

**SJ 47 Joint Subcommittee to Study Mental Health Services in the Commonwealth
in the 21st Century**

Work Group #2: Criminal Justice Diversion

June 23, 2016

The Capitol, Richmond, Virginia

The Criminal Justice Diversion Work Group (work group) of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century held its first meeting of the 2016 interim on Thursday, June 23, 2016, at the Virginia Capitol in Richmond. Del. Robert B. Bell, the work group chair, called the meeting to order and introduced the work group members.

Recommendations of Justice-Involved Transformation Teams - Dr. Michael Schaefer

Dr. Michael Schaefer, Assistant Commissioner of Forensics, Virginia Department of Behavioral Health and Developmental Services (DBHDS), presented the recommendations of the Justice-Involved Transformation Team established by DBHDS. The team was established as part of a review of the state behavioral health and developmental services system and focused on justice-involved individuals, i.e., those individuals in jails or otherwise involved in the criminal justice system.

Dr. Schaefer stated that the general consensus of the team was that it would be best if community services boards (CSBs) had the responsibility to provide behavioral health services to these individuals. In response to questioning from the work group, Dr. Schaefer explained that CSBs are not required to provide services in jails, with certain exceptions related to the issuance of temporary detention orders and restoration of competency of defendants, and that jails frequently contract with a private provider to provide such services, though some jails contract with a CSB to act as the provider in the jail.

However, due to challenges with CSBs acting as the provider of behavioral health services in all jails, including staffing levels at CSBs and the size of some jails, Dr. Schaefer noted that the transformation team ultimately recommended that it would be best to set minimum standards for the services that must be provided in jails instead of dictating who must provide such services. In response to a question from Del. Bell regarding existing standards, Dr. Schaefer stated that the Department of Corrections has established broad criteria regarding the provision of behavioral health services but does not provide specific guidance.

Dr. Schaefer described the services that the transformation team concluded should be available to all individuals in jails:

- Screening upon intake to assess any behavioral health needs and screening for suicide risk during the period of incarceration;
- Procedures to refer individuals to trained mental health professionals if such a referral is indicated as a result of such screenings;
- Sufficient access to medical care, including behavioral health care, to address any acute behavioral health needs that arise during the period of incarceration as well as any chronic behavioral health needs;

- Procedures to notify a CSB if one of its clients has been incarcerated to allow the CSB to share its treatment records with the jail;
- Ongoing case management services provided by a CSB; and
- Discharge planning services to facilitate an individual's transition upon release from incarceration.

In furtherance of the provision of these recommended services, Dr. Schaefer listed the recommendations of the transformation team, which included:

- Supporting localities in the development of mental health dockets;
- Allowing courts to order pretrial mental health evaluations prior to making decisions regarding bond or bail and providing oversight of such evaluations to ensure that they meet the standard of practice;
- Using the Risk Need Responsivity model of risk management for the purposes of determining whether certain low-risk offenders may be diverted from incarceration and training judges in the use of this model; and
- Requiring that all law-enforcement agencies have Crisis Intervention Team (CIT) training.

Dr. Schaefer noted that \$1 million was appropriated to DBHDS in fiscal year 2017 and \$2.5 million was appropriated in fiscal year 2018 for the establishment of a pilot program for mental health treatment in jails.

Del. Bell stated that the work group was focused on three broad areas involving justice-involved individuals: (i) treatment provided to an individual while incarcerated, (ii) treatment provided to an individual upon release from jail, and (iii) possible diversion of an individual prior to incarceration.

Update from Criminal Justice Diversion Expert Advisory Panel - Leslie Weisman, LCSW

The chair of the expert advisory panel formed to assist the work group, Leslie Weisman, Client Services Entry Bureau Chief, Arlington Community Services Board, updated the members of the work group on its work to date. Ms. Weisman noted that the advisory panel was gathering information regarding the use of mental health dockets, both in the Commonwealth and in other jurisdictions. Ms. Weisman also stressed the benefit of using cross systems mapping to identify stages in the criminal justice process, i.e., sequential intercepts, where an individual with a mental illness can be diverted from the process or otherwise receive necessary treatment. Ms. Weisman noted that while most CSBs in the Commonwealth have been mapped, there is significant variation in how such maps are utilized across the Commonwealth.

The members of the work group and Ms. Weisman proceeded to engage in a discussion regarding various aspects of criminal justice diversion. Del. Vivian Watts noted that in most large localities law enforcement duties are performed by police departments while sheriffs are in charge of the jails and that law enforcement may have a different attitude about the benefits of diversion. Ms. Weisman expressed a need for stakeholder involvement on all sides to investigate why mentally ill individuals end up in jail.

Del. Bell raised the issue of what crimes should be eligible for diversion and what discretion a law-enforcement officer should have to divert an individual. Ms. Weisman noted

that in Arlington, a law-enforcement officer can take an individual to an assessment center in lieu of arrest under the officer's authority to take an individual into emergency custody.

The discussion then turned to the practice of post-booking magistrate utilized in Arlington. Ms. Weisman explained that the project has been going on for eight years. Under post-booking magistrate, after booking an individual after arrest, the magistrate informs the CSB and a clinician is sent to evaluate the individual to determine if the individual is mentally ill and, if so, whether the individual can be served by treatment. If the CSB clinician determines that the individual can be served by treatment, the magistrate makes such treatment a condition of the individual's bond. The members of the work group noted that while such a project may be possible in Arlington, smaller jurisdictions would likely not have the resources to operate such a project.

The work group also discussed the utility of mental health dockets. Del. Bell requested more information as to why an individual would volunteer to have a condition imposed as part of a disposition by a court operating a mental health docket (e.g., treatment) when the sentence for the underlying crime would likely be less onerous.

Finally, the members of the work group listed several topics on which they wanted the advisory panel to provide more information, including (i) the discretion of law-enforcement officers to divert individuals from the criminal justice system, (ii) how to best provide treatment for individuals while in jail and upon release, (iii) the process for diverting individuals after arrest at the pre-trial and post-booking stage, (iv) how to best structure a mental health docket, and (v) for what offenses should diversion be available.