



Vermont Judiciary Commission on Mental Health and the Courts

CHARGE AND DESIGNATION

July 2022

INTRODUCTION

The Vermont Supreme Court hereby establishes a Commission on Mental Health and its impact on Vermont's courts and to propose measures to respond to the needs of court-involved individuals with mental health issues for the following reasons, and for the purpose set forth below:

1. When individuals with serious mental illness need help, it can be hard to find. Everyone involved, with the justice system, including law enforcement officers, is frustrated by the frequent inability to connect people with serious mental illness with the treatment they need. The challenge is at least as acute for children arriving in juvenile court as for adults. Most Vermonters are faced with long wait lists for outpatient treatment, and when in acute mental health distress, they may wait days in our hospitals' emergency departments for an inpatient bed.
2. When individuals with serious mental illness arrive in Vermont criminal court, some are given basic screening and advised by pretrial services to seek assessment and follow treatment recommendations. But even for people with obvious treatment needs who are charged with crimes, there may be long waits for such assessments and follow up treatment may not be available even when strongly recommended.
3. The inpatient mental health treatment system is a combination of emergency room beds, a limited number of crisis-focused community beds and more extended treatment beds in designated hospitals around the State and at the State Hospital in Berlin. About a third of the extended treatment beds are currently unavailable due to staff shortages.
4. Individuals with serious mental illness frequently have co-occurring challenges with substance abuse, physical illness, cognitive deficits and lack of housing. These issues can exacerbate their symptoms, put them at risk of serious physical illness, and make them vulnerable to others. People with serious mental illness are vulnerable to crimes by others and are often unable to seek help due to their illness.
5. The agencies and entities that are expected to assist people with serious mental illness are many. They include the Vermont Judiciary, the Department of Mental Health; the Department for Children and Families; the Department of Aging and Independent Living; the Department of Corrections; the Department of Public Safety; the Division of Substance Use Programs; the Vermont Attorney General; the Department of Education; law enforcement agencies in every community, public schools in every

community, State's Attorneys, Public Defenders, Vermont Legal Aid and other entities that provide legal services, and the Vermont Housing and Conservation Board.

6. There are eleven private non-profit agencies (ten community mental health agencies and Pathways) that provide the vast bulk of non-school based mental health outpatient services, and there are many private mental health care providers throughout the state
7. When individuals with serious mental illness arrive in Vermont criminal court, the issue of competency is usually raised, and an evaluation ordered. If an outpatient evaluation is ordered, it is usually not completed for months, and then more time goes by before the report is filed and a hearing held. In the meantime, the person may be incarcerated and/or may engage in conduct that brings about multiple new charges.
8. When individuals with serious mental illness are incarcerated prior to trial because there is strong evidence that they have committed violent offenses against others, and they pose an active risk to others, and/or there is a question about the likelihood they will appear in court as needed, they are not often provided treatment while incarcerated. They may be held in solitary confinement or otherwise in conditions that exacerbate their illness.
9. When individuals with serious mental illness are found incompetent to stand trial in Vermont, most are placed on orders of non-hospitalization that do not include actual treatment plans and therefore cannot be effectively enforced in court. Often, progress on these non-hospitalization orders is not monitored by the court.
10. The vast majority of crimes committed by individuals with serious mental illness are non-violent misdemeanors. However, these offenses are nonetheless serious concerns for the people who are affected, for the victims and community.
11. The victims of crimes committed by those with mental illness, whether the rare cases of serious physical violence or the myriad variations of property and public disturbance offenses, are understandably frustrated with the lack of treatment and effective response by the justice system.
12. We understand there are models of better ways to address some of these issues. Other states are ahead of us in both preliminary and years-long efforts. The judiciary has taken a leadership role in many of these states by convening the necessary actors to launch a better response. Judicial branches in other states have, in many instances, also taken the initiative themselves by educating judges, changing court processes and finding funding for staff and programs that help people with mental illness to get necessary treatment.
13. Every interaction that a person with a mental illness has with a public entity, whether school, law enforcement, healthcare provider, Department for Children and Families, Department of Corrections, Department of Mental Health, or court, is an opportunity to intervene and provide help. The sooner a person with serious mental illness is offered and engages with treatment, the more likely it is that they will benefit, with fewer long-term negative consequences for themselves and others. Many opportunities for intervention exist and include the contacts that people have with the criminal justice system, including 911 (and now 988) calls; arrest; diversion; arraignment; open DCF cases, CHINS petitions; competency evaluation requests; competency determination; incarceration; post-incarceration release, and others. Each stage is viewed as an opportunity to initiate earlier treatment through employing a process known as the Sequential Intercept Model. The sooner there is intervention and more opportunities for offering treatment and/or de-escalation the better. Every interaction should be considered as such an opportunity.

14. There are alternative models for interventions at many stages. When they are effective, they provide help to the person with mental illness, and significantly reduce the financial costs of the most expensive care models that we now rely on most, i.e. hospitals and jails. These interventions also reduce many other risks and costs, related to re-offense, domestic violence, homelessness, inadequate physical healthcare, and negative impacts on families and communities.
15. The many successful models around the country have been built on local community engagement from the beginning and ongoing, including with local prosecutors, public defenders, legal aid organizations, community mental and physical health agencies, hospitals, schools, law enforcement, housing and local state agency offices, peers and families, faith-based and other community organizations and local elected officials. When connections are made and communication and cooperation are at the forefront, real improvements are obtainable. Courts in other jurisdictions have convened these meetings and then helped to coordinate the follow-up with assistance from national state judicial resources and federal support from the federal Substance Abuse and Mental Health Services Administration (SAMHSA). The Vermont Judiciary hopes to follow these examples.

Therefore, the Commission on Mental Health and the Courts (the Commission) is hereby established. The Commission's overarching purpose shall be to advance the pursuit of equal justice under the law. The goal is to identify advances in our justice system that will positively impact the administration of justice where it intersects with mental health, evaluate solutions, and recommend changes. The Commission's work will address practices relating to mental- health-involved individuals prior to the initiation of court proceedings and once they have begun. The Commission shall have discretion to define the scope of its work within the framework established below. To begin the work, an Organizational Meeting of the Members of the Commission identified below will take place within the next sixty days or as soon thereafter as possible.

COMMISSION FRAMEWORK

1. Train and assist communities to identify those people who are part of the criminal and civil justice systems (justice system) who routinely come into contact with those with mental illness and investigate or create alternative ways to resolve the issue prior to taking legal action, employing the Sequential Intercept Model;
2. Identify other ways to deal with those with mental illness who commit crimes rather than immediately arresting or citing into court;
3. Recommend measures to ensure that all those who work in or are involved with the justice system are properly trained on how to detect and respond to mental illness;
4. Design a robust Pretrial Services Program for those with mental illness who are charged with crimes so that proper assessment, referral to treatment, or placement can be obtained;
5. Recommend measures to ensure that court-ordered competency hearings are completed within a specified number of days and that a hearing also follows within a specified period of time so that delay does not result in a defendant with mental illness being held unnecessarily;
6. Seek agreement with Department of Corrections so that defendants who have mental illness and are ordered held by the court are housed in appropriate spaces within the correctional facility and are receiving treatment;

7. Recommend measures to ensure that non-hospitalization orders include treatment plans and judges make orders including these treatment plans and court-ordered reviews before the orders lapse;
8. Convene a Vermont summit on mental health and the justice system.
9. Make such other recommendation to the Vermont Supreme Court as the Commission deems appropriate.

MEMBERSHIP

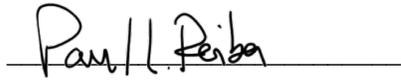
The Vermont Supreme Court hereby appoints Chief Justice Paul L. Reiber and Justice Karen R. Carroll as Co-Chairs and the following persons to the Commission:

1. Judge Thomas Carlson, Vice-Chair
2. Judge Katherine Hayes, Vice-Chair
3. Vermont Court Administrator or Designee
4. Chief Superior Judge or Designee
5. Interim Chief of Trial Court Operations or Designee
6. The Vermont Bar Association President or Designee
7. Vermont Attorney General or Designee
8. Vermont Defender General or Designee
9. Senator Virginia Lyons
10. Agency of Human Services Secretary or Designee
11. Executive Director of the States Attorneys Association John Campbell or Designee
12. Representative of the state's Designated Agencies
13. Representative of the state's Designated Hospitals
14. Commissioner of Department of Corrections or Designee

At its Organizational Meeting the Commission shall: (1) Identify and review specific goals and desired outcomes of the Commission's efforts; (2) Convene committees and appoint members which may include non-Commission members, as needed to be chaired by a Justice, Judge or Commission member; and (3) Consider funding and staffing to propose to the Court Administrator, who will have discretion to approve the proposal. The commencement of work and Reports to the Vermont Supreme Court will be made in six-month intervals with a deadline for completion of the Commission's work by December 31, 2023. The commencement of work and the deadlines outlined above will be amended depending on the adequacy of funding and staffing that are approved and secured.

This Charge becomes effective on 18th of July 2022.

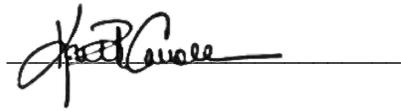
Signed on 18th of July 2022.



HON. PAUL L. REIBER
Chief Justice, Vermont Supreme Court



HON. HAROLD E. EATON, JR.
Associate Justice, Vermont Supreme Court



HON. KAREN R. CARROLL
Associate Justice, Vermont Supreme Court



HON. WILLIAM D. COHEN
Associate Justice, Vermont Supreme Court



HON. NANCY J. WAPLES
Associate Justice, Vermont Supreme Court