

MINUTES

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

August 16, 2012

10:00 a.m. – 12:30 p.m.

Legislative Services Building

Call to Order – 10:02 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 10:02 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 July 19, 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. Melinda Cox seconded. Motion passed.

Juvenile Justice Subcommittee Report Discussion

Kathy McGuire introduced Anna Lopez, DCJ, Juvenile Justice Subcommittee member.

Ms Lopez gave a historical perspective on the issue of juvenile justice competency. At the time there wasn't a procedure in the Children's Code allowing competency to be raised in a juvenile court proceeding. Started to meet to discuss the issue of competency in July 2003. Used a study from Virginia and Colorado adult statute as the basis for the recommended legislation to this Task Force. Several people participated in the drafting of the legislation including Judge Ashby, Ray Slaughter, Meg Williams, Susan Colling, a couple of attorneys, and a youth psychologist. Michael Dohr was the assigned drafter and the first draft was done in August 2004.

Anna Lopez distributed the membership list of the subcommittee. Kathy McGuire asked what counties were represented by public defenders and prosecutors. Anna Lopez responded Denver, Adams, Larimer and Arapahoe.

Anna Lopez highlighted key points of statutes 19-2-1301 to 19-2-1305 passed in 2004.

19-2-1301: Sets up who can raise the issue of competency; prosecution, probation, GAL, defense attorney of parent or legal guardian.

19-2-1302: The court can determine competency based on information they already have; if they feel they do not have the necessary information then they shall order a competency examination (section 1).

Section 4 (a) The competency evaluation should be completed in the least restrictive environment, taking into account the public safety and the best interests of the juvenile.

(b) shall be conducted by a licensed psychiatrist or licensed psychologist who is experienced in the clinical evaluation of juveniles and trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training under the supervision of a licensed psychologist with expertise in forensic psychology.

(c) sets minimum for competency evaluation: (1) opinion regarding juvenile is competent, (2) recommendation whether juvenile may be restored and identify appropriate services to restore.

(d) sets the time –lines; 30 days unless good cause if in secure detention facility, 45 days unless good cause if not held in juvenile detention facility.

19-2-1303: (1) If competent then the suspended proceedings will continue.

(2) If juvenile incompetent to proceed but restorable the court shall stay the proceedings. Court shall order the restoration services be provided in the least restrictive environment, taking into account public safety and best interest of the juvenile. Review progress every 90 days and the court shall not maintain jurisdiction longer than the maximum possible sentence for the original offense, unless good cause to maintain jurisdiction however, cannot extend past 21st birthday.

(3) If incompetent to proceed and cannot be restored the court shall determine if a management plan is necessary. The court shall develop the management plan. At a minimum address treatment, identify parties responsible for the juvenile and specify appropriate behavioral management tools, if not otherwise part of treatment.

19-2-1304: If feel juvenile has been restored to competency then there is a restoration hearing.

19-2-1305: (1) If juvenile is restored to competency court shall commence trial or sentencing.

(2) If juvenile remains mentally incompetent the court can dismiss the proceedings, the court can continue to modify any orders or enter new orders to facilitate restoration.

(3) Evidence obtained during a competency evaluation is not admissible on the issues raised by pleas of not guilty.

Juvenile Justice Subcommittee prioritized their recommendations and focused on the most frequent, most realistic to implement and those that will have impact on kids. She summarized the recommendations of the subcommittee.

Kathy McGuire asked Jeanne Smith what the best way to proceed is. Jeanne Smith responded we are running out of time as the bill draft needs to be approved by legislature by the end of September; however we will be in good shape for the next legislative session.

Kathy McGuire proposed to review each recommendation and to give feedback for each.

1. Evaluation Deadline

Gina Shimeall asked who does the valuation. Anna Lopez responded that the request to do an evaluation goes to state hospital that then contracts someone in the community to do an evaluation. Only 17 competency evaluations were done at the state hospital for the year we have the data. Shortage in juvenile arena.

Michele Manchester introduced Dr. Peggy Hicks, Forensic Evaluator who does competency evaluations for juveniles in the state hospital. Kathy McGuire asked Dr. Hicks to clarify how long it takes to complete an evaluation. Peggy Hicks stated it varies. She described the process: the discovery needs to be in place before an evaluation gets assigned to an evaluator. Some are sent to consultants at different facilities,

some come to the state hospital. Judicial order is sent out to collect collateral information from mental health, schools, residential places, etc. Once the referral is received a person who made the referral, public defender, district attorney, social worker, and any additional people who might have the information are contacted by an evaluator.

Kathy McGuire noted that we not changing 30 days timeline as the evaluations typically take more than 30 days and the good cause is found; we are trying to determine where the kid goes, we'd like to see the language say it is a secure setting. Dr. Hicks noted most of the evaluations she does are outpatient. She also finds SB94 helpful. Anna Lopez added that only 17 kids were inpatient, while 119 were in juvenile detention centers waiting for their evaluation.

Fernando Martinez asked how long it takes on average from receiving a referral to the time you start writing an evaluation. Peggy Hicks responded it depends on the issues, usually within 90 days. Mr. Martinez asked if involving community resources extends the timeframe. Dr. Hicks responded there are 13 consulting psychologists the state hospital works with.

Kathy McGuire stated she supports adding the language of placing kids to a community placement, strengthening the language about 30 days and obtaining the data as a feedback for the first recommendation.

Dr. Kellermeyer asked if there are community resources other than home setting. Is there a good treatment available in the community and who pays for that? Anna Lopez responded it is different in rural communities as they often don't have the resources. SB94 Directors who presented to the subcommittee claim there are state resources in place that can be used for these purposes. Michael Ramirez added that there is a significant cost savings when community placements are used.

Jeanne Smith stated there is contemplation that the juvenile can be at in a community placement or in foster home. What causes the juvenile to be in detention, what causes the judges to rule to place them in community already? Kathy McGuire responded that anecdotally judges do that because of lack of resources and suggested adding a recommendation to give a priority to the kids in detention. Dr. Hicks added it is already being done.

Gina Shimeall stated redefining good cause might not solve the issue, and suggested putting some time restrictions when the discovery has to be provided as one of the options. Kathy McGuire supported the idea and added state departments who are involved with the kid will have some time restrictions that will help speed up the process.

Michael Ramirez supported the suggestions and added that more data is needed. Kids with cognitive delays require some level of secure placement and support; we don't have the number of kids. Michele Manchester asked for clarification on what data is needed. Kathy McGuire and Michael Ramirez clarified that it is the number of juveniles for whom competency evaluations are requested, where they are placed awaiting the competency evaluation and the number of days it takes to receive the evaluation from the court ordered date.

Jeanne Smith commented she is curious if the judges are making the decision to place the kids in detention due to lack of resources or if detention is where kids need to be. Shall we be looking at setting up models how SB 94 funds can be used? What are the root causes of the problem? Gina Shimeall recommended keeping data on why the juveniles are not placed into alternative settings, is it a funding issue or resources aren't there? Why is the backlog there? Peggy Hicks suggested getting data on how

many juvenile competency evaluations are done, where they are done, how many juveniles pending competency evaluation are held in DYC and what are the reasons and their charges? Kathy McGuire added that CMHIP might have the data you are looking for.

The recommendation from the Task Force to the subcommittee is to do additional research and take no actions for this legislative session.

2. Clarification and clean up of language defining competency throughout the state and processes for juveniles based on the mental illness

Kathy McGuire suggested the subcommittee to study it and bring some definitions forward. Dr. Kellermeyer asked if the Task Force should have a presentation on this. It has been agreed this is a task for the subcommittee. Michele Manchester recommended Dr. Hicks to become a member of the subcommittee. Gina Shimeall commented it is hard to rule out the age factor.

3. Restoration Structure

Kathy McGuire commented that the issue is a problem and the payment is the problem from her perspective. Michele Manchester commented that mental health need treatment, basic legal training could be part of that treatment. Dr. Hicks commented that restoration to competency is not the right term for juveniles; it is more likely achievement of competency.

Michael Ramirez mentioned that the challenge with individuals who completed the treatment and become candidates for restoration is identifying who is going to pay for that and what the roles are. Kathy McGuire suggested studying and making legislative recommendation for the next legislative session.

Gina Shimeall asked if representatives from DA's office and public defenders office give recommendations and identify what stumbling blocks are to the subcommittee. Anna Lopez responded that two things that came out from these discussions is that nobody knows who is in charge of this and there is no criteria determining someone is restored to justice. We want to provide parameters and minimums not driving a fiscal note.

Kathy McGuire recommended 3 work groups to the subcommittee. Dr. Hicks would like to be involved in first and second work groups.

Marleen Fish commented that basic insurance plans will be required to have mental health coverage by a health care reform.

Joanie Shoemaker brought up an alternative to statutory change. Judicial doesn't have oversight over courts. May be there could be a guide that can be developed that could be a tool that can be looked at besides a statutory change. Kathy McGuire commented that Jeanne Smith's proposal about using the model of SB94 could be a part of such tool.

Kathy McGuire commended Michael Ramirez and his group for the work they have done.

Susie Walton added that she sees it as an issue of resources. Kathy McGuire asked all those who have interest in this issue be a part of the subcommittee or send someone.

Subcommittee Updates

Medication, Health Care, and Public Benefits Subcommittee

Susie Walton provided an update of the subcommittee work. John Berry has assigned Sarah Roberts to look at the SSI problem we have been studying. Libbie Stoddart is helping to get us on the agenda. Gina Shimeall asked for a letter of support from this Task Force. Kathy McGuire will send it on behalf of the Task Force.

Medication Subcommittee

Joanie Shoemaker is setting a conference call with Regi Huerter and offered anyone interested in participation to email her.

Behavioral Health Transformation Council Update

Jeanne Smith reported the council is in the process of reorganizing. In August there will be an all day meeting to discuss the organizational structure. Jeanne Smith will report on the new directions of the Council after that meeting.

Other Updates

Kathy McGuire commended Lenya Robinson for her presentation to the legislative Oversight Committee on adverse childhood experiences. The Legislative Oversight Committee was very supportive of our strategic planning in November. The meeting will be November 29 and will take place at USDOT.

Kathy McGuire has some leads on facilitators and however there is cost associated with all of them. She is open to suggestions how to pay for it. Michele Manchester asked if we have some people in our agencies who are good facilitators who we can do it for free. Please send your suggestions to Kathy McGuire.

Kathy McGuire reviewed the topics of discussion for the next MICJS meetings. Ms. McGuire will ask Michele Manchester to reconvene steering committee to summarize the entire NGRI curriculum reviewed to date. Mental health treatment services in DOC topic will be discussed at September Task Force meeting. In October a synthesized bulleted list based on reviewed presentations to provide to the Legislative Oversight Committee will be reviewed. Kathy McGuire commented it is important that NGRI piece is tied up in October.

Melinda Cox recommended someone with experience of this subcommittee work to be a facilitator at the November planning meeting.

Marc Condojani has demographic information of the population discussed at the last meeting he will distribute via email.

What is Happening in Your Agency?

Kathy McGuire and Michele Manchester will not attend the September Task Force meeting.

Jeanne Smith shared some of the results of work done with family members and Aurora victim shooting. Aurora mental health stepped up and offered services. The community came together. DCJ office has been involved significantly to ensure that the Victim Compensation funds are replenished; there will be hundreds of claims made to the 18th judicial district Victim Compensation fund. Our reserve funds kept on a state level and also federal funds will be used. Schools have adopted their plans which they had in

place for dealing with traumatic incidents and most have been using the Recovery plans of the four phase Homeland Security model. Much of such tragic incidents that are not as widely publicized occur every day and remind the community of the need for mental health services.

Marc Condojani shared that the Office of Behavioral Health and Children Youth and Family developed a new position responsible for adolescents' treatment statewide. The position is based within CDHS.

Gina Shimeall shared we are underfunded in the mental health for families and victims. We need to have more mental health courts. We have to do something as a Task Force, we have to have be more proactive and preventative as a state.

Melinda Cox reminded that the HB 11-1196 was passed last September and the Division of Child Welfare is implementing it. The bill gives an opportunity for counties to provide services to families who don't need a case to be opened when there is only a service request.

Joanie Shoemaker gave an update on the implementation of the HB 12-1223 Concerning Earned Time for Inmates and in Connection Therewith Making and Reducing Appropriations. The process will be automated and we are going live next Tuesday. It affects anyone in DOC or on parole who completes the program and gets earned time achievement up to 120 days per incarceration.

Michael Ramirez added that John Berry, superintended of Aurora school district is getting some funding to help meet the needs after Aurora shooting tragedy.

11:45 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 11:45 a.m.