



MISSOURI DEPARTMENT OF MENTAL HEALTH



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
4.533

KEITH SCHAFER, DEPARTMENT DIRECTOR

CHAPTER Program Implementation and Records	SUBCHAPTER Transfer Procedures	EFFECTIVE DATE 7/1/10	NUMBER OF PAGES 4	PAGE NUMBER 1 of 4
SUBJECT Transfer to Biggs Forensic Center		AUTHORITY Federal Consent Decree Section 630.050.RSMo	HISTORY See below	
PERSON RESPONSIBLE Director, CPS			SUNSET DATE 7/1/13	

PURPOSE: Prescribes procedures for transfer to the Fulton State Hospital, Biggs Forensic Center (Excludes pretrial evaluations under Sections 552.020 and 552.030, RSMo.).

APPLICATION: Applies to the entire department.

(1) The Biggs Forensic Center has as its primary mission the evaluation, care, and treatment of clients committed under Chapter 552, RSMo. However, the department may admit to the Biggs Forensic Center (forensic center) under the provisions of this DOR any client committed or admitted to the department with the following exceptions:

(A) Competent adults admitted voluntarily under Chapter 632 RSMo, shall not be admitted to the forensic center unless they are Department of Corrections transfers.

(B) Minors under the age of eighteen (18) years, unless they are committed under Chapter 552, RSMo, and transfer to a non-maximum security adult ward has been determined inadequate under DOR 4.563 to provide the necessary security.

(2) All clients committed pursuant to section 552.020 or 552.030, RSMo, for a pretrial evaluation shall not be entitled to a pre or post transfer hearing as set out in this DOR. The director's authority to set the time, place, and conditions of these pretrial evaluations is pursuant to sections 552.020 and 552.030, RSMo.

(3) All clients admitted from a county jail who are charged with Murder 1st degree, Sexual Assault, any dangerous felony as defined by section 556.061(8), RSMo, or the attempts of any of these crimes shall be admitted to Biggs Forensic Center and shall not be entitled to a pre or post transfer hearing as set out in this DOR.

(4) A pre or post transfer hearing as set out in this DOR shall not be necessary if written consent to the transfer is received from the client or guardian. A copy of the written consent shall be maintained in the client's file.

PRE-TRANSFER HEARING

(5) Clients considered for transfer to the forensic center shall be given a hearing before the transfer, except as set out in section (8), to determine the necessity and appropriateness of the proposed transfer to the forensic center.

(6) The following procedures shall apply to hearings held before transfer:



MISSOURI DEPARTMENT OF MENTAL HEALTH

RON DITTEMORE, DEPARTMENT DIRECTOR



DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
4.533

SUBJECT Transfer to Biggs Forensic Center	EFFECTIVE DATE 7-1-10	NUMBER OF PAGES 4	PAGE NUMBER 2 of 4
--	--------------------------	----------------------	-----------------------

(A) The head of the transferring facility shall notify the client, and any guardian on the Notice of Hearing on Transfer Request Form, of the hearing at least forty-eight (48) hours, excluding weekends and legal holidays, before the hearing and a copy of the notice shall be placed in the client's file. The notice shall contain:

1. The purpose, time and place of the hearing;
2. A specific account of the statements, occurrences, facts and conditions that are the basis for request for transfer;
3. A list of witnesses who may testify on behalf of the head of the transferring facility and a statement that the client or advocate shall have access to the witnesses prior to the hearing;
4. The client's rights, as set out in subsection (D) of this section.

(B) If the client needs assistance in understanding the notice, facility staff shall explain the notice and the client's rights regarding the hearing. The date and name of the person giving the oral explanation to the client shall be documented in the progress notes of the client's record.

(C) Clients shall have the right to be represented by an advocate of choice (e.g., attorney, Missouri Protection and Advocacy, facility patient advocate, parent, spouse, minister, guardian) at the hearing at no cost to the department. The advocate may meet with the client before the hearing, investigate the basis for the request for transfer, and attend the hearing. DMH staff will assist the client in arranging for an advocate if requested to do so by the client.

(D) Clients and their advocates shall have the following rights at the hearing:

1. To be given a reasonable delay in holding the hearing for good cause shown to the DMH hearings administrator;
2. To present witnesses (e.g., family members, staff members, or other clients who are willing to testify);
3. To confront and cross-examine witnesses;
4. To appeal the decision of the hearing administrator as set out in section (10).

(E) The hearing administrator shall decide whether confinement in the forensic center is necessary and appropriate for the client.

1. The transfer is "necessary" if the client is dangerous and cannot be safely treated in a less restrictive setting than the forensic center;
2. The transfer is "appropriate" if the client can receive treatment at the forensic center that is reasonably appropriate for the client's needs;

(F) A hearing administrator appointed by the director of Department of Mental Health from among the staff of the central office of the department shall conduct the hearing.

1. The hearing audio shall be recorded and the audio recording shall be kept for at least one year. Upon appeal or good cause shown, a transcription of the proceedings shall be given to the client and/or the client's advocate.
2. The head of the transferring facility shall have the burden to show that confinement in the forensic center is necessary and appropriate for the client. The



MISSOURI DEPARTMENT OF MENTAL HEALTH

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DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
4.533

SUBJECT Transfer to Biggs Forensic Center	EFFECTIVE DATE 7-1-10	NUMBER OF PAGES 4	PAGE NUMBER 3 of 4
--	--------------------------	----------------------	-----------------------

superintendent of the facility requesting a transfer shall designate a staff member to present the facility's position.

3. At the discretion of the hearing administrator, in consultation with the facility and the client or his representative, witnesses may either remain in the hearing room or be called in as they are needed to testify.

4. The hearing administrator's decision shall be based solely on the evidence introduced at the hearing and is restricted to either sending the client to the Biggs Forensic Center or retaining the client in the referring facility.

(7) Within five (5) working days after the hearing, the hearing administrator shall give a written order for or against transfer.

(A) The order shall contain the facts presented at the hearing, the specific reasons for the hearing administrator's decision, especially stating why the proposed transfer is or is not necessary and appropriate and, if the order is for transfer, a statement of the procedures for appealing the hearing administrator's order.

(B) A copy of the order shall be placed in the client's file and a copy given to the client, client advocate, any guardian, the heads of the transferring and proposed receiving facilities and the division director within forty-eight (48) hours after the order is issued.

POST TRANSFER HEARING

(8) If a facility head decides there is imminent danger that a client will cause serious harm to others, the client may be transferred to the forensic center before a hearing. Before any transfer shall occur, the head of the transferring facility shall contact the Chief Operating Officer of Fulton State Hospital to obtain approval for immediate admission to the forensic center. Prior to the post transfer hearing, the sending facility shall state, in writing, to the client, the specific reasons for a post transfer hearing and that such a hearing shall be conducted within five (5) working days of transfer. A copy of the statement shall be placed in the client's file and a copy given to the client, any guardian, and the division director.

(9) All of the provisions of sections (6) and (7) shall apply to hearings after transfer except that the hearing shall be arranged by Fulton State Hospital and held within five (5) working days after the transfer. Notice shall be made on the Notice of Hearing on Transfer Form.

APPEAL PROCESS

(10) A client, the client's advocate, guardian or the head of the transferring or receiving facility may appeal the decision of the hearing administrator as set out below:

(A) Within fifteen (15) days after receipt of the hearing administrator's order, the client or representative may appeal the hearing administrator's order in writing to the department director. Within five (5) working days after receipt of the hearing



MISSOURI DEPARTMENT OF MENTAL HEALTH

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DEPARTMENT
OPERATING
REGULATION
NUMBER

DOR
4.533

SUBJECT Transfer to Biggs Forensic Center	EFFECTIVE DATE 7-1-10	NUMBER OF PAGES 4	PAGE NUMBER 4 of 4
--	--------------------------	----------------------	-----------------------

administrator's order, the head of the transferring or receiving facility may appeal the hearing administrator's order in writing to the department director. If either the facility or the client appeals the decision, they shall include in the appeal the basis for such appeal. The department director shall send a copy of the letter of appeal to the client, the client's advocate, and the heads of the transferring and receiving facilities.

(B) Upon receipt of the letter of appeal, the department director shall order a transcription of the hearing and such transcription shall be prepared and delivered to the department director within fifteen (15) working days after the order.

(C) The department director shall review the client's records and transcription of the hearing and shall, within five (5) working days after receiving the records and transcription, affirm or overrule the hearing administrator's decision.

(D) While the department director is reviewing the decision, the client, the client's representative, the heads of the transferring and receiving facilities may review the hearing administrator's order and submit comments to the department director. Such comments shall be submitted to the department director within fifteen (15) working days after the date of the order to be considered as part of the appeal.

(E) Copies of the department director's written order shall be given to the client, the client's advocate, guardian, the heads of the transferring and receiving facilities and a copy shall be placed in the client's file.

(11) Failure to comply or assure compliance with the provisions of this DOR may be cause for disciplinary action, up to and including dismissal.

HISTORY: Original DOR effective July 1, 1986 replacing Operating Regulations 138 and 188. Amendment effective May 30, 1989. Amendment effective September 1, 1994. Amendment effective February 15, 2001. Amendment effective June 1, 2004. Amendment effective October 1, 2006. Amendment effective July 1, 2010.