

MINUTES

Task Force for the continuing Study of the Treatment of Persons with Mental Illness Who are Involved in the Criminal Justice System

March 15, 2012

10:00 a.m. – 12:30 p.m.

Legislative Services Building

Call to Order – 10:05 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 10:05 a.m. by Kathy McGuire, Chair of the Task Force.

Introductions and Welcomes

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

Minutes Approval

Jeanne Smith moved that the February 16, 2012 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 provided. Louise Boris seconded. Motion passed.

Not Guilty by Reason of Insanity (NGRI) Education Curriculum and Workgroup Update

Michele Manchester introduced the speakers Richard Martinez, MD, MH and Hal S. Wortzel, MD.

Dr. Martinez presented on the topic of Insanity and Criminal Justice in Colorado. CMHI-P Sanity Evaluations 2006 – 2012 (March) data was reviewed. The breakdown of sane/insane and inpatient/outpatient, total evaluations, total insane and percent insane for years 2006-2012 were reviewed (see presentation slides attached for details). Bruce Langer asked to clarify legal insanity. Dr. Martinez clarified he is referring to evaluators' findings. National studies for the last 20 or 30 years show data that runs at about 10-15 % on average for insanity findings.

Dr. Martinez commented that the statistics shows that there has been an increase of mental condition evaluation requests. Kathy McGuire commented that it is interesting that the decrease of number of evaluations CMHI-P has done was the result of the court ordering mental condition evaluation as opposed to sanity evaluations.

Gina Shimeall asked the insanity and mental condition to be differentiated. Dr. Martinez defined insanity as having specific statutory threshold. Mental condition is a broad term, often used for

diminished capacity argument. We see lots of mental condition requests in Pueblo. There seems to be more sophistication with about 10-12 years of case law in Colorado.

CMHI-P Sanity Admissions, Census, and Average Stay 2006 – 2012 (January) data was reviewed. Kathy McGuire asked of those who went to trial, how many were found sane by a state evaluator. Dr. Martinez replied it is hard to say, however the national trend is that 70% never go to trial. Gina Shimeall suggested pulling the court files data off the court link, Kathy McGuire finds this data is important for this task force and will follow up. CMHI-P Evaluation Volume 2001 – 2012 data was reviewed. We are currently at 170 % comparing to 2001 and it is projected that the number of evaluations in the next couple of years will be at 250 % compared to 2000-2001.

Hal S. Wortzel, MD presented on What Happens Once a Plea of NGRI is Entered. He differentiated the roles of clinical and forensic practice. Functions are inconsistent and should not be performed simultaneously. Four fundamental differences: goal, role of truth, judgment and reliability. The goal in clinical role is to help the patient; the goal in forensic practice is to provide information to legal system. Clinical practice/therapy is often focused upon patient's narrative or subjective truth. Forensic practice seeks objective truth, mandating multiple independent collateral sources and validation of litigant's reports. Many jurisdictions employ the Daubert criteria for this purpose. FRE 702 and Shreck decision make for generally liberal standard for admission of expert testimony in Colorado.

American Academy of Psychiatry and the Law Ethics guidelines for the practice of forensic psychiatry were reviewed. In Colorado, CMHIP is responsible for managing all court ordered competency, mental condition, and sanity evaluations. Independent evaluators are deployed in this context; their fiduciary responsibility is to the court.

Michael Ramirez asked if providers come to different conclusions or dispute any of the information. Dr. Wortzel confirmed providers can interpret same information differently.

Kathy McGuire inquired about where evaluators get prior history information from. It depends on the role; the evaluator typically gets a box of materials, after investigators on both sides spoke to witnesses, etc. If the records are not available, the evaluator will collect the information.

Melinda Cox asked how applicable NGRI is to juveniles. Dr. Wortzel admitted he never had a juvenile case. Dr. Martinez added that there is a mixed opinion how the statute applies to juveniles. They very rarely get mental condition requests for juveniles.

Sanity evaluations are always retrospective in nature. Evaluator's task is to apply the available data in an effort to approximate defendant's state of mind at the applicable time. Ability to do so will depend upon the nature and quality of available data. Ultimately, ability to reconstruct mental state need only be sufficient to answer the relevant medico legal question

Louise Boris asked if childhood trauma is being looked at. Dr. Wortzel confirmed it is.

Dr. Martinez gave a historic perspective of the insanity defense. Bruce Langer added that the part of the problem is that some surviving family members can't accept the label "not guilty". Dr. Martinez confirmed some states went to reforms to address this issue changing the term to "guilty but insane". Colorado attempted to make changes 10-15 years however decided not to move in that direction.

Second Evaluations C.R.S. Section 16-8-106(1) was defined. Colorado case law was reviewed. Bruce Langer brought up the process of requesting a second evaluation. If the defense or prosecution would like to request a court ordered second evaluation they have to show a good cause as does prosecution. Jeanne Smith clarified that only the prosecution has to show good cause as the defense can always get a second evaluation if they are able to pay for it.

Colorado Sanity Statutes were reviewed. Dr. Martinez talked about ethical and practical considerations in forensic report writing and evaluations.

Possible changes in Colorado Sanity Statutes presented by Dr. Martinez:

- Improve quality of evaluations by requiring additional qualifying standards and definition of forensic sanity evaluators.
- Incentivize state sponsored experts with revision of current reimbursement scheme.
- Better define "good cause" for court ordered evaluation, but maintain trial court discretion.
- Change trigger or standard for second "court ordered" evaluator in Felony 1 and 2 cases?
- Continue current practice that request for second evaluation can come from prosecution, defense counsel, or court.

Jeanne Smith inquired who sets up the rate. Dr. Martinez responded there are standard rates Colorado Supreme Court Directory that talks about experts in general, but the state hospital budgeting might be different. Experts are not compensated enough to do a very thorough evaluation.

Kathy McGuire pointed out that the Task Force needs to further discuss the recommendations of Dr. Martinez.

Legislative Oversight Committee Update

Kathy McGuire provided an update on the Legislative Oversight Committee meeting. She has met with the Committee. The Medicaid suspension bill was brought up. The Committee expressed concern about the lack of implementation of this bill and will meet to discuss how to proceed with that.

Mobile ID bill was also discussed at the meeting. The lack of implementation of the bill was a concern for the Committee.

Senator King will give some names for law enforcement for western slope to Kathy McGuire.

Juveniles are the area of interest of Representative Acree with regards to this Task Force. How many juveniles are not getting appropriately treated and end up in adult system? Would adults be in the system if they were appropriately treated and diverted as juveniles?

The Task Force discussed possible options for approaching these questions. Jeanne Smith asked if the Division of Youth Corrections does any follow up after juvenile parole. Caren Leaf responded that nothing is done as they no longer have any connection to DYC. Ms. Leaf added the Division is struggling with the definition of youth population with severely persistent mental illness. The Division is being asked a lot about the number of kids with persistent mental health issues, and it is a difficult question to answer without pulling the profile information. The Division is trying to pull the profile information on juveniles who were committed.

Is it an appropriate area of study for juvenile subcommittee? Michael Ramirez responded that it makes sense to look at adult records and go backwards, to see what services might have been provided in adolescent years or earlier. It could be a way to begin the discussion. It might be not necessary an area of study for juvenile subcommittee.

Marc Condojani recommended looking at the adverse childhood experiences study (<http://www.cdc.gov/ace/index.htm>). How do we identify risk factors early to predict certain behaviors so we are paying attention to those risk factors and experiences?

Jeanne Smith reminded the group that we have to be careful how we frame the question and consider what question is being raised, whether we have the data to answer it, how long it will take to collect the data, etc.

Kathy McGuire proposed a onetime meeting of some members of this group and additional experts to strategize on how to study this issue.

Harriet Hall proposed summarizing the adverse childhood experiences study and providing it to Representative Acree asking if this is helpful and if this is what she is looking for.

Patrick Teegarden commended Kathy McGuire for her report to the Legislative Oversight Committee and expressed his fascination by the interest in the topic from the Committee. He recommended putting a letter to representative Acree that will include the data we have available and asking for additional guidance.

Bruce Langer expressed he is interested in how we frame the issue. He finds it is more appropriate to look at what the success rate is, not how the system failed.

Kathy McGuire summarized that she proposes to meet with Marc Condojani and all Task Force members are invited to join if interested to strategize on this topic. The adverse childhood experiences study will be distributed to the Task Force members along with today's PowerPoint presentations and minutes.

Medication, Health Care and Public Benefits Subcommittee Update

Susie Walton updated the group on the work of the subcommittee.

Jail and involuntary medication administration bill was discussed. As Behavioral Transformation Council handles this issue well, the subcommittee would like to invite Diane Pasini –Hill to present at their next meeting.

The subcommittee continued discussion regarding the Mobile ID bill which was passed through legislation; however, funding for the program has not been available. If by June 15, 2012 Department of Revenue doesn't get enough gifts, grants and donations the mobile ID bill will be repealed. What is the sufficient amount? Hillary Smith confirmed that the way the bill reads is that by June 15, 2012 the Department of Revenue has to receive the gifts, grants and donations that are equal to or greater than \$186,000. Subcommittee did some brainstorming as this amount is tough to meet and looked at SB 12-104 treatment consolidation bill as a potential funding source. If you have any ideas please let Susie Walton know, and/or attend the meeting.

NGRI concerns, the disincentives to work continues to be the focus of discussion, we'll have better ideas on that.

NGRI sex offenders, who are trying to leave state hospital, lack of resources, inability to use resources is another topic of discussion. Some individuals have to stay in state hospital; it is a costly population to serve.

Medication Consistency Workgroup Update

Joanie Shoemaker reported there are no updates at this time

Housing Workgroup

Kathy McGuire is working on getting a housing Task Force member.

Juvenile Justice Subcommittee Update

Michael Ramirez distributed the handout and the toolkit for family members and for professionals to the group. The toolkit can be accessed online at <http://toolkit.coloradofederation.org>. The Subcommittees is working on a number of issues:

- Looking at the history of the Competency issue. Look at the first Competency Bill passed, look at the second competency statute passed and what they intended to fix. What has the impact of those two bills been?
 - o Number of youth impacted
 - o Result of raising competency
 - o Services provided
 - o Outcome of services or once they have been released from an institution

- Look at the need for services for youth who age out of juvenile jurisdiction never being restored to competency? How many youth is this and what happens to them?
- Are there areas that need to be changed in statute to fix any gaps left?
- There is an issue of good cause extending the time when individuals are in the state of limbo without services.

Caren Leaf asked about the way the good cause gets presented to court? Bruce Langer answered it usually means we are not done yet. Michael Martinez added we don't have the staff and capacity. Jeanne Smith added that there are some tough enforcement questions.

Kathy McGuire asked about representation on the juvenile subcommittee and if there are any lawyers. Michael Ramirez answered it mainly consists of practitioners. Anna Lopez brought in some lawyers from Commission on Criminal and Juvenile Justice (CCJJ) however there are no lawyers on the subcommittee. The next subcommittee meeting dates are: April 13, 9:00 -11:00 am, May 11, 9:00-11:00 am, June 15, 9-11:00 am, 700 Kipling, 1st floor conference room, Denver.

Caren Leaf added that the youth detention numbers are low. If the cap gets reduced next year, the youth population that is waiting for services might get questioned.

Kathy McGuire commended Michael Martinez and the subcommittee for a job well done.

Behavioral Transformation Council Update

Jeanne Smith reminded that the substance abuse certification training is taking place tomorrow. Mental Health certification training took place in January. A consolidation meeting is scheduled on May 15th to discuss what to do with this information.

Jeanne Smith reminded that there is a Subcommittee at Behavioral Health Transformation Council which mission includes the age group Michael Ramirez was referring to.

Other Updates

Kathy McGuire briefed the meeting on current bills.

1. HB12-1046 Concerning Requiring Drug Testing as a Condition of Eligibility for the Colorado Works Program. The bill requires a person applying for assistance through the Colorado works program (works program) to take a drug test for the presence of controlled substances as a condition of eligibility for assistance.
1. HB12-1100- Concerning the Admissibility in Criminal Proceedings of the Results of a Prenatal Screening for Illegal Substances
2. HB 12-1139 – Concerning Pretrial Detention of Children Prosecuted as Adults
3. HB12-1140 - Suicide Prevention For Minors Family Education
4. HB12-1223 – Allowing Earned Time for Inmates Jailed Due to Parole Violations and Allowing Time for Exceptionally Good Conduct

5. HB12-1232- Concerning a Limitation on Liability for the Treatment Costs of Specified Health Care Conditions of a Person in Custody
6. HB12-1271- Concerning Charging of Juveniles by Direct File of Information or Indictment in District Court
7. SB12-020- Concerning Immunity from Certain Criminal Offences when a Person Reports in Good Faith an Emergency Drug or Alcohol Overdose Event
8. SB12-078 – Concerning Protection of At-Risk Adults.
9. SB12-104- Concerning Consolidation of Drug Treatment Funding into the Correctional Treatment Fund
10. SB12-122- Concerning Avoiding Potential Conflicts of Interest in the Provision of Services to a Person on Probation.

What's Happening in Your Agency?

Harriet Hall updated the group about the mental health center directors meetings that resulted in coming up with a collaborative work plan. We checked if local mental health centers and DOC work collaboratively. Colorado seems to be the only state that is doing that.

Caren Leaf reported that the agency will be allowed to be filled at 100% instead of 110% capacity. It is allowed to begin as of April 1, 2012.

Marc Condojani reported that the CDPHE is waiting for a name of the new Director.

Joanie Shoemaker informed that the DOC Dashboard Measures Report is posted online <http://www.doc.state.co.us/opa-publications/132>. A reference to SB 11-176 Concerning Appropriate Use of Restrictive Confinement regarding the report was made. Department is at a higher than projected denial of population. Parole board is granting too many discretionary paroles.

12:25 p.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 12:25 p.m.