Washington Health Law Manual — Third Edition
Washington State Society of Healthcare Attorneys (WSSHA)

Chapter 4C:
Committed To Commitment – Examining How Adults In Washington Are Committed Based On Mental Illness[1]

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Chapter Outline

4C.1 Introduction

The concept of "commitment" based on mental illness is a familiar one in today's society. Indeed, television crime dramas and movies often include commitment based on mental illness as part of their storylines. But many of those depictions gloss over the very real differences between the different models of involuntary treatment interventions. As used in this chapter, "commitment" refers to an order by a Washington court that an adult undergo some form of involuntary mental health treatment.[2] Involuntary mental health treatment can occur in a variety of settings and can be initiated through the intervention of mental health professionals or law enforcement.[3] There are restrictive civil commitment orders that require care in settings such as a state psychiatric hospital or other secure psychiatric facility licensed by the state. The state psychiatric hospitals and other secure facilities are designed to provide treatment on an inpatient basis to people who have severe and chronic mental illness. There are also less restrictive orders, which require care in a variety of settings ranging from residential placements in group facilities to independent living arrangements with outpatient mental health care. Although involuntary commitment is intrinsically civil in nature it can be initiated by a criminal case. Commitment arising through the intervention of a mental health professional is referred to in this chapter as civil commitment; commitment arising out of a criminal case is referred to in this chapter as criminal commitment.

This chapter explores the involuntary commitment process through the civil[4] and criminal[5] systems.[6] It also identifies areas in which the two commitment systems intersect.[7] The chapter concludes by discussing how the advent of mental health courts has created a relatively new type of "voluntary" criminal commitment as a proactive step in reducing involuntary civil or criminal commitment for the population that the mental health court serves.[8]

4C.2 Involuntary Civil Commitment through Intervention of a Mental Health Professional

Pursuant to Chapter 71.05 RCW, an involuntary civil commitment of an adult occurs when a mental health professional detains a person for evaluation and treatment. To understand Chapter 71.05 RCW's civil commitment process, one must understand the roles of the various players and the procedural road that must be followed. Chapter 71.05 RCW provides information about both the players' roles and the procedural road.[9] For purposes of this article, Chapter 71.05 RCW is summarized in very broad terms rather than in more practice-oriented terms.[10]

4C.2.1 Introductory Concepts

Only the State, as the petitioner, may seek to commit an adult, as respondent, under Chapter 71.05 RCW. Typically, though not always, court-appointed counsel represents the respondent. Generally speaking, a person may be civilly committed if, as a result of mental disorder, he or she presents a likelihood of serious harm or is gravely disabled.[11] The phrases "mental disorder," "likelihood of serious harm" and "gravely disabled" are specifically defined in Chapter 71.05 RCW.[12]

4C.2.2 Parties to the Commitment Proceedings

The petitioner is the party seeking to civilly commit an individual under Chapter 71.05 RCW. Although as a practical matter that means the State, the petition is filed by an individual or agency authorized to do so under the statute. The person the petitioner seeks to commit is the respondent. A Designated Mental Health Professional, referred to as a DMHP, initiates civil commitment proceedings.[13] A DMHP is the mental health professional appointed by the county or other authority authorized by rule to perform the duties specified in Chapter 71.05 RCW.[14] Depending upon the particular facts and circumstances of the case, the State is represented by the County Prosecutor or the Attorney General.[15]

4C.2.3 How the Process Works

This next section focuses primarily on the "commitment" portion of Chapter 71.05 RCW, with limited discussion of the respondent's rights. The limited discussion is not intended to downplay the importance of the respondent's rights, either from constitutional or morality standpoints, but rather to focus on those aspects of civil commitment that intersect with the criminal justice system.

4C.2.3.1 Initial Detention for Up to 72 Hours

The DMHP initiates the civil commitment process in one of two ways. One alternative is an emergency petition,[16] and the other is a non-emergency petition.[17] This first step, whether on an emergency or non-emergency basis, is referred to as an *initial detention*, with the respondent being detained at an evaluation and treatment facility for up to 72 hours.[18]

4C.2.3.2 Petition for Additional Treatment

The evaluation and treatment facility has up to 72 hours to evaluate the respondent.[19] If the facility determines that mental health treatment is appropriate and that the statutory requirements are satisfied, the facility may file a petition for either 14 days of inpatient or 90 days of a less restrictive alternative treatment.[20] This is referred to as a probable cause hearing.[21] If the facility does not file a petition for a probable cause hearing, or if it does not meet its burden of proof at the hearing,[22] then it must release the respondent.[23] Note that the DMHP neither determines whether to file, nor actually files, the petition. That is the prerogative of the evaluation and treatment facility.[24]

4C.2.3.3 If Petitioner Prevails At Probable Cause Hearing

If the petitioner meets its burden, the court must consider less restrictive alternatives to involuntary detention and treatment. If the court finds that no such alternatives are in the best interests of the respondent or of others, the court must order that the respondent be detained for up to 14 days of inpatient treatment. On the other hand, if the court finds that treatment in a less restrictive setting is in the best interests of the respondent or others, the court must order the respondent into a less restrictive course of treatment for up to 90 days.

The respondent must be released at the end of the 14-day period unless the respondent agrees to further treatment on a voluntary basis or is the subject of a petition for additional confinement, referred to in this chapter as a 90-day hearing.[25]

4C.2.3.4 If Petitioner Prevails At 90-Day Hearing

If the petitioner meets its burden of proof at the 90-day hearing, then the respondent will be placed in a treatment program for up to 90 days. The program will either be inpatient or outpatient, depending upon the findings of facts and conclusions of law in the particular case.[26] If the basis for the commitment is based upon a referral from the criminal justice system pursuant to RCW 71.05.280(3), then the period of inpatient or less restrictive treatment is up to 180 days instead of up to 90 days.[27]

4C.2.3.5 Renewing 90-Day Commitment

At the end of the 90-day treatment period, the facility must release the respondent unless the facility (if inpatient treatment) or the DMHP (if less restrictive treatment) petitions for continued commitment.[28] If the court or jury finds that the grounds for additional confinement have been established, the court may order the respondent committed for up to an additional 180-day period.[29] At the end of the 180-day renewal period, the respondent must be released unless another renewal petition is filed. Successive 180-day commitments are permissible on the same grounds and procedures as for the original 180-day renewal.[30] The respondent may not be detained unless a valid commitment order is in effect, and no commitment order may exceed 180 days.[31]

4C.2.3.6 Early Release From Inpatient Commitment

Chapter 71.05 RCW provides a mechanism for a respondent's early release from an inpatient commitment. It also provides a mechanism for revoking the early conditional releases.[32]

4C.3 Involuntary Criminal Commitment Through Criminal System

Involuntary commitment is criminal in nature when it results from mental illness in the context of a criminal prosecution. The criminal justice system can serve as a catalyst for involuntary commitment in either of two ways. The first is when a defendant's mental disease or defect renders him or her incompetent to stand trial in the case.[33] The second is when a defendant is acquitted by reason of insanity.[34]

4C.3.1 Defendants Who Are Incompetent To Stand Trial[35]

Competency to stand trial is best described by looking at the circumstances under which a criminal defendant may be found to be incompetent to stand trial. A defendant is incompetent to stand trial if he or she "lacks the capacity to understand the nature of the proceedings against him or her or to assist in his or her own defense as a result of mental disease or defect."[36] The phrase "mental disease or defect" is not defined in Chapter 10.77 RCW.[37]

In 2015, the Legislature enacted stringent and quite specific time frames for the various stages of the competency process.[38] Those time deadlines and the logistics of the competency process are beyond the scope of this Chapter.

4C.3.1.1 The Competency Evaluation

Whenever a defendant's competency to stand trial is at issue, the court must order a competency evaluation.[39] The contents of the evaluation are the same for felony and non-felony cases,[40] including an opinion whether the defendant should be evaluated by a DMHP for civil commitment.[41] Once the trial court finds that the defendant is incompetent to stand trial, the nature of the charge governs the nature of the subsequent proceedings.[42] There is one procedure that applies to felony matters, and a second procedure, with two subparts, that applies to non-felony matters.[43]

4C.3.1.2 Competency Restoration Treatment For Felony Defendants

If a defendant charged with a felony is found incompetent to stand trial, the trial court must commit the defendant to the custody of DSHS for up to 90 days of competency restoration treatment if the defendant is charged with a Class A felony or a "violent" Class B felony,[44] or up to 45 days if the defendant is charged with a nonviolent Class B felony or a Class C felony.[45] If the defendant is not restored to competency, the trial court has discretion to order the defendant to undergo an additional 90 days of competency restoration treatment.[46]

If the defendant is still not restored to competency at the end of the optional second 90-day period, the trier of fact must answer two questions. The first is whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing the public safety or security. The second is whether there is a substantial probability that the defendant will regain competency within a reasonable period of time. If the answer to both questions is yes, then the trial court may extend the competency restoration treatment for up to another six months.[47]

4C.3.1.3 Eligibility For Competency Restoration Treatment For Non-Felony Defendants

If a defendant charged with a non-felony crime is found incompetent to stand trial, then the court must determine whether the defendant is eligible for competency restoration treatment. That determination impacts what happens next.

If the defendant is charged with a "serious offense",[48] then the court must order DSHS to place the defendant into competency restoration treatment.[49] If the defendant is not charged with a "serious offense," then the court may not order the defendant to undergo competency restoration treatment.[50]

4C.3.2 Defendants Who Are Acquitted By Reason Of Insanity

A defendant charged with a crime may offer an affirmative defense of insanity. The defendant must establish that, at the time of the commission of the offense, as a result of mental disease or defect,[51] the defendant was unable to perceive the nature and quality of the act charged, or was unable to tell right from wrong regarding the act charged.[52]

4C.3.2.1 Same Procedures For Felonies And Non-Felonies

The process by which a criminal defendant asserts an insanity defense[53] is the same for felonies and for non-felonies. A criminal defendant may make a motion for a judgment of acquittal by reason of insanity, or may raise the issue to the trier of fact at trial.[54] The defendant must establish the insanity defense by a preponderance of the evidence.[55]

4C.3.2.2 How Those Procedures Work

If the judge grants the defendant's motion for judgment of acquittal by reason of insanity, or if the judge or jury renders a verdict at trial of not guilty by reason of insanity, the judge or jury must answer several questions regarding the defendant's potential future behavior.[56] The questions relate to whether the defendant is a substantial danger to other persons, or presents a substantial likelihood of committing criminal acts jeopardizing public safety or security, unless kept under further control. If the answer to either of those questions is yes, then the judge or jury must answer the additional question of whether it is

in the best interests of the defendant and others that the defendant be placed in treatment that is less restrictive than detention in a state mental hospital.[57]

The answers to those questions determine what happens to the defendant after the acquittal. The defendant could be released outright, released into some form of less restrictive treatment, or committed to a state mental hospital.[58] The maximum length of the less restrictive treatment or commitment to a state mental hospital is the maximum possible sentence the defendant could have received for any offense charged for which the defendant was acquitted by reason of insanity.[59] In other words, even if the defendant were charged with three gross misdemeanors punishable by up to one year in jail each, the maximum length of time the defendant could be committed to a state mental hospital following an acquittal by reason of insanity of all three charges would be one year. There are procedures for conditional release, early release, and revocation of a conditional release.[60]

4C.3.2.3 Diminished Capacity Distinguished

Diminished capacity is also a defense predicated upon the defendant's mental condition at the time of the alleged offense. "To maintain a diminished capacity defense, a defendant must produce expert testimony demonstrating that a mental disorder, not amounting to insanity, impaired the defendant's ability to form the culpable mental state to commit the crime charged."[61] While insanity is an affirmative defense, diminished capacity is really nothing more than a challenge to the relevant state of mind, accomplished through the use of expert testimony. If the defendant's proffered expert witness cannot render an opinion that the defendant's ability to form the requisite mental state was impaired, the expert's testimony will be excluded and the jury will not hear the diminished capacity defense.

4C.4 Involuntary Civil Commitment Through Referral From Criminal System

As a general proposition, the civil and criminal systems are separate and distinct from one another. But they tend to overlap when a criminal defendant has mental health issues impacting competency to stand trial or providing a potential insanity defense. Depending on the specifics of the case, a criminal defendant might be referred for involuntary civil commitment at the end of his/her criminal commitment in the case or in place of his/her criminal commitment in the case.

4C.4.1 Felony Defendant Following Competency Proceedings

If a defendant charged with a felony is not restored to competency at the end of the felony competency restoration period,[62] then the court must dismiss the charges without prejudice,[63] and refer the defendant to a DMHP for civil commitment evaluation.[64] If the referral is made after the initial 45- or 90-day restoration period, the statute simply states that "the defendant shall be evaluated", but it does not state where or by whom.[65] If the referral is made after the end of the optional 135- or 180-day period under RCW 10.77.086(4), the court must order the defendant committed to the state psychiatric hospital for that evaluation.[66] Although the statute does not expressly state what happens if the defendant remains incompetent after the additional six month restoration period under RCW 10.77.086(4), the language of that subsection suggests that the court must commit the defendant to a state hospital. In any event, civil commitment proceedings based on a dismissal pursuant to RCW 10.77.086(4) would be for a 180-day civil commitment period. The resulting civil commitment hearing has a criminal element; although the state need not prove intent to commit the crime, the nexus between the disorder and the criminal act become crucial. The state must prove that the defendant (now referred to as the respondent) committed acts constituting a felony as a result of a mental disorder and presents a substantial likelihood of repeating similar acts.[67] The elements of the crime, the nexus to the mental disorder and the substantial likelihood of repeating similar acts must be proven by clear, cogent and convincing evidence.[68]

4C.4.2 Non-Felony Defendant Following Competency Proceedings

If a defendant charged with a non-felony is either not restored to competency by treatment or is not eligible for competency restoration treatment, the trial court must dismiss the charges without prejudice.[69] What happens to the defendant depends upon whether the defendant was or was not charged with a "serious offense" as defined in RCW 10.77.092.

4C.4.2.1 Non-Felony Defendant Not Restored To Competency By Treatment

If the defendant is charged with a serious offense but is not restored to competency,[70] the court must refer the defendant for consideration of civil commitment. If the defendant is in custody and not on conditional release at the time of the dismissal and referral, then the defendant must be referred to an evaluation and treatment facility for consideration of a full hearing for a 90-day inpatient or outpatient commitment.[71] Similar to civil commitment cases initiated based upon felonious acts, the burden of proof is clear, cogent and convincing evidence. The petitioner's (state's) attorney must prove that the crime involved the infliction of serious physical harm, and that there is a nexus between the act and the mental disorder and a likelihood of serious harm.[72] If the defendant was on conditional release at the time of the dismissal, then the trial court must order the DMHP to evaluate the defendant for consideration of a 14-day inpatient commitment or a 90-day less restrictive alternative.[73] Under either situation, the superior court must review a decision not to file a petition for civil commitment unless the DMHP or professional person and the prosecuting attorney or attorney general's office stipulate that the defendant does not present a likelihood of serious harm or is not gravely disabled.[74]

4C.4.2.2 Non-Felony Defendant Not Eligible For Treatment

If the defendant is not eligible for competency restoration treatment, the court may stay or dismiss the proceedings and detain the defendant for sufficient time to allow the DMHP to evaluate the defendant for consideration of civil commitment.[75] The civil commitment proceeding in this situation would be an initial detention.[76] Presumably if the court does not detain the defendant, it will release him or her outright.[77]

4C.4.3 Felony Or Non-Felony Defendant Following Commitment For Insanity

Whenever a defendant who has been committed following an acquittal by reason of insanity has not been released within seven days of the maximum possible sentence, the professional person[78] in charge of the treatment facility may refer the defendant to the DMHP for consideration of civil commitment proceedings.[79] If the professional person believes that the defendant presents a likelihood of serious harm or is gravely disabled due to a mental disorder, then prior to the expiration of the maximum possible sentence the professional person may provide a copy of all relevant information about the defendant to the DMHP. The information may include the defendant's likely release date, and the professional person must indicate why the professional person does not believe the defendant should be released.[80] A DMHP who receives notice and records in this fashion must, prior to the expiration of the maximum sentence, determine whether to initiate civil commitment proceedings under Chapter 71.05.[81]

4C.4.4 Felony Or Non-Felony Defendant Based Solely On Competency Or Insanity Evaluation

If the original competency or insanity evaluation includes an opinion that the defendant should be evaluated for civil commitment as discussed in section 3.1.1. above, then the court must order the DMHP to evaluate the defendant for civil commitment. The timing of that evaluation depends upon the procedural setting of the case.[82] Nothing in the section conditions the court's duty on a finding that the defendant is incompetent to stand trial. For example, the section expressly requires the evaluation prior to a convicted defendant's release from custody if the defendant is sentenced to 24 months confinement or less.

4C.5 "Voluntary" Criminal Commitment Through Mental Health Courts[83]

The advent of "mental health courts" within the criminal justice system has created a new form of criminal commitment that can best be described as "voluntary" criminal commitment. Such a commitment is voluntary in the sense that the defendant agrees to comply with mental health treatment. In order to do so, however, the defendant must be competent to stand trial. It is "commitment" as defined in this chapter in the sense that the treatment conditions are court-ordered and are enforceable through the court's power to impose criminal sanctions for willful non-compliance.

This new voluntary criminal commitment can take one of two forms within mental health courts. In one form, the defendant enters into an agreement with the prosecution to engage in treatment. If the defendant successfully completes mental health court, the case is dismissed and the defendant avoids a criminal conviction. This is often referred to as a "diversion". In the other form, the defendant pleads guilty to the charge(s) and engages in treatment as a condition of probation.

`This section introduces the concept of mental health courts, which are a specific form of "therapeutic court". It also identifies the philosophical and structural choices that shape mental health courts, and how those choices impact the form that voluntary criminal commitment takes. Finally, this section provides practical examples of how a mental health court might function by examining various practices within the King County District Court's Regional Mental Health Court (KCRMHC) and the Seattle Municipal Court's Mental Health Court (SMMHC).[84]

4C.5.1 Mental Health Courts And Therapeutic Courts

Mental health courts are a subset of the broader category of "therapeutic courts". In therapeutic courts, the prosecution and defense, along with various other courtroom participants, "collaborate" to try and resolve not just a criminal case but also a very specific issue underlying the alleged criminal behavior. In mental health courts, the very specific underlying issue is mental illness, often coupled with a co-occurring disorder such as alcohol or chemical dependency.

Another way to view mental health courts is as an attempt to decrease the frequency of civil or criminal commitment for those who are charged with crimes. Mental health courts seek to do so by decreasing barriers to mental health treatment for people who might otherwise receive such treatment solely through civil or criminal commitment.

There are a number of articles discussing the benefits and detriments of therapeutic courts in general. Without recounting all of the arguments here, suffice to say that both sides raise valid concerns.

One of the major benefits put forward in favor of therapeutic courts is that they encourage problem solving in what is otherwise very much an adversarial system. The prosecution benefits by reducing recidivism and increasing public safety; the defense benefits by obtaining treatment for the defendant that might not otherwise be available. Another benefit advanced by proponents is that therapeutic courts provide for more intensive probation supervision. Opponents point to the use of a large amount of resources on a relatively small population, which leaves fewer resources for the rest of the system. Critics also cite the appearance of more favorable treatment being afforded the defendants in such courts than the defendants in the other courts in the system. Critics assert that therapeutic courts erode the traditional adversarial roles that underlie the criminal justice system, and therefore lead to less vigorous representation by the attorneys involved.[85]

4C.5.2 Philosophy Of Mental Health Courts

Most, if not all, mental health courts have as their primary goal some variation on the same theme. That theme is to protect public safety and reduce recidivism by securing treatment for those whose criminal behavior is caused at least in part by a mental illness that is amenable to treatment and who are willing to accept such treatment.[86]

As an inducement to participate in voluntary commitment through a mental health court, the defendant receives a settlement offer that is more generous than he/she would ordinarily receive.[87] In return the prosecution resolves the case in a manner that increases the likelihood of protecting public safety and reducing recidivism beyond that which could be achieved if the case were resolved without mental health treatment. Thus, regardless of how mental health courts state their respective philosophies, they all tend to be voluntary.

A defendant does not waive any trial rights unless he/she enters into a voluntary commitment agreement through the mental health court. Thus, if a defendant does not want to participate in the voluntary commitment offered by mental health court, he/she is not required to do so. The defendant can simply decline the settlement offer and proceed as with any other criminal case, either by trial or by settlement without regard to voluntary commitment.[88] If the prosecution does not wish to participate because it believes the case is not appropriate for mental health court, it can simply decline to make the settlement offer.

4C.5.3 Participation Based Upon Crime Type And/Or Criminal History

Mental health courts sometimes limit the cases that they accept based on the level of crime charged. For example, there are some mental health courts nationally that focus solely on defendants charged with felonies.[89] In Washington, mental health courts generally exist in a district or a municipal court and therefore can only

accept non-felony cases. There is no legal impediment to a county creating a mental health court that includes defendants charged with either felonies or non-felonies.[90]

Mental health courts sometimes limit the cases that they accept based on the nature of the offense charged. For example, some mental health courts only accept defendants charged with non-violent offenses. Others accept defendants charged with violent offenses only with the victim's approval. Still others accept a defendant regardless of the crime charged.

Mental health courts sometimes limit the cases that they accept based on a defendant's criminal history. For example, some mental health courts only accept defendants who do not have a prior conviction for a violent offense. Others accept defendants with any criminal history if the court's other criteria are met.[91]

4C.5.4 Structure Governing Form Of Voluntary Criminal Commitment

Mental health courts are formed under one of three structures. There is no "one-size-fits-all" structure that will work for every mental health court. A structure that works well in an urban or suburban jurisdiction may not work well in a rural jurisdiction. Some jurisdictions can provide greater economic support or better access to services than other jurisdictions. Additional considerations include the general culture within the jurisdiction, the level of support for the mental health court from other parts of the court system or from service providers, and the general relationship between the court, the prosecution and the defense bar.

4C.5.4.1 Pure Diversion System

In a pure diversion system, the defendant and the prosecution agree to continue the case for a specified period of time[92] without a finding of guilt. Depending on the jurisdiction, that agreement might be referred to as a stipulated order of continuance, dispositional continuance, continuance on conditions, or diversion agreement. Regardless of the name used, the common features are that the defendant waives his/her trial rights, and has an opportunity to have the case dismissed without a finding of guilt.

During the term of the agreement, the defendant must meet certain conditions, obviously including mental health treatment. The prosecution agrees that if the defendant has complied with all of the conditions, then the prosecution will move to dismiss the case. The defendant agrees that if the court finds that he/she willfully failed to comply with the terms of the agreement, then the court may determine guilt based solely on the face of the police report. Because relapse is a common occurrence for those who have a serious, acute mental health and/or chemical dependency issue, it is important that the parties have confidence in the judge's ability to determine when it is appropriate to revoke the diversion agreement or to permit the defendant to continue in mental health court. If the judge tends to revoke diversion agreements quickly, the defense is less likely to recommend mental health court to defendants. On the other hand, if the judge virtually never revokes diversion agreements, the prosecution is less likely to make a diversionary offer.

Pure diversion systems typically employ clearly delineated guidelines and predictable outcomes, and limit participation to defendants who pose a lower public safety risk based on the crime charged and their criminal history. That makes them an easier system to set up, and enables the parties to assess their participation more clearly. On the other hand, they limit their effectiveness by accepting only those who pose the lowest level of public safety risk, and the clear guidelines leave little room for flexibility.

4C.5.4.2 Pure Plea System

In a pure plea system, the defendant is required to plead guilty and is placed on probation.[93] The defendant waives his/her trial rights, but is not offered an opportunity for a diversionary agreement that will resolve the case short of a guilty plea.

Pure plea systems tend to serve those who are charged with more serious crimes, or who have a more serious criminal history. That enables them to accept cases that pose a greater public safety risk, so that positive results from the commitment create a greater impact on public safety. The requirement of a guilty plea more clearly allocates criminal culpability, which in turn gives greater comfort to the victims. On the other hand, pure plea systems tend to overlook those who, though charged with a less serious crime or possessing a less serious criminal history, nevertheless pose a meaningful public safety risk. Requiring a

guilty plea rather than providing a diversion option may impact future housing or employment options for defendants.

4C.5.4.3 Hybrid System

In a hybrid system, some defendants are required to plead guilty while others are offered a diversionary agreement. The nature of the crime charged, the defendant's criminal history, and the specific facts of the case determine whether there is a guilty plea or diversion offer.

Hybrid systems are the most flexible of the three systems. They can handle a wider range of cases, and therefore a wider range of mental illness issues. They can accept those who pose high public safety risks regardless of the charge or criminal history, especially "felony dropdown" cases in which felony charges are amended to gross misdemeanors or misdemeanors, and can also accept those who pose less of a public safety risk but still are charged with crimes. On the other hand, the lack of clear and consistent protocols for case dispositions means that case outcomes may not be as consistent as with either of the other two systems.

4C.5.5 King County District Court's Regional Mental Health Court (KCRMHC)

King County District Court established its mental health court in February, 1999, and was the second mental health court in the Country.[94] It became a "regional" court in 2010, as explained in section 5.5.2. below. As a hybrid system encompassing both diversionary and plea aspects, it provides an up-close look at how one mental health court functions.

4C.5.5.1 KCRMHC Program Objectives

The stated program goals of the KCRMHC are:

> "The Mental Health Court represents an effort to increase effective cooperation between two systems that have traditionally not worked closely together - the mental health treatment system and the criminal justice system. The project hopes to achieve the following outcomes for the mentally ill misdemeanant population: faster case processing time, improved access to public mental health treatment services, improved well-being, and reduced recidivism. An important outcome to be achieved from this program for the larger community is improved public safety."[95]

4C.5.5.2 KCRMHC Eligibility Requirements

King County's RMHC eligibility criteria consist of three components: diagnostic criteria, amenability criteria, and jurisdictional criteria.[96]

To meet diagnostic criteria, a defendant must suffer from a severe and persistent major mental illness with psychotic features. Typical diagnoses include Bipolar I Disorder, Schizophrenia, and Schizoaffective Disorder, but this list is by no means exclusive. In appropriate cases, exceptions are made. To meet amenability criteria, the defendant must be willing and able to engage in treatment that is available, and that treatment must be reasonably likely to reduce future contacts with the criminal justice system.

In order for the defense and prosecution to determine if the case is appropriate, the defendant must sign a release of information regarding past mental health treatment. A defendant who declines to sign the release of information will not be eligible for mental health court, but will be able to defend the charge(s) in the same manner as any other defendant.

What truly differentiates KCRMHC from other mental health courts is its "regional" nature, which is based on its jurisdictional criteria. Any nonfelony case filed into King County District Court by the County prosecutor meets the jurisdictional criteria. Any nonfelony case filed by a city prosecutor, whether in a Municipal Court or in King County District Court pursuant to a contract for court services,[97] is eligible for consideration. If the case meets the other eligibility criteria and is accepted into KCRMHC, the County Prosecutor will refile the case into KCRMHC and the city prosecutor will move to dismiss the city case. Any felony case filed in King County Superior Court is also eligible for consideration. If the case meets the other criteria and the KCRMHC team wants to accept the case into mental health court, the prosecutor

will file the case as a gross misdemeanor or misdemeanor into KCRMHC and, upon acceptance of a guilty plea by the court, will move to dismiss the felony case.

4C.5.5.3 KCRMHC Team

KCRMHC could not function as effectively as it does without the people who fill the various roles on the team. Those roles are summarized below:

- *Judge*: The KCRMHC judge presides over all mental health court calendars. He/she must be familiar with the competency issues and statutes, and must be sensitive to the unique nature of the defendants appearing in the court. The judge also provides leadership and sets the overall tone of the KCRMHC team.
- *Court Clinician (formerly Court Monitor and Court Liaison)*: The court clinician is a mental health professional who serves as a gatekeeper in the mental health court. He/she obtains necessary releases of information, interviews defendants who may be eligible for mental health court, and coordinates mental health treatment information. For those defendants who are at the predisposition stage, the court clinician attempts to arrange for release from jail on conditions including treatment, if that is appropriate in light of public safety. The court clinician also serves in a capacity similar to that of a probation counselor, except that the defendant has not yet resolved the case. In KCRMHC, the court clinician position is filled by way of a contract between the court clinician's agency and the Mental Health, Chemical Abuse and Dependency Services Division (MHCADS; see below for a summary of MHCADSD full role within the KCRMHC). MHCADSD has a Memorandum of Agreement with King County District Court for the Court Clinicians to provide services to the mental health court.
- *Forensic Peer-Support Specialist*. Forensic peer-support specialists within KCRMHC are certified by the State of Washington. They have either graduated from a mental health court or have a criminal justice history and are in recovery from mental health conditions and/or alcohol or substance use disorders. They support KCRMHC defendants' reentry to the community from the screening process through graduation, by helping them obtain Washington State ID cards, access food stamps and other necessities, and explaining the process. They do not provide treatment or probation supervision.
- *Probation Officers*: The current probation officers generally experience working within a treatment system and have social work or psychology educational backgrounds. They serve in the same capacity as a probation officer in a non-mental health court case. They work with and supervise defendants who have entered into diversionary agreements or who have pled guilty. The probation officers monitor compliance, report non-compliance to the court along with their recommendation for a response by the court, which might include imposing or not imposing a sanction, and keep the court and the attorneys informed about the defendant's compliance with the voluntary commitment. Their entire caseload consists of therapeutic court cases.[98]
- *Program Manager*: The program manager serves as a liaison to the outside, as well as for the internal members of the team.
- *Court Staff*: In addition to carrying out the court's general procedures, the mental health court staff must learn jargon specific to the mental health court and specialized procedures within the court. They help engender communication among the team members and prepare the daily listing of cases for that afternoon's calendar. This enables the KCRMHC team (other than the judge) to meet prior to court each afternoon to go over all of the cases to be heard that day. The pre-court conference is a vital part of the KCRMHC team's functioning.
- *Prosecutor:* The King County Prosecuting Attorney's Office provides prosecutors for the mental health court who have specific and intensive training and experience within the mental health court as well as outside of the mental health court. The specialized prosecutors provide continuity and consistency in the court and help carry out the Office's policies toward the mental health court. There are also specialized staff who carry out important work within the office coordinating case calendaring and other aspects in support of the mental health court.
- *Public Defenders*: The public defender's office provides specialized attorneys who work full time in the mental health court, as well as an experienced social worker assigned to the court. The social worker assists the defense attorneys in assessing the appropriateness of particular cases for mental health court, partly by meeting with the defendant and partly by communicating with the court monitor if there has been a valid release of information.

- *Mental Health, Chemical Abuse and Dependency Services Division (MHCADSD)*: MHCADSD is the local mental health governmental authority. They administer the funding for all of the county-wide criminal justice initiatives that are related to mental health and substance use issues. This includes funding 100% of KCRMHC, as well as King County's post-booking jail diversion programs. MHCADSD participates in the regular team meetings (other than the pre-court conferences).

4C.5.6 Seattle Municipal Court's Mental Health Court (SMMHC)

Established in March 1999, Seattle Municipal Court is the first Municipal Mental Health Court, and the fourth mental health court of any kind, in the nation.[99] Like KCRMHC, it is a hybrid system encompassing both diversionary and plea aspects.

4C.5.6.1 Court's Goals

The stated goals of SMMHC are:

- "Improving public safety,
- Reducing jail use and interaction with the criminal justice system for persons with mental illness,
- Connecting participating defendants with mental illness to mental health services and increasing their likelihood of success in treatment
- Improving participants' access to housing and linkages with other critical supports.
- Enhancing participants' quality of life."[100]

The court strives to achieve its goals through "voluntary" commitment.

4C.5.6.2 SMMHC Eligibility Requirements

Seattle Municipal Court's criminal jurisdiction, as with all municipal courts in Washington, is limited to non-felony cases.[101] Seattle's mental health court, as a hybrid court, accepts defendants without regard to the non-felony crime charged, and without regard to criminal history, so long as both the prosecution and defense agree that the case is appropriate.

- In order for the defense and prosecution to determine if the case is appropriate, the defendant must sign a release of information regarding past mental health treatment. A defendant who declines to sign the release of information will not be eligible for mental health court, but will be able to defend the charge(s) in the same manner as any other defendant.
- The criteria that the defense applies depend upon the particular defense attorney or public defender agency, as well as the defendant's specific situation. The defendant must "have been diagnosed with a major mental disorder, which includes major depression with psychotic features, bipolar disorder, and schizophrenia that is directly related or contributed to his or her alleged criminal behavior. Defendants diagnosed as having other disorders, such as PTSD, autism spectrum disorder or a developmental disability, might be eligible on a case-by-case basis.[102]
- For the most part, the criteria for whether a defendant is an appropriate fit for SMMHC is unwritten.[103]

4C.5.6.3 SMMHC Team

The SMMHC team is similar to the KCRMHC team in most respects. Although there is no specifically identified SMMHC Program Manager currently, there has been in the past and that role is currently filled, at least in part, by a Seattle Municipal Court Program and Policy Analyst.[104] At the present time, the SMMHC team does not include a peer-support specialist. However, it does include the Seattle Police Department has created a Crisis Intervention Team, or CIT, that handles matters involving people who have mental health issues. As one would expect, the CIT works with the prosecution, referring cases for filing consideration, following up on cases already in the system, and in a host of other ways. Unlike in most systems, the CIT also communicate regularly with the defense to coordinate law enforcement action with mental health court action on a particular case. This willingness of prosecution, defense and police to work together to obtain an effective case resolution is something that clearly sets SMMHC's program apart from many other courts.[105]

4C.5.7 Relationship Between Mental Health Court Structure And Voluntary Commitment

Both KCRMHC and SMMHC follow the "hybrid" structure discussed above.[106] Some defendants receive a diversionary, or dispositional continuance, agreement, in which case the voluntary criminal commitment stems from a disposition short of trial or conviction. Other defendants are required to plead guilty and receive either a deferred or a suspended sentence. In that case, the voluntary criminal commitment stems from a finding of guilt. The mental health court team refers to the voluntary criminal commitment conditions as "conditions of sentence", or COS for short, regardless of whether the COS arise from a diversionary or plea disposition. The COS always includes mental health treatment as well as other standard conditions.[107] One of the probation counselors supervises, or monitors, the defendant's compliance with COS.

In most cases, both prosecution and defense agree on what amounts to a trial run, rather than immediately to conditions the defendant may be incapable of complying with. The trial run is accomplished through a mechanism referred to as "conditions of release", or COR for short.[108] The court imposes the COR as a basis for releasing the defendant from custody, subject to conditions of release that are substantially identical to the conditions of the COS that the defendant would be agreeing to upon a disposition. The court clinician (in KCRMHC) or court liaison (in SMMHC) helps set up the COR and monitors the defendant's compliance.

The court has the responsibility and the authority to set conditions of release or to set bail, just as in any other case, with or without the agreement of the parties. As a practical matter in both KCRMHC and SMMHC cases, the overwhelming number of COR imposed by the court have the agreement of both parties.

4C.5.8 Need For Outcome Measures

The concept of voluntary criminal commitment is an intriguing one, as is the concept of mental health courts. But intriguing and effective are two different things, and it is effectiveness that holds sway over public opinion, political reality, and the government budget process. Effectiveness can be measured quantitatively, *i.e.* statistically, or qualitatively, *i.e.*, anecdotally. Both are valid measures if the factors being measured are valid.

As between the criminal justice and social services systems, one would probably be more likely to attribute quantitative analysis to criminal justice and qualitative analysis to social services. But there are actually quantitative or statistical measures valuable to each system. For example, the criminal justice system would probably look for decreases in the length of jail stay, the number of bench warrants for failure to appear or the number of new criminal charges over a period of time. The social services system would probably look at the increase in people served by outpatient service providers or the extent medications are provided to those who need but cannot afford them, or the decrease in involuntary civil commitment.

Which statistical measurement is the "right" one? It depends in part upon the section of the budget that funds the mental health court. If funding flows from criminal justice money, then the jail or the criminal-charging statistics are more important. If it is the social services or health section, then the service statistics are more important.

Qualitative measures might sound difficult to conduct in a setting like mental health court, but they have been done for KCRMHC[109] and SMMHC.[110] They tend to focus on the defendant, which may or may not satisfy public opinion or political reality.

4C.6 Conclusion

Commitment of adults based on mental illness has traditionally stemmed from the civil or criminal systems, and has been involuntary in nature. The advent of mental health courts has created a new form of voluntary commitment that springs from the criminal system. Whether it is stated directly or not, one of the sought-after results from voluntary commitment through mental health courts is a decrease in the extent of involuntary civil or criminal commitment for mentally ill people charged with crimes. Only time will tell if that result is attainable.

contained herein is complete or accurate. If legal advice or other expert assistance is required, the services of a competent licensed professional should be sought.

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[1] By Hon. Michael J. Finkle, Judge, King County District Court, Washington.
This chapter is intended to help educate members of the bench, the bar and the public about the law. The author makes neither express nor implied warranties regarding the use of these materials, and these materials are not provided as legal rulings or legal advice. Each judge and attorney must depend upon his or her own legal knowledge and expertise in the use of these materials.

[2] There are several other commitment laws that this chapter does not cover. On the civil side, Chapter 70.96A RCW applies to civil commitment of adults based on alcohol or chemical dependency, Chapter 71.09 RCW applies to civil commitment of sexually violent predators, and Chapter 71.34 RCW applies to civil commitment of minors based on a mental disorder. The legislature has also created "enhanced services facilities" to provide treatment and services to those for whom acute inpatient treatment is not medically necessary and for whom placement in other licensed facilities is not appropriate. Chapter 70.97 RCW. On the criminal side, Chapter 13.50 RCW applies to juveniles and may grant the trial court discretion not to apply adult standards under Chapter 10.77 RCW. *See State v. E.C.*, 83 Wn.App. 523, 922 P.2d 152 (1996) (involving 90-day period prior to dismissal under RCW 10.77.090).

[3] As a practical matter, mental health professionals initiate the vast majority of civil commitment actions.

[4] Chapter 71.05 RCW. *See* section 2.

[5] Chapter 10.77 RCW. *See* section 3.

[6] This chapter is intended to familiarize the reader with Washington's general principles and statutes behind civil commitment on an introductory level. It is not intended to serve as a practice guide or to substitute for a practitioner reviewing the statutes and case law on his or her own. There are many appellate decisions interpreting and limiting the application of the statutes and cases cited in this chapter. There are also many statutory provisions and cases that clarify, limit or expand the general principles discussed in this chapter. Those cases and statutes are beyond the scope of this chapter, but anyone practicing this area of law will need to review them.

[7] *See* section 4.

[8] *See* section 5.

[9] RCW 71.05.050 describes a person's right to apply for voluntary commitment to any public or private agency. By definition, the voluntary aspect of the commitment occurs without a court order, and is therefore beyond the scope of this chapter.

[10] *See* Chapter 71.05 RCW and cases interpreting it for more specific details.

[11] RCW 71.05.150(1), (2); 71.05.153(1), (2). The concept of "developmental disability" also impacts the civil commitment provisions. The definition of "developmental disability" is incorporated from RCW 71A.10.020(3) by RCW 71.05.020(14). The impact on the civil commitment process for a respondent who suffers from a developmental disability is beyond the scope of this article.

[12] *See* RCW 71.05.020(26), (25), and (17).

[13] *See* RCW 71.05.150.

[14] RCW 71.05.020(11). Prior to July 1, 2005, the phrase was "County Designated Mental Health Professional", and referred to a mental health professional designated by the County to carry out the duties under Chapter 71.05 RCW. The legislature expanded the definition to include a mental health professional designated by an authority, other than the County, authorized by rule to make the designation. *See* E2SSB 5763, sec. 104 (2005 Legislative Session). Many people continue, incorrectly, to use the term CDMHP.

[15] RCW 71.05.130.

[16] RCW 71.05.153(1).

[17] RCW 71.05.150(1).

[18] RCW 71.05.150(2); 71.05.153(1); 71.05.160.

[19] RCW 71.05.170; RCW 71.05.180.

[20] RCW 71.05.230.

[21] RCW 71.05.170; 71.05.200; RCW 71.05.240.
[22] There are different burdens of proof for the various hearings. For purposes of this article, I am not identifying the particular burden of proof applicable to a particular hearing.
[23] RCW 71.05.210.
[24] There is a provision permitting the DMHP to file a petition, but the petition must be signed by at least one person from the facility, and need not be signed by the DMHP if two professional staff from the facility sign. *See* RCW 71.05.230(4).
[25] RCW 71.05.260(2). *See also* RCW 71.05.280.
[26] The court or jury must determine whether the best interests of the respondent or others would be served by a less restrictive treatment, commonly referred to as a less restrictive alternative or a less restrictive order. Even if a jury hears the case, the court determines what happens to the respondent once the jury returns a verdict. If the court or jury finds that the best interests are not served by less restrictive treatment, the court must remand the respondent to a DSHS facility for 90 days of inpatient treatment. If the court or jury finds that best interests are served by less restrictive treatment, the court must *either* remand the respondent to DSHS for 90 days of inpatient treatment or to a less restrictive alternative treatment for 90 days. In this context, DSHS includes a facility certified by DSHS to administer 90 days of treatment. *See* RCW 71.05.320(1).
[27] RCW 71.05.320(1).
[28] RCW 71.05.320(2)-(3).
[29] RCW 71.05.320(6).
[30] RCW 71.05.320(6)-(7).
[31] RCW 71.05.320(7).
[32] *See* RCW 71.05.325-.340.
[33] *See* RCW 10.77.065(1)(b); 10.77.084-.088.
[34] RCW 10.77.110.
[35] This discussion concerns only competency to stand trial. Competency issues may arise at any stage of the criminal process, including sentencing after trial. *See* RCW 10.77.050 (no criminal defendant may be tried, convicted or sentenced while incompetent). *Compare* RCW 10.77.060 (competency evaluation *whenever* there is reason to doubt the defendant's competency) (emphasis added) *with* RCW 10.77.084(1)(a) (stay of proceedings and consideration of competency restoration treatment *prior to judgment*) (emphasis added). The legislature has "recommended" time "guidelines" that DSHS should follow during the competency process. *See* RCW 10.77.068. What happens if DSHS fails to meet the time guidelines, and competency issues at stages other than the trial stage pose complex questions that are beyond the scope of this Chapter.
[36] RCW 10.77.010(15).
[37] *See State v. Klein*, 156 Wn.2d 103, 116-117, 124 P.3d 644 (2005).
[38] *See generally* Ch. 7, Laws of 2015 (SESSSB 5177).
[39] RCW 10.77.060(1)(a).
[40] RCW 10.77.060(3).
[41] *See* RCW 10.77.060(3)(f). A similar report is required at the end of any competency restoration. For defendants charged with a felony the report following the second competency restoration period must also include "an assessment of the defendant's future dangerousness which is evidence-based regarding predictive validity." RCW 10.77.084(5).
[42] Chapter 10.77 RCW sets out a series of procedures that apply as soon as competency to stand trial is at issue. This chapter is focusing only on the general concepts as they relate to civil commitment, and is not intended to provide guidance for handling competency issues.
[43] Felonies are divided into three categories. Unless otherwise provided by a specific statute, Class A felonies are punishable by up to life in prison and a $50,000 fine, Class B felonies by up to 10 years in prison and a $20,000 fine, and Class C felonies by up to 5 years in prison and a $10,000 fine. Non-felony cases are comprised of gross misdemeanors and misdemeanors. Unless otherwise provided by a specific statute, gross misdemeanors are punishable by up to 364 days in jail and a $5,000, and misdemeanors by up to 90 days in jail and a $1,000 fine. *See* RCW 9A.20.010; 9A.20.021. Gross misdemeanors and misdemeanors are often generically referred to as "misdemeanors"
[44] RCW 10.77.086(1)(a). "Violent" offenses are defined in RCW 9.94A.030.
[45] RCW 10.77.086(1)(b).

[46] RCW 10.77.086(3). This option is not available for a defendant whose incompetency is solely the result of a developmental disability "which is such that competence is not reasonably likely to be regained during an extension." *Id.*
[47] RCW 10.77.086(4).
[48] A "serious offense" is defined in RCW 10.77.092. Some offenses are serious *per se* (RCW 10.77.092(1)), and some may be found serious by the trial court in a particular case even if not listed as serious *per se* (RCW 10.77.092(2)).
[49] RCW 10.77.088(1).
[50] RCW 10.77.088(2).
[51] Note that this is different than the phrase "mental disorder" as defined in RCW 71.05.020(22). The phrase "mental disease or defect" is not defined in Chapter 10.77 RCW. *See State v. Klein*, 156 Wn.2d 103, 116-117, 124 P.3d 644 (2005).
[52] RCW 9A.12.010(1).
[53] This article discusses the insanity defense at a very basic level. The technical and strategic aspects of the insanity defense are beyond the scope of this chapter.
[54] RCW 10.77.080.
[55] RCW 9A.12.010(2); RCW 10.77.030(2).
[56] RCW 10.77.040 (if jury verdict); RCW 10.77.080 (if court ruling on motion).
[57] RCW 10.77.040.
[58] RCW 10.77.110.
[59] RCW 10.77.025(1).
[60] *See, e.g.*, RCW 10.77.110(3); 10.77.120-10.77.200. Conditional release under Chapter 10.77 RCW should not be confused with conditional release in the civil commitment context under RCW 71.05.340
[61] *State v. Atsbeha*, 142 Wn.2d 904, 914, 16 P.3d 626 (2001).
[62] Depending upon the felony charged, that period could range from 45-360 days. *See* RCW 10.77.086. Even though the trial court must have found the defendant incompetent before ordering restoration treatment, that does not shift the burden to the prosecution to prove the defendant has been restored to competency; the burden remains with the party challenging competency. *State v. Coley*, 180 Wn.2d 543, 326 P.3d 702 (2014). In most cases, the party challenging competency is the defendant, but that is not necessarily always the case. *Id*.
[63] RCW 10.77.084(1)(b); 10.77.086(4).
[64] The competency restoration provisions are silent as to what happens if a felony defendant is not restored after the initial 45- or 90-day competency restoration period and the trial court does not impose the second 90-day restoration period. If the DMHP were contacted to evaluate the defendant for possible civil commitment, the evaluation would presumably be for an initial detention.
[65] RCW 10.77.084(1)(c).
[66] RCW 10.77.086(4).
[67] RCW 71.05.280(3); RCW 71.05.320(1).
[68] RCW 71.05.310.
[69] RCW 10.77.084(1)(b). *State v. Coley*, 180 Wn.2d 543, 326 P.3d 702 (2014) holds that, in felony prosecutions, the burden of proof does not shift to the prosecution at a post-restoration treatment hearing. The Court relied on the RCW 10.77.084 and 10.77.086 in its reasoning. Non-felony restoration proceedings are governed by RCW 1077.084 and 10.77.088. Whether *Coley* applies equally to non-felony cases is a discussion beyond the scope of this chapter.
[70] This also includes the situation in which a professional person (defined in RCW 10.77.010(18) opines that the defendant is not likely to be restored to competency. *See* RCW 10.77.084(1)(b) and (c); 10.77.088(1)(b).
[71] *See* RCW 10.77.088(1)(b)(ii)(B); RCW 71.05.235(2) (basing the proceedings on RCW 71.05.310 and RCW 71.05.320).
[72] RCW 71.05.310; 71.05.320.
[73] *See* RCW 10.77.088(1)(b)(i); RCW 71.05.235(1) (basing the proceedings on RCW 71.05.230(4)).
[74] RCW 71.05.235(3).
[75] RCW 10.77.088(2).
[76] Initial detentions are discussed at section 2.3.1., s*upra*.
[77] Note, however, that if the initial evaluation recommends referral for civil commitment evaluation, RCW 10.77.065(1)(b) might require referral notwithstanding anything in RCW 10.77.088(2) to the contrary.

[78] RCW 10.77.010(18). Note that this definition of "professional person" in Chapter 10.77 RCW is similar, but not identical, to the definition of "professional person" in RCW 71.05.020(31).
[79] RCW 10.77.025(2).
[80] *Id.* Note that in this provision of Chapter 10.77 RCW the legislature used the civil commitment phrase "mental disorder", which is defined in RCW 71.05.020(26). Yet in defining incompetency (RCW 10.77.010(15)) and insanity (RCW 9A.12.010), the legislature used the undefined phrase "mental disease or defect".
[81] RCW 10.77.025(3).
[82] *See* RCW 10.77.065(1)(b).
[83] The discussion in this entire section is based on the presumption that the defendant is competent to stand trial and does not wish to assert either an insanity defense or a diminished capacity defense.
[84] These two courts have been chosen because the author has worked in both. The author presided over KCRMHC as a judge from 2012-2013, and worked as an attorney in SMMHC for the first 11 years of its existence from 1999-2010. There is no single "perfect" type of mental health court, and the author does not mean to suggest that a mental health court must follow their formats to be successful. The key point is that a mental health court match the particular culture and situation within its particular jurisdiction.
[85] *See generally* M. Perlin, *"The Judge He Cast His Robe Aside": Mental Health Courts, Dignity and Due Process*, 3 Mental Health Law and Policy Journal 1 (2013); A. Harper and M. Finkle, *Mental Health Courts*, 51 Judges' Journal 4 (2012); E. Johnston, *Theorizing Mental Health Courts*, 89 Washington University Law Review 519 (2012).
[86] Information about the defendant's mental illness and current and past treatment for that illness are necessary for the prosecutor or for the defense attorney to evaluate whether their respective clients should agree to a mental health court disposition. The defendant has a strong privacy right in that information, and will not be able to participate in mental health court without signing an appropriate release of information based on advice of counsel.
[87] Whether a particular mental health court office is more "generous" can be open to debate. Mental health court involves intensive supervision, and the defendant commits to comply with a treatment plan that can stretch over two years. There is always the possibility of a "sanction" for failure to comply, which is highly dependent upon the specific situation and the particular philosophy of the mental health court judge.
[88] A defendant involuntarily placed in a mental health court is not likely to comply willingly with treatment, and therefor is not likely to benefit from the court.
[89] Two examples are the felony mental health courts in Cook County, Illinois, and in Harris County, Texas. Their respective websites are:
http://www.cookcountycourt.org/ABOUTTHECOURT/CountyDepartment/CriminalDivision/SpecialtyTreatmentCourts/FelonyMentalHealthCourtProgram.aspx (Cook County), and
http://www.justex.net/courts/Drug/MentalHealth/Default.aspx (Harris County, Texas). The author is not aware of any felony level mental health courts in Washington. KCRMHC does accept "felony dropdown" cases that are amended to misdemeanors or gross misdemeanors from felonies and pled out in KCRMHC.
[90] RCW 2.28.180.
[91] *See generally* M. Perlin, *"The Judge He Cast His Robe Aside": Mental Health Courts, Dignity and Due Process*, 3 Mental Health Law and Policy Journal 1 (2013).
[92] In non-felony courts in Washington, the period generally ranges from six months to two years, depending upon the court system and/or the treatment program.
[93] In non-felony courts, the period generally ranges from 12-24 months. The maximum period of court jurisdiction (and therefore of probation) in a non-felony DUI or Domestic Violence (DV) case is five years and two years for all other non-felony cases. RCW 3.50.330 (Municipal Courts in cities with a population of 400,000 or less); 3.66.068 (District Courts); 35.20.255 (Municipal Courts in cities with a population of over 400,0000, *i.e.*, Seattle)
[94] *See* Bureau of Justice Assistance, *Emerging Judicial Strategies for the Mentally Ill in the Criminal Caseload: Mental Health Courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage*, accessed online at https://www.ncjrs.gov/pdffiles1/bja/182504.pdf. King County is listed as the second in the nation because San Bernardino's court commenced as a pilot project in January, 1999 and did not become a full-fledged program until after King County's mental health court.
[95] KCRMHC website: http://www.kingcounty.gov/courts/DistrictCourt/MentalHealthCourt.aspx.
[96] KCRMHC website: http://www.kingcounty.gov/courts/DistrictCourt/MentalHealthCourt/Regional.aspx.
[97] *See* RCW 39.34.180(1).
[98] King County District Court also operates a Regional Veterans Court (KCRVC), which is also a therapeutic court. The KCRMHC probation counselors also work in the KCRVC.

[99] L. DuBois and T. Martin, *Seattle Municipal Mental Health Court Evaluation* 5 (2013), accessed at www.seattle.gov/courts/pdf/MHReport2013.pdf.
[100] L. DuBois and T. Martin, *supra*, at p. 5.
[101] *See* RCW 39.34.180(1).
[102] L. DuBois and T. Martin, *supra*, at p. 10. Under the current Diagnostic and Statistical Manual of Mental Disorders (DSM) IV-TR, these would be referred to as "AXIS I Disorders". Under the DSM 5, which will be applied in Washington in approximately October, 2014, there is not distinction between Axis I and Axis II disorders, but the definitions of major disorders will remain largely unchanged.
[103] L. DuBois and T. Martin, *supra*, at p. 12.
[104] L. DuBois and T. Martin, *supra*, at p. 11.
[105] This is based on the author's experience working in SMMHC. *See also* L. DuBois and T. Martin, *supra*, at p. 77.
[106] *See* section 5.4.3., *supra*, for a description of the hybrid system.
[107] The other conditions relate to such things as housing, reporting to probation, abstaining from alcohol, controlled substances and non-prescribed drugs, not committing any crimes, no threatening harm to self or others, no contact with victims or addresses, and the like.
[108] That is not to say that the defense cannot or does not seek the defendant's release without COR.
[109] *See, e.g. Mental Illness and Drug Dependency Oversight Committee Annual Reports* (2008-2013), accessed online at: http://www.kingcounty.gov/healthservices/MHSA/MIDDPlan/MIDDCommittees/Reports.aspx; J. Neiswender, *Executive Summary of Evaluation of Outcomes For King County Mental Health Court* (2004), accessed online at: http://www.kingcounty.gov/courts/DistrictCourt/MentalHealthCourt.aspx; *King County District Court Mental Health Court Mid-Year Report* (2003), accessed online at: http://www.kingcounty.gov/courts/DistrictCourt/MentalHealthCourt.aspx.
[110] L. DuBois and T. Martin , *supra;* E. Trupin, H. Richards, D. Wertheimer and C. Bruschi, *City of Seattle, Seattle Municipal Court Mental Health Court Evaluation Report* 20 (2001).