



FIRST ANNUAL REVIEW OF PUBLIC DEFENDER REPRESENTATION

AT CENTRAL MAGISTRATION

SUMMARY

The Bexar County Public Defender’s Office began trial operations at the Central Magistration Facility on September 1, 2015. This report serves as a review of the first year of the Office’s tenure by examining its evolution and focuses on both successes and areas of advancement. The Bexar County Public Defender’s Office (“BCPDO”) was awarded a grant from the Texas Indigent Defense Commission on June 18, 2015. The grant allows attorneys from the BCPDO to be present at the Central Magistration Facility (“CMAG”), counsel arrestees with mental illness on the magistration process, represent them before the magistrate, and facilitate their release on personal bonds with mental health treatment required as a condition. The overall objectives of the program are to reduce jail costs, reduce recidivism, and improve outcomes of mentally ill defendants. By providing for the immediate appointment of the BCPDO to individuals who have been identified as appropriate for diversion from the Bexar County Jail to in-patient and out-patient treatment programs, mentally ill defendants are more likely to get help that can address the underlying causes of the behaviors that have led them into the criminal justice system.

The program has had a significant impact in its first year of operation. The BCPDO has streamlined the process of identifying those arrestees potentially eligible for diversion. The Office has increased the number of arrestees assessed for diversion and released on personal bond. Once released, BCPDO clients are more likely to complete the requirements of personal bond than other arrestees. Clients represented by the BCPDO are also more likely to actively engage in their mental health services following release. The drawback of this past year has been the limited scope of cases in which the office could provide representation. Of 7,806 potential clients with indications of mental illness, our office has provided representation in 262 cases. Low case volume has limited expected jail population reductions. However, the success of those clients we represented clearly demonstrates the potential for the office.

OVERVIEW of PROCESS

The BCPDO attorney works with the detention staff, district clerk, mental health assessor, mental health clinician, district attorney, and magistrate judges to represent indigent arrestees with mental illness at their Article 15.17 hearings. BCPDO representation begins with the identification of potential clients and a subsequent determination of indigency. The BCPDO attorney advises the clients of their rights, charge, and possibilities for release, including the opportunity to receive a personal bond with required mental health treatment as a condition of the bond. The client must consent to the mental health assessment and conditions before proceeding. Once the client has accepted the services, the personal bond interview (“PRI”) and the mental health assessment are performed. The BCPDO attorney then conferences with the on-site assistant district attorney to determine if there is an agreed recommendation

for release on a personal bond. Finally, the PRI, mental health assessment, and agreed recommendation (if any) are submitted to the judge for review. After these documents have been reviewed the magistrate judge calls the “Mental Health Docket”. The judge advises clients of their rights and charges, sets their bond, and determines if they are requesting court-appointed counsel. After arguments from the BCPDO attorney and the district attorney, the judge grants or denies personal bond conditioned upon mental health treatment. From start to finish, the entire representation of a client can take anywhere from 3-9 hours.

Working Hours:

The BCPDO staffs CMAG with three full time Assistant Public Defenders (“APD”). Initially, the office planned to operate at the facility 24 hours a day for five days a week. The BCPDO has attempted several schedule variations to more efficiently provide representation to a greater number of clients. The onsite mental health services at CMAG are provided by the Center for Healthcare Services (“CHCS”). Arranging mental health assessments and creating treatment plans has proven difficult due to staffing changes by CHCS. At the time of the grant proposal, CHCS was not yet meeting its goal of providing a mental health professional 18 hours a day/7 days a week. CHCS staffed a morning clinician working 7:00 am to 3:30 pm Sunday-Sunday and an evening clinician working Monday-Friday, 7:30 pm to 4:00 am.

After working 24 hours/day the first week in September, the BCPDO attorneys shifted hours to mirror the clinicians. Soon after beginning this schedule, the BCPDO was informed by the Bexar County Mental Health Department (“MHD”) that there would no longer be a “weekend clinician” available after September 16, 2015. On that date, the CHCS clinicians began a Monday-Friday schedule with only a morning and evening clinician during those days. The BCPDO again shifted its schedule to mirror these working hours. In October, CHCS shifted the morning clinician’s working days to Tuesday-Saturday and the BCPDO attorneys adjusted their schedule accordingly. The CMAG attorneys worked these hours until March 21, 2016. On March 10, 2016, the BCPDO was informed that CHCS hired a weekend clinician whom would be working 7:00am-5:00pm on Saturday and Sunday. The regular morning clinician reverted to a Monday-Friday schedule. Due to this, the BCPDO began a 24 hour schedule working Monday-Friday on March 21. These hours were adjusted in an attempt to provide representation to clients who are “already magistrated” as the magistrate judges will not allow the BCPDO to represent clients who have already been through their Texas Code of Criminal Procedure Article 15.17 hearing. This schedule continued until May 1, when CHCS again shifted the weekday clinician’s schedule to work Tuesday-Saturday with another morning clinician coming in on Sunday and Monday. Due to only having three APDs, the BCPDO is unable to cover the remaining two days of the week when a clinician is present.

Identifying Clients:

At CMAG, the BCPDO is authorized to represent clients who have a qualifying mental illness and are determined indigent. Special Order No. 67606, issued by the Bexar County District Court Judges on July 15, 2015, states, in part, the following:

The appointment of the of the Bexar County Public Defender’s Office shall be for the limited purpose of representation of the indigent arrested person during the magistration process and related solely to the determination of the bond and the conditions of the bond for arrested person described in this order...

IT IS THEREFORE ORDERED, that effective September 1, 2015, in any case in which an arrested person has been determined to be indigent and has requested court appointed counsel in accordance with the policies and procedures contained in the Bexar County Criminal District Courts Indigent Defense Plan, and additionally has been deemed to have a mental illness, the Bexar County Public Defender's Office is appointed to represent said arrested person for the limited purpose of magistration only.

A potential client can be identified as mentally ill through several avenues: (1) an affirmative answer to the Arrest & Booking Sheet "Law Enforcement Questions;" (2) CCQ Hit; or (3) affirmative answers to the Brief Jail Mental Health Screenings. The "Law Enforcement Questions" are placed on the back of the arresting officer's "Booking Sheet." The Booking Sheet supplies identifying information for the arrested person, including the current charge(s). The back of the Booking Sheet has four questions that the arresting officer is supposed to ask the arrested person:

1. Have you ever been diagnosed as having a mental illness by a doctor or by a mental health professional? (Circle 1) YES NO
2. Have you ever or are you currently taking any medication for mental illness? (Circle 1) YES NO
3. Have you ever tried to kill yourself? (Circle 1) YES NO
4. Do you currently have thought of killing yourself? (Circle 1) YES NO

If any of these questions are circled "yes" the person is identified as having an indication of mental illness.¹ If all of these questions are answered "no," the Pre-Trial Mental Health Assessor will run the Continuing Care Query or "CCQ." The CCQ is a statewide system to identify if a person has previously received mental health services from a state-sponsored mental health provider. Finally, if the arrested person answers "no" to all questions and is not in the CCQ system, the Brief Jail Mental Health Assessment ("BJMHA") is performed by the Mental Health Assessor. The BJMHA is an eight-part question series asking the following questions:

1. Do you *currently* believe that someone can control your mind by putting thoughts into your head or taking thoughts out of your head?
2. Do you *currently* feel that other people know your thoughts and can read your mind?
3. Have you *currently* lost or gained as much as two pounds a week for *several* weeks without even trying?
4. Have you or your family or friends noticed that you are *currently* much more active than you usually are?
5. Do you *currently* feel like you have to talk or move more slowly than you usually do?
6. Have there *currently* been a few weeks when you felt like you were useless or sinful?
7. Are you *currently* taking any medication prescribed for you by a physician for any emotional or mental health problems?
8. Have you *ever* been in a hospital for emotional or mental health problems?

¹ If the person answers "yes" to currently having thoughts of killing themselves, "suicide protocol" is put in place and the person is handcuffed and placed in a cell alone until assessed by the clinician or nursing staff.

If the arrestee answers “yes” to two of the Questions 1-6 or “yes” to either Question 7 or 8, he or she will be referred to the BCPDO. Any of these methods provide an indication of mental illness that requires further evaluation by the clinician.

Once a client is identified as potentially having a mental illness, the attorney must determine if he or she is eligible for a personal bond, as provided for by Articles 17.03 and 17.032 of the Texas Code of Criminal Procedure. To begin this vetting process, the APD must request the potential client’s criminal history from the district clerk’s office. The criminal history is reviewed for informational purposes. Once it is determined that the potential client is eligible for release on a personal bond, the APD requests pre-trial services interview the arrestee to determine if indigent and eligible for the public defender’s services. If indigent, the client must agree to mental health services, knowing that the judge will make treatment a condition of his or her bond if released. For many potential clients, this is a daunting requirement. If the client understands, agrees, and wants services, the BCPDO accepts the case.

Personal Bond Interview/Mental Health Assessment:

Once a client is determined to have an indication of mental illness, be indigent, agree to services and has an eligible charge they must go through another “vetting process” with the clinician from CHCS. The clinicians do not refer anyone for services who is currently withdrawing from a drug that causes potentially harmful physical withdrawal symptoms. The CHCS clinicians do not accept any clients who do not have a “verified” address (confirmed through a third party) and do not live in Bexar County. If the address cannot be verified, CHCS is unable to provide services and the application is submitted to the judge for release on a personal bond without mental health treatment.

If there is no clinician present to perform assessments, the magistration hearing is bifurcated. The first hearing entails the advising of rights, requesting court appointed counsel, and setting bond. The personal bond interview is conducted prior to the clinician’s arrival and the mental health assessment is delayed until that time. Once the clinician arrives the process proceeds normally. The magistrate judges agreed to this system in order to give the client an opportunity to bond out while awaiting the clinician’s arrival.

METRICS

The BCPDO collects data during each shift to catalogue the arrestees coming through CMAG. If any of the arrestees are identified as having a potential mental illness, their information is recorded for evaluation. If the on-duty APD determines they are unable to present the case to the magistrate for release, this reason is categorized and noted. This data collection process has evolved over the year and provides the BCPDO the opportunity to examine areas for improvement.

Cases Reviewed:

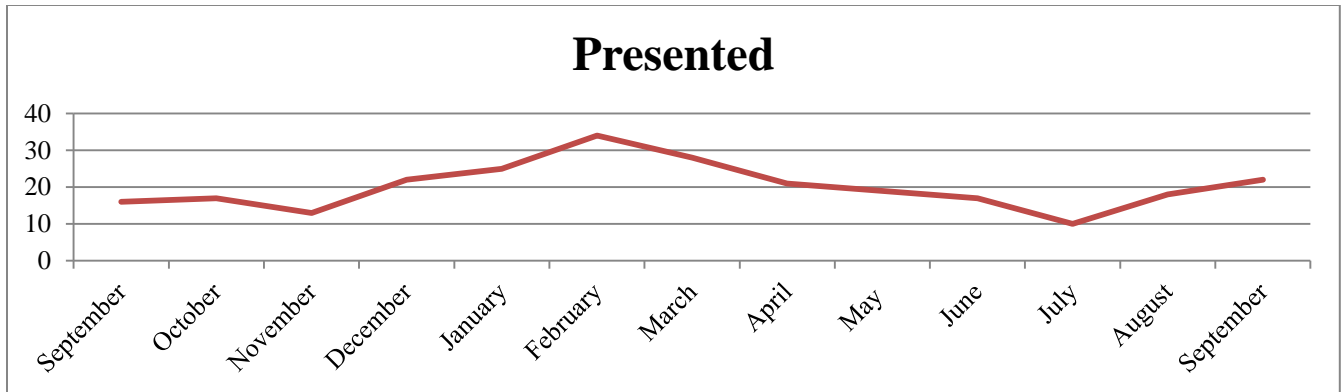
From September 1, 2015-September 31, 2016, the BCPDO worked a total of 554 shifts at CMAG. During those shifts, we reviewed 7,806 potential clients who had an indication of mental illness. Due to various factors, not all of these clients were presented to the magistrate judges. Some of the reasons for ineligibility are statutory, while others are a result of local policy or logistical problems in the system. The table below lists the reasons for ineligibility from greatest to least. The single greatest reason for ineligibility was due to the arrested person having a “violent charge”. This is an example of

clients that are statutorily ineligible for a personal bond. Other significant reasons for ineligibility were “already magistrates” or “timed out/homeless”. These are examples of logistical problems in the system that could be addressed to increase the number of eligible cases.

<u>Reason for Ineligibility</u>	<u>Total</u>	<u>Percent</u>
Violent Charge	1355	17%
Remanded Without Bond	836	11%
Parole/Probation	767	10%
Already Magistrates	766	10%
Muni. Court Warrants/Tickets/Civil	596	8%
On Bond	582	7%
Timed Out (Include: Homeless)	572	7%
Accepted: Disqualifying Reason	448	6%
Unknown/Other	310	4%
Presented: Granted/ Denied	262	3%
Out of County Warrant	246	3%
Violent History	233	3%
Warrant/MTRP	189	2%
Out of County Resident	123	2%
Not Indigent	111	1%
Bond Forfeiture	110	1%
Bond Increase	91	1%
Suicidal	68	1%
Habitual	54	1%
Refused Services/Attorney/Clinician	52	1%
Intoxicated	35	<1%

Cases Presented:

If determined eligible, the BCPDO presents the client for release to the magistrate judge. From September 1, 2015 through September 31, 2016, the BCPDO presented 262 cases for release to the magistrate judges. Of those cases presented, 197 were granted and 65 were denied. The number of personal bond hearings fluctuates from month-to-month and the overall number of bond hearings per month is displayed in the chart below:



The presence of the BCPDO has assisted in streamlining the overall process of identifying arrested persons for release on a personal bond with mental health services. This is demonstrated by the overall increase in defendants released since the BCPDO began operations. According to data provided by Pre-Trial Services and the MHD, from February 2014-April 2015, 125 defendants were diverted to CHCS. In a comparable 10 month time period (from September 2015-June 2016), 308 defendants were diverted to CHCS. This represents a 150% increase in the number of releases since the BCPDO began operations. This is a reflection of the BCPDO’s positive impact at CMAG through a formalization of the process required in identifying clients for diversion.

Assessments:

The presence of the BCPDO has increased both the number of clients assessed for diversion and those released. An analysis of the numbers provided by the Mental Health Department from January 2015-August 2015 indicate that a total of 1,982 assessments were performed. With the help of the BCPDO, a total of 2,402 assessments were performed for the same time period the following year. More importantly, the number of full assessments dramatically increased. In April 2015, the MHD began differentiating the type of assessment performed, whether it was a brief, full, or suicidal ideation assessment. From April 2015 until August 2015, 306 full assessments were completed. Upon introduction of the BCPDO in September 2015 through August 2016, a total number of 1,200 **full assessments** were performed.

Releases:

The overall objective of the grant was to provide counsel at Article 15.17 hearings and assist in diverting eligible arrestees from the jail. The APD’s ability to increase compliance and cooperation of the arrestee in the mental health interview and the resulting number of people referred to treatment has facilitated this goal. While there is continued room for improvement, we believe that this objective has been met, and the importance of representation at an Article 15.17 hearing by an APD cannot be overstated. This is most clearly demonstrated by comparing the release rate of arrested persons who are represented by an APD to those presented for release without representation. When an APD is not on duty, CHCS is referred clients by one of the several Pre-Trial employees. As demonstrated by the table below, the clients represented by the BCPDO are much more likely to be granted personal bonds than those who are not. The average release percentage for clients with representation by BCPDO is 77% and is only 57% without.

These numbers are further explained in the following table:

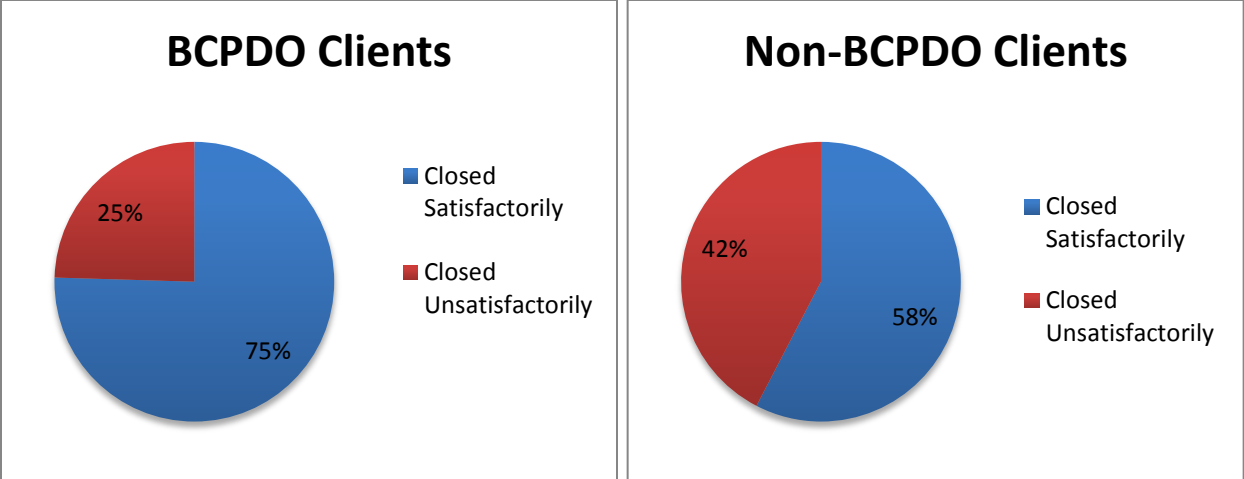
	Presented:	Released:	BCPDO Releases/Presentations:	Non-BCPDO Releases:
September:	37	22	13/16 (81%)	9/21 (43%)
October:	51	41	14/17 (82%)	27/34 (79%)
November:	38	24	10/13 (77%)	14/25 (56%)
December:	48	28	15/22 (68%)	13/26 (50%)
January:	55	33	19/25 (76%)	14/30 (47%)
February:	54	32	21/34 (62%)	11/20 (55%)
March:	52	35	20/28 (71%)	15/23 (65%)
April:	54	37	17/21 (81%)	20/33 (61%)
May:	49	33	15/19 (79%)	18/30 (60%)
June:	40	23	13/17 (76%)	10/23 (43%)
July	33	20	10/10 (100%)	10/23 (43%)
August:	37	26	14/18 (78%)	12/19 (63%)
September:	38	28	16/22 (73%)	12/16 (75%)

It is reasonable to assume that the higher percentage of releases with BCPDO representation is due to the fact that the APD is present to advocate before the magistrate for release on personal bond. In cases where the BCPDO is not involved, Pre-Trial will compile documents related to release on a personal bond, but these documents are submitted to the magistrate without elaboration or argument. The ability of the APD to not only advocate for the personal bond, but to address concerns the magistrate may have and relate the personal experience of speaking to the client, their family and the clinician all contribute to the higher release percentage for clients with BCPDO representation.

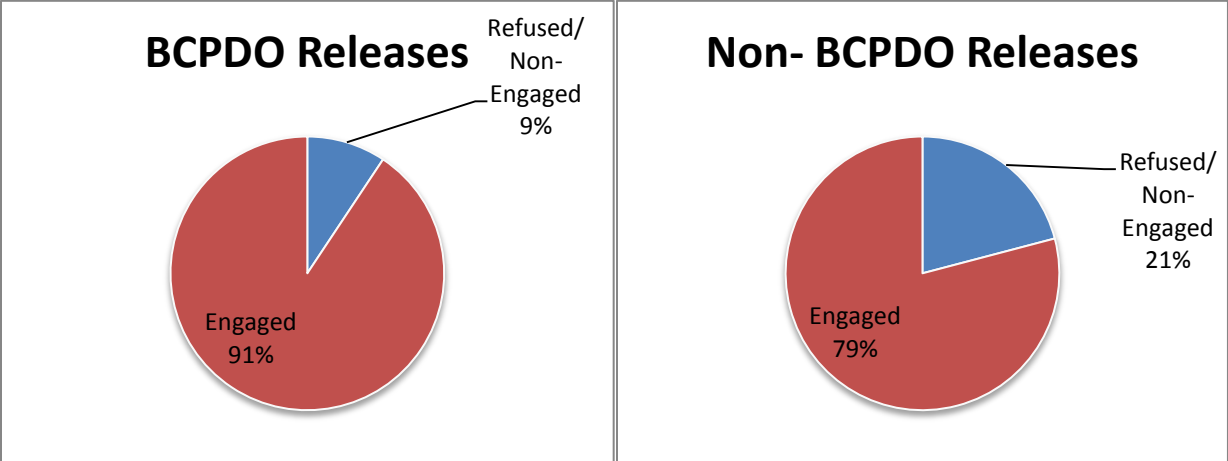
Once released, BCPDO clients are also more likely to complete the requirements of the personal bond, resulting in fewer bond revocations and better case dispositions². As shown below, clients represented by an APD at CMAG have higher compliance rates and lower Failure to Appear (“FTA”) rates than those released without³.

² Data concerning case disposition is still being collected and analyzed. It is presumed that in any given case where there is no failure to appear and/or the defendant is not re-arrested will result in a better case disposition.

³ Any given case is “Closed Satisfactorily” if the client makes all court appearances, participates in treatment and is not rearrested prior to case disposition.



Clients represented by an APD are more likely to actively engage in their mental health services. This is critical to the success of any program to divert persons from jail into mental health services. The APD visits extensively with potential clients for the program, explains program requirements in detail, and moves forward only when the client expresses a genuine desire to participate in the mental health services. Once a defendant begins mental health services, some do not continue to participate in the treatment. They are then considered to have become “non-engaged” in services. In order to reduce recidivism and improve case outcomes, defendants must accept the services and remain engaged in treatment. The charts below show that defendants granted personal bonds without APD representation are more than twice as likely to refuse or not engage with their mental health services provider:



As identified in the grant proposal, CMAG did not previously allow for the representation of these individuals by counsel during this process. Once clients are released, they are assigned a pre-trial officer in the Special Needs Unit (“SNU”) who supervises them until the completion of their criminal case. At least one SNU officer remarked that clients represented by the BCPDO at CMAG are markedly better at both becoming and staying engaged with mental health services. Clients reported that speaking with an attorney encouraged them to work hard to fulfill the conditions of their bond. Based on results obtained in the first year of operation, it is logical to assume that more resources, experience, and better efficiencies will expand the BCPDO’s impact in the future.

Successes:

While data collected indicates that representation by the BCPDO correlates with better outcomes, this is further demonstrated by the success of individual clients. After representation at CMAG, if the charge is a misdemeanor, the Mental Health Department of the Bexar County Public Defender's Office will continue representation of the client. Once released from CMAG, public defender clients have an intake appointment that day or within the next two days. They can expect to see a psychiatrist within the next two weeks. This minimal waiting time is extraordinary when compared to the average 3-6 month waiting period for the "average" client seeking an appointment with a psychiatrist.⁴

The importance of prompt access to legal and mental health services cannot be understated. Many clients are unemployed or disabled and without social support and a network of dependable providers. Ready access to affordable services can be life-changing. One of the most surprising aspects of representation at CMAG is the overwhelming number of people who *want* the mental health services. Clients will often remark that they knew they needed to seek treatment, but were unsure where to start. The individual successes of the client are not easily reduced to numbers. Instead, we offer a few examples to show the impact this has had on our client's lives:

- A client who was released with mental health services, was offered Mental Health Court Pre-Trial Diversion. This client appears in court on a monthly basis to track her progress and has been compliant with treatment and probation at every hearing.
- A client with no criminal history who was released on a personal bond with mental health services was compliant with bond conditions. The assessment for the Mental Health specialty court was so positive that the program recommended the Mental Health Pre-Trial Diversion program, despite his charge, which normal Pre-Trial Diversion precludes. The client proceeded with a "regular" Mental Health Court plea that allowed charge reduction, a deferred adjudication, and reduced fines.
- A client with enhanced misdemeanor charges was dealing with substantial personal and health difficulties, including new charges (creating new warrants), drug addiction, and finding a place of treatment. Eventually a local medical home accepted the client and a two-case plea deal was negotiated with the condition that the client to stay at the local treatment center. Since that time, the client has remained compliant with probation, continued treatment and residency at the treatment center, and attained awards for sobriety status. Her probation officer reports she has been prompt and compliant.
- A client was homeless and unemployed at the time of their arrest. He was diverted from jail and released on a personal bond with electronic monitoring, mental health treatment and placement in a local homeless shelter. The assigned attorney approached the prosecutor, who agreed to dismiss the case if the client appeared on time. The client appeared on time in clean, ironed clothes and a new haircut and the case was dismissed. Several months later the BCPDO followed up to check on the status of the former client. The follow-up interview took place at the furnished apartment the client had obtained through the San Antonio Housing Authority. It is also important to note that the client insisted that the interview take place on a weekend so he would not have to take time off from his new full-time job.

⁴ The 3-6 month figure was provided by the Bexar County Mental Health Department.

AREAS OF ADVANCEMENT

The BCPDO has met its initial objective of informing arrestees of their rights, representing them at the initial Article 15.17 hearing, and facilitating their release to an appropriate out-patient treatment program in lieu of transport to the Bexar County Jail. While the BCPDO has made significant strides in the representation of arrestees with mentally illness at CMAG, there are several areas where further improvement is necessary.

The BCPDO aimed to increase the utilization of personal bonds for indigent arrestees with mental illness through increased cooperation and interest on the part of the arrestee. We believe this has been accomplished, but issues with attorney-client confidentiality remain. Currently there is no guarantee of confidentiality at CMAG. If a transport officer is available, the APDs speak with clients at a desk located in the middle of the CMAG facility, which is surrounded by cells, detention officers, police officers and other staff. If no transport officer is available, the APD is required to speak to the client through a mesh screen at the cell. To speak with clients, the APD must first advise the client about the non-confidential nature of their conversation, thereby undermining the attorney-client relationship. If the client agrees to waive confidentiality, the APD must discuss the client's mental health issues, a sensitive subject which they do not want disclosed to an audience. While confidentiality continues to be a concern, the BCPDO believes that it has achieved the best results possible under the current model.

Currently, magistrates will only approve the release of an arrested person with a verified home address who agrees to begin/transfer outpatient mental health services at CHCS. Originally, the BCPDO could refer homeless individuals for release to Haven for Hope. In December, the BCPDO was informed that it could no longer refer clients to Haven for Hope because of a change in local policy. As a result, the office is unable to obtain release for persons who are homeless. By working with local officials and Haven for Hope, the BCPDO hopes to address this gap in services in the coming year.

To increase release on personal bond, the BCPDO has begun advocating for the release of clients who are currently in services with another provider, with the condition that they continue with their current services. CHCS has informed the BCPDO that they have hired a fourth clinician and plan to move to a 24 hour schedule, 5 days of the week, with a morning clinician the remaining two days. The BCPDO plans to increase personnel to match these hours and provide more representation to indigent and mentally ill clients.

The poor physical layout of CMAG continues to result in underutilization of resources. On September 6, 2016, the Bexar County Commissioners approved a proposal to move CMAG operations to the Bexar County Jail. The BCPDO anticipates that a new facility designed with the Bexar County Public Defender's Office in mind could alleviate several of the barriers encountered by the program.

CONCLUSION

The Bexar County Public Defender Office's representation of arrestees with mental illness at Article 15.17 hearings is the first of its kind in Texas. This has raised unique questions regarding the correct processes and the office's scope of representation. The past year has been a learning experience for both this office and judges alike. It has required the district, county and magistrate judges to examine

underused statutes and determine the best path forward. Ultimately, the implementation of this program has required collaboration from all levels of judges, city and county officials, and countless other agencies. The BCPDO anticipates that this cooperation will continue in years to come, allowing the office the opportunity to provide constitutionally required representation to all arrested persons.

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