Forensic Working Group Meeting

Wednesday, October 26, 2022
9:00 am – 11:00 am

Attendees: Samantha Sweet, Matt Viens, Karen Barber, Jennifer Rowell [DMH]; Erik Filkorn [BGS], Joanne Kortendick [Victims Representative], Kelly Carroll, Representative Alice Emmons, Margaret Bolton [Forensic Psychiatrist], Matt Valerio [VT Defender General], Heidi Henkel [VPS], Simha Ravven [VMS President], Michael Hartman [DA], Susan Aranoff, Kimberly Blake, Jack McCullough, Brett Yates, Jared Bianchi

Rep Emmons: For the last 6 years, we have been really grappling with two things, my committee deals with corrections policy and MH issues within corrections as well. We are trying to figure out how to deal with folks incarcerated with MH issues. Forensic also plays a part in this. It is difficult to wrap your hands around the forensic issue. We are established in committees. The committees don't work in isolation of each other but sometimes we do. How do we address folks with either building a forensic unit or providing services, is it DMH, DOC, the courts? Do we build a unit, how big of a unit, who's jurisdiction does it fall under? It is putting a lot of pressure on DMH, DOC the courts. Putting together this working group was a way for the legislature to have a group come together to figure out a path forward and put forward a couple of proposals to the legislature.

Matt V: It seemed like I had the impression your committee felt that a forensic facility of some sort was a necessity or something that had already been settled on, where this group has debated that and there are certainly voices for and against. Is the legislature in favor of a forensic facility? Or is the issue whether or not one should be considered.

Rep Emmons: it is very conflicted from our committee, no unanimous feeling one way or another. HHC is also divided as well. I think there may be some folks who are saying that we have to do a facility somehow. Everyone is coming from a different angle. It is a very confusing issue and complex with strong emotions.

Karen B: One of the other things going on is the Vermont Judiciary has a commission on mental health and there are a few members on that committee here in this workgroup. Last session we had talked about that group and folks had questions. I don't think anyone from the judiciary is on right now. In the past Judge Carlson has been in these meetings but not here today. We met on Monday and some of the department heads that are most impacted on the issue gave a brief overview on the issues we are seeing. DMH talked about the delay in competency and insanity evals, reasons for the delays and talked basics about educations. The day of MH court on Friday is not great trying to place folks after that. The use of force policy came up and how that might be having impacts on folks involuntary in the custody of the commissioner, impacting the DA, the hospitals. The way we left it is there are going to divide into smaller subgroups and think about different ideas on what the workgroups could be.

Susan A: Vermont had a very significant shortage of housing. Is there a way you and the legislature could look at the lack of housing for people with disabilities? There is so much money available for bricks and mortar. There was a bill passed last session to create new hosing models with people with developmental disabilities. They are looking for safe and secure settings. I think everyone agrees on is

that we need more housing. I would like to see this group think about residential solutions and think about the housing crisis and workforce crisis.

Karen B: Please sign up to do a presentation, or if you are not comfortable presenting, please see myself or Sam as we are a great help for this and can help facilitate that. We will also send out articles that folks give to us like this: https://mentalhealth.vermont.gov/document/competency-restoration-use-state-hospitals-community-based-and-jail-based-approaches

Presentation

Joanne and Kelly: *Prosecutorial Notification and Competency Restoration: Statutory Suggestions from a Victim's Perspective*

Presentation Link: https://mentalhealth.vermont.gov/document/prosecutorial-notification-competency-restoration-statutory-suggestions-victims

Narrative Link: https://mentalhealth.vermont.gov/document/prosecutorial-notification-and-competency-restoration-victims-perspective-narrative

Jared B: [slide 8] I think these are helpful provisions and would be useful from our perspective. I do think there is a recognition of some of the burden of this from further narrowing the public safety concerns or crimes. I think the public safety mandate for DMH would be a good approach.

Matt V: The process that Joanne referenced to in her sister's case was one that the criminal court set up because there was no formal competency restoration process in statute.

Jared B: Interesting

Matt V: Thank you Joanne and Kelly. I know my work with the AGs office I was fairly involved in the case you were talking about. The criminal court on that case had established a system that there is no competency restoration process in Vermont. I think this case got more attention than the average case which underscores the need for a process. This case worked to get more information flowing between treatment providers and the court.

Joanne: In the order there was a status report that was to be provided, but nothing in the order that talked to restoration of competency specifically. It was more of just let me know how the person was doing.

Presentation

Dr. Ravven and Dr. Peg Bolton – coordinated with VAHHS and VMS

Link to Dr. Ravven: https://mentalhealth.vermont.gov/document/dr-simha-ravven-presentation-notes

Link to Dr. Bolton: https://mentalhealth.vermont.gov/document/dr-peg-bolton-presentation-notes-october-26-2022

Share a few points on our infrastructure and will improve both success in the community for individuals who are we broadly describe as forensic patients and well as safety

Does competency restoration work? What do the programs look like and when individuals are treatment in programs, how likely are they to be restored to competency? By in large, competency restoration programs work. 80-90% of those who are not competent to stand trial, are restored to competency.

Peg B: We need a forensic facility that is not connected to insurance dollars. The hospital association has people brought in, in great distress, they assault someone, they are incarcerated then back in the hospital and get no treatment. The staff at this kind of facility would need to be forensic trained. Those folks would be the hub and experts and the spokes would be intensive case management at the DAs that would connect with the hub, help with the stepdown. There could be a liaison between the hub and prosecutors' office for notification [guidelines on what would be notified]. Of course, we could divert people at any point to our regular MH system when that is warranted.

Heidi H: The idea for the forensic beds would to be used so they are in captivity while they are waiting for a ruling, instead of in the community committing more crimes.

Peg B: The inpatient resources would be used for competency restoration at that level. They would not be a facility to house people, a facility to focus on assessment, treatment and proper level of care. That is the idea.

Heidi H: Why can't that be done in a CMS hospital?

Peg B: I appreciate that question – they are often not at the level of requiring hospitalization as it is deemed in our current world. In a forensic facility you could look at the whole picture, evaluate them in light of the charge.

Jared B: I think first of all we are looking at in a MH paradigm. The bucket that can fit in the CMS structure is very specific. In the current paradigm we can only fit that small circle and other folks can't satisfy the CMS criteria.

Jack M: I think of the obligation of any doctor who is treating a patient as being highly focused concentration on what is good for that patient and their loyalty should be exclusively to that patient. Treatment someone and potentially forcibly treating someone in order to make that person competent to stand trial would seem to be in conflict with what you obligation to your patient might be and how do you address that?

Simha R: When I treat individuals, I wear a couple of different hats. My obligation is to align with them and help them fulfill their goals, whether in the community where they are seeking treatment, or on an ONH. There is a conflict with having a specific oversight role and that is why those roles should be separated.

Matt Valerio: Criminal defense lawyers have an ethical obligation, under the rule and law that govern the practice of law, to prevent incompetent individuals from being subject to the jurisdiction of the criminal court. ABA Standards, Mental Health, Std. 7-4.2(c)

In fact, the Court, the Prosecutor and Defense counsel all have an obligation to raise the issue of competence whenever they have a good faith doubt as to the defendant's competence. (See ABA Standards for the Defense Function) To do otherwise would be ineffective assistance of counsel. See

also, CH. 11, Ineffective Assistance of Counsel, Professional Responsibility in Criminal Defense, John Wesley Hall, Jr.

COMPETENCY v. SANITY: Competency and Sanity are two very different issues. Competency is a jurisdictional issue (the criminal court does not have jurisdiction over incompetent people), while insanity is a defense that can be raised only by a competent defendant properly charged with a crime. Raising a sanity defense is the DEFENDANT'S choice, not the lawyer's choice. SEE: State v. Bean, State v. Tribble. (Vermont Supreme Court cases.)

Sanity defenses evaluate the mental state of a defendant at the time of the alleged crime.

Competency deals with the mental health of the client at the time of trial. Competency waxes and wanes. A person may start a trial as competent and become incompetent during the trial.

I only post this because these issues are routinely confused and conflated., and the obligation to raise each issue is very different.

Michael H: I have to drop off, but thanks all presenters for good materials. Also, would ask if we can discuss these presentations further at our next meeting.

Public Comment