Order of Non-Hospitalization Study Committee
September 27, 2018
10:30 – 12:30, WSOC – Ash Conference Room

Attendees: **Members:** Frank Reed, Mary Teachout, Jill Martin, Devon Green, Kristin Chandler, Mary Cox, Jack McCullough, Calvin Moen, Phoebe Wagner, AJ Ruben
Phone: David Gartenstein
Public: Jennifer Rowell, Sandy Steingard**,** Amy Guidice, Diane Bugbee, Anne Donahue, Nelson Floyd, Samantha Sweet

Introductions took place around the room.

Review Agenda: No modifications

8/23/18 Minutes Review: No changes.

Update: Data Review: Nothing new to present at this time due to difficulties encountered with the way the data is being warehoused. It is a solvable problem and we will be presenting the results to the questions that were asked from the last meeting as soon as possible.

Comment: How can the committee do anything without data?

Question: Can we have another meeting before the end to discuss the data?

Comment: Jack stated that he and David could get together to compare data points.

Update: Follow-up on ONH Modification/Revocation Forms (Nelson Floyd): The new forms offer new information for the judiciary, which he thinks will be helpful, particularly with scheduling i.e. is the case more appropriate for a status conference within 10 days, where it will then be determined how soon the case needs to be schedule for a hearing or does this need to go to hearing as soon as possible? There are specific motions for either of those two instances.

Question: Who is going to decide if it needs to be expedited and does that mean we would just follow the Request for Expedited Hearing form if expedited? **Answer:** There would be two motions, one would explain if modification is of original order, revocation, or modification/revocation (one of the three would be filed), in addition to that there would then be either the request for status conference or the request for expedited hearing. Regarding who decides if this needs to be expedited, it would be a conversation between DMH, DMH legal and the treatment team.

Comment: We know that a lot of DA's have complained about how long it takes.

Comment – I think the idea is to give the filing party, if all they need is a conference, for it to be treated that way instead of every case needing a hearing.

Comment: At least in the four main counties, they have the court schedule the status conference every week and the attorneys talk to either the judge or clerk and talk about new cases that have been filed. We will say this one really needs to be heard because things are going bad, or not a rush, still work on trying to resolve this. I think it is fine, the state can start doing these forms right away, but not convinced it would fix any

problem. One caveat is there are 10 other counties that have some cases, but not as many as the 4 counties. Those ones do not know what to do when they get the current form. Training for the other counties would be in order to help manage the mental health cases they are dealing with.

Question: With the current system, if a motion to revoke an ONH is filed, does it depend on the county? **Answer:** Within the 4 main counties that handle these proceedings, both the attorney and court staff work very closely together so matters that need to be scheduled soon, in our experiences, are filed in a timely manner. In the outlying counties, these forms could make a difference

Comment: If patients are clinically able to leave a hospital, the should be able to leave the hospital. The hospitals are stressed with mental health patients and if there is someone who is in there who clinically shouldn't be, they should be able to leave**. Answer:** The hospital is supposed to be getting them better, and ready to leave, once they are ready to go, they will get them out. If the persons order is revoked, they would propose changes or send them out on the ONH they were on.

Comment: Our experience is people are stuck in EDs because the system doesn't have the capacity to get them out. I think the consensus there is no problem with the court system, but there are not enough programs/resources within the mental health system. We don't have good community resources.

Comment: There are structural problems with the ONH system. I would like to talk about an alternative to ONHs with this committee. Possibly ask legislature to put more money into resources.

Comment - There is another committee led by Judge Hayes and Andy Stone (Judiciary) to talk about how things are going with new electronic filing system being created. Question: What is the Timeframe for this new system? **Answer:** Roughly within three years, all the counties will be done.

Comment: I think medications are really useful for some people, if they choose to take them. My son hasn't been on meds for years and is doing well. My brother takes them every day and is doing well. Maybe an enhanced voluntary agreement could be part of an agreement.

Comment: There is no informed consent when the doctors are not telling the patients about side effects of the drugs. There is grave doubt not just about the efficacy of antipsychotics but the actual damage they do. Housing is a huge way to get people off of medications.

Comment: The orders can include a lot of other things, but they are not clear on how they can be enforced, it is very confusing language. What would be very helpful would be clarity on language of the EE's - substantial probability - there is a lot of ambiguity in that. We are not very good about predicting dangerousness.

Comment: When I was on an ONH, I was discharged to a hotel with no follow up whatsoever.

Discussion: Additional Strengths and Weaknesses: Frank did not receive any feedback.

VPS Position on ONH Statutes: Reviewed and summarized VPS position on the ONH Statutes.

The services being offered need to be desired and useful to the individual. Our recommendations are first not that an ONH system needs to be replaced by anything, however, we are also calling for community support because we feel there are people in the community struggling and need support. Based on the data we

have/studies, we know that housing is a major predictor in the number of ED visits, hospital stays, law enforcement.

Comments: I concur with housing issues. Through the work with NAMI, I come into daily contact with people with mental illnesses, from all walks of life who are not on ONHs because they have already gotten where they are career wise by the time they have their first episodes and able to achieve stability quickly. The people who end up on ONHs are on the fringes of society.

Comment – I think this is well written. Looking back at the strengths and weaknesses, what we haven't touched on is the ONH that come out of criminal court versus the family court. We need to address that. If someone is incompetent because of a mental illness, there needs to be some way to attempt to help them get treatment. We need to figure out a way to fix that part of the system, we have two very different systems.

Comment – two years ago in a separate committee (Commission on Offenders), I felt a consensus in the criminal setting, where someone has been found incompetent, the next step is the hospitalization hearing. There is where these ONHs are being created in the criminal setting. In that stage, instead of continuing with the state's attorney or public defender, we would substitute the AGs office with their expertise for the states attorney and the mental health project would come in for the the defendant (we would go from punishment to what treatment is appropriate) The proposal went through the legislative session before but it came out in the end, and we don't know the reasons why. I think this could be a start to some of the discussions here. Is an ONH necessary? Have people who are focused on treatment working with the team.

Comment: There are gaps between whether people are incompetent and the system relating to ONHs and subsequent treatment. When the person is found incompetent, the issues of public safety remain to be addressed, if there comes a time when the person regains competency. Given recent supreme court decisions (10 to 15 years), there is a discontent with the system of ONHs channeling back into the criminal justice system and making determinations of public safety issues.

Comment: The states attorney was not in favor of that legislation

Comment: As a public defender, I believe our office was in favor.

Comment: During the proceedings of the committee every participate on that committee including judiciary, DMH, Menta Health Law Project, Defender General, and the office to states attorney supported the legislative proposal that came out of that committee. I do know that the states attorney was represented and did explicitly support the langue of that legislation, It was unanimous.

Comment: The issues of public safety – since I am one of the people who litigations cases in the family division of the courts, public safety is what is being litigated (13vsa section 22) .

Comment: I think it is an incredible benefit – it would solve the problem that comes out of criminal court where the DA has no idea that the patient has been put on an ONH.

Comment: Once the defendant is deemed incompetent and placed in the care and custody of the Commissioner on and ONH, there is no mechanism on the status of the defendant, no public input as to what is going on with the defendant and no mechanism on how to get that person back in the criminal justice

system once competency is regained. The standard is different to the extent that the litigation where the person would be placed on an ONH is transferred from the state's attorney to the AGs office.

Comment: I really think the problem is lack of community resources.

Comment: One of the concerns of family members is if they are going into a psychotic episode, they don't know what to do. Things like mobile crisis teams are expanding out in the surround areas and those seem to work really well. We need to have a plan in place, not just get rid of ONH and not have a plan.

Comment: I think somewhere even within the DMH there is a glimmer of recognition that ONHs are not necessary a solution to the problems. For at least some cases the department is showing a recognition that says ONHs don't help that much.

Question: What is the Departments thoughts on the ONH process?

Discussion: Recommendations, if any, in preparation for final meeting in October:

- Should fund, have an independent entity conduct a study to show the experience in VT of who gets on ONHs, who doesn't, and what happens in their lives in a more longitudinal way, does the evidence in VT support the ONH system.
- Eliminate ONHs all together
- Propose statutory language: If we keep ONH, AGO and mental health law project to have a voice.
- Increased coordination with DMH and states attorneys – what is the status of people – there is no coordination and no communication.
- It would be nice to know how much is spent to enforce ONH's, is it a good use of money?
- Would like an amendment in Title 13 for a victim impact statement.
- What processes we have for making a decision for the group, who does that? Are we going to come to consensus, vote?

Public Comment:
If the committee doesn't end ONHs, giving more resources to the community, ask for clarity on language of EE's.

Comment: In terms of criminal court, there are people we don't know at all, would be nice to have some kind of assessment to see if help would be helpful.

Comment: I agree with a lot of things said, I also believe that we can't have a one size fits all. We need to realize things aren't back and white, there are things that are grey as well. Medication and ONHs have save family members life, I think we need to be careful about making decisions were we just scrap something where it can help people. We need a system that has a basic humanity for others. We have to be careful we don't throw everything away and look at what is working and build on any strengths.

Comment: I think Calvin has done a superb job of the official position of VPS.

Comment: There was 25% of the criminal court folks put on ONH who never got any services period. 42 onhs total – just trying to see what happened to those people, why didn't they get services?

Next Steps:

1. Frank to send White Paper by Rod Copeland
2. Study done investment in mental health services – there is a huge payback to give adequate supports. Asking for additional money for services.
3. Could be a real challenge to get the legislature to change the statute.

Summary list of possible recommendations from 9/27 meeting

Training for counties on ONHs when they are less frequent/common to improve timeliness

Increase Community Resources – (crisis/respite, mobile units, housing resources)

Alternatives to coercion, enhanced voluntary treatment services (NY used as an example)

Ensure implementation of IT system for the judiciary as it will improve data available and communication (3-year plan)

Look at efficacy of medication before stipulating in ONH for someone (i.e. first episode)

Eliminate ONH's all together

Evaluate ONHs; consider expiration provisions that don't just keep getting renewed

Evaluate ONHs as to whether it will really lead to effective change for someone

More support for completing psychiatric advance directives; identify person preferences

More information and services for individuals seeking support re: medication reductions

ONH study – anybody experience involuntary care. Did being placed on an ONH help or have better outcome / a more longitudinal study of benefit

With incompetency, move from criminal court to family court; include provision for allowing victim impact statement in proceeding/provision for status communication with State's Attorney?

If no change in criminal proceeding, other alternatives need to be available? If incompetent, hospitalization or community are the only current options.

For people who end up in corrections, improve treatment options. Having environment with treatment is better than being released and no engagement in follow-up mental health services

Recommend clarity on language of an existing order – person that continues to need treatment or likely to need treatment. Clarify language on EE – not very good at predicting "dangerous". Not following order is not necessarily enough to revoke. More guidance would be helpful.

Close loop back from DA that a person from criminal court put on an ONH did or did not engage with services/outreach follow-up unsuccessful