

**MEMORANDUM OF UNDERSTANDING REGARDING PERSONS DEEMED
INCOMPETENT TO STAND TRIAL
BETWEEN THE COUNTY PROSECUTOR'S OFFICE, CMHSP, AND CHIEF JUDGE**

Between 2010 and 2019, the number of competency to stand trial and criminal responsibility evaluation orders issued annually across Michigan has risen 47%. In 2018, the Center for Forensic Psychiatry received nearly 4800 court orders for forensic evaluations; over half were for evaluation of competency to stand trial. For misdemeanors alone there has been nearly an 80% increase in the number of evaluations conducted by the Center on the issue of incompetence to stand trial. In 2018, defendants charged with misdemeanor offenses accounted for 15% of competency evaluations performed by the Center.

In addition to the increased *number* of referrals to the Center for competency evaluations, there has been a corresponding rise in the *rate* of individuals who have been opined incompetent to stand trial, particularly for those charged with misdemeanors. Since 2010, the incompetence to stand trial opinion rate has increased 24%, overall; but more so for individuals charged with misdemeanors, which has increased 44%. In 2018, misdemeanor defendants had a higher rate of being opined incompetent to stand trial (40%) than those who were referred for felony charges (19%). In 2018, 142 misdemeanant defendants were opined by the Center to be incompetent to stand trial; which is higher than the overall number of defendants on average awaiting admission to State of Michigan Hospitals for treatment to attain competence.

When an individual is determined incompetent to stand trial, under Michigan Law, the Center has 15 months *or* 1/3 the maximum sentence the defendant could receive if convicted of the charges (whichever is less) to restore the defendant's competency. MCL 330.2034.

The maximum sentence for any misdemeanor offense is one year. The vast majority of misdemeanor offenses are 93 days. This severely limits the time and ability of the Center for Forensic Psychiatry to allow restoration treatment of an individual charged with a misdemeanor to have the effect of making them competent to stand trial. There is now a substantial backlog of individuals awaiting treatment after being determined incompetent to stand trial. Defendants are waiting an average of approximately 150 days to get into the Center after he/she has been deemed incompetent to stand trial, with some defendants waiting much longer. Many of those individuals are housed in county jails awaiting space at the forensic center. The large increases in misdemeanor offenses, the referrals, and the number of defendants deemed incompetent, are some of the contributors to this backlog.

Given the severe limitations on staff resources and the strict limitations on the time the Center must make an individual competent to stand trial, it is not beneficial to attempt to make a misdemeanor defendant competent if he/she is found incompetent to stand trial. Further, in cases where prosecution is unlikely, it may therefore similarly not be practical to expend limited staff resources to have the misdemeanant evaluated for competence to stand trial to see if he/she can ultimately proceed to trial, which is the purpose of the evaluation. It is a severe drain on the resources of the Center. It is causing substantial delays in the felony cases:

murders, rapes, and other more serious offenses and the ability to timely evaluate and treat individuals charged in those serious cases. Many states are examining removing misdemeanor offenses from the competency services.

Presently across the state some communities are already diverting misdemeanants out of the competency referral process. It is therefore agreed by the undersigned parties that we will attempt to establish a process in this county that will allow us to draw upon established diversion models in order to divert misdemeanants out of the competency framework in this county. This would be consistent with the 2016 revised standards of the American Bar Association which states in part that responding to persons with mental disorders in the criminal justice system includes “work with Community Mental Health treatment providers and other experts to develop reliable screening, assessment, diversion and intervention strategies.” (standard 7-1.2) https://www.americanbar.org/groups/legal_education/resources/standards/

For example, at the outset of a case, the prosecuting attorney or the defense attorney can move to refer the individual defendant to the CMHSP. The CMHSP will assess the person’s treatment needs and, if appropriate, either enter or link that person into the appropriate mental health programming to assure that the individual will be receiving necessary treatment in the community. Any person may file a petition to have the individual evaluated clinically to determine if he/she is a person requiring treatment. With appropriate authorization for release of information, the CMHSP will provide the findings of the assessment to the prosecution and defense.

For those defendants deemed incompetent to stand trial on a misdemeanor offense punishable by one year in jail or less, that person will be referred to the local Community Mental Health Services Program (CMHSP) for further review and treatment. The prosecuting attorney may file a petition with the Probate Court for a finding that the person is in need of treatment using the Center’s finding of incompetency as part of the required proofs, and then the criminal case must be dismissed. If the individual is determined by the Probate Court or CMHSP to not be a person requiring treatment, the CMHSP will enter or link that person into the appropriate mental health programming to assure that individual receives treatment as deemed appropriate by the CMHSP.

Signed and Executed by:

SIGNATURE FOR THE PROSECTUOR’S OFFICE

PRINTED NAME, TITLE, AND COUNTY

DATED

COMMUNITY MENTAL HEALTH SERVICE PROGRAM

PRINTED NAME AND TITLE

DATED

CHIEF JUDGE

PRINTED NAME

DATED