

**Beverly A. H. Buscemi, Ph.D.**

*State Director*

**David A. Goodell**

*Associate State Director  
Operations*

**Kathi K. Lacy, Ph.D.**

*Associate State Director  
Policy*

**Thomas P. Waring**

*Associate State Director  
Administration*



3440 Harden Street Ext (29203)  
PO Box 4706, Columbia, South Carolina 29240  
803/898-9600  
Toll Free: 888/DSN-INFO  
Website: [www.ddsn.sc.gov](http://www.ddsn.sc.gov)

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Reference Number: 503-01-DD

Title of Document: Consumer Involvement with Criminal Justice System

Date of Issue: March 1, 2007

Effective Date: March 1, 2007

Last Review Date: January 7, 2013

Date of Last Revision: January 7, 2013 **(REVISED)**

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 consumer rights, choice and self-direction. This emphasis should be balanced with the need to also promote consumer responsibilities; see DDSN Directive 510-01-DD: Supervision of People Receiving Services, Attachment A. As such, consumer compliance with local, state and federal law should be strongly encouraged. Nonetheless, some consumers 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 consumers 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

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

### **DISTRICT II**

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

## **PROCEDURE**

### A. Reporting

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

1. The report should be submitted in accordance with DDSN Directive 100-09-DD: Critical Incident Reporting, for arrests which are made while the consumer is receiving services from a DDSN funded or operated program.
2. The report should be submitted to the DDSN Office of Clinical Services for arrests which are made when the consumer is not receiving services. This report should include consumer name, criminal charge, date of arrest and a summary of the nature of the circumstances leading to the arrest.

### B. Incarceration

1. If the criminal charge against the consumer is serious, the consumer may be incarcerated at a local detention facility upon arrest and not be able or allowed to post bond.
  - i. The board/provider/Regional Center should not post bond for the incarcerated consumer.
  - ii. However, it would be appropriate for the board/provider/Regional Center to facilitate the consumer to use personal resources to post bond when appropriate supervision/support can be provided to the consumer after release.
2. The board/provider/Regional Center's primary responsibility, if a consumer is incarcerated following arrest, is to advocate for the consumer to be assigned a public defender in a reasonable period.
3. If the consumer is not on Level I service coordination when arrested, he/she should be placed on Level I service coordination. The consumer should remain on Level I service coordination until DDSN is notified that he/she is convicted or the charges are dismissed.
4. If the consumer does not have active family involvement, the board/provider/Regional Center should also have contact (telephone or personal) with the incarcerated consumer at least monthly (prior to trial) to assure that his/her needs are being met (especially needs relating to medications).

5. If the consumer is incarcerated in a state operated correctional facility following a court trial, the consumer should be moved to Level II service coordination after three (3) months. The consumer should be placed on Level I service coordination when he/she is within three (3) months of release and for three (3) months following release.
6. The board/provider/Regional Center should not make any agreements with the Court, Solicitor or Public Defender to accept responsibility for serving the consumer in exchange for the criminal charge not being prosecuted. If such an agreement is suggested to the board/provider/Regional Center, the DDSN Office of Clinical Services and the DDSN Office of the General Counsel should immediately be notified.

C. Forensic Examination/Court Orders

1. When a consumer is involved with the criminal justice system, there should be a determination made if the consumer 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 a consumer 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 should immediately be sent to the Office of Clinical Services or the Office of the General Counsel.
3. Court orders for persons 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 are received from the Family Court or General Sessions Court.
  - ii. Some consumers referred for CST evaluations are already eligible DDSN consumers and known to DDSN. However, a number of consumers referred for CST evaluations are not previously known to the DDSN system.
  - iii. In either case, two DDSN examiners conduct the evaluation to determine whether the presence of an intellectual disability or related disability is

indicated, and if so, render an opinion regarding the consumer's competency to stand trial.

4. If a consumer is deemed incompetent to stand trial and the examiners believe an intellectual disability or related disability is present, the board/provider in the consumer's home county will be notified by the Office of Clinical Services with a copy of the competency evaluation completed by DDSN and any other pertinent information forwarded by the Solicitor's Office. The DDSN District Office and the Director of the Consumer Assessment Team (CAT) (if the consumer must go through intake) will also be notified.
5. If a consumer is found not competent to stand trial, the Solicitor may petition the Family or Probate Court to issue a petition to "judicially admit" the consumer to the jurisdiction of DDSN.
  - i. These petitions judicially admit a consumer to DDSN, not a specific facility.
  - ii. These petitions are typically sent to the Office of Clinical Services; however, in the event that a petition for a "judicial admission to DDSN" is inadvertently sent to a board/provider/Regional Center, the petition (and any supporting documentation) should immediately be sent to the Office of Clinical Services.
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 to these court orders in a timely and appropriate manner with meaningful information provided back to the court.
7. There are three (3) situations in which the board/provider/Regional Center must respond following a forensic evaluation/judicial admission order.
  - i. If a consumer 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 consumer.
  - ii. If an consumer is deemed incompetent to stand trial by DDSN and is not known to the DDSN system, it is expected that the board/provider will follow through upon notification by the Office of Clinical Services to initiate and complete the intake process (assuming the consumer consents to intake), and if the consumer is determined eligible, the board/provider, in conjunction with the Office of Clinical Services, will develop a plan of service for the consumer.

- iii. If there is a petition for judicial admission of a consumer due to his/her incompetence to stand trial, it is expected that the board/provider will follow through upon notification from the Office of Clinical Services to develop a service plan for the consumer.
- 1) The service plan must be reasonably expected to prevent a recurrence of the activity which resulted in criminal charges against the consumer.
  - 2) The board/provider is expected to attend the court hearing for a judicial admission and present the service plan to the court. When feasible, the Office of Clinical Services or District Office staff will also be in attendance at the court hearing to assist the service coordinator.
  - 3) The planning process/contact with the consumer and family needs to be initiated as soon as possible after notification from the Office of Clinical Services, not from the notice of hearing. The Office of Clinical Services may only get a few days' notice of the court hearing.
  - 4) The development of a Service Plan for a consumer who is being judicially admitted to DDSN involves the following steps:
    - Assessment of the home setting and determining what services can be offered to support the consumer in his/her home, if appropriate, and if providing in-home supports will adequately provide for the health, safety, and supervision needs of the consumer.
    - Services from a board/provider do not necessarily have to include residential placement if the plan can adequately provide the services and supports to meet the needs of the consumer in his/her home and community in a manner which would be reasonably expected to prevent the recurrence of any criminal activity.
    - If the board/provider completes its assessment and determines that the needs of the consumer cannot be met in his/her home, the reasons why such a plan is not a feasible option needs to be explained.
    - If residential placement is identified as a need, the next step is for the board/provider to assess whether it can serve the consumer in a local community residential setting. The

service coordinator should notify the District Office of the need for residential services in accordance with DDSN Directive 502-05-DD: Procedure for Prioritization of the Waiting List for Institutional and Community Residential Placement.

- If the board/provider determines the needs of the consumer cannot be met in one of the local residential settings, the reason why such a residential plan is not feasible needs to be explained to the District Office. Again, this should be explained on the Report of Critical Circumstances.
- The next step in the planning process would be to explore other residential options with other board/providers within the DSN network via coordination with the District Office.
- The District Office is notified by the Office of Clinical Services of the case at the same time the board/provider is and should communicate with the board/provider about the status of the Service Plan's development.
- The board/provider/coordinator must submit a copy of the Service Plan to the Office of Clinical Services for review at least two (2) weeks before the probate/family court hearing (assuming there is at least two (2) week's notice of the hearing).
- Any problems completing the Intake or a Single Plan must be communicated back to the Office of Clinical Services within 30 days from receipt of the letter.
- The board/provider needs to involve the District Office in the planning process when:
  - Technical assistance is needed after the service provider/coordinator has developed an appropriate Service Plan.
  - The case needs to be reviewed for consideration of placement on the critical waiting list.
  - There are delays in processing for eligibility. Processing to the CAT Team needs to be expedited because notice of a court hearing may be given at any time.

- There are problems with availability of resources, as determined by assessing the consumer's specific needs as previously outlined.

D. Service Implementation

1. The board/provider/Regional Center must assure that the service plan presented to the court is immediately implemented as written.
2. The board/provider/Regional Center must provide regular management oversight of service plan implementation to ensure the consumer's needs are being met in a fashion which reduces likelihood of re-offending.
  - i. For consumers who have been accused of a crime against another person, this oversight should involve direct observation and be at least monthly for the first six (6) months and quarterly thereafter.
  - ii. For consumers with other types of criminal charges quarterly oversight will typically be sufficient.
3. If problems occur with the implementation of the plan, the board/provider/Regional Center must assure that the Office of Clinical Service is notified immediately.

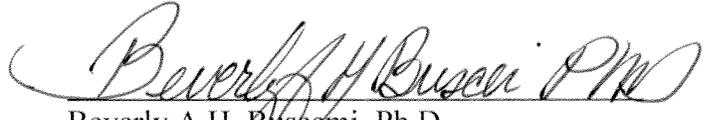
E. Quality Assurance/Prevention

1. The Office of Clinical Service staff will track law enforcement involvement and will contact boards/providers/Regional Centers to assure the current status of the law enforcement is accurate and that necessary steps in the judicial process have been completed.
2. The Office of the General Counsel and the Office of Clinical Services staff will endeavor to provide periodic training to county judges, solicitors, public defenders in pertinent laws and regulations relating to DDSN consumers involved with the criminal justice system.
3. Boards/providers/Regional Centers should offer training as needed (upon employment and at least once every three (3) years thereafter) to applicable staff in the established protocol for responding when a consumer has involvement with the criminal justice system.
4. Boards/providers/Regional Centers should evaluate as needed (at least quarterly), the adequacy of the service plan/consumer level of accountability for those consumers with a history of criminal charges.

- i. When a consumer does not reside in a DDSN sponsored residential setting and the board/provider believes that the consumer's level of accountability is insufficient to prevent the consumer from re-offending, the board/provider should immediately contact the Office of Clinical Services or the District Office.



Kathi K. Lacy, Ph.D.  
Associate State Director-Policy  
(Originator)



Beverly A.H. Buscemi, Ph.D.  
State Director  
(Approved)