

Meeting Minutes
Working Group on Policies Pertaining to Individuals with Intellectual Disabilities
Who Are Criminal-Justice Involved
October 18, 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), Tiffany North Reid (Office of Racial Equity - ORE), Hon. Karen Carroll (Vermont Judiciary - VJud), Max Barrows (Green Mountain Self-Advocates - GMSA), Mary-Graham McDowell (Vermont Care Partners - VCP), Rep. Rey Garofano (House Human Services - HHS), Pat Frawley (Vermont Crisis Intervention Network - VCIN)

Working Group Members Absent:

Karen Barber (Department of Mental Health - DMH), Rep. Ela Chapin (House Judiciary - HJ).

Others Present: Kim Guidry (DAIL), Rebecca Silbernagel (DAIL), Joanne Kortendick (guest), Nicole DiStasio (DMH), Barbara Lee (Co-Chair State Program Standing Committee), Michael Kasper (GMSA), Marie Lallier (VT Care Partners), (Kelly Carroll (guest).

Motion to approve minutes from 9/11/2023:

First motion: Jennifer Poehlmann

Seconded: Justice Carroll

Approved as submitted.

The Victim's Perspective

Presentation by Joanne Kortendick and Kelly Carroll with Powerpoint slides

Would a forensic facility be a solution to fill the gap?

Dangerousness is one factor that will be considered to recommend the placement of an individual in the facility.

S.89 (Act 27), together with the companion Bill, S.91, they hope could establish a competency restoration program in Vermont.

In the slide presentation, the presenters outlined provisions from earlier drafts of the legislation that they would like added back into the bill.

They hope to see a treatment facility established in the forensic facility that includes competency restoration and a better system to convey the accused's progress or status to victims and their families.

They believe that there have been times when an individual accused may have been uncooperative or unwilling to participate in a competency evaluation, because if they were found competent, they would potentially then be charged and face their crimes.

They would like all of the victims' provisions added in, including having a voice about whether the individual is admitted to the facility and whether the participant is discharged.

Mary Graham-McDowell: Are victims made aware when there is a change in custody to someone in the custody of DAIL or DMH?

Joanne and Kelly shared incidences in their respective situations where they were not notified when the AP was moved between facilities or housing. Jennifer Poehlmann stated victims have many rights in the criminal justice process, but there are no enforcement methods and no remedy if notification about the status of an AP to the family doesn't happen.

Jennifer opened the discussion about the proposed changes to Titles 13 and 18 of Vermont Statutes.

Justice Carroll made it known that she will abstain from discussion of any language to statutes.

This discussion will focus on those sections that pertain to those under Act 248 (i.e., Sections 2, 3, 4, 12, 13 and 14 through 19)

Section 2: 3 V.S.A. § 3098 Human Services Community Safety Panel

Susan Aranoff: Would like to see people/a person on the panel with clinical expertise, beyond those available in the departments. Perhaps independent experts, outside of the Agency of Human Services, third-party clinical experts in the areas of psychiatry, developmental disability, intellectual disability, and competency restoration.

Senator Lyons: Notes that legislation frequently assigns responsibility for making such determinations to appointing authorities (e.g., "secretaries"). Agrees that this section should include qualifications to ensure the Panel possesses the necessary clinical expertise; however, leave it to the Commissioners to help make those decisions. Suggests that a Panel member, or a consultant, with knowledge of the subject matter, could assist the Panel and Commissioners.

Eliza Novick Smith: Agrees with Susan Aranoff's and Senator Lyon's suggestions. In addition, wants the availability of personal information to be considered in this statute. Her experience is that legal process for individuals can be hampered by barriers to important information; process is slowed by requiring releases, agreements, authorization to share info, including between state entities. It's important that those making decisions on behalf of these individuals have access to all the information necessary and on a timely basis, to fully evaluate backgrounds in dangerousness. In addition, Eliza suggests including law enforcement representation on the panel, or to make sure the Panel has access to criminal history and other law enforcement databases.

Section 3:

Stuart: Regarding the provision in 13 V.S.A. § 4821, which states, “Procedures for hearings for persons with an intellectual disability shall be as provided in 18 V.S.A. chapter 206, subchapter 3,” 18 V.S.A. chapter 206, subchapter 3 lacks clear procedures for hearings concerning the initial commitment of individuals to the custody of the DAIL Commissioner and the placement of an individual in the forensic facility. Chapter 181 contains more procedural details than Chapter 206.

Susan Garcia Nofi: Since the Panel would be making the recommendation for placement in the facility, Susan believes the clinical factors for admittance to the forensic facility should include evidence that lower levels of care have been tried and exhausted before it is determined that the forensic facility is the least restrictive option. “Dangerousness” should consider evidence of one’s repeated dangerousness, as opposed to using the conduct that led to the individual’s commitment under Act 248. In addition, the term “evidence-based violence risk assessment tool” needs to be defined, as does what constitutes “evidence-based”. Suggests that she could be more comfortable with the Panel making such a recommendation if the Panel considered the recommendations of a clinician who administers the “evidence-based violence tool.” For example, the clinician could help identify the most appropriate assessment tool to use for an individual with ID.

Pat Frawley: States there is an overlap between those with ID and psychiatric disorders, so distinguishing between the procedures to be followed for each population may not be appropriate.

Susan Aranoff: From a civil rights perspective, those with developmental disabilities and mental illness or brain injury should be treated the same in terms of due process and protections. All those with developmental or intellectual disabilities should receive the highest standard we offer in due process.

Max Barrows: Agrees with VDDC (i.e., a forensic facility should not be an option for individuals with I/DDO). Says GMSA has due process concerns and agrees with Legal Aid that a judge should be authorized to initially place a person with ID in this facility for *no more than* 90 days, and that the burden should be on the State to justify continued placement. GMSA believes “dangerousness” should be defined as repeated acts, as opposed to basing eligibility for placement in the facility on a single act that may have occurred years earlier.

Stuart: Emphasized that, as defined in the draft bill, the dangerousness factors would require a showing “there is a reasonable probability that the conduct will be repeated if admission to a forensic facility is not ordered.” Not everyone on Act 248 would be a candidate for the facility.

Section 4: 18 VSA section 7101

Susan Garcia Nofi: Pointed out the conflicting wording between language about this facility being for an extended period of time and the idea that this is a transitional placement until individuals are regulated. Suggests taking off the wording about “extended period of time” altogether and stating that it is for someone who is in need of this treatment within a secure setting.

Max and Susan Aranoff expressed concern about the availability of community placements once individuals are discharged from the forensic facility. Stuart responded that, through the Designated Agencies/Specialized Service Agencies, residential placements in the community for those who do not pose a risk of harm to themselves or the community can be identified. The scarcity of placements is with

those who pose a risk of serious harm. Also, those under a Court Order to be kept in a less restrictive environment would have community-based options.

Section 12:

Susan Garcia Nofi: This section doesn't distinguish between an Act 248 commitment, in which one would be placed in a designated program in community-based setting, and placement in a forensic facility. Without such a distinction, Susan is concerned that an individual placed in the forensic facility would likely need to wait for their annual review to challenge the placement. Susan encourages language similar to that of the mental health portions of this statute, including that which requires a court review of an individual's commitment before extending the placement beyond the initial 90 days. Susan will propose draft language.

Section 13:

Susan Garcia Nofi: Suggests adding language in this section about the standard of review, clear and convincing evidence, and she'll draft some language to present to the Group.

Stuart: Current language speaks to someone coming into custody at initial commitment, but DAIL also believes there should be an option to consider whether someone already committed to Act 248, who is deemed to pose a risk of harm to self or others after the initial commitment, could be then placed in the facility for a period. There should be a provision to examine whether someone is no longer suited for a community-based setting, and it should be up to the Family Division to consider whether a more restrictive setting than the one they were originally placed in is appropriate. If this language is going to be added, it should be consistent with the process utilized by the Criminal Division when considering one for placement in the forensic facility at the time of their initial commitment.

Susan Garcia Nofi: VLA disagrees and believes initial commitment should be in a community-placement first, before placement in a forensic facility. Placement in a forensic facility should happen only once lower levels of intervention are tried and found unsuccessful. VLA also believes this civil commitment process should happen in the Family Court vs the Criminal Court because it involves the individual's medical treatment, and the Family Court is already positioned for this treatment review because of the Act 248 annual reviews process already in place.

There were no objections to the language that was struck in section 13.

Public Comments:

Barbara Lee (co-Chair of the DS State Program Standing Committee): Thought that a flow chart or set of rules to follow when someone with an intellectual or developmental disability is going to be considered for commitment or for placement in the forensic facility would assist with decision-making.

The meeting was adjourned at 4:02 pm.