Forensic Working Group
February 17, 2022
9:00 am – 12:00 pm

Attendance Via Phone: Jennifer Rowell, Samantha Sweet, Karen Barber, Jared Bianchi, Kelly Carroll, Karen Genette, Colleen Nilsen, Kate Hayes, Annie Ramniceanu, Devon Green, Thomas Carlson, Matt Viens, Monica Hutt, Rhonda Palmer, Margaret Bolton, Domenica Padula, Simha Ravven, Heidi Henkel, Linda Cramer, Jack McCullough

Meeting minutes are intended to capture the substantive business of the meeting and should not be construed as an explicit transcript of all meeting commentary

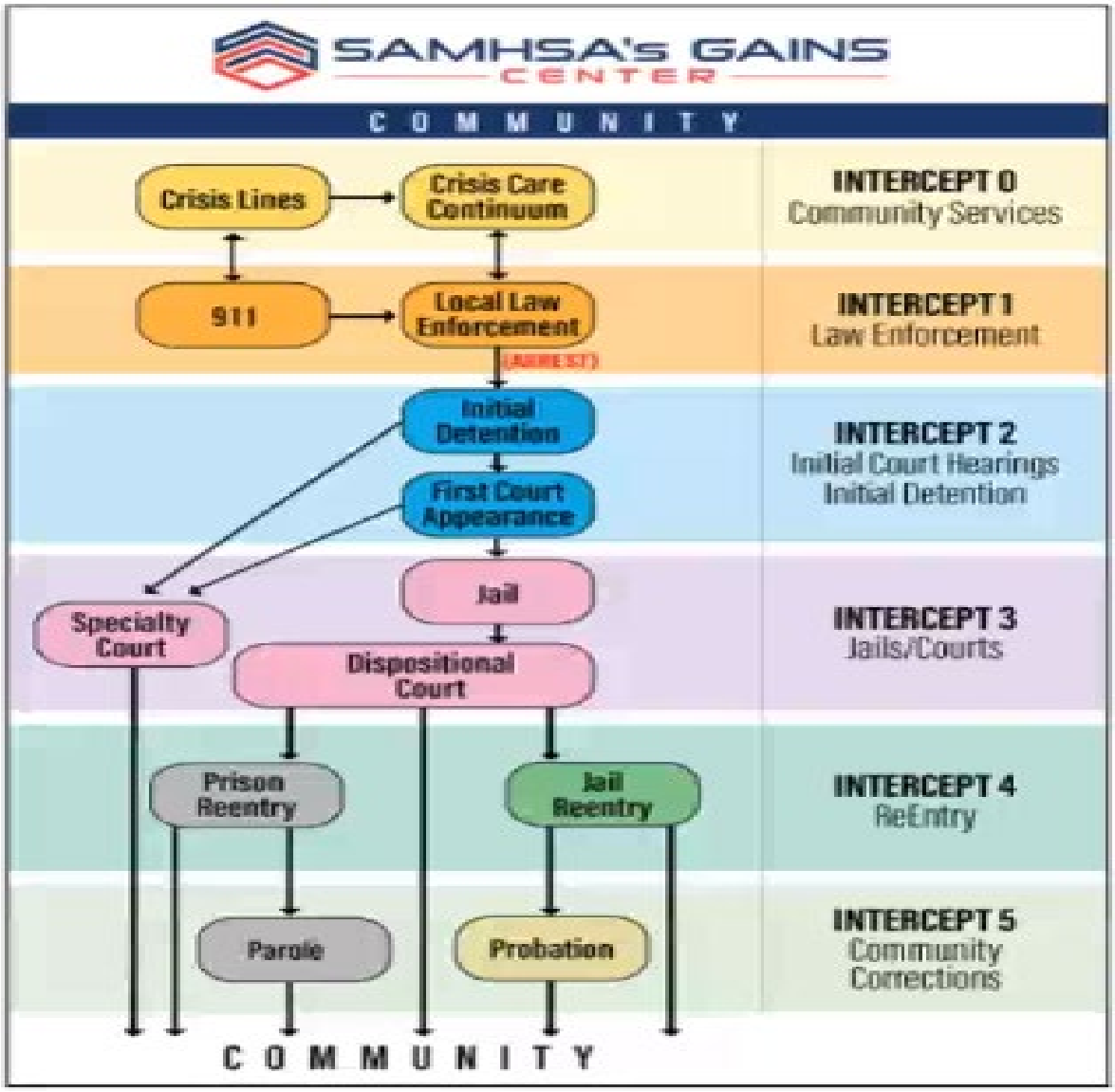
Welcome and Introductions took place.

Karen Genette: Sequential Intercept Model (SIM)
https://www.samhsa.gov/criminal-juvenile-justice/sim-overview

Tri branch taskforce was created in 2009– it was put together by the chief justice and the court administrator. It was an invitation to communities to apply for technical assistance and a small bit of money for strategic planning f people with co-occurring disorders. What can we do to intervene for these individuals? During this time, it was presented to use the SIM. A core team was developed through this that met monthly through 2009 to 2015. What do we have in the communities in Vermont? Every county has different services.

We started advocating for pre-trial services in Vermont. One of the things we did before the project went away, we started looking at what are the minimum level of services we would want in each county to service this population. That question remains unanswered, what is the minimum?

Intercept Points [below]



Incompetent to stand trial is what group this committee is working with. Diversion models, competency restoration and forensic treatment facilities. Where do these services happen/fit along this continuum? How many people are you talking about and to make sure you right size the service to the population? What are the best practices for the folks you are serving? Are you looking at them when they are being intervened with law enforcement, do you recognize them more when they are in a facility? What is the highest and best service for the population you are serving with the best cost?

Questions:

Judge Carlson – When you are looking at only 24 people in a treatment Court, which treatment court was that? Karen G: We had enough funding for 1 to 1 ½ case managers, Rutland and Chittenden had funding, and Washington had no funding at all. 20 people per case manager was a really good number.

Judge Carlson - There are 3 or 4 drug treatment courts, but there is no mental health court per say other than the Act 248 docket and the hospitalization hearing docket that comes out of the criminal court process. Kate: When Judge Crawford left the bench for a time, it was managed by another Judge who has since retired. I think there is still a family treatment court in Caledonia County.

Karen G- You are looking at diversion models, competency restoration and forensic facility? Do you know what is happening in the universe of people who are incompetent to stand trial now and where would the services fit in this model? Simha Ravven: I think competency restoration program could be in a number of these intercept points [after 1]. Most states have competence restoration programs and multiple models and settings. In Vermont we would robust community programs.

Kate - Have you talked about the fact that competence restoration is a very system-based approach rather than an Individual based approach? Simha Ravven – yes that has come up a lot. I think this group has acknowledge it is a very narrow population of people who would undergo competency restoration programs. It is important to acknowledge and address this issue. We are bit of an outlier here in Vermont for not having this system.

Sam – Karen, can you give a quick overview of what treatment court looks like?

Karen G– there is a treatment court team, and the team consists of the judge, prosecutor, public defender, sometimes an outside attorney if there are conflicts, the substance abuse provider in the community, many times the mental health prier in the community and usually clinical and also case management hearing are setup in the courts, around every two weeks and the team meets before the hearings and would talk about the 3 phases. There are certain requirements in each phase that the person has to comply with the requirement to move on to the next phase. The shortest time to get through the treatment court is about a year, but you want it to be about 18 months. The first phase requirements are coming to court, seeing case manager, complying with treatment, more than 1 random drug test weekly. Phase 2, they lighten up on some of the requirement but add in getting a job, support meetings. Phase 3 there are other requirements. Before the hearings, the team meets to talk bout the person's progress. Everyone is championing for that person. It is a remarkable thing to observe, and you can go in and watch the proceedings. What they used to do is have you sign a confidential statement and then go in and watch the hearings.

How do people get into it and when they graduate? Karen G: When the person is charged with a crime and they come in, it is usually the states attorney who looks at the charges and person and sees if they are appropriate for treatment court. They bring the referral, and the team reviews it. If they are eligible, they are asked if they want to participate. More then than not they say yes. They do a screening, they get the condition of the courts, get the schedule of their drug testing and start coming to court right away to observe and then participate. When they finish all of the requirements of the program and they are on their road to recovery, there is usually a big celebration [cake, cupcakes] when someone graduates from treatment court.

What about criminal charges? Depends on original charges but there is a big incentive for finishing the treatment court.

Jared: What if any role in the treatment court process is there for engaging with victims and making sure they are heard and respected in the process? Karen G: They have a coordinator that choregraphs

everything that is happening. If there are victims, they talk to the victims advocate in the state's attorney office, so they are alerted to what is going on.

Jarred: Definition silos carrying to the treatment court process? Karen G: The only reason they wouldn't serve someone is if they felt the person couldn't benefit from the services that were offered or had issues that were so extreme that the limitation of the services offered through treatment court wouldn't help them.

Kelly Carroll: Washington County they started the process without additional funding, and that is always an issue. Can't you allocate some of the resources existing for funding to start this? Karen G: I wouldn't recommend it without funding. It was very hard, and they found that they needed funding. The judiciary has to be involved for anything happening in the courts. They are severely limited in funding. They are very careful about opening up a new docket because of the funding and because of the time and energy it takes from the team for these things to work. I am not advocating for treatment courts here; it is up to the judiciary.

Judge Carlson – First of all it is great to hear the history that Karen brings to this, and you folks have been working on this project for a long time. I appreciate the conversation about treatment court. I am worried that it is a diversion from where I think I see this conversation going. I hear wonderful stories about how the drug treatment court works, but fundamentally the drug treatment courts, there energy comes from all the positive attention and ultimate a prospect of going to jail if you don't do the program. It strikes me in the world we are talking about, mental health treatment, that the ultimate sanction if you don't the program you are going to jail, is not a train of thought that is particularly helpful. In your minutes, I saw there were 225 people on an ONH and try to make that a more responsive, useful direction is really what we might focus on and where it is called an ONH or diversion to community treatment, that is a whole ongoing conversation. Where does this fit in the chart? Karen G – that is a really good question and that is what I was advocating for the team to answer for themselves. I am encouraging you to take a look at this system to see where an ONH fits in and is there more you can do. Judge Carlson – a team to take a look at these like the treatment court makes sense.

Judge Hayes – True tragedy with what Kelly is going through. I wanted to say the mental health treatment court was not ever focused on violent offenders, it was focused on offender that got involved in smaller, not a danger to the community offenses. That was an effective model in Chittenden County. The judiciary does not have a lot of funding, we barely have enough to pay for the staff that is there.

Karen B – I wanted to say, I think for the judiciary, it has been very helpful. I feel one of the things we do not want to do is limit the ideas that are coming out of this committee. The legislature wants to know what is the ideal solution, what do we want to see.

Matt V – I think sometimes me being an attorney who represents DMH but also gets involved in the criminal cases, I see two sides of the situation – talking to the states attorney who have a viewpoint and the treatment provider's side. I see a disagreement often between what I would refer to as the court and the states attorney and what treatment providers often want. This disagreement isn't always really openly stated, there are a lot of people with mental illness who are struck in the criminal justice system who should be and an alternative view that there are a lot of criminogenic behaviors that are stuck in the mental health system.

Karen G – Is the mental illness driving the behavior or is it really criminogenic behaviors driving the behavior?

Annie R – I am with you 100% in your thinking. An offshoot of all the work we did way back when is a criminal justice capable mental health system. We were trying to create an integrated whole person approach.

Simha Ravven – so appreciating this conversation about the complexity of this area. I think both Annie and Matt just brought up a real point about how to we delineate and distinguish who should be diverted from criminal settings to treatment settings. As a forensic psychiatrist it is often very far from straight forward and a moving target.

Jarred: I wanted to appreciate Matt's comments are absolutely accurate as there are those differing viewpoints. I wanted to appreciate Judge Hayes conversation with Karen B. I think it is important we do not limit the discussion and identify our priorities

Devon – I want to echo those thoughts as well. I am glad Matt pointed out these differences. We would support a forensic facility for the purpose of when they come into the ED and commit a crime due to criminogenic behaviors and the judge still thinks that person needs inpatient treatment, and maybe they do but are brought back to the same ED where they assaulted someone and retraumatize that person.

Heidi H – Are we trying to get the person to treat the mental illness or are we trying to make them change their behavioral choices?

Jarred: I wanted to note the standard for not being competent to stand trial of insane at the time of the commission of the crime is much more rigorous then just having a mental illness. It is not sufficient to evade the criminal justice system to simply have a mental illness and remain cognoscenti of that while we talk about those different categories.

Judge Carlson - Summit

Tasked with trying to come up with a better judicial response to mental illness. We are excited about doing whatever we can make of this summit to best support and advance what you have been doing. This is not just in criminal court but in civil and probate court as well. As part of that, there are these regional summits occurring all over the country. They are all about trying to get judges connected with all of the people like you to try to envision a better system. It is fascinating to hear Matt Viens perspective about there may be too many people who have criminal justice problems are tied up in the mental heath system. We have looked at all of the minutes from this committee. We get that there is a lot of ambivalence about competency restoration and what does that really mean, and we get a question someone raised about why we are not using the capacity we already have.

Discussion [Karen Barber facilitating]– fine tune where our priorities are

We went to the Legislature to ask for an extension for the group to go through January of next year, with the goal of presenting the legislature with some recommendations in January.

The first thing the group wanted to focus on is diversion programs. We wanted to confirm this is where folks wanted to start. What are you thinking about this?

Jarred – From my perspective, I don't know this groups time is best spent focusing on diversion. I think we would be better served to look at the well-established gaps in the system.

Peg B – I want to echo what Simha said that when we are talking about populations, people are quite complex. We seem to want to say this person belongs here and this person belongs there. What I would like to see us talk about is diversion to what and if we are having competency restoration in the community or a system of forensic care. It seems we see this dichotomy; we need to focus on these folks that are between these two worlds.

Simha R – For me, the energy behind this and my priory is competency to stand trial and restoration programs. Individuals' treatment needs and safety needs often dovetail. Less around diversion and more supporting competency restoration and making more robust programs the DA's have to support this.

Karen – instead we should start and pivot a little bit to a forensic system that focuses on both outpatient and inpatient and the outpatient diversion could be a part of that, but really taking about a structure and narrowing focus in on competency first.

Heidi – Some sort of broad categories I think about is I am not clear if there is an equivalent of an arraignment if there is not enough evidence that the crime occurred, and the person did the thing accused of.

Simha R – You are taking about the phenomenon of someone with mental illness facing criminal charges that are unfair or unbased. That is important when we don't have a competency restoration program.

Karen - Previous Deputy Commissioner Fox said it is a rights issue, someone has a right to have their competency restored if they want t.

Jack – It is complicated. I think there are really serious problems with competency restoration as the state wants to use it as an opportunity to put them in jail, typically for a long time. I do think it is important to be thinking about what happens in a criminal case in general, judicial side of it, once a person is found incompetent to stand trial. As I understand it in most of the counties in the state, there may be negotiated resolution involving ONH and an agreement by the state to dismiss the charged without prejudice so in the future the case can be brought up again. In some cases, not dismissing the state to put the case on inactive treatment status and can continue to pend for years and years, but there is still the possibility they are either brought back to trial or they can be held for violating the conditions of release which have not been vacated.

Matt V – If the individual is believed to have a mental illness, they are found incompetent, there is then a hospitalization hearing scheduled there should ideally be evidence at that hearing that the individual did engage in some dangerous behaviors. The court is supposed to make a finding the person is in need of treatment or a patient in need of further treatment. Often times, the evidence of danger would connect with the criminal offense they are charged with. Having said that though, there are times where the danger might be separate from what was alleged from the criminal offense.

Kelly C – my knowledge of competency restoration started with this group. Reached out to Wilda – a person really doesn't want to be deemed not competent because their decision gets taken away. They

can get stuck in the system. It seems like trying to restore where applicable because not everyone can be restored, just seems to be the right thing to do.

Simha R – Competence is used in a lot of different settings, but it sounds like you may have been grouping together criminal competence and decisional capacity and capacity to make decision, those are separate. Jack raised the issue of the defendant's desire, and it may not being in their best interest to resolve their charges and be restored based on a jail sentence. There are multiple competing interests here and looking at an individual's interests and when we are taking about a small number of individuals who have committed significant acts of violence, community safety is a really important interest. I think a part of the task of this group is to hold these things together and understand there are competing interests and balance those priorities.

Rhonda P – I just wanted to piggyback on what Jack was saying and many others, that we don't want to hold any crimes over anyone's head long term however I worked with several kind of challenging high fliers over the year and we also don't want to just set aside or dismiss any charges so the next time something happens and they return, the folks know the history.

Matt V – When Jack was talking, he voiced what his attorneys are going through and how they are more involved in the criminal cases and some counties do things differently. One county they have generally opted not to dismiss criminal changes with ONH's and the county he is referring to has done that for a while. Some of the language in legislation from last year in the S3 bill tied a lot to the notice of provisions in connection with people who are placed on mental health orders if they are released from DMH custody, transitioned to a lower level of care, notice around that is linked to whether the charges have been dismissed. If they dismiss the charges, notice is not necessary whereas keeping the charges open does allow for notice to the prosecutor.

Judge Hayes – I don't have the same understanding as the not guilty as the reasons by insanity as Matt outlined. There has to be a finding, or a jury finds it after a trial. I would rather have a system where they recognized they have a serious mental illness and get them treatment.

It sounds like the experience for the DMH is different than the judiciary experience.

Simha R – the issue addressing can only competent individuals be found not guilty by reason of insanity, that is certainly the best practice and I have been asked to review literature of that by DMH and have testified on that issue. My understand is that is not required yet in Vermont and to your point, it is certainly central for an individual to be competent to make the decision to enter in defense.

Heidi H – One thing that crosses my mind is that maybe judges aren't aware of finding of fact whether the person is quality of the crime as they make these agreements, and the judges doesn't see that. In the regular criminal justice system there is an arraignment, what I am suggesting is there would still be an arraignment even if the person is found incompetent and the prosecution fails, then it is dismissed. Finding them competent shouldn't necessarily mean their mental health issues aren't taken care of.

Jack – I am not sure where all of this confusion comes from. if someone is charge with a crime, there is an arraignment in court, it is where the court decides to order a forensic evaluation for competency and potentially insanity. The arraignment is what gives rise to the examination. In most of the ONHs we have seen coming out of criminal cases, they were found incompetent. It is more likely if there is a serious charge, it is more likely the state would give repeated attempts to be found guilty of reason of

insanity. There doesn't have to be a determination of whether the alleged criminal act has been done for competency to stand trial.

Kelly C – I wanted to add, when we went through all of the S3 stuff, one thing I remember him saying is insanity is a defense. if competent you are not able to actively participate in your defense, how would you get to the insanity in the first place.

Karen – I think Dr. Ravven spent a lot of time testifying on that, on the forensic psychiatrist side of that. Whether you could put forward that defense if you are not competent.

Jarred – the need for an emergency response, that dovetails with a little bit about what Jack is talking about. When a prosecutor is having to charge folks in order to get a response from the mental health system to get treatment. We have to invoke criminal justice process where we prefer to leave that to the treatment process, but it is not quick enough to meet that emergent need.

Domenica – it is an affirmative defense, there is no one in the courtroom that can assert a sanity defense but themselves. If you have someone who is deemed not competent, can you make that decision?