

NEWS > CRIME AND PUBLIC SAFETY

## Delays at state mental hospital continue to put strain on defendants, justice system



The Colorado Mental Health Institute at Pueblo. April 03, 2015. (Photo by RJ Sangosti/The Denver Post)

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In February, the Boulder County District Attorney's Office petitioned the 20th Judicial District to issue a citation to the Colorado Mental Health Institute at Pueblo, hoping it would [force the state hospital to provide an update](#) on a mass shooting suspect undergoing treatment.

The order worked, as the state hospital soon after [provided a written report](#) to attorneys on restoration efforts for Ahmad Alissa, who is accused of killing 10 people at a Boulder King Soopers last year.

"Generally speaking, when it's a serious case, it's in everyone's best interest that the offender is getting the required treatment and medication so they can assist in their defense and the case can move forward," Boulder County District Attorney Michael Dougherty said.

But while this high-profile situation was quickly resolved, anyone who has spent any time in a Colorado courtroom in the past few years can see that is the exception, not the rule.

Attorneys and judges have increasingly expressed frustration at the delays associated with restoration efforts at the state hospital, where significant waits have led to lengthy delays in cases and inmates languishing in jail awaiting treatment.

"For as long as I've been practicing law, CMHIP has always been incompetent, and apparently unrestorable," said defense attorney Christian Griffin, who has been practicing law in Boulder for more than a decade. "Look no further than the federal consent decree that's been in place since 2019."

The decree Griffin referred to [followed eight years of legal disputes](#) between the Colorado Department of Human Services and Disability Law Colorado, a nonprofit organization that in 2011 sued in federal court over wait times. The two sides in 2019 reached a new agreement that created a system of fines to penalize Colorado when it fails to meet deadlines.

But Griffin says it's not working. For cases and defendants that aren't high profile, the delays continue.

"Since then, things have gotten even worse," Griffin said. "So, it's disingenuous for



"The Boulder DA's office is just making a stink about it in the King Soopers case, because that's a high-profile case. But in cases that don't garner media attention, prosecutors, in my experience, typically don't bat an eye when the state hospital routinely violates indigent, mentally ill criminal defendants' rights."

## 'My client is being warehoused in a cage'

Griffin currently has a client who was arrested in December 2019 and charged with motor vehicle theft and eluding, along with two misdemeanors.

The client, now 21, was deemed incompetent April 6, 2020, almost two years ago. To date, the client has yet to get any restoration treatment and has been in the Boulder County Jail since July 10.

"The poor kid was 19 years old when he picked up the charges he's sitting in jail for now," Griffin said. "He had one prior adult conviction for a low-level misdemeanor, he's severely mentally ill, and as of (Feb. 20), he's been in jail for 90 days longer than his co-defendant served for the exact same offenses."

At a February court hearing, even the judge expressed his frustration upon hearing the state hospital couldn't guarantee Griffin's client would be transported to the state hospital until the end of the summer, prompting the attorneys to discuss a similar contempt of court order that was issued in the King Soopers case.

"He threw himself off the second floor of his pod, resulting in serious injuries that required extensive hospitalization," Griffin said of his client.

Griffin filed a motion asking for a personal recognizance bond, saying his client could be restored to competency much faster out of custody.

"My client is being warehoused in a cage not because of his charges, but because of his disability," Griffin said. "Which makes CMHIP's current delays as much about the (Americans with Disabilities Act) as they are about the constitutional right to due process. They're obviously violations on both fronts, and my concern as a defense attorney is the impact of those violations on the person sitting in the cage, not the community at large."

Unfortunately, Griffin's client is not the only one with a similar story.



"Some of them will be there for more than a year," said Amabile, whose own experience with her adult son's schizophrenia has fueled her interest in the intersection of [mental health and the justice system](#). "This really causes people to get worse, and worse and worse. Being in jail is no place for someone experiencing psychosis."

Officials at the state hospital said staffing issues are to blame for the delays. Maria C. Livingston, the interim communications director for the Colorado Office of Behavioral Health, said 3.5 of the 21 units at the state hospital are closed.

"Staffing issues continue to pose delays for admitting individuals," Livingston said.

Orders from the state hospital on individual cases have also reported that [spacing and transportation issues due to the COVID-19 pandemic](#) have also played a part in some of the backlog.

The impacts of the pandemic are also sometimes indirect. In the case of Griffin's client, he had been doing well on a community supervision program until the pandemic forced the program to limit visits. Without the structure of the program, he slipped up and wound up in jail.

"I think it's fair to say people have been cut off from treatment, and some of those issues do bleed over into the criminal justice system," Dougherty said.

But Amabile said not everything can be blamed on COVID, noting that the delays with the state hospital predate the pandemic.

"We had a problem before COVID," Amabile said. "Every year the state has to pay \$10 million because we have not gotten rid of this backlog. Yes, there are dire staffing problems, and there is a staffing problem at the state hospital. Part of it is it's in Pueblo and it's hard to hire people, part of it is they don't pay enough. But this problem existed pre-COVID."

## **'We absolutely have to get people out of jails'**

As society's grasp on mental health has evolved, Dougherty said mental health and competency issues have come to play a large role in the criminal justice system.



"Obviously it's really important that people receive the treatment and medication they need to be competent to move forward with a case," Dougherty said.

While more jails, including Boulder County, have begun implementing their own mental health programs and begun allowing evaluation and treatment within the jail, Dougherty said there are some defendants who need the resources only found at the state hospital.

"The challenge with that process though is that when someone is at the state hospital, they are monitored 24/7, as opposed to someone just visiting them at the jail," Dougherty said. "The jail also can't force someone to take medication, while the state hospital can, under specific circumstances, force someone to take medication."

So Dougherty said he thinks the state hospital needs to be able to take care of its backlog of cases.

"I strongly believe the state has to provide the state hospital in Pueblo with the resources they need," Dougherty said. "I think as we continue to consider the possible impact of delays on serious cases, we have to make sure the state is funding the hospital."

Griffin said he thinks prosecutors can also help by using more discretion when evaluating when cases should be dismissed, rather than having defendants languish in jail.

"The state hospital is not wholly to blame," Griffin said. "There are other options, including local prosecutors taking the time to thoughtfully exercise better judgment about which cases to continue prosecuting and which cases to dismiss. That, in and of itself, could clear up some of the backlog at the state hospital."

Dougherty said that is something his office evaluates in cases, but also added he does not think simply letting defendants go is the answer, either.

"There's been discussion of just releasing individuals found incompetent after a certain amount of time, but that's a safety valve we should not utilize," Dougherty said. "It doesn't help the individual, and it also puts the community at risk."

For Amabile, the solution lies even further up the line in addressing those with mental health issues before they find themselves in a crisis. She has been working



"If we don't do that, no matter how many competency restoration beds we build, we still won't have enough," Amabile said. "We have to do both. We have to stop people from getting into the criminal justice system, and then we have to do better with them once they do."

But what most can agree on is that inmates sitting in cells is not the solution.

"We absolutely have to get people out of jails; that is just so wrong," Amabile said.

Added Griffin, "Sadly, it's as if we're back in the '50s again, with jails as our new asylums. It's truly a shame."

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