

Meeting Minutes
Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who
Are Criminal-Justice Involved
August 23, 2023
Microsoft Teams Phone/Video Conference

ATTENDEES

Working Group Members Present: Susan Aranoff (Developmental Disabilities Council - DDC), Susan Garcia Nofi (Vermont Legal Aid - VLA), Stuart Schurr (Department of Disabilities, Aging, and Independent Living - DAIL), Jennifer Poehlmann (Vermont Center for Crime Victim Services - VCCVS), Eliza Novick Smith (Vermont State Employees Association - VSEA), Tiffany North Reid (Office of Racial Equity - ORE), , Rep. Ela Chapin (House Judiciary - HJ), Sen. Dick Sears (Senate Judiciary - SJ), Sen. Ginny Lyons (Senate Health and Welfare- SHW), Pat Frawley (Vermont Crisis Intervention Network - VCIN), Hon. Karen Carroll (Vermont Judiciary - VJud).

Working Group Members Absent: Max Barrows (Green Mountain Self Advocates – GMSA), Karen Barber (Department of Mental Health - DMH), Rep. Rey Garofano (House Human Services - HHS)

Others Present: Ashley Bonneau (DAIL), Rebecca Silbernagel (DAIL), Delaina Norton (HC), Marie Lallier, Joanne Kortendick, Kelly Carroll, Jared Bianchi (DSA -Bennington), Bart Gengler (AHS), Tim Lueders-Dumont (SAS)

Motion to Approve August 2, 2023, Minutes:

First: Susan Aranoff

Second: Hon. Karen Carroll

Minutes are approved as written.

Vermont Crisis Intervention Network:

Pat Frawley

The Vermont Crisis Intervention Network has three levels. The first level is *Clinical Foundation Building*, which aims to reduce and potentially prevent crises throughout the state by increasing the level of clinical expertise within the agencies. Level II, *On Site Consultation*, focuses on stabilizing a potential crisis through early intervention. Level III, *Residential Crisis Services*, strives to keep individuals out of institutions by providing treatment in a calm, non-secure environment, with the goal of a rapid return to the community. Currently, there are three statewide crisis beds available.

In its 32 years, VCIN has declined to serve only 8 people due to concerns that those individuals were motivated and capable of leaving VCIN's care and, upon eloping, could

present a risk of danger to the community or to themselves. In 2018, the average stay in the Moretown and Wardsboro beds was 16 days. Since 2020, the Moretown bed has served the same individual for more than 3 years, while the Wardsboro bed has served the same person for 327 days and counting. The third bed has served the same individual for 339 days and counting.

The system is no longer working as intended or how it did for decades. Agencies lack the human resources needed to support these most challenging individuals.

We need to do something more and different. A forensic unit could be designed to be sensitive to those with DD who present an extreme risk of harm, and someone in that facility, even for a short time, would receive psychiatric, psychological, nursing, and medical care at a level that exceeds what is available in the VCIN crisis beds.

Olmstead and the Americans with Disabilities Act

Bart Gengler, General Counsel, Agency of Humans Services, provided an overview of the *Olmstead* decision. The issue before the Court was whether the failure to provide a community-based setting to individuals residing in an institution violated the “reasonable accommodations” provision of the ADA. The Court answered with a qualified “yes.” The Court said that 3 factors must be considered: (1) Did the person’s treatment professionals determine that community supports are appropriate for that individual? (2) Did the person not object to living in the community? (3) Was the provision of services in the community a reasonable accommodation, or would doing so “fundamentally alter” the services?

Despite the move toward community-based placements, the US Supreme Court’s holding in *Olmstead* was not condoning the termination of institutional-based settings across the board; rather, states may continue to rely on the reasonable assessments of its own professionals in determining whether an individual is eligible for community-based programs, and there was no requirement that community-based treatment be imposed on those who do not want it.

The forensic model contemplates a short-term placement to stabilize individuals who present a high level of dangerousness, many of whom present with co-occurring disorders, until community-based programming can be developed which meets their needs while ensuring the safety of the community. The Legislature has directed us to focus on whether there is a need for a forensic facility for individuals with ID who cannot be served in a community-based setting as a result of their dangerousness.

The meeting was adjourned at 4:00 pm.