

SJ47 Criminal Diversion Expert Panel

**Providing Prior Treatment Plans to Local
Correctional Facilities**

December 4, 2018

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Overarching Question/Request

How do jails receive treatment information on mentally ill inmates once incarcerated?

Code language is needed that would mandate the exchange of clinical information, keeping in mind HIPAA regulations;

Treatment information may come from local CSB, family/significant others, or private providers;

Particularly important if inmate answered in the affirmative to any of the questions on the BJMHS (Brief Jail Mental Health Screen)

Current challenges in Virginia jails

Jails are not monitored or regulated by one agency, but rather by six, and receive *minimal direction* from any of these agencies re: provision of mental health care in the jails

- ❖ BOC
- ❖ DOC
- ❖ Compensation Board
- ❖ DCJS
- ❖ Department of Health
- ❖ (Treasury Board/VA Public Building Authorities)

Legislative options

- Develop government infrastructure, define adequate minimum requirement;
- **Amend 53.1-68: Minimum standards for local correctional facilities, lock-ups and personnel, health inspections, behavioral health care standards.**

C. The **Board shall also establish minimum standards for behavioral health care services** in local correctional facilities and procedures for enforcing such minimum standards, with the advice or and guidance from the Commissioner of Behavioral Health and Developmental Services and State Inspector General. Such standards shall include procedures for the conduct of at least one unannounced annual inspection of each local correctional facility by the State Inspector General to determine compliance with the standards for behavioral health services established pursuant to this subsection and such other announced or unannounced inspections as the Board or the State Inspector General may deem necessary to ensure compliance with the standards for behavioral health services established pursuant to this subsection. **Such standards shall include regulations directing the sharing of medical and mental health information and records in accordance with Va.Code 32.1-127.1:03, 53.1-133.03, and 54.1-2403.3.** Such standards shall include a process by which a community services board providing mental health services in the local or regional correctional facility shall bill and the sheriff or superintendent shall pay for mental health services provided by the community services board in accordance with Va. Code 53.1-126.

HIPAA concerns

To tackle HIPAA concerns which have been expressed in some parts of the Commonwealth related to sharing of PHI re:inmates:

- Consider use of MOUs for CSB and jail staff – used in Arlington, Pr. Wm. County and likely other communities (vetted through City/County Attorney and HIPAA compliant)
- Read the following: “Dispelling the Myths about Information Sharing Between the Mental Health and Criminal Justice Systems” – CMHS National GAINS Ctr (author: John Pettila, JD, LLM)
“Information Sharing in Criminal Justice/Mental Health Collaborations: Working with HIPAA & Other Privacy Laws” – BJA and CSG Justice Center

“In the case of correctional facilities, HIPAA permits health information to be shared with a correctional institution or law enforcement official with custody of the individual, if the information is necessary for the provision of health care to the individual; the health and safety of the inmate, other inmates, or correctional officials and staff; the health and safety of those providing transportation from one correctional setting to another; for law enforcement on the premises of the correctional facility; and for the administration and maintenance of the safety, security, and good order of the facility.”

From: “Dispelling the Myths about Information Sharing Between the Mental Health and Criminal Justice Systems”

Other options for tackling HIPAA concerns

- Provide statewide training, through the Local Government Attorneys (LGA) to look at the exchange of personal health information (PHI) regarding jail inmates for purposes of treatment and transitioning of treatment between the community and jail setting – this could be live one hour CLE training at their conference and/or web based;
- Consider Section 1 study to look at the creation of a central, secure information sharing portal that would allow cross-agency sharing of limited identifying information to communicate when an inmate has a mental illness