

Order of Non-Hospitalization Study Committee
August 23, 2018
10:30 – 12:30, WSOC – Ash Conference Room

Attendees: **Members:** Frank Reed, Mary Teachout, David Gartenstein, Jill Martin, Devon Green, Kristin Chandler, Jeff Wallin, Mary Cox, Jack McCullough, Calvin Moen, Phoebe Wagner
Public: Katrina Guinan, Amy Guidice, Diane Bugbee, Anne Donahue, Michael Sabourin, Matt Viens, Karen Barber, Samantha Sweet, Emily Tredeau, James Pepper, A.J. Ruben, Eva Dayon, Brian Gearson, Jonathan Jerome

Introductions took place around the room.

Charge of the Committee – Frank Reed reviewed the Charge of the Committee for the members.

Review Agenda—Study by Ben Joseph was not available to discuss as planned, draft of proposed “Motion For Modification Of Order Of Nonhospitalization Based on Noncompliance with the Order” to be discussed instead.

7/26/18 Minutes Review – No corrections or additions to the minutes were identified.

Comment: The minutes were unusual and confusing with the list of comments and questions without identifying the speaker. **Response:** Public Meeting Law only requires that a roster of attendees be kept, not that comments and questions be identified by the speaker. If folks wish to have their own comments and questions identified in the minutes, they can simply let us know.

Discuss Reports and Studies: Up to 10 minutes allowed per presentation

1. State’s Attorney Memo—Reviewed and summarized the memo dated July 22, 2018 written to the committee by State’s Attorney David Gartenstein.

Question: Should the Mental Health Law Project be involved automatically when a criminal case is being resolved with an ONH? **Answer:** There is currently no funding or resources for that case load, but it’s agreed that involvement by the Mental Health Law Project is an important thing. Not all people found incompetent really require treatment and therefore should not be put on an ONH.

2. NAMI Involuntary Outpatient Commitment Myths and Facts—Reviewed and discussed report.

Comment: I read the study on the NY AOT program. It is very successful because they put huge funds into providing increased services and housing to people on the order. Instituting more services and outreach provides for better outcomes.

Comment: Great info here. They touch on a lot of themes I’ve been talking about for years. Next steps should be to fund a study identifying the long-term outcomes of those on an ONH or OH.

3. Reimagining ONH: TAC Report—Reviewed and discussed report.

Comment: There is a real concern with the black robe effect and cases continually going to hearing verses regular status conferences. This would only contribute to the bed crisis in the hospitals with the added back-up of patients waiting for hearing dates.

Comment: I have many issues with this overall report and its many factual inaccuracies, but I'm not going to get into that now. However, I am curious about the statistics in other areas of law that employ the "black robe effect" in every case where a person is put on conditions of release and there are a big number of violations of those conditions. I would like to see statistics on the instances of success.

Comment: This is very similar to the treatment court model where the defendant and the Judge have an ongoing relationship in that the defendant returns in front of the Judge often. To do so with an ONH doesn't seem realistic. Running a treatment court model effectively is very complicated and requires a lot of resources.

Comment: Treatment Court requires very intensive monitoring. The black robe effect is the biggest factor in the success of any treatment court. I think we need data to determine what the probability of success would be here. I question the data the report relies on.

4. Video of Testimony: Forwarded by Phoebe Sparrow Wagner—Transcript of Testimony video was read. There were no comments or questions
5. One Alternative to ONH: Forwarded by Mary Cox—Summarized PowerPoint report and discussed the importance of making treatment a collaborative effort. Looking at treatment as recovery-oriented with a person-centered approach. In other states where an individual has the option of an ONH (AOT) or mental health treatment court, most people choose to remain in the court system. In having the option, they feel more empowered and engaged in their own recovery which enables them to more effectively stay on track with treatment.

Comment: We must keep in mind that for a person to remain in mental health court, they must be competent, most individuals on an ONH are usually found incompetent.

6. Sample DRAFT Motion to Modify ONH—When someone is not complying to the conditions of an ONH a Revocation is filed with the court. This filing is not currently being done through the court's standard motion process but rather by a "Notice of Non-Compliance and Request for Hearing". This doesn't give the court the information it needs to determine what exactly is needed such as: Is this person deteriorating quickly and this hearing should be held on an emergency basis? Is hospitalization needed or just a treatment review? Judge Teachout proposes that a motion be filed with specific requests and needs for the case. The committee reviewed and discussed the draft provided.

Comment: The interesting thing is this is something that can be done now. It requires no change in the law. I agree that this would help clarify what is needed on a case by case basis. In some cases, we are not eager for hearing because the person seems to be coming back into compliance, but in others the person is deteriorating rapidly, and a hearing is needed quickly. If the court knows, a hearing can be scheduled rather quickly. Judges present did not think there would be additional burden if a motion was entered and hearing scheduled and subsequently was cancelled if individual became engaged. Such actions happen now in court calendars.

Review ONH Process and Flow Charts for Criminal Court and Family Court: Reviewed and discussed the Criminal Court ONH Flow Chart. Matt pointed out that when a person is put on an OH by the criminal court, the process flows a lot more smoothly than when put on an ONH. When a criminal court issues an ONH, often the designated agencies are not made aware of this ONH and have no background information on the individual.

Question: Are there any statistics showing the percentage of people who are put on an outpatient order by the criminal court and do not comply with an evaluation? **Answer:** We do not have that data.

Comment: When someone is being held by DOC and are ordered for an outpatient exam where they are found to be incompetent, they are not supposed to remain in corrections but there seems to be a big gap in returning to court. There seems to be no effort to get a hearing quickly.

Comment: A defendant can have an individual exam, if they do not do so they should get in quickly for an evaluation.

Comment: The flow could come to a halt because of lack of beds.

Comment: This flow does not take the person into consideration. It is very authoritative.

Document the strengths and weaknesses of the current ONH system: Frank asked that people review the handout and submit to him any additions or changes. We will also try to incorporate any strengths and/or weaknesses identified during the meeting's discussions.

Preliminary Data Review: Reviewed preliminary data reports provided by Dave Horton of the DMH Research and Statistics division. Dave identified that he was still in the process of cleaning up the data and queries to make sure he was capturing the right information. Missing information cannot be ruled out as yet, so subsequent reports will be coming and be updated if additional data is available.

Question: Wondering if the percentages around which courts are issuing Criminal ONHs is on track with the case load in those courts? **Answer:** Yes. Those with the highest percentage of ONHs issued are also the courts with the highest volume of cases.

Comment: The Revocation data seems low, it doesn't look accurate. **Response:** Often a Revocation is accompanied by an AIT, when this happens and the AIT is granted, the Revocation is dismissed as moot. This is likely why the data looks low.

Question: Is there data on how many revocations are filed? We've been discussing the dilemma of people not complying with the ONH but this is not apparent by the data. **Answer:** Matt said that DMH could probably pull this data, Dave responded that once he understands the legal process better he can go back and look at that data. Judge Grearson believes the judiciary could provide that data. Jack McCullough believes he can also provide this data.

Question: The data on people engaged in at least one service is the most critical we've seen. Is anyone reaching out to these people? Maybe the DA should be reaching out to discuss services and schedule an appointment.

Comment: Offering more pre-trial services would keep people involved with their conditions. We should develop a survey to ask the people on an ONH for their input on the effectiveness of their ONH. I would volunteer to work on this.

Question: The preliminary data report reflecting people who have engaged in at least one service shows that 14% did not follow through. Is there any data on what happened to these people? **Answer:** No, but that is an area I will be exploring for data and see if it effects this number.

Comment: It seems odd that this report shows that in FY17 14% were never in compliance with their ONH but in FY17 only 1 Revocation was filed. **Response:** Not odd at all. If someone never shows up for treatment, there is no way to file a revocation.

Question: Communication is very important to a successful “hand-off” of a person on an ONH. In civil cases, what is the mechanism for this communication and how often does the agency reach out?

Public Comment:

On the preliminary data reports, the longest “Length of ONH” is 365 days. My understanding is that a significant population of people on ONHs are on year after year. I think a “number of years” category would be helpful data to include.

Next Steps:

1. Matt and Jack to circulate draft memo among the attorneys and get back to Judge Teachout and Judge Grearson with feedback.
2. Review Strengths and Weaknesses handout and submit any edits and/or additions to be made.
3. Data, is there other? Breakdown of ONHs issued on what charges. How many AITs are filed during the period of ONH. How many Revocations filed.
4. Focus next meeting on any new information topics to consider, update efforts to respond to data requests, and begin to identify and discuss possible recommendations of the committee. Agenda Item suggestion: Discuss initial communication and outreach of the agency providing services to an ONH client.
5. Schedule next meeting with members: Next meeting is September 27th 10:30 – 12:30