

Meeting Minutes
Working Group on Policies Pertaining to Individuals with Intellectual Disabilities Who Are Criminal-Justice Involved
September 5, 2023
Microsoft Teams Phone/Video Conference

ATTENDEES

Working Group Members Present: Susan Aranoff (Developmental Disabilities Council - DDC), Susan Garcia Nofi (Vermont Legal Aid - VLA), Stuart Schurr (Department of Disabilities, Aging, and Independent Living - DAIL), Jennifer Poehlmann (Vermont Center for Crime Victim Services - VCCVS), Eliza Novick Smith (Vermont State Employees Association - VSEA), Tiffany North Reid (Office of Racial Equity - ORE), Rep. Ela Chapin (House Judiciary - HJ), Sen. Dick Sears (Senate Judiciary - SJ), Sen. Ginny Lyons (Senate Health and Welfare- SHW), Pat Frawley (Vermont Crisis Intervention Network - VCIN), Hon. Karen Carroll (Vermont Judiciary - VJud), Max Barrows (Green Mountain Self-Advocates - GMSA), Mary-Graham McDowell (Vermont Care Partners - VCP), Karen Barber (Department of Mental Health - DMH).

Working Group Members Absent: Rep. Rey Garofano (House Human Services - HHS)

Others Present: Kim Guidry (DAIL), Rebecca Silbernagel (DAIL), Joanne Kortendick, Kelly Carroll, Isaac Dayno (DOC), Nicole DiStasio (DMH), Michael Casper (GMSA), Jared Bianchi (SAS), Jennifer Garabedian (DAIL).

Motion to Approve August 2, 2023, Minutes: First: Hon. Karen Carroll
Second: Rep. Ela Chapin

Minutes are approved as written.

Act 248 and Vermont Legal Aid's (VLA) Role in the Annual Judicial Review

Attorney Susan Garcia-Nofi of VLA (presentation)

Act 248 participants are those with diagnosed intellectual disabilities and who have committed serious bodily injury to another, sexual assault, or lewd or lascivious conduct with a child. These individuals are entitled to an annual recommitment review, and VLA represents them during that judicial review process. A recommitment order lists conditions of recommitment until the next review and order is issued. Standard conditions include the level of supervision, required compliance with all care plans, attendance at all treatment appointments, and abstaining from dangerous or illegal behavior. Most participants live with shared living providers or home providers; however, a few participants live in 24/7 supervised, staffed homes. Susan shared the numbers of Act 248 cases assigned to VLA over the past five years and noted the discrepancy between the number of assigned cases and the reported number of 248 participants. She asked the group to consider how to ensure forensic facility participants receive their due process.

Most of the time a participant returns to the home if s/he elopes; however, if an individual is not welcomed back to the home, or if it doesn't serve the participant or community for them to return, the DAs will look for another placement by asking other DAs, other programs, or making referrals to other programs. The DAs are required to continue the programming and staffing for that participant. If a participant elopes and commits another crime, or it is deemed not to be in the best interest to return the participant to the home, there are no alternatives at this point.

Stuart Schurr commented that all Act 248 participants have committed serious crimes, and the standard in Vermont is to continue the commitment if that individual continues to present a danger of harm to others.

Mary- Graham McDowell reported that many clinicians are intrigued and interested by the idea of Competency Restoration.

Senator Lyons wanted assurance that individuals held at a forensic facility would receive support services.

Susan Garcia-Nofi shared VLA's thoughts on the following questions:

1. Should there be a facility for the small number of Act 248 individuals who are deemed too dangerous to be served in a community-based setting?
 - VLA's position: Being in the community supports practicing social and safety skills, practice self-regulation, and participating in community allows for a higher quality of life. The housing shortage may add pressure to place individuals in the facility. A home-based setting is the least-restrictive setting. Worry about people falling through the cracks, especially in an institutional setting. VLA prefers the funding is directed to the DAs instead of the forensic facility to make sure the community-based setting is safe.
 - Other comments: Mary Graham McDowell shared that there is a small number of Act 248 participants who don't (won't?) engage clinically with the DAs and aren't willing to participate in a healthy and safe way. These situations are of concern to her. The current programming that is created to keep these individuals and the community safe is very restrictive and very secure and may not be best option. This scenario, with its high level of security, may start to look like the forensic environment that some are opposed to, but it may still not offer the level of support the forensic facility would be designed to provide. Sen. Sears reminded that some of these individuals who are not able to participate in a community setting are now in the custody of the Department of Corrections. Jen Garabedian stated that the intention of the forensic facility is to provide a short-term placement to help people get access to psychiatric support, stabilize, and prepare to return to the community. Agencies could develop a step-down option to return to the community.
2. What would the circumstances be under which an individual could be placed in the facility, including any concerns with, or limitations on, such placement?
 - VLA's position is that candidates for the forensic facility should be afforded a separate process to determine if that level of care is necessary, similar to the DMH process for hospitalization placement. The State should prove there is sufficient and clear evidence that this is the least

restrictive environment necessary. Finally, individuals should be given a time limit, the right to counsel, and the right to an independent psychiatric exam.

3. What would Legal Aid or the LTC Ombudsman's role be to serve those placed in the forensic community?
 - Currently, the Long-Term Care Ombudsman program doesn't go into TCRs (Therapeutic Community Residences) because there isn't a federal mandate, nor is there funding for VLA to cover those programs. There would need to be additional conversations about VLA supporting these individuals.
4. What investments, policies and programmatic options are necessary for high quality community-based supports for those committed to Act 248? Please identify the associated costs.
 - VLA would like to see the funding that would go into a forensic community instead be given to the DAs and back into the community as better pay, benefits and housing for the staff who support those on the Act 248 program.
 - VLA expressed an ongoing concern that an intended short-term stay facility would end up keeping participants longer than intended.

Senator Lyons said it would be helpful to compare the DMH statutes and the Act 248 statute to see where areas of improvement are needed in the DS statutes. She'd like to see the pathway through the court and outcomes for those with DS vs those with MH.

Sen. Sears said from his experience those with an intellectual disability are held longer in corrections facilities than those committing the same crime without a disability because they are waiting for competency hearings, housing, and programs to fit the individual's needs.

In order to report the group's positions in the final report, the report will identify points where there is unanimity, as well as points where there are differing points of view, so that the Legislature has the benefit of considering all opinions.

Senator Lyons requested having the draft statutory language ahead of time so each member can read it and be ready to discuss their positions at the scheduled meeting.

There was a request to hear from a participant in the program, or someone from their family. Stuart said they have been working on that, but it has been difficult to find a volunteer. Mary-Graham McDowell will request again of the providers she's in contact with to see if anyone would be willing to speak to the group. The difficulty is partly that these discussions are public, and privacy is an issue.

No further discussion or questions. The meeting was adjourned at 10:15am.