

# Improving Criminal Justice Responses for Persons with Mental Illness

October 28, 2020

1pm-3pm

ZOOM

## Present

- Terry Dosch
- Senator Reynold Nesiba
- Representative Tim Reed
- Senator Arthur Rusch
- Dr. Tom Stange
- Shane Penfield
- Commissioner Cindy Heiberger
- Betsy Doyle
- Representative Linda Duba
- Sheriff Mike Milstead
- Tiffany Wolfgang
- Katie Hruska
- Greg Sattizahn

## Excused

- Judge Carmen Means

## Guests

- Staci Ackerman, South Dakota Sheriffs Association
- Sheriff Fred Lamphere, Butte County
- Sheriff Andy Howe, Clay County

## *Welcome, Call the Meeting to Order, and Introduction of New Members*

Mr. Sattizahn called the meeting to order at 1pm and determined there was a quorum. He introduced Katie Hruska, the governor's appointee who replaced Tom Hart.

## *Annual Report*

Mr. Sattizahn walked the Oversight Council through each page of the annual report.

On page 2, Representative Reed recommended adding a note that the legislature secured permanent funding for a Crisis Intervention Training coordinator.

On page 5, Senator Nesiba asked if Mr. Sattizahn had the number of individuals who were determined to be competent versus incompetent. Mr. Sattizahn indicated that the information was tracked, but he did not have the report in front of him at that time. Ms. Doyle responded that in her office, there are many requests. Their policy is that they require the attorney to retrieve past medical records in order to vet the individual's history. Based on this information, the office will gauge if a professional opinion is needed. One of the biggest challenges is that if an individual needs an evaluation, they may be waiting or months. Ms. Doyle's office has not been using HSC for initial evaluations, and instead use local doctors under a contracted price. Another concern of her office is the amount of time it takes to place a person in HSC once they are deemed incompetent. In some situations, it may take months. This results in many status hearings.

Dr. Stange asked Ms. Doyle how many of the exams are bundled—for example, competency and insanity. Ms. Doyle indicated that her office does not bundle baseline competency and insanity together. They require each attorney to have a discussion with the department head about who is actually in need of an insanity evaluation, which rarely is needed.

Mr. Sattizahn added that this is common statewide. While the state used to see various mental health related evaluations bundled together, the process is much more refined and competency is ordered independently. Occasionally insanity and competency are ordered together, but it is rare to see a Guilty but Mentally Ill included. Defense attorneys are deliberate about which tests to order.

On page 5, Commissioner Heiberger asked why so few counties were submitting for reimbursement. She wondered if it was because there are fewer competency evaluations being completed, or counties are not submitting the paperwork. Mr. Sattizahn replied that there are counties leaving money on the table, and more counties outside of Brule, Minnehaha, and Pennington county are submitting for reimbursement. He has visited with Bob Wilcox about how to get the word out and he has worked hard to make sure the counties are informed. There is frustration because the reimbursement process is not difficult.

Senator Nesiba asked Ms. Doyle what percentages she sees as being incompetent. She estimated that more than 50 percent are incompetent. She believes it is at that level because defense attorneys are diligent, and do not request tests simply because of a low IQ. Additionally, they have help from Southeastern Behavioral Health with programming, as well as the counseling services.

#### *Virtual Crisis Care Program*

Staci Ackerman from the South Dakota Sheriff's Association, as well as Sheriff Lamphere from Butte County and Sheriff Howe from Clay County, joined the call to discuss the Virtual Crisis Care program. Ms. Ackerman explained that the Virtual Crisis Care pilot program provides law enforcement with 24/7 access to behavioral health professionals who can assist in responding to people experiencing a mental health crisis. It advances Chief Justice David Gilbertson's vision to ensure that those working in the criminal justice system have access to the resources they need to help people with mental illness, regardless of where they live. It is currently available in 18 sheriff's offices and the 4<sup>th</sup> Judicial Circuit. In the month of October alone, it has been used 23 times for reasons including suicidal ideations, depression, and aggressive or disruptive behaviors. So far, the majority of users are able to remain in place and avoid commitment.

Sheriff Lamphere and Sheriff Howe both discussed their personal experience with the program, and commented on the program's ability to keep people in the community. Not only is it better for the individual, but it saves law enforcement time and resources because they are not driving the individual back and forth between mental health facilities. Additionally, the program connects the individual with the local Community Mental Health Center for follow-up services. Avoiding unnecessary commitment at the Human Services Center in Yankton is the biggest benefit.

Mr. Sattizahn asked Ms. Wolfgang on the status of SB 46, which revises provisions related to the restoration to competency of criminal defendants by expanding the types of locations where an individual can be restored. Ms. Wolfgang replied that while some progress is being made, COVID-19 has not allowed this progress to proceed as quickly as anyone would like—similar to many other initiatives and projects at the state and county level.

Ms. Wolfgang asked Ms. Doyle if she had an estimate for how long her clients were waiting. Ms. Doyle said she has one case where the order was signed in early September and the person is still in jail. 10 days ago, they heard from HSC that it would be another 2-3 week wait. Ms. Wolfgang replied that HSC was doing much better before COVID, and expects that it will continue to be a challenge over the next few months. Ms. Doyle added they have had success with other community services backed by DSS. Many of her clients have been successful in the community because of these programs. For some people, however, the HSC setting is the only setting appropriate for their needs.

Sheriff Milstead added that the progress at his jail to address competency is also going slow. In addition to the disruption caused by COVID-19, their jail health provider recently left; the county is working on finding a new provider. Therefore, the plan is to wait until the new provider is installed before they attempt to add competency restoration.

#### *Substance Abuse Involuntary Commitment Workgroup*

Mr. Sattizahn reviewed the involuntary commitment document. He reported that the members of the group met four times to determine what needed to be studied, and what procedures needed to be discussed, as well as what type of information should be tracked. Mr. Sattizahn reviewed each bullet point with the committee.

On the 4<sup>th</sup> point, Representative Reed inquired as to which party would be responsible for the funding and where the funding would originate? Dr. Stanage replied that a county will seldom charge the family members as petitioners. Since it is in statute, however, that creates a barrier to the families seeking help. Counties are not really collecting any money from this process. Mr. Sattizahn added that they know there is a cost associated, but it was a difficult thing for the workgroup to wrap its arms around since they are unsure if it is being collected. Ms. Wolfgang replied that when someone is referred for treatment, and to be eligible for the actual treatment, they have to be income eligible and appropriate for the treatment. To Dr. Stanage's point, it could be the perception that may prevent someone for the fear of being financially responsible. There are other costs associated with the court process.

Senator Rusch requested that a one-pager with data be compiled for the legislature.

Commissioner Heiberger added that they have had IVC families come in to have the case dismissed—the statute is definitely an issue for them and can be a tremendous burden. Mr. Sattizahn asked Commissioner Heiberger if she believed the county auditor would have the best source of information. She recommended Carol Mueller in the commission office.

Dr. Stanage said it was difficult to imagine a system that made someone who isn't financially responsible for someone to be financially responsible for them in this instance. Senator Nesiba asked where he recommended the funding originate? Mr. Sattizahn said he was unsure, but would dive into it deeper. The person might have access through treatment, and the attorneys are probably paid for by the county, then there is a lien. It is most likely about recouping costs the counties pay. Commissioner Heiberger agreed with Greg's assessment. Dr. Stanage said that in his office, they get around this burden by having a staff member file the petition—this will alleviate the family of the financial responsibility. The costs won't exist.

Mr. Sattizahn asked the committee what should be the next step. For example, attorney education on the subject. Ms. Wolfgang replied that DSS has some information available and can contribute to that. Dr. Stanage stressed the urgency of next steps—individuals have died because the process is too long.

Representative Reed requested that Mr. Sattizahn keep the group updated on what information he learned about this process.

#### *Public Input*

There was no public input.

#### *Next Steps*

Mr. Dosch said he would like to acknowledge all the great things that are happening in the state around this subject. He discussed the new advancements, including the Virtual Crisis Care program and new telehealth opportunities in the community mental health centers. All of these programs have the primary goal of helping people. The value cannot be overstated.

#### *Next Steps*

The next meeting will be in the spring of 2021

#### *Adjourn*

Greg Sattizahn adjourned the meeting a little bit before 3pm CT.