

FORENSIC WORKING GROUP

Position of Mental Health Law Project

The Mental Health Law Project (MHLP) generally agrees with the overview of the Department of Mental Health that the process of this working group was unsuccessful in either reaching agreement on the important issues before the working group, or in answering the questions posed by the Legislature. The position of the MHLP on some of these issues follows:

A. Gaps in the current mental health and criminal justice system.

The most important gap in the mental health system is the inadequacy of resources for community services. The inadequacy of resources makes the system unable to respond to crises, and, more importantly, unable to help individuals to maintain stability and avoid crises. This has led to criminal acts that could have been avoided if adequate services had been provided. A large and sustained increase in funding for community services is needed to address this problem. A related problem caused by inadequate community resources is that people who have been determined to need psychiatric care are confined to inpatient settings because there

are not sufficient outpatient residential resources to meet their needs. Increasing community resources is the most important step Vermont can take to improve the mental health system.

B. Same as above.

C. Competency restoration.

The Mental Health Law Project does not support competency restoration in the involuntary mental health system. Mandated treatment for the purpose of competency restoration creates an inherent conflict between the treatment professional's duty to do what is best for the patient and the mandated effort to create circumstances in which the patient will be prosecuted and potentially incarcerated. In addition, competency restoration for lower-level offenses is likely to lead to diversion of resources from patient care to prosecution and incarceration of people who may have committed minor and nonviolent offenses. Without a comprehensive assessment of the incidence of serious, violent crimes among defendants who have been found incompetent to stand trial, and of how many of those defendants are also likely to be found not guilty by reason of insanity,

it is difficult to evaluate whether there are sufficient cases in which competency restoration is valuable.

D. Models to determine public safety risks, including guilty but mentally ill verdicts.

There is no need for changes in Vermont's mental health laws to protect public safety. The definitions of both a person in need of treatment and a patient in need of further treatment incorporate the danger that the person may pose to others; this makes clear that in evaluating an application for involuntary treatment or an application for continued treatment, or a hospitalization hearing in criminal cases, the court must assess not only the person's mental condition, but also whether the person poses a risk of harm to self or others; in other words, does the person before the court pose a threat to public safety.

As noted above, the biggest issue for public safety is not the legal standards or the content of the statutes, but the inadequacy of the community mental health system.

E. Need for a forensic detention facility.

Throughout the public proceedings we heard claims that Vermont needs a forensic unit of some type, either a separate forensic hospital or some kind of dedicated unit within the Department of Corrections. At the meeting on December 9, 2022, the MHLP questioned whether the basis of the asserted need for a forensic unit was that some number of patients in the mental health system came into the system because of criminal charges, or that they were perceived to pose a grater risk than some other patients. The need for a forensic unit is not obvious, but if it will be explored it is essential to clarify the need for such a unit, and whether it is intended to separate criminal defendants from civilly committed patients, or to separate patients based on the current level of danger they pose.

CONCLUSION

Unfortunately, the process of the Forensic Working Group cannot be termed a success. It is hoped that as these issues are taken up by the Legislature, Close attention will be paid to the issues raised in this study.