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LEGISLATIVE UPDATE FOR MAY 9, 2023

As the legislative session draws to a close many bills were being tweaked and finalized last week including the bills on emergency warrants, school safety and tuition bills, forensic facility, and sanity and competency evaluations. Meanwhile, the budget conference committee worked through their differences.

PROGRESS and TESTIMONY

Appropriations Conference Committee Works through Differences

Representatives and Senators met throughout the week to work through differences in the House and Senate budget bills for FY24. The House specified five positions for developmental disability quality reviewers, plus four additional quality review positions that could be applied flexibly, but the Senate was allowing DAIL total flexibility in how the positions could be used. Rep Theresa Wood said they already compromised from nine to five positions and pointed out that DAIL is out of compliance with CMS quality requirements. She expressed particular concern about people living with shared living providers. The Conference Committee agreed to two years of funding for the Blueprint pilot. The House did, but the Senate didn't fund the children's psychiatric inpatient unit. The 988 funding proposed by the Governor survived both budgets. A review of workforce initiatives, inventory, summary, recommendations for restructuring and streamlining was also under consideration.

Warrant Bill Passes House Health Care Committee

House Health Care reviewed a [revised version](#) of the warrant statute bill. The majority of the changes were an update to section 7505(b):

(b)(1) The law enforcement officer may take the person into temporary custody if the law enforcement officer has probable cause to believe that the person poses a risk of harm to self or others. The law enforcement officer or a mental health professional shall apply to the court for the warrant without delay while the person is in temporary custody. The law enforcement officer, or a mental health professional if clinically appropriate, may transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others.

This includes new language referencing "probable cause" which was proposed by Wilda White of Mad Freedom. White testified that the revisions address her concerns about the constitutionality of the bill. She would also like to see Mad Freedom listed as a stakeholder in the study group to be convened by DMH. Jack McCullough of Vermont Legal Aid supports the revised language. Dillon Burns said Vermont Care Partners supports the language that removes mental health professionals from taking people into custody and being ordered by the court to transport. She wanted other stakeholders, such as the

judiciary, law enforcement, and NAMI to be included in the study committee. Vermont's Team Two collaborative response best practices were suggested as a focus when the warrant statute gets more attention. DMH's Karen Barber said DMH was in support of the bill.

Committee discussion led to additions to the list of stakeholders for the study committee, including Vermont Psychiatric Survivors and persons with a lived experience of a mental health condition. Rep Peterson also proposed adding "then" to this sentence, for clarity: "The law enforcement officer, or a mental health professional if clinically appropriate, may then transport the person if the law enforcement officer or mental health professional conducting the transport has probable cause to believe that the person poses a risk of harm to self or others." The bill passed out of committee 11-0.

School Safety Bill in House Education Committee

House Education heard from Ted Fisher at the Agency of Education and Rachel Seelig from the Disability Law Project on proposed revisions to S.138, the School Safety Bill. They have been working hard as a stakeholder group to revise language to the behavioral threat assessment team to fully address concerns about exclusionary discipline practices. This includes clarifying that this only applies when there are "serious and significant threats of violence." It will be important to ensure that when that threshold isn't reached, the school response shifts away from behavioral threat assessment to a different process. This version of the bill requires schools that are currently using behavioral threat assessment teams to start with the approaches outlined in the bill this coming school year and to come into compliance for the training components in 2024.

The Committee will be looking at a side-by-side version of the bill on May 8th. The Vermont Independent Schools Association believes that this bill will not pass this session and will be taken back up next year.

Senate Education Committee Discusses Public Tuition Policy

The Senate Education Committee discussed H.483, the bill that sought to make changes to public tuition policy. Committee Chair Brian Champion noted recent changes to Rule 2200 (independent school approval rules) and noted that the clause that includes a moratorium on new independent school approvals was shifted to the budget bill. That moratorium is for "any and all schools." The Agency of Education will have to assess how many schools are in the queue. Some people have suggested the need to carve out special education schools, but Champion said, "a blanket moratorium is the only way to do this for now."

Sen Gulick feels that this bill is important and would like to see a vote. Sen Hashim thinks the moratorium is important and limiting dollars to international schools is important. Sen Gulick doesn't understand why this bill is seen as a hardship for independent schools; she feels that it adds to a more equitable landscape. The Committee discussed that some schools are not a right fit, but that's why Vermont has special education schools and therapeutic schools. Sen Champion doesn't want to eliminate the interview process for schools as long as it does not lead to discrimination. It was a testy discussion, and the bill appears unlikely to move forward this session.

Senate Judiciary Takes Back S.91, Separating Competency and Sanity Evaluations

The Senate Judiciary Committee reviewed the House changes to S.91, which separates competency from sanity evaluations, opens the potential for new provider types to provide the evaluations, and sets up a committee to study competency restoration. One of the House changes was to clarify that once there

has been an initial competency evaluation, the court will order another one only upon a showing of changed circumstances. People can move in and out of competence and this language is an attempt to improve fair access. The House also added a clause that gives a judge discretion to issue an arrest warrant if a person is not showing up for a competency evaluation. DMH General Counsel Karen Barber indicated that no-shows are a problem. In the last week, one evaluator had 4 no-shows. Warrants will be an important tool.

The Committee discussed the lack of providers included in the study committee for the Competency Restoration Program. Sen Vyhovsky would like to see a better balance with healthcare given the heavy criminal justice tilt. Barber said she doesn't see it as an exclusive list and the Vermont Medical Society has already reached out. DMH has worked closely with Dr. Ravven (Howard Center) and intends to continue doing so. She doesn't oppose those additions to the study committee makeup. The Committee will discuss this further this week.

House Corrections and Institutions Accepts Testimony on Forensic Facility

Shayla Livingston, Policy Director of AHS, testified that AHS will be ensuring the forensic facility will meet all the CMS requirements, and asked that the Committee not add language to the bill which they were considering directing the separation of the hospital and forensic populations to avoid incidence of violence. It was pointed out that the Middlesex Secure Residential population was housed at Vermont Psychiatric Care Hospital during the pandemic, which demonstrated that it has the physical and staff security necessary to house the forensic population which has the risk of violence. Shayla clarified that there are people in the hospital units who also have histories of violence and all the staff are trained to address the risk.

Chair Emmons would like to add language on intent to ensure safety of the residents and patients. Shayla reported that the rule process will occur this fall and the program won't be up and running until July 2024. She said she would be happy to return to the Committee with an implementation plan. Shayla clarified for the Committee that the facility is only for individuals who have never been convicted of a crime. The Chair also wants confirmation that there are no conflicts with being in the same building as the hospital level units at VPCH. It was clarified that the new license for this facility would enable involuntary treatment which is not allowed at River Valley Secure Residential.

House Judiciary Services Finalizes Forensic Legislation after Policy Committees Provides Perspective

The House Judiciary Committee passed H.80 and clarified the intent for the forensic facility bill by specifying the location at VCPH:

LEGISLATIVE INTENT It is the intent of the General Assembly that an initial forensic facility be authorized and operational beginning on July 1, 2024 in the nine-bed unit of the current Vermont Psychiatric Care Hospital. This unit shall be relicensed as a therapeutic community residence. In preparation for the operation of a forensic facility, the work of the General Assembly in relation to this act shall guide the Departments of Mental Health and of Disabilities, Aging, and Independent Living in adopting rules and the Working Group established pursuant to Sec. 6 of this act in recommending procedures and criteria for commitment of individuals with development or intellectual disability to a forensic facility.

The Bill maintained the Senate language exempting it from the CON process. The rule making process will be initiated July 1, 2023 and will include amending therapeutic community residence to allow involuntary treatment, including involuntary medication on a non-emergency basis. A report on the implementation plan as well as annual reports for five years will be made to multiple legislative committees.

A Working Group will include representatives from Vermont Crisis Intervention Network (VCIN) and VCP and has the following responsibilities:

- “(1) the extent to which a forensic facility addresses any unmet needs or gaps in resources for individuals with intellectual disabilities;
- (2) if the Working Group determines there is a need for individuals with an intellectual disability to receive programming in a forensic facility, the specific circumstances under which an individual committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living could be placed in a forensic facility;
- (3) any amendments to 18 V.S.A. chapter 206, including amendments needed to ensure due process prior to and during the commitment process, regardless of whether the Working Group determines that a need for forensic level care exists;
- (4) the roles of Vermont Legal Aid, an ombudsman, or Disability Rights Vermont in serving individuals with intellectual disabilities placed in a forensic facility;
- (5) necessary changes to 13 V.S.A. chapter 157; and
- (6) investments, policies, and programmatic options for high-quality community-based supports for at-risk individuals committed to the custody of the Commissioner of Disabilities, Aging, and Independent Living

Committee Chair LaLonde wants the facility to be able to accommodate both populations, with the acknowledgement that the working group could recommend a separate approach for people with intellectual disabilities. DAIL believes it should consult with a broad range of stakeholders but is the responsible party to submit the report and make the recommendations. DAIL asked to narrow the review of Act 248 to due process, but then wanted to be able to make housekeeping changes to Act 248. The Committee is clear that the revisions are about taking a deeper look, without delaying implementation. Chair LaLonde expressed the importance of “doing it right and to get it right”.

On Wednesday, Rachel Seelig, Director of the Disability Law Project for VT Legal Aid, testified that she does not like the change of intent that would allow for multiple forensic facilities. Chair LaLonde said considering the alternative use of a correctional facility, it makes sense to ask the group to identify if a forensic facility is needed. While the report will be due in December, they will have until July 2024 for the workgroup to consider updating Act 248 and the need for a DD ombudsman program.

Defender General Matt Valerio said there are people with intellectual disabilities and mental illness in the correctional system where they often become victims; they would be better served in a forensic facility.

LEGISLATIVE RESOURCES

Vermont Care Partners Advocacy Fact Sheet

Here is a link to our updated [Advocacy Fact Sheet](#). The critical points are the rising demand, the impact of the ongoing workforce crisis and need for improved funding.

YouTube link for Mental Health Advocacy Day:

<https://www.youtube.com/watch?v=S3ml6skUE4A>

NAMI-VT Fact Sheet on Mental Health

Here is the [NAMI-VT fact sheet on mental health](#).

Vermont Care Partners Legislative Advocacy Webinar

In case you missed it, here's a link to the [recording](#) of our Legislative Advocacy Webinar to help guide you through the process of working with legislators. In just 40 minutes you can learn the basics for effective advocacy.

Key Committees in relation to Network Agencies

Here are the key Committees in relation to our network services with the Agencies in each legislator's region noted. We encourage everyone to reach out to your local legislators to introduce yourself and share the issues most important to you: [Legislative Committees by DA and SSA Region](#).

The purpose of the legislative update is to inform individuals who are interested in developmental, mental health and substance abuse services about legislative advocacy, policy development and activities that occur in the State Legislature. The Vermont Council is a non-profit trade association which works in partnership with Vermont Care Network to form Vermont Care Partners. Together our mission is to provide statewide leadership for an integrated, high-quality system of comprehensive services and supports. Our membership consists of 16 designated and specialized developmental and mental health service agencies.