

## Summary Paragraphs S 3 Report- Victim's Recommendations

As an overall comment it appears to us both from personal experience and from the statements that were expressed by some of the members of the Forensic Task Force that there is very little interest in Restoration of Competency in Vermont once an Individual has been determined not Competent to Stand Trial particularly by those representing the defense. The Director of Legal Aid even expressed his opinion that a competent individual would not choose to have competency restored if it means having to stand trial for the alleged offense and potentially serve prison time.

As victims we are primarily concerned with victim safety and public safety and with speedy prosecution. A victim's interest in speedy prosecution is codified in Chapter 165 of Title 13, Section 5312.

Two of the charges of the Legislature in S. 3 to this Forensic working Group were to consider statutory language for prosecutorial notification in the event of non-compliance with an order of non-hospitalization (ONH) and to look at other states' processes for restoration of competency and statutory recommendations for Vermont.

Our statutory recommendation for prosecutorial notification is notice should not be triggered in cases where there is inadequacy of treatment but that notification should be triggered by the individual's failure to comply with the ONH. The notice requirement should be limited to certain types of crimes (perhaps those that are currently referenced as "Listed Crimes" in Vermont's Chapter 165). In addition not every incident of non-compliance should trigger notice but only those types of non-compliance that threaten public or victim safety. Finally there may need to be a revision of DMH statutes to include a public safety mandate in order to implement this type of notification.

Our foremost recommendation with respect to Restoration of Competency based on our study of various states' Competency Restoration Systems is to statutorily establish a system in Vermont. Currently unlike almost every state in the United States there is not a statutory requirement in Vermont for restoring an individual's competency or requiring an individual to undergo treatment for restoration of competency.

In looking at this issue it is important to separate the Competency Restoration process from the patient treatment process- focusing instead on symptom management and education around courtroom processes. Assessment of competency is not a medical diagnosis. It is a legal adjudication that is decided by the judge after an adversarial hearing.

Our statutory recommendations were formed after reviewing many states' Competency Restoration statutes and processes including a report in Minnesota from a task force formed to provide recommendations to its legislature for restoration of competency, recent statutory enactments in Colorado and reports from National Task Forces looking at what is working

across the Country in the area of Competency Restoration and making recommendations based on successes and failures. (Honorable Brian Grearson of the Vermont Judiciary was a national advisor to one of those groups). We also referred to the report recently presented to the Health Care Committee of the House of Representatives in Vermont by University of Dartmouth which provides recommendations specific to Vermont.

We recommend that Vermont enact a Competency Restoration Statute that requires that individuals that are found not competent to stand trial participate in a competency restoration process, directs those individuals to competency restoration services, and includes a continuum of where and how such services should be offered and to what populations. In addition we also recommend that the competency restoration statute address those individuals who are not restorable and include a competency curriculum which is flexible enough for a variety of users in a variety of settings.

The resources we reviewed recommended that certain types of provisions be included in any statute establishing a competency restoration structure which we would also recommend for Vermont, including the following:

That those standards and processes include provisions for diverting those with lesser crimes.

Identifying an entity or agency responsible for bridging the gap between the mental health and criminal justice system including the consideration of the use of liaisons/forensic navigators in accomplishing that goal and ensuring that individuals do not fall through the cracks especially at critical points in the competency process.