

Act No. 27 (2023) Working Group Meeting Minutes
June 14, 2023
Microsoft Teams Phone/Video Conference

ATTENDEES

Working Group Members Present: Susan Aranoff (Developmental Disabilities Council - DDC), Max Barrows (Green Mountain Self Advocates - GMSA), Karen Barber (Department of Mental Health - DMH), Susan Garcia Nofi (Vermont Legal Aid - VLA), Pat Frawley (Vermont Crisis Intervention Network - VCIN), 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), Hon. Karen Carroll (Vermont Judiciary - VJud), Rep. Rey Garofano (House Human Services - HHS), Rep. Ela Chapin (House Judiciary - HJ), Sen. Dick Sears (Senate Judiciary - SJ)

Working Group Members Absent: Sen. Lyons (Senate Health and Welfare - SHW), Mary-Graham McDowell (Vermont Care Partners - VCP)

Others Present: Monica White (DAIL), Xusana Davis (ORE), Ashley Bonneau (DAIL), Rebecca Silbernagel (DAIL), Karen Topper (GMSA)

Review Act, Including change and timeline:

Working Group Members

The members of the group went around the room to introduce themselves and what organization/agency they are representing as required by the Act.

Overview of Act No. 27 by Commissioner White, DAIL

Starting at Section 6 of No. 27 An act relating to establishing a forensic facility:

The ultimate intent of the working group is to assess whether a forensic level of care is needed for individuals with intellectual disabilities who are charged with a crime of violence against another person, have been determined incompetent to stand trial, or adjudicated not guilty by reason of insanity, and are committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living.

If it is determined that a forensic level of care is needed for such individuals, the Working Group shall propose legislation to establish a process and criteria for the placement of those individuals in a forensic facility. Multiple committees in both the House and Senate heard a significant amount of testimony on the bill.

The working group has been directed to consult with additional individuals to include:

- a psychiatrist or psychologist with experience conducting competency evaluations.
- Individuals who have lived experience of an intellectual disability who have previous experience in the criminal justice system or civil commitment system or both.
- Family members of individuals with an intellectual disability who have experience with the criminal justice system or with competency evaluations.
- Executive Director of the Department of State's Attorney and Sheriffs
- The Defender General
- The Commissioner of Corrections
- The State Program Standing Committee for Developmental Services

The powers and duties of the working group are to assess the need for a forensic level of care facility for individuals with an intellectual disability, including the extent to which a forensic facility addresses any unmet needs or gaps in resources for an individual with an intellectual disability. A report will need to be delivered on or before December 1st, 2023, to the House Committees on Human Services and Judiciary as well as the Senate Committees on Health and Welfare and Judiciary with its findings of any recommendations for legislative actions to include proposed language.

The working group has completed the first milestone by holding its first meeting before the deadline of July 10th, 2023. The first order of business of the committee is to select the chair. The group will cease to exist on July 1st, 2024.

Members of the committee who are not otherwise compensated for their time will be entitled to a \$50.00 per diem. Ashley Bonneau will send out information on this.

Questions:

The label of a forensic level of care, does that mean you have to go to a facility? A forensic facility means a residential facility, licensed as a therapeutic community residence, as defined in 33 V.S.A. § 7102(11), for an individual:

- with a mental health condition or intellectual disability, if the General Assembly determines that commitment to a forensic facility is appropriate for an individual with an intellectual disability.
- (B) who is charged with a crime of violence against another person and the individual is assessed not competent to stand trial or was adjudicated not guilty by reason of insanity.
- (C) who requires treatment or programming within a secure setting for an extended period of time.

This facility would be specific to the very small population of individuals with an intellectual disability who are committed to the custody of the Commissioner under Act 248. The intent of forensic level of care means for individuals who meet that level of care to be eligible for placement in the facility. There would need to be a process for that to happen. Act 248 is for individuals who have been deemed incompetent to stand trial or have been found not guilty by reason of insanity after a trial. The Criminal division of the superior Court orders these individuals into the custody of the DAİL Commissioner. Currently, 26 individuals are in the Commissioner's custody under Act 248. Not all of these individuals would be eligible for the forensic facility.

When reading the language of the legislation, it suggests that the facility is going to happen, but then the Act describes that the working group is to assess the need for individuals with an intellectual disability to receive programming in a facility. The facility will be open, but the question is what population(s) will be eligible for admission.

One member asked to discuss the difference between Developmental Disability and Intellectual Disability. Developmental Disability is a broader term that means an intellectual disability or an autism spectrum disorder that occurred before age 18 and results in significant deficits in adaptive functioning. Intellectual Disability means sub-average cognitive functioning, which is documented by a full-scale IQ score of 70 or below, or up to 75 or below when taking into account the standard error of measurement.

Discussion around the selection of the chair:

If the format is to have an in-person meeting as well as a virtual option, it is prudent to select someone that will be available and present at each meeting. It is important for someone who has knowledge of what DAİL does and who they work with. It would be helpful to decide what the role of the Chair would be. It is also important for the chair to make sure that the meetings are as accessible for everyone, to include sending materials one week prior to the meeting and providing a summary after each meeting. Also, the chair should check in during the meeting to make sure the discussion has been understood and ensure that simpler terms are used during the discussions.

DAİL is committed to making sure the information is available. This will include issuing an agenda and handouts with sufficient time to review in advance of the meeting. Also, DAİL will prepare and distribute minutes and summaries after each meeting and will post them on its website.

It was discussed that the chair should have administrative support. The members also discussed the possibility of having a vice-chair for backup who represents the non-state government perspective. The committee has decided that the chair will serve as a facilitator, and there will be a vice-chair, as well. The Working Group unanimously approved the motion to have both a Chair and a Vice Chair.

Motion to select Chair.

Motion to nominate Stuart Schurr, as chair, by Rep. Chapin. The Working Group unanimously approved the motion to appoint Stuart Schurr as Chair.

Motion to select Vice Chair

Motion to nominate Jennifer Poehlmann, as vice-chair, by Sen. Sears. The Working Group unanimously approved the motion to appoint Jennifer Poehlmann as Vice-Chair.

Charge & Timeline:

The location: Meetings will be held at the Waterbury State Office Complex, and there will be a virtual option, as well.

Frequency: Meetings will be held every 3-4 weeks. The next meeting is scheduled for Wednesday, July 12th, from 12:30-2:30 pm.

Next Meeting: The committee would like more of an education meeting (Who would this be? What are the current options? What are the current problems? What is the process currently in the court system? Overview of crisis services. Current data. How many individuals with Intellectual Disabilities, how many historically, anticipating for future. What are the restrictions that individuals have in the community who are committed to Act 248? Why has the system changed? How are people getting out of this system? Also, include the socioeconomic impacts. Hearing from individuals who are in the system.

Procedures:

The group supports not using the Robert's Rules of Order, option for a more informal approach. It was stated that this Working Group is not subject to Vermont's Open Meeting Law, as it does not meet the statutory definition of a "public body". Nonetheless, members wish to ensure the public has access to these meetings. Also, before speaking, members shall identify themselves, so that those attending virtually know who is speaking. The Group will discuss whether to set aside a meeting for the public to speak to these issues or to carve out time during each meeting for members of the public to speak. The members agree that they would like broad input. There are

other creative ways that public input could be gathered and presented to the working group.

The meeting was adjourned at 3:00 pm