant to Chapter 916, Florida Statutes (F.S.).
2. Scope. This operating procedure applies to all individuals committed to a state mental health treatment facility pursuant to Chapter 916, F.S. This operating procedure excludes residents in the Florida Civil Commitment Center.
3. References.
  - a. Chapter 916, F.S., Mentally Deficient and Mentally Ill Defendants.
  - b. Florida Rules of Criminal Procedure (F.R.C.P.) 3.210-3.219.
  - c. Chapter 65E-20, Florida Administrative Code (F.A.C.), Forensic Client Services Act.
  - d. Chapter 65E-5, F.A.C., Mental Health Act Regulations.
  - e. CFOP 155-35, Violence Risk Assessment Procedure in State Mental Health Treatment Facilities.
  - f. HCR -20, Assessing Risk for Violence, Version 3.
  - g. CFOP 155-22, Leave of Absence and Discharge of Residents Committed to a State Mental Health Treatment Facility Pursuant to Chapter 916, F.S.
4. Standard Definitions. The following definitions are provided for purposes related to this operating procedure.
  - a. Certificate of Service. The section of a pleading or motion that certifies that the party filing the document has sent a copy of the document to the opposing party or the opposing party's lawyer. A copy of every document filed in court must be given to every person involved in the case. The Certificate of Service documents that this happened.
  - b. Competency Restoration Training. Education provided to the individual by a mental health provider to gain factual and rational understanding of the charges, legal process, possible court dispositions and the individual's rights under the law. This education may be provided over a period of time until the clinician is confident that the individual has demonstrated factual and rational understanding of the information or it has been determined that the individual will not regain competency in the foreseeable future.

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This operating procedure supersedes CFOP 155-38 dated March 12, 2019.

OPR: SMF

DCF Tracker Assignment Number: A21-002288.

c. Conditional Release. A court-approved discharge for a resident committed under Chapter 916, F.S., from a state mental health treatment facility to a less restrictive community setting. It is also used in lieu of an involuntary commitment to a facility pursuant to ss. 916.13 or 916.15, F.S.

d. Conditional Release Plan. A court-ordered plan for providing appropriate outpatient care and treatment for individuals found Incompetent to Proceed or Not Guilty by Reason of Insanity. The committing Court may order a Conditional Release of any defendant in lieu of an involuntary commitment to a state mental health treatment facility, or upon a recommendation that outpatient treatment of the defendant is appropriate. A written plan for outpatient treatment, including recommendations from qualified professionals, must be filed with the Court with copies to all parties. Such a plan may also be submitted by the defendant and filed with the Court with copies to all parties.

e. Forensic Coordinator. A staff member employed by the Managing Entity, or their contracted provider, who has contractual and programmatic oversight responsibility of forensic services for adults for each court circuit in the covered region.

f. Forensic Specialist/Forensic Case Manager. A staff member employed by a community mental health provider, under contract with the Managing Entity, to provide an array of services to individuals who are at risk of or have been ordered by the Court to receive mental competency or sanity evaluations or have been committed to the Department of Children and Families under the provisions of Chapter 916, F.S., by one of the state's twenty Circuit Courts. Specifically, these are individuals who have received an Order of Evaluation of Competency or Sanity or have been adjudicated as Incompetent to Proceed (ITP) or Not Guilty by Reason of Insanity (NGI) due to mental illness. The Forensic Mental Health Services Model is used as an exhibit for the contractual provision of these services.

g. Incompetent To Proceed (ITP). A determination made by the Circuit Court that an individual is unable to proceed at any material stage of a criminal proceeding. These stages include pretrial hearings and trials involving questions of fact on which the defendant might be expected to testify. It shall also include entry of a plea, proceedings for violations of probation or violation of community control, sentencing, and hearings on issues regarding a defendant's failure to comply with Court orders. It shall also consider conditions or other matters in which the mental competence of the defendant is necessary for a just resolution of the issues being considered.

h. Managing Entity (ME). As defined in s. 394.9082(2)(b), F.S., an entity that manages the delivery of behavioral health services.

i. Non-Violent Offense. A crime that does not involve a violent crime against a person and is not one of the violent or capital offenses found in s. 916.145, F.S. Individuals that have non-violent offenses are a priority population for discharge.

j. Not Guilty By Reason of Insanity (NGI). A determination made by the Circuit Court that an individual is acquitted of criminal charges because the individual is found insane at the time of the offense.

k. Post Commitment Diversion. The process in which an individual committed to the Department of Children and Families pursuant to Chapter 916, F.S., is permitted by the committing court to forego admission to a secure forensic facility and reside in a less restrictive environment. The diversion process applies to adults or juveniles adjudicated as adults who have been charged with a felony offense, and adjudicated as incompetent to proceed or not guilty by reason of insanity pursuant to Chapter 916, F.S. The individual is diverted post commitment to a less restrictive community mental health treatment facility or the order of commitment is vacated, and a new order is issued conditionally releasing the individual to appropriate community-based services as a result of interventions by the

Circuit/Region Forensic Specialist/Forensic Case Manager, other community mental health stakeholders and/or Circuit staff prior to admission to a state forensic mental health treatment facility.

I. State Mental Health Treatment Facility. A facility operated by the Department of Children and Families or by a private provider under contract with the Department to serve individuals committed pursuant to Chapter 394, F.S., or Chapter 916, F.S.

5. Diversion as an Alternative to Commitment. The decision to divert an individual to an alternative community placement rests with the Court. Since the Court is the final decision-making authority, it is important that the Circuit/Region Forensic Coordinator, Forensic Specialist/Forensic Case Manager, and the Circuit/Region Legal Counsel have a positive working relationship with the court system. The timeframes involved necessitate the circuit/region being aware of individuals at risk for forensic commitment as early as possible in the commitment process.

6. Program Office Screening. The Forensic Admissions personnel within the Headquarters office of State Mental Health Treatment Facilities, Policy and Programs in Tallahassee, will screen each individual's commitment packet as soon as it is received. All documents will be reviewed, including the court appointed expert evaluations and documents related to probable cause. Cases will be identified that appear appropriate for further review and possible diversion of the resident to the community. Possible diversion indicators include, but are not limited to:

a. Individuals with felony property crime charge(s) and/or substance abuse related charges only;

b. Individuals with non-violent probation or conditional release violations;

c. Individuals with non-violent offenses;

d. Individuals who have been compliant with medication and have not exhibited violent or dangerous behaviors while in jail; or,

e. Individuals representing exceptional cases, i.e., residents who are geriatric or with organic brain syndrome, or other conditions needing special care, which can be provided in a community setting.

7. Approval Authority. Although the decision to recommend a resident's diversion to a community setting is made by the circuit/region, the committing court has final approval and must agree to the alternative placement plans by vacating the original commitment order. A Conditional Release Plan may need to be developed and a conditional release order may be issued depending on the needs of the individual and/or the requirements of the committing court.

8. Circuit/Region Assessment. If post commitment diversion to community-based treatment services appears generally appropriate, the Mental Health Program Office Forensic Admissions personnel referring the individual will contact, via email, Circuit/Region Legal Counsel and the Forensic Coordinator in the Circuit/Region where the jail is located to request an immediate review/assessment for possible diversion. If otherwise unavailable, a copy of the commitment order, charging document, court appointed evaluator reports and any other available pertinent information will be faxed or emailed to the Circuit/Region for review. Forensic Coordinators shall attempt to have their name (and/or the names of other designated forensic staff per county) added to the Certificate of Service for all commitments in order to ensure this information is accessible in a timely manner.

a. The Forensic Coordinator will reply within two working days by acknowledging receipt of the request for diversion, report at least weekly on the status of their review and/or efforts to divert and identify barriers to diversion if unsuccessful. The weekly status update reports shall continue until the

Forensic Admissions Office personnel have received documentation sufficient to vacate the commitment order or until diversion to community-based treatment services has been ruled out as an option for the individual. The Forensic Admissions Office will contact the Forensic Coordinator for a diversion update, prior to scheduling an individual's admission to a state mental health treatment facility.

b. The Circuit/Region will have the final decision in determining which individuals are recommended to the court for diversion to a community setting and may initiate diversion procedures in the absence of Forensic Admissions Office referral. The Circuit/Region Forensic Coordinator will report the initiation of diversion proceedings for all non-referred individuals to the Forensic Admissions Office personnel, continue to provide weekly updates on the status of review and/or efforts to divert, and identify barriers to diversion if unsuccessful. The weekly status update reports shall continue until the Forensic Admissions Office personnel have received documentation sufficient to vacate the commitment order or until the resident's diversion to community-based treatment services has been ruled out as an option for the individual.

c. If a Conditional Release Plan is necessary, the Circuit/Region will coordinate the development of a Conditional Release Plan for individuals determined appropriate for diversion to the community. The plan will include indicated mental health treatment, living arrangements, and wraparound services to provide for the needs of the individual and to appropriately address any concerns of the Court.

d. If the circuit/region has a community-based competency restoration program, the Court should be notified when relevant to the individual. Details of the program should be included in any proposed conditional release plan offered to the Court.

e. It is important to initiate efforts early when attempting to divert individuals assessed as appropriate for post commitment diversion to a community setting. When possible, individuals should be placed within fifteen days of receipt of the referral. If not possible, other arrangements should be made with the Court for additional time while finalizing diversion plans.

9. Criteria for Diversion. Circuit/Region staff or their designee will determine which treatment environment they believe is in the best interest of the individual and is also protective of society.

a. The following criteria should be considered when determining whether or not an individual is appropriate for diversion to a community setting:

(1) Using information obtained from available records and following an investigative review of the individual's history, an assessment will be conducted of the nature and severity of the immediate crime, nature and severity of prior criminal charges or convictions, nature and severity of the individual's mental illness, especially where the nature of the delusions and/or hallucinations impact the immediate crime, recent suicide attempts or suicidal preoccupations and the documented propensity of the individual for violence, risk of assaultive behavior, and/or escape;

(2) The individual should not be at high risk to commit serious assaultive behavior toward others;

(3) There should be no evidence of preoccupation with escape or a history of actual attempts to escape from a jail, a correctional facility and/or a treatment facility where the individual was involuntarily committed; and,

(4) The individual should not be considered to be at high risk to commit arson.

b. As needed, a risk assessment should be conducted on individuals meeting the above criteria. The assessment should be conducted by a person designated by the Circuit/Region who:

(1) Has expertise, training and experience in interviewing, in the administration and interpretation of standardized tests and in the diagnosis of mental disorders; and,

(2) Possesses knowledge in the study of violence and familiarity with the professional and research literature on the nature, causes and management of violence.

c. Upon completion of the risk assessment, the person who conducted the risk assessment should report the findings to the Forensic Coordinator and Circuit/Region Legal Counsel to determine if the individual is appropriate for diversion.

10. Procedures for Diversion.

a. The Circuit/Region Legal Counsel will advise the committing court, the state attorney, and the defendant’s counsel of record of the proposed commitment alternative including the details of the conditional release plan.

b. The Court, the state attorney, and the defendant’s counsel will be requested to vacate the original commitment order and, if appropriate, issue an order of conditional release incorporating the plans developed by the Circuit/Region.

c. If the Court refuses to vacate the original commitment order, Circuit/Region staff or their designee will immediately notify the Forensic Admissions Office. The individual will be placed in the appropriate state mental health treatment facility as soon as space becomes available.

d. If the Court agrees to the proposed conditional release alternative, the Circuit/Region will notify the Forensic Admissions Coordinator and the individual’s name will be removed from the Forensic Admission Waiting List upon receipt of the vacated order of commitment/order of conditional release. The Circuit/Region will assist in coordinating arrangements to transport the individual to the placement identified in the conditional release order.

e. The Forensic Specialist/Forensic Case Manager or designee from the provider agency stipulated in the order will monitor the individual’s compliance with the conditions of the order and ensure that the Court receives periodic progress reports as required by the Court in the conditional release order. The provider shall also ensure that copies of the progress reports are provided to Circuit Forensic Coordinator.

BY DIRECTION OF THE SECRETARY:

*(Signed original copy on file)*

JACQUELINE A. YOUNG  
Director, Policy and Programs

SUMMARY OF REVISED, DELETED, OR ADDED MATERIAL

Deleted or amended references in paragraph 3; in paragraph 4, deleted definition for Case Manager and updated definition for Forensic Specialist; and, in paragraph 6, updated office name.