

SAN FRANCISCO DAILY JOURNAL

SEPTEMBER 7, 2010 | CRIMINAL

Mentally Ill Defendants Stuck in Jail State Hospitals Say They Struggle to Handle The Influx of Patients Sent Over by the Courts

By Amy Yarbrough
Daily Journal Staff Writer

Finding him too mentally ill to understand court proceedings, a Marin County Superior Court judge issued an order sending accused robber Van McDuffie to Napa State Hospital for treatment.



Marin County Deputy Public Defender Deborah Lewis felt satisfied that she had served her client and put the case out of her mind.

Six months later, when the case was called for a status conference, Lewis was stunned at what she found.

McDuffie was still sitting in county jail. Officials with Napa State Hospital said they had no beds for him. So McDuffie was spending his days largely in solitary confinement and unmedicated for his illness, listed in court records as paranoid schizophrenia.

"When he came walking out and hadn't been to the hospital, I was shocked," Lewis said. "He never called me to say, 'Hey, what's going on' because he was too out of it."

Lewis was even more taken aback to learn McDuffie was not alone in his plight. Half a dozen mentally ill clients were languishing in the county jail. But that was just in one county. In June, more than 200 mentally ill defendants across the state were stuck in the same kind of limbo.

It's a problem that's persisted for a number of years, and one that's finally seeing some action from the state's higher courts - although change is coming slowly.

Mentally Ill Defendants Stuck in Jail

In the meantime, lawyers in many cases have been asking judges to issue orders to show cause, which threaten to hold the hospital or mental health directors in contempt for the delay. That's what Lewis did, and it worked for her client.

But while a popular tactic, forcing state hospitals to take their incompetent defendants is just a Band-Aid, according to David Meyer, a clinical professor with the Institute of Psychiatry, Law and the Behavioral Sciences at the University of Southern California's Keck School of Medicine. Treat the backlog in one county, he said, and the problem simply crops up elsewhere.

As of July, the California Department of Mental Health estimated that some 1,179 defendants declared incompetent to stand trial were being housed in state hospitals. Roughly 300 more "1370s" - named for the applicable California Penal Code section - were on the wait list for placement.

The wait has real world implications. Some mentally ill inmates awaiting placement have gouged out their eyes, according to Solano County Sheriff Gary Stanton. One suffering man removed his own testicles with his fingernails.

"We're not equipped to be a full-blown hospital," said Stanton, who points out that jail guards don't have the authority to force medication on mentally ill wards who refuse to take it.

Department of Mental Health officials say the backlog exists because courts have been sending more 1370s to state hospitals and there are not enough qualified hospital staffers to care for the mentally incompetent.

Deborah Moore, a spokeswoman for Napa State Hospital, said the agency makes a consistent effort to address the problem.

"We have seen an increase in the number of individuals referred to our hospitals as incompetent to stand trial, and are working closely with the courts to manage the admission orders and our available beds, so we are able to admit patients as quickly as possible," Moore wrote in an e-mail to the Daily Journal.

Department of Mental Health spokeswoman Nancy Kincaid said the agency has been trying to find a reason for the jump in cases, but maintains that at

Mentally Ill Defendants Stuck in Jail

least some of those admitted as 1370s turn out to be malingering.

"We're not trying to not admit people," Kincaid said, adding that her agency is in a constant "ballet," trying to juggle hospital populations based on patients' conditions. "There are a lot of things that play into what's going on."

Meyer said it doesn't matter if the state hospital officials agree with trial courts about defendants' mental status; they are required to accept and treat them. Political pressure to house sexually violent predators and mentally disordered offenders - those who are committed upon their release from prison - makes 1370s a lower priority, he said.

"In a limited budget, you decide where to put your money," he said.

According to Meyer, delays of four to six months in getting 1370s to a state hospital are not uncommon. Judges' use of orders to show cause - which usually cite a seven-day timeline spelled out in the 2002 landmark federal decision, *Oregon Advocacy Center v. Mink* - seems to be "growing and growing because the level of frustration among the trial judges and their anger just grows.

"It's interesting though," Meyer said. "It's one of those things where you squeeze a toothpaste tube in one place, it will come out another end."

Nicholas Filloy, a Solano County deputy public defender who worked with Lewis on the McDuffie case as a law clerk, said orders to show cause can be successful but "what occurs is you have this sort of shell game going on."

"It will continue to be that way until some organization in California files a civil suit requesting monetary damages," he said. "Until that happens, there is really no incentive for the state hospital" to clear the backlog once and for all.

While some, like Filloy, believe state hospitals need a stronger push, a court of appeal decision in Los Angeles this year may have at least nudged mental health officials.

In the March 3 opinion, the 2nd District Court of Appeal in Los Angeles held that even if an incompetent defendant receives medication in county jail,

Mentally Ill Defendants Stuck in Jail

that isn't a substitute for his or her timely transfer to state hospital for treatment. *In re Mille*, b217102

The case stemmed from a petition for writ of habeas corpus the Los Angeles Public Defender's Office filed on behalf of a 1370 defendant, Freddy Mille, challenging the 84-day delay in transferring him from Los Angeles County Jail to Patton State Hospital in San Bernardino County. The decision noted that Mille was admitted a mere six days before the hospital's medical director was due to submit his 90-day status report to the court.

Bernice Hernandez, a head deputy with the Los Angeles Public Defender's Office, said for years her colleagues had been asking for orders to show cause or filing writs of habeas corpus stating that prolonged delays in admission to state hospitals violate their clients' due process rights. But given the ongoing problem, they decided to get more aggressive with the Mille case.

That effort has made a big impact, she said, noting there have been shorter delays since the Mille decision.

"It's something we are very proud of," she said.

Since the decision, Kincaid said the Department of Mental Health has been making room by shifting patients admitted under other criteria to hospitals that can't take 1370s, such as its newest facility, Coalinga State Hospital, built in 2005.

Recent admissions numbers seem to reflect that increased emphasis. In June, agency figures show, 213 incompetent defendants were admitted to four state hospitals, the highest number in more than a year-and-a-half. Even so, the wait list remains very high: 248.

According to Meyer, the Mille decision has also helped reinvigorate discussions about the bottleneck.

Last month, a two-year-old statewide task force Meyer serves on that had been studying the backlog issued a report suggesting solutions. For one thing, the Task Force for Criminal Justice Collaboration on Mental Health Issues, a 35-member advisory group to the Judicial Council, said more options should be made available outside of state hospitals - like public and

Mentally Ill Defendants Stuck in Jail

private mental health treatment facilities - to treat incompetent defendants accused of non-violent crimes.

The report also recommends changes to expedite courts' handling of cases and that state hospitals and mental health outpatient programs receive adequate funding to come up with solutions to the problem. The task force did not get specific enough to suggest a monetary amount, a calculation that could prove difficult given the number of factors and organizations involved. In San Mateo County, superior court officials say the backlog gets significant enough that a judge has to issue an order to show cause about once a year. San Francisco defense attorney Paul DeMeester said he's making sure his client Ronald O'Brien, who's incarcerated there, doesn't get caught up in the delay.

Accused of raping a fellow patient in a psychiatric ward and subsequently of attacking a deputy in San Mateo County Jail, O'Brien has been found incompetent to stand trial. The recent clash with the deputy isn't the first time O'Brien has been accused of attacking a custodial officers, and DeMeester said he plans to be particularly vigilant to make sure he gets admitted to the hospital as soon as possible.

"Hope springs eternal," he said.

amy_yarbrough@dailyjournal.com