

MINUTES

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

April 19, 2012

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 Kathleen 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 March 15, 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. Harriett Hall seconded. Motion passed.

Not Guilty by Reason of Insanity (NGRI) Education Curriculum Legal and Procedural Issues after CMHIP Finds Person Insane

Bruce Langer introduced the speakers. Dan May gave a historical perspective of insanity defense in Colorado. In 1982 the definition of insanity was expanded from just knowing the right from wrong to mental defense of impaired mental condition. There was no method of how to handle mental defense. In the last 30 years it is the issue of finding the truth whether the person had an impaired mental condition. 16-8-103.6 was proposed in 1987 and included the waiver of privilege clause allowing the jury to see all the information and making the decision. The bill was found constitutional in both the House and the Senate. The bill radically changes the process, the jury got to see the whole picture.

Mental defense was raised without raising insanity in some cases. 16-8-107 was written and amended in 1999 to include the clause that if a mental condition was raised as a defense even if it is not insanity then the defendants waive their privileges as the whole truth would need to be discovered. We have an adversary system in Colorado, different attorneys have different approaches.

Prosecution can't do anything until the defense pleads something. The defense can consult the doctor(s) before they plea. The prosecution can either wait for a report from the state hospital or ask the judge for their doctor to do an evaluation.

Kathy McGuire asked who is responsible for providing the discovery information to the state hospital. Dan May responded sometime the state hospital requests the information from the prosecution, sometimes from the defense. Dr. Richard Martinez added that usually the DA provides the information, however he doesn't believe it is statutory driven.

Harriet Hall asked which statute allows the judge to deny the prosecution to have their own evaluation done. Dan May responded it is 16-8-107 or 16-8-108, it is to the court's discretion to allow the prosecution to do their own evaluation.

Dr. Richard Martinez asked Mr. May to share what the good cause means, if it is variable from jurisdiction to jurisdiction and how judges determine it. Dan May answered it is undefined, each court makes a decision. He thinks that it is good cause when the reports are inadequate, if a mental health expert says it is important for the case.

Dr. Martinez brought up the state process and the standard of evaluation, experts not trained as forensics as issues that currently exist in the state.

Michelle Weaver provided examples of some insanity and malingering cases from her practice. Michelle Weaver noted the difference in the 24/7 examinations done in the state hospital where the observations are continuous and constant versus the intermittent ones done in jail. She also noted the fundamental differences in forensic and clinical psychiatry.

The group discussed the issue whether we should fundamentally change the current system or work with it. Dr. Martinez brought up the point of making the state system more robust and increasing the faith in it from both sides. He also brought up some potential options for achieving it: panels of experts comprised of high quality evaluators or triggers that would lead to automatic second evaluations no matter which side requests them. He added that the state hospital evaluator is liable to the court and not to either side. Dan May gave an example of Great Britain that appoints CBI, lawyer, etc. and reminded that Colorado is an adversary system, both sides get to present their sides.

Jeanne Smith reminded all that the purpose of today's presentations was to get additional information regarding the rule that requires judicial permission to get an additional evaluation. The reality how the law works is viewed differently from different parties in the system. How things work in practice is different from theory. This is a complicated issue, it is the one that we need to look at as a Task Force and make a recommendation on whether there should be an automatic second evaluation or a panel of experts.

Dan May pointed out the gap in our legislature regarding juveniles. If juveniles were found legally insane, they would walk out of the door, with no treatment as there is no system in place in juvenile law. He also added that he found it interesting to see the data discussed at the last Task Force meeting showing a big increase in mental illnesses evaluations compared to insanity evaluations. He pointed out that they have different effect: if the person is found insane the person will go to the state hospital, if the jury finds the person wasn't able to form intent due to the mental illness he/she walks out of the door.

Kathy McGuire summed up the discussion. Dan May added that his priorities would be getting the tools to find out what the truth is and whether he should confess insanity and also for the jury to see the entire picture so they can make the best decision they can.

Subcommittee Updates

Medication, Health Care, and Public Benefits

Susie Walton stated a small meeting was held today, an update will be provided at the next Task Force meeting. There is an outside effort with a similar mission Ms. Walton is working on connecting the subcommittee with. The subcommittee is working on the issue of formulary drugs on the detained side of juvenile justice system and housing among others.

Medication Consistency Workgroup

Joanie Shoemaker had no updates on the workgroup.

Administrative Segregation

Joanie Shoemaker reported that the Department of Corrections (DOC) submitted a report on administrative segregation to chairs of the Judiciary Committees. The Department has been looking at the administrative segregation for awhile. A secondary process was put in place for offenders who have been in administrative segregation for over a year. We looked at 870 offenders – 321 (36.9 %) were released from administrative segregation either thorough a step down process or into the general population reducing administrative segregation to close custody. About 20 out of 321 returned back to admin segregation due to their behavior. This reduced our administrative segregation population from 6.8 to 5.5 %. Kathy McGuire asked what number or percentage of the discussed population was mentally ill. Joanie Shoemaker noted she doesn't have the numbers at hand.

In FY10-11, the average placement to administrative segregation was 65 offenders, and in current fiscal year it is 39. We strengthened the process of central classification review.

A program was put in place a year and a half ago to address our concern regarding the population going from administrative segregation back into the community. Because of the work on this program the number of releases from administrative segregation to parole was 47% in FY11. This fiscal year it is 22%.

Ms. Shoemaker reminded the group that when CSP2 program was funded in 2010 specific funds were given to improve our program for mental health. We had rearranged some resources. From December 2007 to June 30, 2011 we had 338 offenders who were in some phase of that program. 237 offenders moved though Centennial program with 44 completions of the program during July 2010-June 2011.

Kathy McGuire asked to clarify what CSP2 is. CSP2 is Centennial South. CSP is Centennial North facility opened in mid 80s.

Fernando Martinez asked if facilities have an org chart that can be distributed. Ms. Shoemaker confirmed that there is a list of facilities statutory and she will provide it.

During December 2007- June 2010 59 offenders failed Centennial program and were moved back to administrative segregation. In the year CSP component was implemented only 25 offenders failed. The population stays in the CSP program for 7.5 months on average. Combining Centennial and CSP components we are seeing higher success rate in moving the offenders to general population.

Gina Shimeall asked to clarify what the CSP component is, program or building. Joanne Shoemaker confirmed it is a program that includes different program levels.

Ms. Shoemaker added that DOC population has Axis one and Axis two diagnoses. What is noteworthy is that 53% of CSP population has primary diagnoses that are access two diagnoses which is more difficult to manage.

Fernando Martinez asked if the outline of the curriculum can be shared. Joanne Shoemaker will send to Kathy McGuire to distribute as a reference.

Marlene Fish asked to comment on the recent relocations of DOC population. Ms. Shoemaker replied the DOC population is down by 1000. This fiscal year an additional 170 reduction of incarcerated population

is anticipated. Several factors contribute to this including felony filings being down in Colorado which resulted in our intake population to be reduced as well as parole and community staff implementation of a more structured system used to make parole decision more consistent. Reduction of parole violators' numbers are down and the number of paroles is up. The closure of CSP is due to this population dynamics as well as the reduction of our administrative segregation population.

Harriet Hall commented that being on a tour and hearing the data today sounds encouraging. She commended good job Department of Corrections has done. Kathy McGuire agreed and commended the DOC staff.

Gina Shimeall commended the collaboration of DOC and parole. Joanne Shoemaker added that the whole state is focused on reentry and collaboration helps.

Behavioral Health Transformation Council Update

Jeanne Smith reminded that there were two sessions on mental health and substance abuse certifications both very well attended. A consolidation meeting is scheduled for May 15th to review gaps and issue some practical recommendations. Kathy McGuire asked if some notes from those meetings can be distributed.

Other Updates

Kathy McGuire added that the meeting with Marc Condojani was held to address Rep. Acree concerns and she is following up on some recommendations discussed at the meeting.

What's Happening at Your Agency?

Michele Manchester announced per Marc Condojani's request that Doug Muir is the new Director of the Division of Behavioral Health.

Harriet Hall announced that Jeffco received a criminal justice grant, focusing on holes in continuum of services provided in the County, specifically at early intercepts. Two active groups and an advisory Council are working on this effort.

Susie Walton announced that the Jeffco was selected as an expansion county with the Crossover Youth Initiative, Georgetown University Initiative and the Partnership of Casey Family Programs to bring the juvenile survey system together around the crossover youth; children in the child welfare system who are also in the juvenile justice system. The intent of the initiative is to help build a bridge between the two systems that view the child from different angles and help families navigate these systems.

Melinda Cox reminded all that the April is National Child Abuse Prevention Month and May is the National Mental Health Awareness and National Foster Care Month. Division of the Child Welfare is working on two large pieces of legislation: differential response legislation that allows different counties implement differential response as well as fatality and near fatality piece of legislation.

11:51 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 11:51 a.m.