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Applicability: DSN Boards, Private Contracted Service Providers, DDSN Regional Centers, DDSN Central Office, DDSN District Offices

PURPOSE

The South Carolina Department of Disabilities and Special Needs (DDSN) places a high priority on promoting individual rights, choice and self-direction. This emphasis should be balanced with the need to also promote individual responsibilities; see DDSN Directive 510-01-DD: Supervision of People Receiving Services, Attachment A. As such, individual adherence with local, state and federal law should be strongly encouraged. Nonetheless, some individuals will become involved with the criminal justice system.

This policy serves to clarify the role of the DDSN Central Office, DDSN District Offices, DDSN Regional Centers and boards/providers once individuals are arrested by law enforcement or charged with a criminal offense.

DISTRICT I

P.O. Box 239
Clinton, SC 29325-5328
Phone: (864) 938-3497

Midlands Center - Phone: 803/935-7500
Whitten Center - Phone: 864/833-2733

DISTRICT II

9995 Miles Jamison Road
Summerville, SC 29485
Phone: 843/832-5576

Coastal Center - Phone: 843/873-5750
Pee Dee Center - Phone: 843/664-2600
Saleeby Center - Phone: 843/332-4104

PROCEDURE

A. Reporting

Boards/Providers/DDSN Regional Centers should submit a Critical Incident Report to DDSN Central Office in accordance with DDSN Directive 100-09-DD: Critical Incident Reporting, if an individual is arrested by local, state or federal law enforcement.

B. Incarceration

1. If the criminal charge against the individual is serious, the individual may be incarcerated at a local detention facility upon arrest and not be able or allowed to post bond.
 - i. The board/provider/DDSN Regional Center should not post bond for the incarcerated individual.
 - ii. However, it would be appropriate for the board/provider/DDSN Regional Center to facilitate the individual to use personal resources to post bond when appropriate supervision/support can be provided to the individual after release.
2. The board/provider/DDSN Regional Center's primary responsibility, if an individual is incarcerated following arrest, is to advocate for the individual to be assigned a public defender.
3. If the individual is not receiving case management when arrested, State Funded Case Management (SFCM) should be requested from DDSN. DDSN will pre-certify SFCM for the individual for at least the period of time until he/she is convicted or the case is resolved.
4. If the individual does not have active family involvement, the board/provider/DDSN Regional Center must contact (telephone or personal) the incarcerated individual at least monthly (prior to trial) to assure that his/her needs are being met (especially needs relating to medications).
5. If the individual is incarcerated in a state operated correctional facility following a court trial, SFCM may continue for three (3) months. SFCM may not resume until the individual is within three (3) months of release.
6. The board/provider/DDSN Regional Center should not make any agreements with the Court, Solicitor or Public Defender to accept responsibility for serving the individual in exchange for the criminal charge not being prosecuted. If such an agreement is suggested, the DDSN Office of Clinical Services and the DDSN Office of the General Counsel must immediately be notified.

C. Forensic Examination/Court Orders

1. When an individual is involved with the criminal justice system (General Sessions Court or Family Court), there should be a determination made if the individual is competent to stand trial (CST), (see DDSN Directive 508-01-DD: Competency to Stand Trial Evaluations) unless the charge is in Magistrate Court.
2. The Office of Clinical Services coordinates the forensic evaluations which must be conducted to assist the court to determine if an individual is competent to stand trial.
 - i. Typically the court order to conduct “CST evaluations” will be sent to the Office of Clinical Services.
 - ii. In the event that a court order to conduct the “CST evaluation” is inadvertently sent to a board/provider/Regional Center, the court order must immediately be sent to the Office of Clinical Services or the Office of the General Counsel.
3. Court orders for individuals to be evaluated regarding their competency to stand trial and the presence of an intellectual disability or related disability are the most common orders sent to DDSN.
 - i. These court orders may be received from the Family Court or General Sessions Court.
 - ii. Some individuals referred for CST evaluations are eligible for DDSN services. However, some individuals have not been determined eligible for DDSN services.
 - iii. In either case, two DDSN examiners conduct the evaluation to determine if an intellectual disability or related disability is present, and if so, render an opinion regarding the individual’s competency to stand trial. In cases where the individual is suspected of having both an Intellectual Disability/Related Disability (ID/RD) and mental illness, examiners from both DDSN and the Department of Mental Health (DMH) will conduct the evaluation jointly.
4. If an individual is deemed incompetent to stand trial and the examiners believe an intellectual disability or related disability is present, the board/provider in the individual’s home county will be notified by the Office of Clinical Services with a copy of the competency evaluation completed by DDSN and copies of other pertinent information. The DDSN District Office and the Director of the DDSN Consumer Assessment Team (CAT) (if eligibility needs to be determined) will also be notified.

5. If an individual is found not competent to stand trial, the Solicitor may petition the Family or Probate Court to issue a petition to “judicially admit” the individual to the jurisdiction of DDSN.
 - i. These petitions judicially admit an individual to DDSN, not a specific facility.
 - ii. These petitions are typically sent to the Office of the General Counsel; however, in the event that a petition for a “judicial admission to DDSN” is inadvertently sent to a board/provider/DDS Regional Center, the Petition (and any supporting documentation) must immediately be sent to the Office of the General Counsel.
6. The Office of Clinical Services tracks all incoming court orders/petitions for the Department. The Office of Clinical Services and the Office of the General Counsel are responsible for insuring that DDSN and the board/providers respond in a timely and appropriate manner with meaningful information provided.
7. There are three (3) situations in which the board/provider/DDS Regional Center must respond following a forensic evaluation/judicial admission order.
 - i. If an individual is deemed incompetent to stand trial by DDSN and is already eligible for DDSN services, it is expected that the board/provider will follow through upon notification by the Office of Clinical Services to develop, review, and/or revise a service plan of supports for the individual, in conjunction with the Office of Clinical Services.
 - ii. If an individual is deemed incompetent to stand trial by DDSN and is not known to the DDSN system, the Office of Clinical Services will initiate a referral to the DDSN Consumer Assessment Team for DDSN eligibility determination.
 - iii. If there is a Petition for Judicial Admission of an individual due to his/her incompetence to stand trial, it is expected that the board/provider will, upon notification from the Office of Clinical Services, develop a service plan for the individual, in conjunction with the Office of Clinical Services.
 - a. The service plan must include sufficient interventions and supports so that it can be reasonably expected that a recurrence of the activity which resulted in criminal charges will not occur.
 - b. The Office of Clinical Services or DDSN District Office will attend the court hearing and present the Plan of Services Report to the court. The case manager is expected to attend the hearing as well.

- c. Contact with the individual and family to initiate planning must be initiated immediately after notification from the Office of Clinical Services. Planning cannot be delayed until a Notice of Hearing is issued by the court.
- d. DDSN is federally mandated to serve individuals in the least restrictive setting feasible. This includes individuals involved in the criminal justice system. The development of a Service Plan for an individual who is being judicially admitted to DDSN involves the following steps:
 - Assessment of the home setting to determine if services can be offered to support the individual in his/her home, and if in-home supports will adequately protect the health, safety, and supervision needs of the individual and ensure the safety of the general public.
 - If services and supports to meet the needs of the individual in his/her home and community in a manner which would be reasonably expected to prevent the recurrence of any criminal activity can be provided, residential services will not be necessary.
 - If residential services are necessary, the case manager should notify the DDSN District Office of the need for residential services in accordance with DDSN Directive 502-05-DD: DDSN Waiting List.

D. Service Implementation

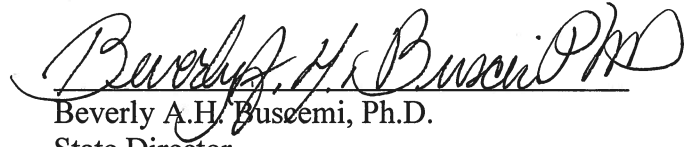
1. The board/provider/DDSN Regional Center, in conjunction with the Office of Clinical Services, must assure that the service plan presented to the court is immediately implemented as written.
2. Implementation of the Plan must be managed, overseen and monitored to ensure the individual's needs are met, thereby reducing the likelihood of re-offending.
3. Individuals who have been judicially admitted to DDSN cannot be discharged from DDSN without prior approval from the Office of Clinical Services, and the DDSN State Director or her designee.
4. Any problems or concerns with the implementation of the plan, must be reported to the Office of Clinical Services.
5. All judicially admitted individuals must receive case management unless otherwise directed by the Office of Clinical Services.

E. Quality Assurance/Prevention

1. The Office of Clinical Services will track those individuals judicially admitted to DDSN by regularly soliciting updates from case managers on status of plan implementation.
2. As able, the Office of the General Counsel and the Office of Clinical Services staff will provide periodic training to county judges, solicitors, public defenders on pertinent laws and regulations relating to DDSN individuals involved with the criminal justice system.
3. Boards/providers/DDSN Regional Centers should offer training as needed to applicable staff in the established protocol for responding when an individual has involvement with the criminal justice system.



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