Meeting Minutes
Working Group on Policies Pertaining to Individuals with Intellectual Disabilities
Who Are Criminal-Justice Involved
November 01, 2023
Microsoft Teams Phone/Video Conference

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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), Karen Barber (Department of Mental Health - DMH), Jennifer Poehlmann (Vermont Center for Crime Victim Services - VCCVS), 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), Laura Carter (Office of Racial Equity - ORE), Sen. Lyons , Rep. Ela Chapin (House Judiciary - HJ).

Working Group Members Absent:
Tiffany North Reid (Office of Racial Equity - ORE), Sen. Dick Sears (Senate Judiciary - SJ), Eliza Novick Smith (Vermont State Employees Association - VSEA)

Others Present: Kim Guidry (DAIL), Rebecca Silbernagel (DAIL), Joanne Kortendick (guest), Nicole DiStasio (DMH), Barbara Lee (Co-Chair State Program Standing Committee).

Motion to approve minutes from 10/18/2023:

First motion: Justice Carroll
Seconded: Sen. Lyons
Approved as submitted.

Justice Carroll stated that she will abstain from all discussion about statutory language.

Susan Garcia Nofi and Susan Aranoff each sent the group suggested language

<u>Discussion about Changes to the draft language:</u>

Garcia Nofi: Their first suggestion for 13 VSA §4821(c)(2) is to add "repeatedly" to "threatened", so that a pattern or repetition of *threats* of dangerous behavior is considered for eligibility for admission. Second, VLA notes that since an evidence-based assessment tool wasn't specified, the Security Panel could incorporate an assessment tool into other available clinical information that could be interpreted by a trained psychologist. Third, Hilary Ward's other considerations should be considered.

Chapin: Whether "dangerousness" needs to be a one-time incident or repeated, is an important piece for this group to consider.

Schurr: Should less-restrictive options be explored first, in all instances, regardless of the crime? Example: if someone commits murder and is found incompetent, do they need to be placed in the community first and fail in that environment before being admitted to the facility?

Aranoff: DDC agrees with what Susan Garcia Nofi said above, but also with what she submitted on behalf of VLA. Susan added that when someone is being deprived of their liberty, it is important to evaluate and document ongoing risk of dangerousness.

Section 12 13 VSA §4823

Garcia Nofi: For subsection (a) VLA proposes placement be limited to 90 days for each Order which is consistent with what happens in the DMH commitments.

In subsection (b) suggestion for clearer language to distinguish between commitment to the custody of the DAIL Commissioner and placement in the forensic facility. Also, in (b), a proposal to have an independent examination or assessment, as is allowed in the DMH commitment process. These could be conducted by psychologists, who make the initial determinations of intellectual disability and adaptive behavior. Another language proposal for (b) is in line with Hilary Ward's suggestion that lower-level options were tried before admitting someone to the forensic facility, and that would be to have documentation of the lower-level options that were tried and failed.

Schurr: Agreed least restrictive setting is always the goal. Make the distinction between having the Court make the determination as to the least restrictive setting versus putting the individual through the steps of least restrictive settings and possible failing in those settings.

Barber: Clarified that DMH's independent psychiatrist's assessment reports on an individual's need for initial treatment, continued treatment, or involuntary medical treatment. The assessment does not consider level of care nor make placement recommendations but rather a determination as to whether someone has a serious mental illness and if they should be under care and custody.

Schurr: The main topic where DAIL has differing views is when this facility could be used and what prerequisites are to placement in the facility; specifically, whether all other community options need to be exhausted first.

Garcia Nofi: In subsection (c)… the burden should be on the Department to go to Court before the first order expires and demonstrate why it is necessary to extend the order placing the individual in the facility. Ninety-day stays, with continued commitment as deemed appropriate by the Court.

Barber: In alignment with the DMH commitment process, it makes sense to include language allowing placement to the facility any time after the initial commitment by the Criminal Court if someone is exhibiting dangerousness in the community setting.

Section 13 13 VSA §8845

Garcia Nofi: If there needs to be placement in a forensic facility, VLA's position is that *each* order would be limited to 90 days and that DAIL would need to justify an additional 90-day stay.

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Barber: DMH's initial commitment from Criminal Court is 90 days and thereafter orders are given for *up to* one year before review. Statutory language says that if anyone fails to meet the criteria during that time, DMH has an obligation to move them to a lower level of care, and the individual or their legal representation may also request justification for the stay. DMH has the obligation to place individuals in the least restrictive settings. The DAIL process could mirror the DMH process.

Aranoff: If at all, DDC supports a maximum of 90-day stays before review; a year is a long time if the facility becomes not the most restrictive environment for an individual.

Emphasized the need for independent, transparent, and accountable oversight for licensing the facility, determining eligibility, and reporting to the Court when and if a lower level of care is necessary for an individual.

Barber: In the DMH system, oversight is multi-fold. Evaluating practitioners are licensed and have a professional obligation to report appropriately and accurately the status of any individual under commitment. Individuals in the DMH system have patient representatives through Disability Rights VT. Anyone could make a report with concerns to the Division for Licensing and Protection, the Nursing Board or the Physician's Board. Finally, each person has an independent attorney with the ability to motion the Court anytime for a level of care evaluation, or advocate for their client in any other way.

Aranoff: Says DRVT doesn't advocate for those with DD so wonders who is advocating for this community.

Schurr: The facility would be licensed, and oversight would be provided by DAIL as a therapeutic community residence.

The Working Group's charge is to consider what roles VLA, DRVT and an Ombudsman have in providing external oversight and accountability.

Garcia Nofi: Concern about the timeliness of Act 248 annual reviews and if that will carry over to annual reviews for these individuals.

Circumstances Under Which an Individual Can Be Placed in a Forensic Facility

Schurr: Discussion topics include whether someone only comes to the facility at initial commitment to Act 248 and not afterwards, despite posing one-time or repeated dangerous behavior to self and others. Also, is there is no right to bail under Title 13, and that would be individuals who have committed certain incredibly egregious offenses.

McDowell: Initial admission to the facility should be based on repeated dangerousness, not the commitment. And there could be instances where someone would be admitted to the facility without repeated acts.

Kortendick: The victim's perspective would advocate for consideration for admission at any time, dependent on dangerousness anytime.

Schurr: Is there interest in an Ombudsman that would go into TCRs if there were funding for such a program?

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Graham-McDowell: VT Care Partners would support an Ombudsman.

Schurr: Investments, policies and programmatic options, what would be necessary for high quality community-based supports for those committed to Act 248? (no comments). Asked for comments about aligning this process with that used by DMH and their commitments. Without further comments, the report will include what has been discussed already.

November 15th will be the cut-off for input, recommendations, and suggestions for the report.

Whether there will be time before the report is due for Stuart to draft specific language for the statute remains to be seen, but at the very least the Committees and Leg Council will know where the Working Group found consensus and he will work with them on a draft statute. DAIL intends to say the Department wishes to have the option to place someone in the facility after initial commitment.

Aranoff: DDC doesn't think there should be a forensic facility at all, but, if there IS going to be one, the DDC believes that at the time of admission the person is *clinically* determined that they can't be in a less restrictive setting. An independent clinician should look at the person's present dangerousness, not their history of dangerousness.

Barber: To clarify; in this draft language, the AHS Safety Panel will make a recommendation and the final determination comes from the Commissioner. Currently, in DMH, clinicians at the facility make decisions for admission. No one goes to VPCH unless an admitting physician determines they meet criteria or that level of care. The idea of the AHS Safety Panel is to bring different points of view together to make the recommendation, not to have the final say in admittance. Also, DMH doesn't need to exhaust all other options, but goes to the Court to explain what has transpired with the individual and why DMH feels the selected option is the least restrictive one, and the Court decides. DMH's suggestion is to align DAIL's process with DMH's. Finally, add into the statute a requirement that DAIL needs to try all other options before admitting to the forensic facility, is too "narrow," which leads to unintended consequences.

Aranoff: Supports independent clinical input, independent legal and advocacy.

Public Comment

Barbara Lee is Co-chair of the State Program Standing Committee for Developmental Disabilities, a parent of an adult with intellectual and developmental disability, and a physician. The Standing Committee thinks it is important to have someone with lived experience speak to the Working Group. The single most important factor to promote healing in a person who's been traumatized is a safe relationship.

Barbara shared a report from 13 years ago by DAIL's then Commissioner, Joan Senecal, about individuals with Developmental Disabilities who pose a public safety risk. The report opined that instead of creating a separate location for those who pose a public safety risk, Vermont may want to fund a DA to provide the services for these high-risk individuals. Barbara pointed out that this was not taken up and instead the solution is to create a separate facility. She encourages members to read the full report as well as the Seven Days article about Woodside Facility.

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[Woodside Investigation: Violence and Isolation at Vermont's Juvenile Lockup | Seven Days (sevendaysvt.com)]

Schurr: Thanked Barbara for coming to this meeting and sharing the position of the SPSC, noting that the members of this Working Group tried several times to identify someone with lived experience; a participant, a family member or friend to a participant, or family or friend themselves, to speak of their experience; however, to date, no one has taken the Group up on the request to come speak. Invited Barbara, or someone she knows, to come speak to the Group about lived experience because it would be very helpful for the group to hear that perspective.

Garcia Nofi: In 18 VSA 7612 (f) involuntary treatment – talks about when there's an application for involuntary treatment and when the certificate of examination is completed, "the physician shall consider available alternatives forms of care and treatment that might be adequate to provide for the person's needs without requiring hospitalization. The examining physician shall document specific alternative forms of care of treatment considered and why they weren't appropriate." On the DMH side it says that someone shouldn't go directly to hospitalization without lesse restrictive options being considered. Wonders if there can be language created for this statute saying the same or similar; lesser restrictive options are documented and why those were not found appropriate for the individual.

Barber: The burden is on the State to prove it's the least restrictive environment, part of the analysis is considering other options, why they wouldn't or didn't work, then the Court makes the final decision.

Aranoff: Regarding the role of VLA, DDC and an Ombudsman, people in this setting should have 24/7 access to independent advocates. Whoever is assigned access for this community residence should have the same access authority that the protection and advocacy system guarantees for people who are held because of a psychiatric or other disability in similar institutional settings where they don't have access to the outside. An independent outside advocate.

Every state must have a protection and advocacy and in Vermont that's Disability Rights Vermont (DRVT). They contract work for those with DD to the Disability Law Project, as DRVT doesn't serve those with DD. Those receiving DD services do not currently have an independent advocate in Vermont. There is a pilot program started by Legal Aid in one Vermont county for those with developmental disabilities and brain injuries, but the question is who would be able to provide independent, 24/7 legal advocacy services for those in this facility, an entity with expertise advocating for those with DD. DDC's opinion is that it doesn't matter *who* the group is that is the independent advocate for those in this facility, but they need to be funded and it needs to be in statute that those in this residential community have the same 24/7 access to this support that those in DMH have.

Schurr: Believes DRVT does have legal advocacy authority for those with Developmental Disabilities. The Group will invite Lindsay Owen to the next meeting to clarify DRVT's access and authority. Agrees independent advocacy make sense for those in the facility, and the report can make a recommendation as to who could take on that role after speaking with Lindsay.

Garcia Nofi: Agrees of the importance to have independent advocacy for individuals and agreed it would be helpful to have Lindsay at the next meeting.

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How to include and provide feedback on the draft report

We can provide a document – a Google Doc or spreadsheet - that others can contribute suggestions, feedback, comments.

Graham-McDowell: Liked the spreadsheet idea; members can put comments in grids. Felt easier than adding comment bubbles. Two columns, statute or report text on the left, everyone's comments on the right, each person in a different row. Everyone can read all other comments. Nothing is erased.

Kortendick: Can we the guests or the public see a copy of the draft report?

Schurr: Will check with leg council about appropriateness of sharing legislative working group draft docs with the public.

Meeting was adjourned at 4:03 pm

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