

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

**Work Group #2: Criminal Justice Diversion**

**August 22, 2016**

**The Capitol, Richmond, Virginia**

Work Group #2: Criminal Justice Diversion Work Group (the Work Group) of the Joint Subcommittee to Study Mental Health Services in the Commonwealth in the 21st Century (the Joint Subcommittee) held its second meeting of the 2016 interim on Monday, August 22, 2016, at the Virginia Capitol in Richmond. Delegate Robert B. Bell, the Work Group chair, called the meeting to order and introduced the Work Group members.

**Update from Criminal Justice Diversion Expert Advisory Panel**

Professor Heather Zelle updated the members of the Work Group on the activities of the expert advisory panel formed to assist the Work Group. Professor Zelle noted that the advisory panel had been looking into the topics for which the Work Group requested additional information at its last meeting on June 23, 2016, including how to best provide treatment for individuals while in jail and upon release and how to best structure a mental health docket. Professor Zelle stated that the advisory panel was in the process of developing recommendations for the Work Group as well as prioritizing its recommendations on a most-attainable basis. Delegate Bell stressed that the advisory panel's recommendations should include information regarding each underlying policy decision made by the panel in making its recommendations.

**Presentation: Therapeutic Dockets in the Roanoke and Salem General District Courts, The Honorable Jacqueline F. Ward Talevi**

The Honorable Jacqueline F. Ward Talevi, Chief Judge, General District Court, 23rd Judicial District, gave a presentation of the therapeutic docket utilized in her court as a sentencing alternative for offenders with serious mental illness. Judge Talevi stated that the therapeutic docket was first put in place in July 2015. Prior to that date, she noted, she spent five years educating herself about mental health issues and discussing issues with the relevant stakeholders, including the probation department, the community services boards, and the attorneys for the Commonwealth.

Judge Talevi explained that the goal of establishing the therapeutic docket is to provide a sentencing alternative for persons who have committed a misdemeanor and who need more intensive supervision because of their serious mental illness. Judge Talevi explained that only adults who have committed a misdemeanor, excluding an offense of driving under the influence, and who suffer from a serious mental illness or who have been diagnosed with post-traumatic stress disorder or a traumatic brain injury are eligible for the therapeutic docket. An offender is referred to the therapeutic docket only after a plea of guilty or nolo contendere, and the offender must consent to the referral. Judge Talevi clarified that the attorney for the Commonwealth has an absolute veto over referring any particular offender to the therapeutic docket.

For each offender referred to the therapeutic docket, the court orders a pre-sentence investigation to be prepared by community corrections and the offender is placed on probation

supervision. The offender returns to court 30 days later for presentation of the pre-sentence investigation. At that time, if the offender is found to be eligible to be referred to the therapeutic docket and agrees to comply with all conditions placed upon him by the court, he is placed by the court on intensive probation supervision, typically for a period of 12 months. Judge Talevi explained that a treatment team, which consists of the judge, the attorney for the Commonwealth, the public defender, a jail discharge coordinator, a probation officer, and other case managers, meets weekly to discuss the progress of the offenders referred to the therapeutic docket in meeting their treatment goals.

Judge Talevi detailed the requirements for an offender placed on intensive probation supervision, which include the following:

- Participation in mental health treatment;
- Medication compliance;
- Abstinence from alcohol and illegal drugs;
- Biweekly court appearances for progress updates;
- Biweekly reporting to the probation officer; and
- No new criminal convictions.

In response to a question from Delegate Bell regarding how medication compliance is confirmed, Judge Talevi stated that an offender may be required to keep a log of his medications and submit the log to the court under oath or, depending on the type of medication, that the medication may be required to be administered to the offender by a health professional.

Judge Talevi also listed the sanctions employed if an offender fails to comply with the requirements of intensive probation supervision, including:

- Lectures from the court;
- Community service;
- Reporting of noncompliance to the court by the probation officer;
- Additional treatment, including substance abuse treatment;
- Drug testing;
- Remanding the offender to jail; and
- Scheduling a revocation hearing and removing the offender from the therapeutic docket.

Judge Talevi stated that an offender who successfully completes the terms of his intensive probation supervision will either have his charge dismissed or will receive a suspended sentence with no period of active incarceration, depending on the choice of the attorney for the Commonwealth. Delegate Bell stated that this result appears to be an expansion of when the deferral and dismissal of criminal charges is currently allowed. Judge Talevi explained that the attorney for the Commonwealth must concur in the disposition in all cases.

**Presentation: CORE Program (COllaboration for Recovery and ReEntry), Michelle Albert, Jail Diversion Therapist Supervisor, Alexandria Department of Community and Human Services**

Ms. Albert gave a presentation on the CORE Program (the Program), a post-incarceration diversion program. Ms. Albert explained that the Program is a partnership between the Alexandria Criminal Justice Services and the local office of probation and parole designed to

help mentally ill offenders reenter the community. Initially, the Program operated on a probation model; that is, offenders were eligible for the Program upon their release from incarceration. Ms. Albert stated that currently offenders may be diverted into the Program at any stage, including at the time of arrest or of post-arrest and booking but pretrial. According to Ms. Albert, all offenders entering the Program from state prisons are referred by a probation officer, while between 75 and 80 percent of referrals on the local level occur pretrial.

Ms. Albert stated that the Program utilizes a jail diversion therapist supervisor at the Alexandria community services board (CSB), two CSB case managers, and mental health probation officers for both state and local probation. These individuals meet every two months to coordinate the execution of service and release plans and improve the efficiency of service delivery. Specifically, Ms. Albert noted that the Program provides services such as emergency lodging, medications, clothing, and transportation, as well as two hours per week of psychiatric time.

Since the Program began in 2009, Ms. Albert reported, 125 offenders have been enrolled. She noted that, compared with their pre-enrollment status, more Program enrollees had housing, health insurance, and Supplemental Security Income or Social Security Disability Insurance benefits. Ms. Albert stated that Program outcomes included an 82 percent overall reduction in days incarcerated by enrollees and that 98 of the 125 enrollees were not re-incarcerated.

**Presentation: Investigation of In-custody Deaths, Colonel Bobby D. Russell, Superintendent, Western Virginia Regional Jail and President, Virginia Association of Regional Jails**

Colonel Russell presented information regarding how in-custody deaths in regional jails are investigated. Colonel Russell explained that in the event of an in-custody death at a regional jail, the jail notifies a law-enforcement agency, either a local agency or the State Police, to conduct an investigation. The regional jail also conducts its own internal investigation concurrently with the law-enforcement agency investigation. In addition, Colonel Russell stated, notifications are made to the Office of the Chief Medical Examiner, as all in-custody deaths require an autopsy, and the Board of Corrections (BOC). Colonel Russell noted that the BOC is the entity responsible for jail oversight and is tasked with conducting jail inspections through its administrative agency, the Department of Corrections.

In response to questions from Work Group members, Colonel Russell acknowledged that the Office of the State Inspector General (OSIG) has stated that it was unable to gain access to the Hampton Roads Regional Jail for the purpose of investigating an in-custody death that occurred in that facility. Colonel Russell noted that the OSIG is set up to investigate state agencies, not local or regional agencies, and that in his judgment the BOC should be in charge of investigating in-custody deaths, emphasizing the BOC's current authority to enter and inspect jails as well as its familiarity with the operation of correctional facilities.

**Next Meeting and Adjournment**

The Work Group adjourned, with its next meeting scheduled for October 26, 2016.