MENTALLY DISORDERED OFFENDER [PC 2960]

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MENTALLY DISORDERED OFFENDER [PC 2960]

ESTABLISHMENT OF MDO PROGRAM

Origin

The Mentally Disordered Offender (MDO) Program was established in July 1986. Legislation (Chapter 1419, Statutes of 1985, and Chapter 368, Statutes of 1986) was enacted and codified in Penal Code (PC) Sections 2960-2981.

People v. Gibson

In October 1988 in People v. Gibson (204 Cal App. 3d 1425), the California State Court of Appeals ruled that the MDO law was unconstitutional on two grounds.

First, the law failed to require proof of present dangerousness and second, it was being applied retroactively to persons based on crimes that had been committed before the date the law went into effect (January 1, 1986). As a result of the Gibson ruling, the MDO treatment program was discontinued in February of 1989.

Program Resumption [SB 1625]

In response to the Gibson ruling, urgency legislation (SB 1625; Chapter 228, Statutes of 1989) was passed and signed into law on July 27, 1989. As amended by this statute, the MDO Law is to be applied only to persons whose crimes were committed on or after January 1, 1986. The issue of present dangerousness was added to the eligibility criteria. The MDO program was re-established in August 1989.

PROGRAM ELEMENTS

Treatment in Prison

The MDO law states that the California Department of Corrections (CDC) should evaluate each prisoner for severe mental disorder during the first year of the prisoner's term, and those inmates identified should be provided with an appropriate level of mental health treatment in prison and when returned to the community.

Treatment as a Condition of Parole

A prisoner who meets the six specific MDO criteria (see **Evaluation Process: Criteria** on subsequent pages in this section) shall be ordered by the Board of Prison Terms (BPT) to be treated by the Department of Mental Health (DMH) as a condition of parole. An MDO patient is a parolee who meets the criteria and is ordered by the BPT to undergo DMH treatment.

DMH Treatment Mandate

The statutes mandate DMH to provide mental health treatment to parolees identified as Mentally Disordered Offenders. The MDO law provides a mechanism for annual extension of the MDO treatment conditions as long as the person is on parole. At the end of parole, certain MDO's may be civilly committed to further MDO treatment.

The treatment must initially be in an inpatient setting (state hospital). When the parolee/patient can be safely and effectively treated on an outpatient basis, the individual may be discharged from the hospital and continue treatment in the Conditional Release Program (CONREP).

PROGRAM ELEMENTS

DMH Program Goal

The goal for the Department of Mental Health MDO services program is to increase public protection by providing a safe and effective system of inpatient and outpatient services for Mentally Disordered Offenders. It is to this end that the specific procedures outlined in the **OUTPATIENT TREATMENT OPERATIONS** sections of this manual are to be followed.

EVALUATION PROCESS

Initial Evaluations [PC 2962(d)]

Prior to a prisoner's release date, both CDC and DMH are required to evaluate eligible inmates. The purpose of these evaluations is to determine whether or not the individual inmate meets the eligibility criteria as specified in the law.

CDC Certification

If the CDC and DMH evaluators agree that the person meets the criteria, the case is certified by a Chief Psychiatrist from CDC. Following this, the Board of Prison Terms shall order treatment by the Department of Mental Health. An inmate who exercises his right to refuse treatment will be retained in custody.

Independent Evaluators

If the evaluators disagree, the BPT must seek two additional evaluations from a list of independent licensed psychiatrists and licensed psychologists. All independent evaluators must have at least five years of experience in the diagnosis and treatment of mental disorders. The list of independent professionals is prepared by CDC and DMH and submitted to the BPT annually. The independent professionals cannot be state employees.

If both independent evaluators agree the inmate meets the criteria, the Board of Prison Terms shall order treatment by the Department of Mental Health.

EVALUATION PROCESS

Criteria
[PC 2962]

The following six (6) factors are the criteria established in the MDO law and are utilized by the evaluators to determine whether or not a prisoner is eligible for the MDO program. The criteria are:

* The person must have a **severe mental disorder;**

* The **severe mental disorder was one of the causes of or was an aggravating factor** in the commission of the crime for which the prisoner was sentenced to prison;

* The crime was one in which the **prisoner used force or violence** or caused serious bodily injury;

* The prisoner's severe mental disorder **is not in remission or "cannot be kept in remission**";

* The prisoner **has been in treatment for the severe mental disorder for ninety (90) days** or more within the year prior to the prisoner's parole or release; and

* As a result of the severe mental disorder the **person represents a "substantial danger of physical harm to others."**

EVALUATION PROCESS

Definition of Terms
[PC 2962(a)]

Severe Mental Disorder	An illness, disease, or condition that substantially impairs the person's thought, perception of reality, emotional process, or judgment; or which grossly impairs behavior, or that demonstrates evidence of an acute brain syndrome for which prompt remission in the absence of treatment is unlikely. It excludes personality or adjustment disorder, epilepsy, mental retardation or other develop-mental disabilities, or alcohol/drug abuse.
Remission	A finding that the overt signs and symptoms of the severe mental disorder are controlled either by psychotropic medication or psycho-social support.
Cannot be Kept in Remission Without Treatment	During the prior year, the prisoner has been in remission and has done one of the following: 1) been physically violent, except in self-defense; 2) made a serious threat of substantial physical harm upon another person; 3) intentionally caused property damage; or 4) not voluntarily followed the treatment plan.
Substantial Danger of Physical Harm to Others	There is no statutory definition or standard for a determination of "dangerousness". For an in-depth discussion of the issues involved in determining dangerousness, please refer to the DMH **MDO Evaluator Handbook Supplement**.

HEARING AND REVIEW PROCESS

Board of Prison Terms Order

If the person is found to meet the six criteria, the Board of Prison Terms shall order DMH treatment as a condition of parole. Parole and the special conditions of parole are reviewed annually by the BPT.

BPT Certification Hearing [PC 2966(a)]

If the prisoner disagrees with the order of the BPT, he or she may request a full hearing before the Board to determine whether or not he or she meets the criteria.

If requested by the parolee, the Board shall appoint two independent professionals to evaluate the prisoner prior to the Board hearing. In these hearings, the burden of proof shall be on the person or agency who certified the prisoner under PC 2962.

Judicial Review [PC 2966(b)]

A prisoner who disagrees with the BPT decision that he or she meets the criteria may request the Superior Court to review the case within 60 days. The standard of proof is beyond a reasonable doubt, and the jury must be unanimous in its verdict. The order of the Board shall remain in effect until the completion of the court proceedings.

If the court determines that the prisoner does not meet the legal criteria, MDO treatment by DMH cannot be continued as a condition of parole. The person will be released on parole and may receive community treatment services provided by CDC's Parole Outpatient Clinics.

DMH INPATIENT TREATMENT

Initial Placement
[PC 2964(a)]

The initial treatment is to be inpatient unless DMH certifies to the BPT that the parolee may be safely and effectively treated on an outpatient basis. It is the policy of the Department of Mental Health that all newly certified MDO patients are to be treated in a state hospital.

Atascadero State Hospital is the designated hospital that provides initial specific MDO treatment programs for male patients. Patton State Hospital serves the same function for female MDO patients. For more details, refer to **Initial Admission: MDO Procedures** in the **STATE HOSPITAL** section of the manual.

Inpatient Placement Review
[PC 2964(b)]

If DMH has not placed a parolee on out-patient treatment within 60 days after admission or transfer to MDO status or after parole is continued pursuant to PC 3001 at the annual renewal, the parolee may request a hearing before the BPT.

The burden of proof shall be on DMH to demonstrate the person cannot be safely and effectively treated on an outpatient basis. If requested by the parolee, the Board shall appoint two independent evaluators.

CONREP Liaison Services

CONREP programs are responsible for providing liaison services to MDO patients while on inpatient status in the state hospital. This includes a specific schedule of visitations for MDO parolee/patients. For a more detailed description of these visits and all liaison services, please refer to **CONREP Liaison** in the **STATE HOSPITAL SERVICES** section of this manual.

DMH OUTPATIENT TREATMENT

DMH Certification [PC 2964(a)]

There are two methods by which a parolee can be treated on an outpatient basis. If DMH certifies to BPT that it has reasonable cause to believe that the parolee can be safely and effectively treated on an outpatient basis, BPT shall permit DMH to place the parolee in a CONREP outpatient program.

DMH must consult with the local outpatient program concerning the appropriate treatment plan prior to placing the parolee/patient in a CONREP program. Please refer to manual **Section 1410: ADMISSION PROCESS** for further discussion of the referral and evaluation procedures, including **Guidelines for Determination of MDO Outpatient Readiness.**

BPT Hearing [PC 2964(b)]

The second process by which a parolee is treated on an outpatient basis is patient initiated. As discussed above, after 60 days of inpatient treatment, a parolee may request a hearing before the BPT to seek treatment on an outpatient basis. If the Board believes that a parolee can be safely and effectively treated on an outpatient basis, it may so order.

Treatment Requirements

MDO parolees shall receive the same treatment as other CONREP patients. Parolees will be required to meet the Minimum Core Services Performance Standards described in manual **Section 1340: CORE SERVICES**. Once an MDO parolee/patient has been admitted to a CONREP program, certain clinical issues deserve special attention and monitoring.

DMH OUTPATIENT TREATMENT

Clinical Treatment Issues

Substance Abuse

Establish a "zero tolerance" for the use of illicit drugs and alcohol, especially in residential settings, as such behavior increases the risk of use by other patients. For patients with increased organicity, the use of traditional drug/ alcohol rehabilitation programs is often precluded. Consider modalities for these patients which use a more concrete and behavioral focus, rather than insight and sharing.

For those MDOs engaged in AA, NA or similar external programs, staff should be rigorous about getting verification of attendance and sponsors. Medical administration of antabuse is another option in dealing with chronic chemical abusers. Increase the frequency of substance abuse screenings or emphasize random sampling and unannounced home visit testing, especially on evenings and weekend/holidays.

Medication

If an MDO parolee/patient is non-compliant regarding medication, and in particular, if the crime was committed while off medication, intramuscular (IM) administration is encouraged unless it is medically contra-indicated or inappropriate.

Consider the use of blood level monitoring of medication compliance, when medically appropriate, for those who are not on IM administration. Increased frequency of home visits, check-ins, curfews and general monitoring may also be necessary for patients with histories of medication non-compliance

Reports and Annual Review

Quarterly reports must be prepared and sent to the CDC parole agent. An annual review is required for all parolee/patients. For specific requirements, please refer to the contents of **Section 1420: REPORTS & ANNUAL REVIEW PROCESS**.

REHOSPITALIZATION

Criteria
[PC 2964(a)]

The CONREP Community Program Director may place the parolee in a secure mental health facility if the parolee can no longer be safely or effectively treated in the outpatient program. (PC 1600 community outpatient treatment provisions do not apply to an MDO parolee.)

Notification

When a parolee/patient has been admitted to an inpatient facility, the CONREP program shall immediately notify the DMH Headquarter's Hearing Office and CDC parole agent.

72 Hour Local Limit

Within seventy-two (72) hours of placement into a secure treatment facility, the Community Program Director shall decide whether the parolee/patient will need treatment beyond 72 hours. If so, the parolee/patient shall be transferred to a specified state hospital which shall admit the patient, pending a security evaluation.

DMH Hearing Time Limit

Within fifteen (15) days of the original placement in the secure facility, DMH shall conduct a hearing in the state hospital, unless "good cause" exists and then the hearing must be held within twenty-one (21) days.

Additional Information

There are specific statutory requirements and procedures which must be met in order to rehospitalize an MDO currently on outpatient status. For a detailed discussion on this subject, including selection of a state hospital and clarification of responsibilities, please refer to **Rehospitalization: Mentally Disordered Offender** in manual **Section 1430: SEPARATION PROCESS.**

CDC PAROLE REVOCATION

CDC Responsibility

Certification for mental health treatment pursuant to PC 2962 does not eliminate the requirement that CDC parole agents report the parolee/ patient's behavior to the Board of Prison Terms as specified in BPT Rules Section 2616(a).

Information in CDC reports is not subject to DMH confidentiality limitations and may be used to exercise CDC responsibilities.

Parole Violation

A parolee on MDO outpatient status may have his/her CDC parole status revoked by a parole agent if he or she violates any condition of CDC parole, including the special condition of MDO mental health treatment.

CDC Placement Notification [PC 2964(a)]

Pending CDC parole revocation, the CDC parole agent may place the parolee in a State correctional facility. The parole officer must consult with the CONREP Community Program Director before deciding to revoke the parole and return the parolee to prison.

DISCHARGE

Criteria for Discharge

Board of Prison Terms	A MDO parolee/patient can be discharged from CONREP if the BPT terminates the patient's parole or the MDO special condition of parole.
DMH Determination [PC 2968]	The CONREP program may also determine that the severe mental disorder of the patient is in remission and can be kept in remission. The DMH Director then certifies those findings to the BPT and the parolee can be discharged.
Evaluation Report	Whenever the CONREP program has reason to believe that an MDO parolee/patient is in remission and can be kept in remission, a report containing that determination and recommendation is to be sent to the DMH Director.
Notification of Remission	The Community Program Director shall complete and forward form **MH 1789, Notification of Parolee/Patient Remission** along with the remission evaluation report, to the Regional Forensic Coordinator. A courtesy copy should be sent to the CDC parole agent of record.
Additional Information	For a more detailed description of the discharge process and additional information on the requirements for determining if a patient is, in fact, in remission, please refer to **Discharge: Mentally Disordered Offender (PC 2962)** in manual **Section 1430: SEPARATION PROCESS.**

CIVIL COMMITMENT [PC 2970]

Description

At the end of the parole period, a written evaluation (**MH 1788, Evaluation on Remission of MDO Prior to End of Parole Term**) shall be sent to the district attorney by CONREP. The purpose of this evaluation is to determine whether or not the person meets the MDO criteria. This report is due no later than 180 days prior to the termination of parole. The district attorney may petition the court to initiate an MDO judicial commitment.

Criteria

The criteria are the same as those which are applicable while the person is under parole status. A civil commitment may be sought if:

* The parolee/inmate has a severe mental disorder;
* The mental disorder is not in remission or cannot be kept in remission without treatment; and
* By reason of the severe mental disorder, he/she represents a substantial danger of physical harm to others.

Court Commitment [PC 2972(c)]

If the court or jury finds that the patient continues to meet the specific MDO criteria, the court shall order the patient recommitted to the inpatient facility or outpatient program in which the patient was being treated. The commitment shall be for a period of one year from the date of termination of parole or previous commitment. Effective January 1, 2001, only time spent in a locked treatment facility at the direction of the Community Program Director counts toward the one year term of commitment. However, each patient under the MDO Civil Commitment who is on outpatient treatment shall have an outpatient hearing pursuant to PC 1606 and PC 2972.1.

CIVIL COMMITMENT [PC 2970]

Outpatient Status
[PC 2972(d)]

PC 2970 patients on outpatient status are subject to the outpatient placement and service provisions of PC 1600 et seq. similar to other judicially committed patients on out-patient status.

Revocation

The PC 1609 revocation process applies to civilly committed MDOs, but the standard for revocation shall be that the person cannot be safely and effectively treated on an outpatient basis.

Additional Information

For a more detailed description of the procedures relating to this process, please refer to manual **Section 1440: MDO CIVIL COMMITMENT PROCESS** .