

MINUTES
Task Force for the Continuing Study of the Treatment of Persons with Mental Illness
Who are Involved in the Criminal Justice System
November 17, 2011
10:00 a.m. – 12:30 p.m.
Legislative Services Building

Call to Order – 10:10 a.m.

The Task Force for the Continuing Study of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System meeting was called to order at 10:10 a.m. by Harriet Hall, Chair.

Introductions and Welcomes

Introductions were made around the room. Task Force members and guests introduced themselves.

Harriet Hall reported that Kathleen McGuire was elected, in October, to serve as Chair of the Task Force and will take over that position in December upon her return from vacation. Michele Manchester was elected Vice-Chair and has taken over that position.

Subcommittee Updates

Medication, Health Care and Public Benefits

Susie Walton provided an update from the Medication, Health Care and Public Benefits Subcommittee. The subcommittee continued its discussion of topics of interest for further study.

The discussion about potential legislation regarding involuntary medications in the jail continued from the October subcommittee meeting. The subcommittee discussed whether this change needs to occur through legislation or through an administrative process and changes to rule. After discussion, the subcommittee believes that the effective solution may come through the administrative process and changes to rules versus changes to Title 16. Members of the subcommittee will further study the option of administrative process and changes to rules. Dr. Kellermeyer will gather information from other states, particularly Washington, around this issue and will share with subcommittee members.

The subcommittee continued discussion regarding the Mobile ID bill which was passed through legislation; however, funding for the program has not been available. It is believed that this legislation may be accomplished with very little money, possibly through memorandums of understanding. More information will be available at the December subcommittee meeting.

Mike Lewis detailed challenges for individuals receiving SSI and residing in an assisted care facility (ACF) as a result of changes made to income allowances. Under the revised regulations, an individual's SSI income is reduced dollar for dollar when they work a part-time job resulting in a reduction of personal expense income which allows them to pay for medications and other personal needs. As a result of this reduced income Mike reports that some individuals are asking to return to the state hospital which is not aiding in their ongoing recovery.

Mike noted that the cost of keeping an individual in the hospital is approximately \$15,000 per month compared to allowing an individual approximately \$200 in income per month. More information and research will be gathered on this issue and further discussed at the next subcommittee meeting.

Representative Solano and Representative Gardner joined the subcommittee meeting to discuss their efforts in getting clarity on the status of the Medicaid Suspension Bill.

Medication Consistency Workgroup

Harriet reported that Elizabeth Hogan is no longer with the Department of Corrections (DOC); therefore, the status of the Workgroup is unclear. Joanie Shoemaker and Michele Manchester will work on identifying individuals to continue this Workgroup. Marceil Case reported that Elizabeth Hogan is interested in continuing work with the Medication Consistency Workgroup.

Housing Subcommittee

Harriet reported that, at the request of her employer, Michelle Lapidow has resigned from the Task Force. If anyone is interested in chairing the subcommittee or has any suggestions for a chair they should contact Harriet.

Juvenile Justice Subcommittee

Michael Ramirez provided a Juvenile Justice Subcommittee update to the Task Force.

The Family Advocacy Toolkit launch event occurred on October 7th and Michael reported that it was a very successful event with approximately 60 people in attendance. The Colorado Federation is the host website for the toolkit and it may be accessed at <http://toolkit.coloradofederation.org>. Michael distributed a copy of the webpage to Task Force members.

The Juvenile Justice Subcommittee is scheduled to meet on Friday, November 18th and will further discuss projects and priorities for the next year. The subcommittee discussions, to date, have focused on studying the impacts of direct file and access of mental health supports for juveniles as a possible next priority.

Harriet reported that at the October meeting there was discussion about scheduling a presentation regarding juvenile competency for the December meeting. The Task Force did work around this issue a few years ago and is interested in an update regarding how things are going around the juvenile competency issue. Michael will further discuss this topic with the subcommittee.

There was discussion regarding the connection between the Juvenile Justice Subcommittee and the Criminal and Juvenile Justice Commission. Michael reported that there is cross-representation on both the Subcommittee and the Commission; therefore, there is sharing of information and issues. Charlie Smith reported that the Department of Human Services is currently examining its involvement in adolescent behavioral treatment across multiple divisions and offices. An initial meeting has been held to lay out challenges within the Department

relative to the interface between child welfare, corrections, health care services and behavioral health. Linking these discussions as well as the current work of the Commission with the work of the Juvenile Justice Subcommittee will aid in work on specific issues not being duplicated.

Criminal and Juvenile Justice Commission Update

Jeanne Smith reported that part of the work with the Criminal Justice Subcommittee of the Behavioral Health Transformation Council is to work on the issue of short and long term certifications and how, in practice, some individuals are getting passed from provider to provider and the certifications don't always follow a judge's orders and may or may not have follow through. A group is currently meeting regarding this issue and includes representation from local hospitals. Training efforts also continue. The Commission continues to monitor whether a change will occur with community corrections clients being allowed to be Medicaid eligible. This eligibility determination is waiting for a federal response.

Diane Pasini-Hill reported that an all-day meeting, with representation from several entities across the system, is being scheduled for January 25, 2012.

Discussion of "Not Guilty by Reason of Insanity"

This discussion is a continuation from the October 20, 2011 Task Force meeting which started as a result of media attention to a Jefferson County case. The initial discussion focused on whether this was an issue the Task Force should take on with some initial disagreement amongst members. Consensus was reached that if this is an issue that is going to be looked at in terms of legislative solutions that the Task Force was the best place for this issue to be discussed. Commitments were made by Task Force members to further look into various aspects of the issue and follow-up with a discussion at this meeting.

Bruce Langer reported that he had agreed to explore whether this is an issue elsewhere and as a result of his research reported that there are currently no other examples outside of the Boulder and Jefferson County cases discussed in October. Bruce further reported that the Boulder office was denied a request for its own evaluator to have access to a defendant and as a result took a Rule 21 appeal to the Supreme Court. The Supreme Court denied hearing the appeal. There may be opportunity for appeal in the future depending on where the case goes. The elected District Attorneys have begun having preliminary discussions regarding the issue and it is not clear at this time how that will proceed. The Boulder County District Attorney's office has assigned a law clerk to research statutory frameworks in other states regarding the specific issue of the prosecutions access to its own evaluation. This research information may be available for the December Task Force meeting; however, is more likely for availability in January.

Laurie Rose Kepros with the Public Defender's Office reported that Kathleen McGuire had heard that for the 2012 legislative session the Colorado District Attorneys Council will not be running any bills around this issue. Laurie further reported that Kathleen had done some research as to other current cases where the prosecution's request for an evaluation was denied and, like Bruce, found no other examples. Kathleen also volunteered to undertake further research, as needed, by the Task Force.

Bruce concurred with what Laurie reported regarding the Colorado District Attorneys Council and 2012 legislation. Harriet concurred that this is also what she heard from Jefferson County District Attorney Scott Storey.

Through her research, Gina concurred that the two mentioned cases are the only two cases she identified where this issue has come about. Individuals on the defense counsel side have expressed to Gina the importance of looking at the broader perspective and looking at legislative history in terms of the NGRI statute. The legislation passed as a result of addressing some of the issues that are surfacing now and the statute was written in such a manner to address what the defendant was required to do. For the Task Force to have credible input into this area it would be necessary to gain a knowledge base of this history; otherwise the Task Force could lose credibility. It is important to go further than the right of the prosecution to have an evaluation but go back in terms of the history of the legislation. The legislation and statute is approximately 20 pages in length and is very complex.

Harriet reported that she did speak with Scott Storey regarding the Task Forces interest in this issue and he expressed interest in working further with the Task Force and the District Attorneys Council regarding the issue. Scott expressed that he has broader issues and concerns around this issue than the right of prosecution to have their expert interview the defendant.

The difference in this area is that the prosecution always has the burden of proving guilt and in this case, the prosecution also has the burden of disproving insanity. There has to be a showing before the burden is assumed; however, practically speaking, the threshold is very low in what the defense has to show to create that burden. The prosecution has the burden of disproving sanity and is one of the basic reasons that prosecutors feel that they should have access to the defendant.

There was discussion regarding affirmative defense. It was noted that in affirmative defense, the prosecution always has the burden. Jeanne Smith noted that part of the difference from affirmative defense and this issue is that there has to be a showing but there is no proof level defined for what the showing has to be.

Gina again noted the importance of understanding this issue fully. She further noted that there was over a year of discussions and hearing when the statute was revised several years ago and understanding all the discussions and input that went into those changes is critical to the Task Forces understanding of the full issue. It is also important to keep in mind that the case referred to in the editorial is a high profile case and it is important to not respond as a result of that case but to look at and understand the entire issue.

It was further noted that the statute is young enough that not all the details have been worked out in practice. These cases are so different than regular criminal cases as well as a lot of variation between cases.

Bruce noted that the statutes are complicated and have been amended heavily over the years. Bruce further noted that what is significant for him and prosecutors is that if you go back ten years ago when an evaluation was requested by the prosecution it was granted. Not getting

the rulings is the change. There was a ruling in the area of competence that defined good cause in terms of the prosecution asking for another competency evaluation. As a result of this ruling, judges have taken it and moved it over into the sanity area and while it is not the same situation try to apply that same test and it doesn't fit. There is a feeling that there is a shift away from the prosecution having access. There has been a change in practice after the legislation came along. It was further noted that if it is a case of the judge using the wrong standard then it should be addressed through the appellate process.

Harriet thanked Greg Kellermeyer for sending "The Insanity Defense: A Historical Perspective" presentation. The presentation provided by Greg was copied and distributed to Task Force members.

In determining how the Task Force should move forward, Harriet summarized that there is an issue at hand and from what we can tell is going to be discussed on an ongoing basis over the next year in at least one forum, the District Attorneys Council, which could potentially lead to a recommendation of changes through legislation. The Task Force also has a growing understanding of the issue and of the complexity of the issue. In addition, the issue may at some point become a legislative issue.

Harriet outlined three different possible courses of action which could be taken by the Task Force:

- 1) The first course is acknowledging that this isn't a legislative issue yet and the Colorado District Attorneys Council is dealing with it so we could let them proceed and should legislation be introduced then the Task Force could become involved at the request of the Oversight Committee. The issue with this course is that by the time the Task Force is asked to become involved we would be a naïve voice. The benefits of this Task Force is that it can look at this issue beyond the legal perspective and look at the treatment, good of the individual and mental health sides of the issue.
- 2) The second course would be for the Task Force to say it believes that the issue will at some point come up as a legal issue and at some point the Task Force will be asked to become involved and; therefore, the Task Force should educate itself so it can develop a more robust understanding of the issue. This will prepare the Task Force in being a useful contributor when asked for input.
- 3) The third course would be appropriate if the Task Force determines it has heard enough information to know that there should be legislation. If this is the case, the Task Force should get involved now in further understanding the issue so we can determine and develop what the legislation is.

Harriet is leaning towards the second course as it is not clear that this is a legislative issue and it is not clear there should be legislation; however, it is likely that at some point legislation will be introduced. To provide valid input the Task Force should learn more about the issue. The Task Force should figure out a course of self-educating itself on the issue so that it has the appropriate level of knowledge available to play the appropriate role if this becomes a legislative issue. Libby Stoddard noted that by choosing course number two it may not eliminate the third course and may even enhance the opportunity of the third course. Bruce Langer agreed that the second course seems appropriate and it is important for the Task Force to continue educating

itself in regards to the legislative history as well as a national perspective of what other states are doing regarding the issue.

Jeanne Smith noted there is a real danger in the Task Force not studying and educating itself on the issue as the Task Force mission is to be an advisory group on legislation. Jeanne further noted that even though a specific group may not be preparing legislation in regards to the issue, any individual or group of sponsors could introduce legislation. This is specifically an issue related to mentally ill persons in the criminal justice system.

Michael Ramirez agreed with the second course and feels a need for further education around the issue.

Susie Walton recognized that the scope of this issue is tremendous and questioned the number of individuals impacted by the issue. Currently there are only a couple of cases; however, it was noted that over time this has been a change in practice and it is believed that there will be an increase in cases over time. Information that might be valuable to the Task Force is the number of NGRI pleas per year which could determine the number of possible cases where this might be an issue. Michele Manchester reported that on an annual basis the state hospital admits 10 to 14 new NGRI cases per year.

Gina Shimeall noted that she agrees with the second course; however, her question to the Task Force is that since this is such a complex issue and area of the law the time necessary to study the issue would make it the top and possibly only priority for the Task Force and questioned whether that makes sense for the Task Force and whether it is willing to make that commitment.

Charlie noted that much of the discussion regarding this issue will focus on the legalities and statutes; however, the issue is much bigger and questioned how far reaching the Task Force would want to explore the issue. Discussion should include definitions, the process by which individuals identified as NGRI enter the state system, what happens to individuals who go through the NGRI process and end up in the Department of Corrections and should there be a different set of steps or identifications that need to be considered for this population, and what happens to those in the state hospital system not only when housed in the state system but when they transfer into the community. This is a systemic issue for a high profile population and it may be of great value for the Task Force to take on this issue. Susie Walton noted that while this issue may impact few numbers of people it is so central and is worth a real study effort.

Harriet noted that due to the 2010 legislation, which did not allow the Task Force to meet over a several month period, no legislation is being proposed for the upcoming session; therefore, the Task Force should have adequate time available to make the NGRI issue a priority.

Fernando Martinez agreed that the Task Force should continue with education to understand the issue and the population. It is important to understand how the system gets activated and understand the whole system and process.

Harriet suggested that, if the Task Force is going to proceed with the self-education, a Steering Committee be appointed to define the education process. The Steering Committee will take on the responsibility of planning the self-education process as well as identify individuals to present to the Task Force. Harriet asked whether there were basic education items that could be presented at the December meeting or whether another presentation topic should be identified for the December 15th meeting.

Michele Manchester agreed with the Steering Committee concept because of the varied and numbered components of the NGRI process. Michele agreed to serve on the Steering Committee. Laurie reported that Kathleen McGuire would also like to be on the Steering Committee. Other Steering Committee volunteers were Bruce Langer, Gina Shimeall, Fernando Martinez and Jeanne Smith. Greg Kellermeyer will assist the Committee as needed. It was suggested that DYC representation would also be valuable to the Committee. It was also suggested that Shane Bahr be contacted for interest in participating. Michael Ramirez will check with the Juvenile Justice Committee should anyone be interested in participating. No NGRI presentation topics will be scheduled for December. The Committee will meet and the self-education process will begin in January. Michele Manchester will be the lead for the Steering Committee.

It was suggested that the Steering Committee look at using the Intercept Model for this issue. Marlene Fish recommended that the Steering Committee might review the legislative archives in regards to the statute change and the lengthy testimony which occurred.

December Presentation Topic

Jeanne Smith will coordinate a CIT (Crisis Intervention Training) presentation for the December 15, 2011 Task Force meeting.

Other Updates

There were no Task Force updates.

What's Happening at Your Agency?

Charlie Smith reported that he will be leaving state government as he has accepted a position as Regional Administrator for the Department of Health and Human Services Substance Abuse and Mental Health Services Administration. He will begin his new position in January. Charlie thanked the group for their work on making change happen within Colorado. Harriet thanked Charlie for his expertise and compassion and contributions to the Task Force. Charlie reported that he is recommending Marc Condojani to serve on the Task Force during the interim period.

Melinda Cox with the Division of Child Welfare distributed the Core Services Program Evaluation Annual Report for the Fiscal Year 2010-2011 (July 1, 2010 through June 30, 2011) with the Task Force. Melinda reported that this is a \$45M statewide program. During the fiscal year over 24,000 individuals were served. A total of 13,200 were children/youth and 10,922 were adults. Approximately 40,000 services were delivered. Melinda noted that almost 50% of services delivered are within the behavioral health realm.

Laurie Rose Kepros with the Colorado Office of the Public Defender thanked the Task Force for letting her participate in the discussions and thanked the Task Force for the continued work it does.

Jeanne Smith reported that the federal criminal justice grant funding that comes to the state and includes Justice Assistance Grants (JAG), Juvenile Justice Grants; Victims of Crime Act Grants has passed out of the Conference Committee and expects approval of the House and Senate. It was expected that some of these grant would not receive any funding; however, the Justice Assistance Grant was cut by 17%, the Juvenile Justice was also cut and the Victims of Crime Act Grants appears to be stable.

Joanie Shoemaker reported that the Department of Corrections has updated its website.

Michele Manchester reported changes to two key positions within the hospital; an interim Superintendent has been appointed and the Assistant Superintendent position will be filled by Dr. Birgit Fisher.

Fernando Martinez reported that community mental health continues integration efforts with primary care as transition to health care reform is underway.

Michael Ramirez reported that he recently attended a meeting in Colorado Springs regarding mental health issues impacting children of military families. Michael noted that it is important to take a step back and really look at the impacts of the ongoing war and its implications on families and children.

Minutes Approval

Libby Stoddard moved that the October 20, 2011 minutes of the Task Force for the Continuing Study of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System be approved as submitted. Jeanne Smith seconded. Motion passed.

11:50 a.m. – Adjourn

The Task Force for the Continuing Study of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System was adjourned at 11:50 a.m.