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XII. MENTAL HEALTH TRANSFERS:

The Chief Medical Officer (CMO) shall ensure the care and treatment of every committed offender who is determined by a qualified doctoral-level mental health professional, employed or retained by the Department, to be mentally ill as outlined in the Health Care Services Directives (HCSD) of Policy and Administrative Procedure 01-02-101, “The Development and Delivery of Health Care Services.” This section provides the procedure for the transfer of offenders to the Family and Social Services Administration (FSSA) Department of Mental Health and Addictions or to a program within the Department of Correction (NCP, IRT, SNU) that meets the mental health needs of the offender. Transfer to a non-IDOC mental health facility does not extend an offender’s term of imprisonment or commitment.

A. Conditions for Involuntary Transfer to the Department of Mental Health and Addictions

In accordance with Indiana Code 11-10-4-3(a), a committed offender may be involuntarily (i.e., Department-initiated) transferred to the FSSA Department of Mental Health and Addictions or a mental health facility (non-IDOC) if the following conditions are met:

1. The offender has been examined by a psychiatrist employed or retained by the Department, and the psychiatrist reports in writing to the Department that, in his/her professional opinion, the offender is mentally ill and is in need of care and treatment by the FSSA Department of Mental Health and Addictions;
2. The Director of the FSSA Department of Mental Health and Addictions has approved the transfer;
3. The Department shall afford the offender a hearing to determine the need for such a transfer. The hearing must comply with the following procedures:
 - a. An offender who is believed to be in need of care and treatment by the FSSA Department of Mental Health and Addictions shall be referred to a psychiatrist for examination;
 - b. The psychiatrist, after examining the offender, shall submit a report of his/her examination to the Warden. The report shall include:

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- 1) Name of the Department facility in which the offender is housed;
 - 2) Date of report;
 - 3) Offender's name and IDOC number;
 - 4) History of offender;
 - 5) Conditions, impressions, and symptoms;
 - 6) Diagnosis;
 - 7) Recommendations with respect to transfer; and,
 - 8) Signature.
- c. If transfer to the FSSA Department of Mental Health and Addictions is recommended, the following shall occur:
- 1) The offender shall be accorded the opportunity to demand a hearing by completion of State Form 45040, "Notice of Mental Health Transfer and Right to a Hearing." (Appendix XII-A provides instructions for completing SF 45040.)
 - 2) If the offender signs the waiver of hearing on SF 45040, the following shall occur:
 - (a) The Warden shall assign the case to an impartial hearing officer by initiating State Form 5572, "Transfer Hearing: Notice to a Hearing Officer." Appendix XII-D includes a sample form and completion instructions. Hearing Officers shall be selected from a group of previously designated staff, who are considered competent and trained to perform such hearings. This group shall include only Classification, Unit Team, Behavioral Clinicians, or other treatment personnel;
 - (b) A finding that the offender is in need of mental health care and treatment in the FSSA Department of Mental Health and Addictions must be based upon clear and convincing evidence;
 - (c) The offender shall be given a written statement on State Form 5556, "Transfer Hearing Report," within three (3) business days of the conclusion of the hearing (see Appendix XII-C) to include

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recommendations to transfer or not, based on:

- (1) Findings of fact(s);
 - (2) Evidence relied upon; and,
 - (3) Reasons for the recommendations;
- (d) The Hearing Officer shall submit all documents to the Warden;
 - (e) The Warden shall ensure that all documentation is forwarded to the Executive Director of Behavioral Health for review;
 - (f) The Executive Director of Behavioral Health shall forward the report to the Director of the FSSA Department of Mental Health and Addictions, who will make the final determination for placement within the FSSA Department of Mental Health and Addictions; and,
 - (g) If approved by the FSSA Department of Mental Health and Addictions, the Executive Director of Behavioral Health shall forward the approval to the Central Office Classification Division for transfer.
- 3) If the offender demands a hearing, the following procedures apply:
- (a) The Warden shall assign the case to an impartial hearing officer by initiating State Form 5572, "Transfer Hearing: Notice to a Hearing Officer." Appendix XII-D includes a sample form and completion instructions. Hearing Officers shall be selected from a group of previously designated staff, who are considered competent and trained to perform such hearings. This group shall include only Classification, Unit Team, Behavioral Clinicians, or other treatment personnel;
 - (b) The offender shall be accorded the following additional minimum standards:

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- (1) At least ten (10) calendar days advance written and verbal notice of the hearing;
 - (2) The hearing must be held no sooner than ten (10) calendar days after the psychiatrist's recommendation for transfer;
 - (3) Notice of date, time, and location of hearing;
 - (4) Notice of reason for recommended transfer;
 - (5) The offender is entitled to:
 - [a] Appear in person;
 - [b] Speak on his/her own behalf;
 - [c] Call witnesses;
 - [d] Present documentary evidence;
 - [e] Confront and cross-examine witnesses. Offender must request this right prior to the hearing. The offender may request all Department staff who prepared documentation to be present for cross-examination. If previously requested, failure of the preparer to appear without good cause shall exclude the document from evidence.
 - (6) Offender is entitled to be represented by legal counsel, at his/her own expense, or other competent representative; and,
 - (7) Offender is entitled to a copy of the psychiatrist's report at the time when he/she is presented with the Notice of Hearing.
- (c) Notice of the date of hearing shall be given to one of the following concerning the offender and shall be mailed on the same date the offender is notified of a pending hearing:

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- (1) Spouse;
 - (2) Parent;
 - (3) Attorney of Record;
 - (4) Guardian (if applicable);
 - (5) Custodian (if applicable); or,
 - (6) Relative.
- (d) A finding that the offender is in need of mental health care with the FSSA Department of Mental Health and Addictions must be based upon clear and convincing evidence;
- (e) The offender shall be give a written statement on State Form 5556, "Transfer Hearing Report," within three (3) business days of the conclusion of the hearing (see Appendix XII-C) to include recommendations to transfer or not, based on:
- (1) Findings of fact(s);
 - (2) Evidence relied upon; and,
 - (3) Reasons for the recommendations;
- (f) The Hearing Officer shall submit all documents to the Warden;
- (g) The Warden shall ensure that all documentation is forwarded to the Executive Director of Mental Health and Special Population for review;
- (h) The Executive Director of Behavioral Health shall forward the report to the Director of the FSSA Department of Mental Health and Addictions, who will make the final determination for placement within the FSSA Department of Mental Health and Addictions; and,
- (i) If approved by the FSSA Department of Mental Health and Addictions, the Executive Director of Behavioral Health shall forward the approval to the Central Office Classification Division for transfer.

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- 4) The Executive Director of Classification shall receive the approval from the Executive Director of Behavioral Health and shall facilitate the transfer to the FSSA Department of Mental Health and Addictions in the following manner:
 - (a) Submit the documents along with a completed State Form 6588, "Transfer Request to the Department of Mental Health," to the Commissioner for review and signature. A copy of these documents shall be filed in the offender's Central Office packet;
 - (b) Receive the Commissioner's decision and forward to the Warden.

B. Conditions for Voluntary Transfer to the FSSA Department of Mental Health and Addictions

Offender-initiated (voluntary) transfers to FSSA Department of Mental Health and Addictions in accordance with IC 11-10-4-4 shall adhere to the following procedure:

1. A committed offender who believes him/herself to be mentally ill or in need of care and treatment in the FSSA Department of Mental Health and Addictions shall submit a written request for such a transfer to the Warden;
2. The offender shall be referred to an appropriate mental health professional (psychiatrist, psychologist, psychiatric social worker, or behavioral clinician) for screening and evaluation.
3. If, as a result of the screening and evaluation, consideration of placement in an inpatient psychiatric unit (non-IDOC), a psychiatric examination shall be conducted.
3. After the examination, the psychiatrist shall submit a report of the examination to the Warden. The report shall include:
 - a. The name of the facility housing the offender;
 - b. Date of report;
 - c. Offender's name and IDOC number;
 - d. History of the offender;

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- e. Conditions, impressions, and symptoms;
 - f. Diagnosis;
 - g. Recommendations; and,
 - h. Signature.
4. All documents relating to the offender's request shall be forwarded to the Warden.
 5. The Warden shall ensure that all documentation is forwarded to the Executive Director of Behavioral Health for review. The report shall be forwarded to the Director of the FSSA Department of Mental Health and Addictions who shall make the final determination for placement within the FSSA Department of Mental Health and Addictions.
 6. If approved, the Executive Director of Behavioral Health shall forward the approval to the Central Office Classification Division for transfer.
 7. The Executive Director of Classification shall receive the approval from the Executive Director of Behavioral Health and shall facilitate the transfer to the FSSA Department of Mental Health and Addictions in the following manner:
 - a. Submit the documents along with a completed State Form 6588, "Transfer Request to the Department of Mental Health," to the Commissioner for review and signature. A copy of these documents shall be filed in the offender's Central Office packet;
 - b. Receive the Commissioner's decision and forward to the Warden and prepare for transfer to the FSSA Department of Mental Health and Addictions.
- C. Psychiatric Review for Offenders Involuntarily Confined in the FSSA Department of Mental Health and Addictions

Each such offender shall be entitled to:

1. Written notice at the time of admission of his/her right to a review of his/her confinement in an FSSA Department of Mental Health and Addictions facility every six (6) months from the date of admission to the facility to determine if the offender continues to meet the standard of mental illness;

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2. A review to be conducted six (6) months from the date of transfer to the psychiatric facility by the psychiatric staff (i.e. psychiatric social worker, clinical psychologist, rehabilitation therapist, nurse, or psychiatrist) of the facility where the offender is confined;
 3. A written copy of the report prepared by the psychiatric staff which shall contain:
 - a. The offender's psychiatric history;
 - b. A summary of the offender's progress and behavior during the previous six (6) months;
 - c. A clinical diagnosis; and,
 - d. A recommendation regarding continuation of treatment.
 4. If the recommendation is to continue treatment, the offender shall be entitled to, if he/she does not wish to continue treatment, the procedures as outlined in subsection D of this procedure.
 5. If the FSSA Department of Mental Health and Addictions determines that the offender no longer needs care and treatment in the FSSA Department of Mental Health and Addictions, it will return the offender to the custody of the Department of Correction with notification to the Executive Director of Behavioral Health.
- D. Release from the FSSA Department of Mental Health and Addictions
1. The Executive Director of Behavioral Health shall receive and review the discharge summary from the FSSA Department of Mental Health and Addictions.
 2. The Executive Director of Behavioral Health, in coordination with the Executive Director of Classification, shall review the discharge summary and assign the offender to the appropriate IDOC facility/program that meets the mental health needs of the offender.
 3. The Executive Director of Classification shall ensure the offender is transferred to the IDOC facility/program agreed upon in subsection 2 above.
- E. Civil Commitment upon Release from the Department of Correction
1. Upon determination that mental health treatment is needed upon release

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from the Department, a Civil Commitment to the FSSA Department of Mental Health and Addictions may be requested. A Civil Commitment shall only be attempted pending the offender's release.

2. The facility shall make a determination of the need for the offender's continued treatment after the completion of his/her term of commitment. The determination shall be made at a minimum of forty-five (45) calendar days prior to the offender's projected release from confinement unless emergency circumstances prevail.
 3. If the determination is that the offender needs continued care and treatment, the Warden shall:
 - a. Petition the court for Civil Commitment in accordance with IC 16-14-9.1 and IC 12-26-7-3(b) and notify the Division of Legal Services for representation at the Civil Commitment hearing;
 - b. Copies of the petition shall be sent to the FSSA Department of Mental Health and Addictions along with a request for the FSSA Department of Mental Health and Addictions to indicate the appropriate inpatient unit for the offender's placement;
 - c. The facility Release Staff and the Director of Parole Services shall be notified of the pending Civil Commitment hearing;
 - d. The FSSA Department of Mental Health and Addictions accepting facility shall be provided with all pertinent treatment documents including medical (including mental health) records and recent psychiatric diagnosis(es); and,
 - e. If the Civil Commitment proceedings result in a Civil Commitment, the Civil Commitment documents shall be forwarded to the appropriate FSSA Department of Mental Health and Addictions facility.
 4. The Division of Parole Services shall investigate and complete an appropriate alternate placement should the Civil Commitment be denied.
- F. Placement of Offender with Mental Health Needs within the Department of Correction (NCP, IRT, SNU):

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The following are the procedures for transfer of offenders within the Department who are in need of mental health services but do not require the services of the FSSA Department of Mental Health and Addictions

1. An offender who is believed to be in need of mental health care and treatment or has a dual diagnosis of mental illness and substance use disorder shall be referred to a psychiatrist or psychologist for examination;
2. The psychiatrist/psychologist, after examining the offender, shall submit a report of the examination to the Executive Director of Behavioral Health or designee with a copy forwarded to the Warden. The report shall include:
 - a. Name of the facility housing the offender;
 - b. Date of report;
 - c. Offender's name and IDOC number;
 - d. History of the offender;
 - e. Conditions, impressions, and symptoms;
 - f. Diagnosis(es);
 - g. Recommendations; and,
 - h. Signature.
3. The Executive Director of Behavioral Health or designee shall:
 - a. Receive the request and determine, in consultation with the contracted medical provider's Regional Director of Mental Health, if the offender is appropriate for transfer. If so, the Executive Director of Behavioral Health, in consultation with the contracted medical provider's Regional Director of Mental Health and Addictions Recovery staff, shall determine which mental health program within the Department to assign the offender; and,
 - b. Notify the requesting facility's Warden, the Executive Director of Classification, and the appropriate Classification Analyst of the decision.
5. If approved for transfer to a Department mental health facility (NCP, IRT, SNU), the sending facility shall submit transfer documentation, in accordance with Section X, "Inter-Facility Transfers," to the appropriate Classification Analyst, including:
 - a. Written approval from the Executive Director of Behavioral Health;

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- b. State Form 5556, "Transfer Hearing Report." (See Appendix XII-C); and,
 - c. Other pertinent information.
 6. If the transfer request to a Department mental health facility (NCP, IRT, SNU), the sending facility's Warden shall ensure that all parties, including the offender, are notified of the decision.
- G. Release from a Department of Correction Mental Health Program (NCP, IRT, SNU):
 1. Offenders discharged from a Department of Correction Mental Health Program shall be moved to a living area off the unit as soon as an appropriate assignment is identified and approved by the Executive Director of Behavioral Health or designee and the Executive Director of Classification.
 2. The Executive Director of Classification and the Warden shall ensure the moves made are in accordance with the mental health and/or substance use disorder needs of the offender and Classification Policy and Administrative Procedure.
- H. Placement of Offenders in Department-wide Disciplinary or Department-wide Administrative Restrictive Status Housing Units, or Department-wide Protective Custody.
 1. Facilities requesting the placement of offenders in the Department-wide Disciplinary Restrictive Status Housing Units, Department-wide Administrative Restrictive Status Housing Units, or Department-wide Protective Custody shall cause a completed State Form 53491, "Request for Mental Health Status Report for Offender Recommended for Placement in a Restrictive Status Housing Unit," to be developed by a qualified mental health profession that indicates the offender's mental state and risk to decompensate if placed in such a unit.
 2. Offenders not approved for Department-wide Restrictive Status Housing according to the mental health review shall not be placed in a Department-wide Restrictive Status Housing unit unless otherwise recommended by the Warden and the respective Regional Directors.

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3. Offenders shall have continued reviews in accordance with applicable Health Care Services Directives, Policy and Administrative Procedure 02-01-111, “The Use and Operation of Adult Offender Administrative Restrictive Status Housing Unit,” Policy and Administrative Procedure 02-04-102, “The Use and Operation of Disciplinary Restrictive Status Housing,” and Policy and Administrative Procedure 02-01-107, “The Use and Operation of Protective Custody.”
 4. Procedures for transfer to a Department-wide Disciplinary Restrictive Status Housing unit shall be in accordance with Policy and Administrative Procedure 02-04-102, “The Use and Operation of Disciplinary Restrictive Status Housing,” and Appendix XVI-B of this policy and administrative procedure.
 5. Procedures for transfer to a Department-wide Administrative Restrictive Status housing unit shall be in accordance with Policy and Administrative Procedure 02-01-111, “The Use and Operation of Adult Offender Administrative Restrictive Status Housing Unit,” and Appendix XVI-C of this policy and administrative procedure.
 6. Procedures for transfer to a Department-wide Protective Custody unit are found in Appendix XVI-N of this policy and administrative procedure.
- I. Placement of Offender in Facility Restrictive Status Housing Units and Protective Custody.
- a. For placement in a facility disciplinary restrictive status housing unit, staff members shall refer to Policy and Administrative Procedure 02-04-102, “The Use and Operation of Disciplinary Restrictive Status Housing.”
 - b. For placement in a facility administrative restrictive status housing unit, staff shall refer to Policy and Administrative Procedure 02-01-111, “The Use and Operation of Adult Offender Administrative Restrictive Status Housing Unit.”
 - c. For placement in a facility protective custody unit, staff shall refer to Policy and Administrative Procedure 02-01-107, “The Use and Operation of Protective Custody.”