

LOUISVILLE, Ky. (WDRB) – Cane Madden smeared his feces on the wall of a psychiatric hospital in La Grange, Ky., spelling out "I will kill her."

He also threatened to harm children and animals and said he wanted to "kill and then rape the first female that he comes in contact with," a psychiatrist testified in court.

When a Louisville judge found Madden incompetent to stand trial in a violent sexual assault case earlier this year, she asked if prosecutors would try to have him hospitalized. In that case, he was accused of not only sexually assaulting a woman but biting her face, "removing a large chunk," according to an arrest report.

Circuit Court Judge Annie O'Connell said Madden was "a danger to himself and others."

He was hospitalized – but not for long. He ultimately went free because he didn't meet Kentucky's criteria for involuntary hospitalization, a law that says, in part, people can only be held against their will if they will benefit from treatment, even if they are mentally ill and considered dangerous.

After his release, he was arrested again in May for breaking into a business. But a judge dismissed that case earlier this month over the same competency concerns and sent Madden to Central State Hospital in Louisville.

And, again, he was quickly released, starting the cycle anew. Less than 24 hours later, [Madden was accused of raping and assaulting an 8-year-old girl, fracturing her skull with a shovel.](#)

The Madden case has placed a new spotlight on a decades-old problem in Kentucky: mentally ill defendants who aren't competent to stand trial but can't by law remain hospitalized. The result is a dangerous person walking free.

"It's a crazy loophole," said Hardin Commonwealth's Attorney Shane Young, who also is president of the state's commonwealth's attorney's association. "It's nuts. If the legislature doesn't do something about this, there is going to be more people get hurt."

The problem is that a different set of laws determine whether someone is competent to stand trial versus whether that person can be involuntarily hospitalized.

In the legal process, judges in Kentucky must decide, based on psychiatric evaluations, whether a defendant can understand the charges against him and participate in his defense.

Meanwhile, there are four separate criteria determining whether a patient can be involuntarily hospitalized:

- The person must be mentally ill
- The person must be deemed a danger to himself or others
- The person is expected to benefit from treatment
- Hospitalization is the least restrictive treatment available

If any one of those criteria is not met, at any time during treatment, the hospital is required by law to release the person.



As Assistant Commonwealth's Attorney Emily Lantz told Judge O'Connell after the incompetency ruling:

"He has gone to U of L hospital multiple times under the same conditions and they have consistently found there is no reason to hold him," she told the judge. "He's not kept very long at all, whether they find he is not a danger to himself or they find there is nothing that can be done to have him benefit from the treatment."

Young said he has one or two such cases in Hardin County every year. Most recently, he said he had a defendant charged with arson released from a hospital because treatment wouldn't help him.

"The person we can't help -- the person who's so mentally ill that they're not going to be helped, they're not going to be better -- those are the ones we're required to release back into the public," he said during an interview.

"It's every prosecutor's nightmare, because you know this person's dangerous. You know this person's going to do it again. A lot of these individuals indicate they're going to do something like this again."

### **A system gap**

Madden is that worst nightmare case. And he repeatedly said he would attack again.

He has been hospitalized or jailed more than 20 times, according to court records. He has been arrested multiple times on charges of criminal mischief, assault, burglary, sexual abuse, terroristic threatening and rape going back years.

Each time, the charges were dismissed because he was found incompetent. While he has been hospitalized, those stays haven't been for long.

He will turn 30 this week.

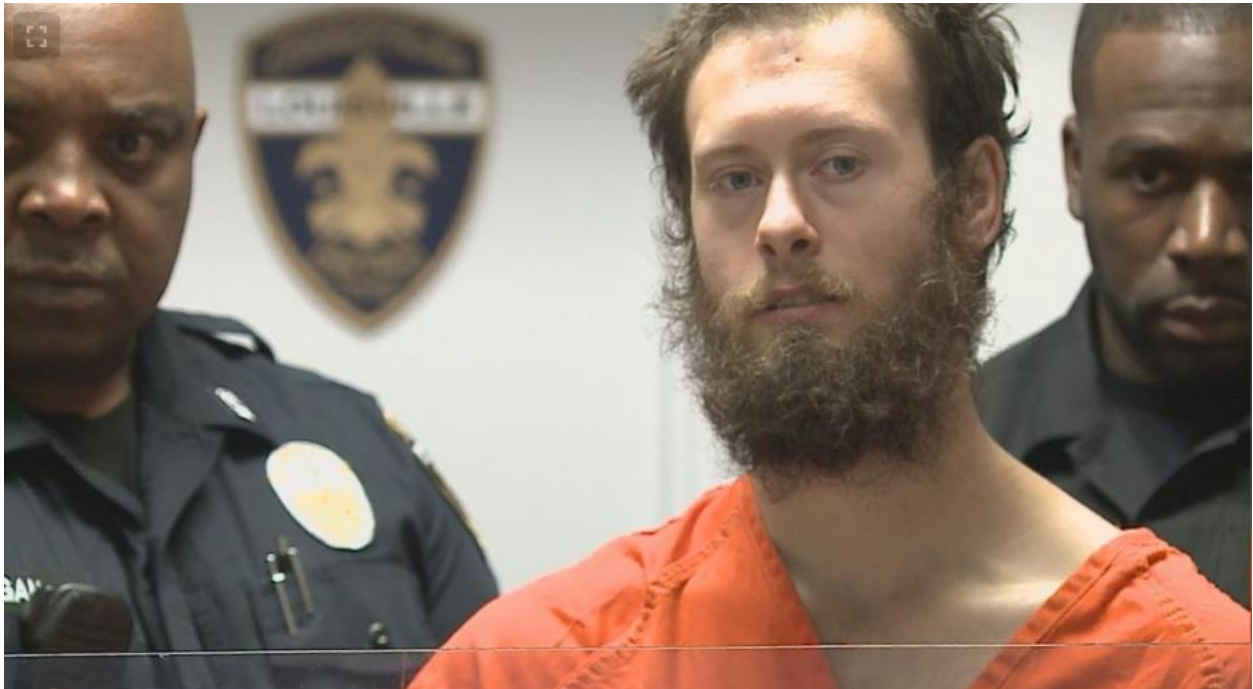
"Oh my God," Jefferson Circuit Court Judge Erica Williams said earlier this month upon learning Madden was only 29, while looking at his criminal history.

On Aug. 8, Williams found that Madden was not competent to stand trial in the burglary case, following a recommendation from both the prosecution and defense.

Knowing that Madden had just been found incompetent by another judge - and the case dismissed - prosecutors likely knew this case would end with the same result and jailing him would not be possible.

"When asked about homicidal ideation, he stated, 'I want to kill someone,' Williams said during the hearing while reading from Madden's court file. "When he was asked who he wanted to kill, he said, 'Some straight woman.'"

Prosecutors agreed with the judge that they should seek a "mental inquest warrant," ordering that Madden be hospitalized. He was freed within hours.



Madden has been described in court as having intermittent explosive disorder, substance abuse disorder, narcissism and anti-social personality traits.

A psychiatrist from the Kentucky Correctional Psychiatric Center in La Grange said Madden was violent, assaulted staffers and "displays very little remorse for his actions," according to video of court testimony.

He has, at times, been unable to answer even the most basic questions about his life: where he was born and raised, what school he went to and why he received a disability check.

During one court hearing earlier this year, Madden can be seen talking to a deputy about murder and chopping up bodies.

"He was writing letters stating that he wanted to grab a three-to six-year old and have sex with them," a psychiatrist testified.

Wendy Morris, the commissioner of state's Department of Behavioral Health, acknowledged there is a "gap in our system" for defendants like Madden.

"If you are deemed not competent to stand trial and not restorable, the laws are silent," Morris said in an interview last week. "There's not a statutory process for that."

Morris said the cabinet is looking to fix the problem, studying how other states handle the issue with a "renewed focus" in light of the "horrific and tragic event" in the Madden case.

The mental health community has a "sense of urgency, whether it be a statutory fix, to see what our options are," Morris said.

While Morris noted only a tiny percentage of mentally ill defendants fall into this loophole, the issue has come up time and again over the years.

One prominent example is the case of Patricia Ann Smith, a Louisville woman who was arrested more than 40 times in the 1990s but found too incompetent for trial yet not mentally ill enough to be hospitalized against her will for very long.

As The Courier-Journal outlined in a story about Smith 20 years ago, she would resume taking medication while in the hospital and then be released after being deemed no longer a threat to herself or others.

Once back in society, however, Smith would stop taking medication and soon be arrested again.

Smith was charged with kidnapping, robbery and even murder, yet she was set free over and over, the newspaper reported. It appears she died in 2016.

Dr. Shelia Schuster, a longtime mental health advocate, said the blame doesn't lie with prosecutors or individual hospitals.

"This is a system's gap and we really need to be looking at it," she said. "There's something amiss that we're not addressing in a way that is protecting the rest of our society."

In the late 1990s, a state task force was appointed to study the issue and made several recommendations to the Kentucky legislature. But nothing changed.

A psychiatrist with Central State Hospital at the time told the newspaper that there was reluctance to change the law for fear of damaging the rights of mentally ill people who had not committed crimes.

And in an interview last week, Morris noted the same issue, pointing out that people with mental illness are much more likely to be victims of crime.

"It's very complicated," she said. "How can we strengthen the system moving forward for all people, not just one particular case?"

### **'Scary as hell'**

In his most recent arrest, Madden admitted taking an 8-year-old who was playing on her iPad in the 1700 block of Hale Ave., beating her head with a shovel and raping the child. The child suffered a head fracture and multiple cuts and bruises.

Madden has been indicted on charges of rape, assault and robbery. He is lodged in Metro Corrections on a \$1 million bond and will be back in court on October 25. A not guilty plea has been entered on his behalf.

The judge in his new case is, again, Annie O'Connell, who ruled Madden incompetent earlier this year.

And prosecutors already fear what could happen next.

If his defense attorney raises competency issues, as expected, "we have no alternative" but to follow the current law, meaning Madden could be released again if found incompetent, according to Jefferson Commonwealth's Attorney Tom Wine.

Wine said he has "concerns with the state of Kentucky law," adding that his office has already been in talks with mental health professionals and hopes to work with the Jefferson County Attorney's office to "craft legislation that will provide a process that better protects the community."

Young, the president of the Kentucky commonwealth's attorney's association, said the law should be changed to eliminate the criteria that people who won't benefit from treatment must be released.

"This has been going on ever since I've been doing this, and it's been scary as hell ever since I've been doing this," he said.

"After a while, it's like beating your head on a wall, because you know this is going to happen again."