

MINUTES

Task Force Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems

Thursday, August 28, 2014
9:00 a.m. to 12:00 pm
Legislative Hearing Room B

I. Call to Order

- *Michele Manchester, Colorado Mental Health Institute at Pueblo*

II. Introductions and Welcome

- *Michele Manchester, Colorado Mental Health Institute at Pueblo*

III. Discussion on Juvenile Competency Legislation

- *Michele Manchester, Colorado Mental Health Institute at Pueblo*

Ms. Manchester stated that the goal of the meeting was to arrive at a consensus on whether to move the proposed bill concerning juvenile competency forward to the Legislative Oversight Committee. Kathy McGuire discussed the work group that brought forth the proposed legislation. Hal Sargent discussed the concerns of the Colorado District Attorneys' Council about the proposed bill. There was discussion about an e-mail from Dr. Tom Grisso, juvenile competency statutes in other states, and various task force members' experiences working with juveniles when the issue of competency is raised. Karen Knickerbocker referenced the 2013 MICJS Final Report and discussed whether the task force wants to bring forth juvenile competency legislation without the support of the Colorado District Attorneys' Council.

Dr. Richard Martinez discussed concerns from the therapeutic community about the proposed legislation. There was discussion about adding a legislative declaration, the definitions included in the proposed bill, and whether to include language reflective of the U.S. Supreme Court's Dusky Standard.

There was discussion about the language on page 4, line 18-22, stating "A determination of competency must include, but need not be limited to . . ." and what this language could imply for setting a standard for the determination of competency. Ms. Knickerbocker referred to House Bill 14-1032, concerning the provision of defense counsel to juvenile offenders, and its inclusion of the language "the juvenile is of sufficient maturity level ...". Jane Ritter asked whether the definition of mental capacity would encompass maturity and, if so, could "but need not be limited to" be removed from page 4.

Janet Drake stated that her office is supporting the position of the Colorado District Attorneys' Council. There was discussion about the intellectual disability definition and whether that definition is needed. Ms. Ritter suggested adding a language to the bill stating that a juvenile shall be presumed competent if certain criteria are met. There was discussion about whether a similar statement exists for adults about a presumption of competency. The discussion returned to adding a legislative declaration and what language should be included in a legislative declaration.

Ms. McGuire stated that the definition of intellectual disability is needed because it is used throughout the bill. There was discussion about altering the definition of mental capacity to

include functional legal elements. Sheri Danz referenced the Florida statutes concerning juvenile competency. Ms. Knickerbocker discussed created a definition for mental capacity that provides guidance to new evaluators without being overly broad or overly narrow. There was discussion about whether the legislation further criminalizes juveniles and the ability to access services.

There was consensus that the word “or” on page 3, lines 18 and 23 should be changed to “and”. Further discussion occurred about removing the definition of intellectual disability.

Ms. McGuire stated there seemed to be agreement about making the following changes to the proposed bill:

- adding a legislative declaration about why the task force was addressing the issue and that age alone is not determinative of incompetence;
- removing “but need not be limited to” on page 4, lines 19 and 20;
- removing “intellectual disabilities” on page 4, line 21, but keeping the definition;
- adding additional functionality to the definition of “mental capacity” on page 3; and
- changing “or” to “and” on page 3, line 18 and 23.

She then proposed having the task force members review the changes and respond by e-mail about whether they support the draft moving forward.

There was discussion about making changes to the definition of “incompetent to proceed” to make it similar to the definition in the adult statutes. Chris Habgood suggested changing the language on page 5, lines 18 and 19, to say “whether there is a likelihood that the juvenile may achieve or be restored to competency”. The task force agreed to that change.

Discussion about the cost of conducting competency evaluations in home or community placement and the possibility of a fiscal note occurred. Michael Lott-Marnier discussed including in the legislative declaration a statement about prioritizing treatment for mental illness.

Next Steps:

Jane Ritter will make the following changes to the proposed bill draft:

- add a legislative declaration;
- conform the definition of “incompetent to proceed” on page 2 to mirror the statutes concerning adults;
- add additional functionality language to the definition of “mental capacity” on page 3;
- change “or” to “and” in the definition of “mental capacity” on page 3;
- remove “but need not be limited to” on page 4, lines 19 and 20;
- remove “intellectual disabilities” on page 4, line 21, but keep the definition;
- change the language on page 5, lines 18 and 19, to say “whether there is a likelihood that the juvenile may achieve or be restored to competency”.

Amanda King will send out the draft for review by Tuesday, September 2.

Task force members will respond as to whether they support or do not support the draft moving forward within 48 hours of receiving the draft.

Meeting Adjourned