

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

Thursday, December 18, 2014

10:00 a.m. to 12:30 pm

Legislative Hearing Room B

I. Call to Order

• *Susie Walton, Park County Department of Human Services*

II. Introductions and Welcome

• *Susie Walton, Park County Department of Human Services*

III. Approval of Minutes

• **November 20, 2014**

Minutes were approved as written.

IV. The Purpose of Today's Meeting

• *Susie Walton, Park County Department of Human Services*

The entire meeting was devoted to the juvenile competency bill in order to ensure that it is in the best state possible for the legislative session beginning in January. Ms. Walton asked all attendees to add any discussion points that they wished to address during the meeting. The recommendations included areas where specific language may need to be changed, how many competency evaluations are being mandated, the causative relationship of mental capacity, and discussion of the fiscal note that will likely be attached to the bill.

V. Historical Background

• *Michael Ramirez, Colorado Department of Education*

Michael Ramirez presented an overview of the history of the juvenile competency discussion that had been sent to members of the Task Force prior to the meeting. In addition, he highlighted proposed changes to the language of the bill.

VI. Proposed Amendments, Discussion

• *Janet Drake, Attorney General's Office*

• *Sheri Danz, Office of the Child's Representative*

• *Others?*

Janet Drake presented recommendations from a prosecutorial perspective, but she told the Task Force that they are not the views of the Colorado District Attorneys Council (CDAC) or all prosecutors in Colorado. Ms. Drake explained the underlying concerns that have "flavored" prosecutors' positions regarding the language of the bill. Ms. Drake told the members that the Attorney General's Office has focused on the mental capacity definition and the language within it. Ms. Drake presented her recommendations to the Task Force. They included a suggestion to change language to mirror some language contained in the Maine statutes.

Sheri Danz, from the Office of the Child's Representative, helped facilitate the discussion by sharing specific parts of the language with which interested parties may be concerned as well as offering insight into some of the language changes and proposed amendments throughout the drafting of the bill. Karen Knickerbocker, from the Office of the Public Defender, offered insights from a defense perspective while Tariq Sheikh, of the 17th Judicial District, spoke from the prosecutorial perspective from the Colorado

District Attorneys Council. Richard Martinez, MD, offered a clinical / provider's perspective on the language at issue.

Members of the Task Force discussed, at length, whether to add language from the Maine statutes, nuances surrounding the term "age appropriate," as well as the norms by which juveniles may be evaluated on their competency. In addition, the representation (defense counsel, guardians ad litem, etc.) available to children who are accused in the court system and the amount of time that a legal proceeding may take when a juvenile is evaluated for competency were discussed.

- Motion made by Janet Drake, seconded by Moe Keller, to adopt prepared amendment to LLS 15-0058, with the exception of taking out "age appropriate language" and further amending it to reflect language contained in the Maine statutes in place of the - Title 15, §3318-A.

- Discussion prior to the vote included insight from Dr. Martinez surrounding striking "age appropriate" from the amended version
- Ms. Drake did not amend her motion.
- Motion failed - 3 in favor; 10 opposed***

- Motion made by Peggy Heil, seconded by Michael Ramirez , adopt prepared amendment to LLS 15-0058, to include the language "appreciates" and "having a factual and rational understanding" and further being amended to remove "age appropriate" in both places it appears in (12.3)(b) in the amendment.

- No discussion
- Motion carried – 16 in favor***

VII. Decision/Discussion Points for the Task Force

The Task Force discussed the nuances surrounding language in the bill concerning "appropriate courtroom behavior." Ms. Knickerbocker said, anecdotally, a defender would not likely raise a competency issue solely based on courtroom behavior. Dr. Martinez explained the implications of willfully disruptive behavior vs. uncontrollable behavior due to a mental deficiency.

Ms. Danz presented other amendments that have been proposed by the work group as a result of the special meeting of the Task Force prior to the draft of the bill being presented to the bill's sponsors.

- Motion made by Ms. Drake, seconded by Ms. Heil - Page 4, strike lines 23-27 and on Page 5, strike line 1 - Thus removing (a) and (b) from the legislative declaration and renumbering (c) through (e) accordingly

- Discussion included further clarification about why (a) should be stricken.
- Motion carried without opposition***

- Motion made by Ms. Danz, seconded by Dr. Martinez, Page 5, line 7, strike "formal competency evaluation" and substitute "decision by the court"

- Discussion included whether the competency evaluation informs the decision of the court so that the court is not required to adopt the recommendations set forth in the competency evaluation.
- Motion carried without opposition***

Discussion of 7(a) included whether the statutory language is useful to evaluators, and does it follow the language accepted in the *Diagnostic and Statistical Manual of Mental Disorders* (DSM). Ms. Danz requested that the Task Force members review this section to ensure that the language reflects the current version of the DSM, version 5. Dr. Martinez provided an overview of the terms used in the DSM-IV and

the DSM-V to describe a person's intellectual or cognitive disabilities. In addition, he provided examples that may be used to describe a "disorder." Dr. Martinez recommended keeping "developmental disabilities" because the term could be used to describe various disabilities or disorders by definition in the DSM. Dr. Martinez deferred to members of the Task Force to determine whether to keep "intellectual disability." Both Chris Habgood, from the Division of Behavioral Health, and Ms. Knickerbocker, highlighted areas in which these terms are defined statutorily. The term "intellectual disability" is included under "developmental disability." There was no concern from a clinical/evaluator perspective about the language in the amended version of the bill. Mr. Sheikh raised the question about whether the category of "intellectual disability" is a redundant term. Dr. Martinez suggested referencing back to the definition of "developmental disability," if there further clarification is needed. Mr. Sheikh explained that the bill may become more palatable by CDAC if the term "intellectual disability" were stricken. Mr. Sheikh raised the point that attorneys and evaluators may look at these terms differently. Adam Tucker, Department for Intellectual and Developmental Disabilities within Health Care Policy and Financing (HCPF), explained some of the reasoning behind the current health care field adopting the term "intellectual and developmental disabilities (IDD)," and the differences between "intellectual" and "developmental" disabilities. Mr. Tucker is comfortable with the language of the bill as is. Michael Ramirez reminded the Task Force, for the record, that the initial juvenile subcommittee discussed these issues at length and provided a very strong voice in this matter. The subcommittee was very concerned practitioners and courts understand the terms defined in the bill. Ms. Tunstall reminded the Task Force that these discussions took place prior to the publication of the DSM-V.

Dr. Martinez spoke to the concerns that leaving the term "intellectual disability" without any qualification may pose for the CDAC. Mr. Sheikh expanded upon Dr. Martinez's comments. Chris Habgood, Division of Behavioral Health, further explained the revisions that took place as a result of concerns surrounding "intellectual disability" and why the term is referenced to the definition in the bill.

- Motion made by Janet Drake, seconded by Karen Knickerbocker, Page 2, line 21, after "intellectual disability" to insert "as used in 19-2-103 (5.5)"

-No further discussion

-Motion carried without opposition

Dr. Martinez raised the issue that the definition of "incompetent to proceed," as it is stated in the adult statute is different to how it is stated in the juvenile bill, and whether there is a causative relationship. Ms. Danz explained that this was a conscious decision to not include language mirroring the adult statute. Dr. Martinez expressed a desire to remain consistent with the adult standard, but would not oppose the bill as it is written. Mr. Ramirez suggested that an explanation that the Dusky standard was used in drafting the legislation in bill summary. While the bill summary is not typically used in this manner, this can be stated in testimony. No changes to the bill's language were proposed as a result of this discussion.

Next, the Task Force discussed the fiscal note associated with the bill. Susan Colling, from the Judicial Department, presented data about how many competency evaluations were done in the past two years. She explained that there were some problems collecting the data: one was that it was difficult to distinguish between mental health competency evaluations and psycho-sexual evaluations; the other was that districts pay for these evaluations differently – some per evaluation, and some for multiples at a time (so some of the data may represent multiple evaluations given). The new accounting system in Colorado may rectify the coding issue. Mr. Habgood presented data he had collected from Fiscal Years 12-13. He also explained the methods used in determining last year's fiscal note (\$4,096 at minimum). This year's fiscal note is currently being developed, but is to remain confidential until added to the bill.

Ms. Walton posed the question about how a dollar amount can be determined so as not to create unfunded legislation. Task Force members discussed the issues surrounding evaluations mandated by the courts.

This discussion included how many evaluations may be given, how they are paid, where they may be done, and whether the community contains resources (i.e. expertise) to provide a sufficient evaluation. Mr. Ramirez reminded the Task Force of the data collected in 2011. Members discussed the gaps that still exist in collecting data for evaluations that are given. Additionally, they discussed the importance of making a strong case for funding with Senators and Representatives so that the message can be carried to the Joint Budget Committee.

VIII. What's Happening at Your Agency

Attendees provided updates on their respective agencies, which included personnel announcements in Behavioral Health, HCPF, and Mental Health America. Don Mares, former director of Mental Health America, has been chosen by the Mayor of Denver as the city's first executive director of the new Office of Behavioral Strategies. Dr. Martinez expressed an interest in inviting Mr. Mares to present to the Task Force at a future meeting. In addition, Camille Harding announced that HCPF received the SIM grant. Ms. Harding will provide the Task Force with updates and will invite participants as needed. Ms. Harding announced the development of a use case for the exchange of health information. The group – including interested members from this Task Force – is looking at funding opportunities for this effort.

Meeting Adjourned