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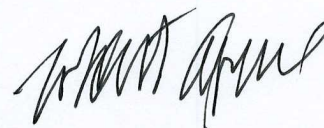
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MEMORANDUM

TO: Rep. Bill Lippert, Chair, Anne Donahue, Vice-Chair and all Members of the House Health Care Committee

DATE: February 21, 2017

RE: H. 145—Mental Health Crisis Response Commission



I write to follow up on my brief testimony of Friday, February 17th on the above referenced bill. As I said at that time, I believe that this bill is a step forward, albeit one that does not begin address the immense underlying problems created by not adequately funded community based mental health services that are immediately available upon demand.

That said, I attach my marked up version of H. 145. I will translate my scrawl and provide further comment below.

P. 1, II. 15-16. I do see locating this function within the Office of Attorney General (OAG) as problematic. As the AG testified on Friday, his office along with the county state's attorney (SA) where the incident occurred have concurrent criminal jurisdiction. Therefore, the AGO's primary function in investigating and reviewing the actions of office involved shootings (OIS) or tasings resulting in serious bodily injury or death is to determine whether criminal charges should be filed against the officer.

One must recall that the AGO works very closely with law enforcement on an on-going basis which makes it challenging to charge an officer. In fact, during the twenty year tenure of our last elected AG, upon information and belief, no criminal charges were ever filed against an officer for excessive use of force. It is also important to remember that the AG is an elected officer and is not free from the ebb and flow of political winds. Filing criminal charges against police officers is usually not rewarded by the electorate.

P. 1, I. 20. I recommend that the word "attempted" be inserted before "fatality or serious bodily injury as defined in 13 V.S.A. § 1021(a)(2)..." that reads as follows:

- (2) "Serious bodily injury" means:
- (A) bodily injury which creates any of the following:
 - (i) a substantial risk of death;
 - (ii) a substantial loss or impairment of the function of any bodily member or organ;
 - (iii) a substantial impairment of health; or
 - (iv) substantial disfigurement;

P. 2, II. 9-10. I note that this bill does not require that the Commission's recommendations be either seriously considered or followed.

P. 2, II. 11-12. The bill does not specify to whom or which agencies the Commission's recommendations be transmitted.

P. 2, 13-17. This is already standard operating practice given that the AGO and the local SA review such cases to determine whether criminal charges should be pursued.

P. 3, II. 9-10. Assigning a sitting judge to this Commission raises serious separation of powers issues, and would result in one or more judges being unable to preside over either a criminal or civil action arising from the incident under review.

P. 3, I. 13. There is only one consumer representative contemplated out of a ten member commission. I suggest that a prominent criminal defense or civil rights attorney be added to the panel to provide some modicum of balance.

P. 4, II. 5-6. If this Commission is to have any meaningful role, subpoena power should be added to the bill.

P. 4, I. 13. The Commission's recommendations and conclusions shall be disclosed but to whom or what, under what circumstances, with or without redactions and other related issues need to be addressed.

P. 4, II. 17-19. There should be a specific remedy for a breach of the confidentiality requirement and a specific process set forth to hold persons accountable for such unauthorized disclosures.

Again, I remain available to the Committee for further comment or questions on this measure. Thank you for considering these comments.

1 H.145
2 Introduced by Representatives Donahue of Northfield, Donovan of Burlington,
3 and Lippert of Hinesburg
4 Referred to Committee on
5 Date:
6 Subject: Health; mental health; law enforcement; fatality and injury review
7 Statement of purpose of bill as introduced: This bill proposes to establish the
8 Mental Health Crisis Response Commission for the purpose of reviewing
9 fatalities and serious bodily injuries that occur during interactions between law
10 enforcement and persons demonstrating symptoms of mental illness.

11 An act relating to establishing the Mental Health Crisis Response
12 Commission

13 It is hereby enacted by the General Assembly of the State of Vermont:

14 Sec. 1. 18 V.S.A. § 7257a is added to read:

15 § 7257a. MENTAL HEALTH CRISIS RESPONSE COMMISSION

16 (a) There is created the Mental Health Crisis Response Commission within
17 the Office of the Attorney General for the following purposes:

- 18 (1) to conduct reviews of law enforcement interactions with persons
19 demonstrating symptoms of mental illness that have led to and resulted in a
20 fatality or serious bodily injury to any party to the interaction;

*needs to
be expanded
& independent*

1 (2) to identify where increased or alternative supports or strategic
2 investments within law enforcement, designated agencies, or other community
3 service systems could improve outcomes;

4 (3) to educate the public, service providers, and policymakers about
5 strategies for intervention in and prevention of mental health crises;

6 (4) to recommend policies, practices, and services that will encourage
7 collaboration and increase successful interventions between law enforcement
8 and persons demonstrating symptoms of mental illness;

9 (5) to recommend training strategies for public safety, emergency, or
10 other crisis response personnel that will increase successful interventions; and

11 (6) to make recommendations based on the review of cases before the
12 Commission.

13 (b) Each incident involving an interaction between law enforcement and a
14 person who is demonstrating symptoms of a mental illness that results in a
15 death or serious bodily injury to any party shall be referred to the Office of the
16 Attorney General by the relevant law enforcement agency for review, analysis,
17 and recommendations.

18 (c)(1) The Commission shall comprise the following members:

19 (A) the Attorney General or designee;

20 (B) the Commissioner of Public Safety or designee;

21 (C) the Commissioner of Mental Health or designee;

*no requirement
that these
recommendations
be followed*

*This is
stream
current
practice*

↳ to whom

1 (D) a State's Attorney with experience investigating use-of-force
2 incidents, appointed by the Executive Director of the Department of State's
3 Attorneys and Sheriffs;

4 (E) a representative of local law enforcement, appointed by the
5 Governor;

6 (F) a representative of the Vermont State Police;

7 (G) the Executive Director of the Vermont Criminal Justice Training
8 Council or designee;

9 (H) one judge, appointed by the Chief Justice of the Vermont
10 Supreme Court;

11 (I) a representative of the designated agencies, appointed by Vermont
12 Care Partners; and

13 (J) the director of Disability Rights Vermont or designee.

14 (2) The members of the Commission specified in subdivision (1) of this
15 subsection shall serve two-year terms. Any vacancy on the Commission shall
16 be filled in the same manner as the original appointment. The replacement
17 member shall serve for the remainder of the unexpired term.

18 (d)(1) The Attorney General or designee shall call the first meeting of the
19 Commission to occur on or before September 30, 2017.

20 (2) The Commission shall select a chair and vice chair from among its
21 members at the first meeting, and annually thereafter.

*separation of
powers, conflicts*

*one m.h. advocate
out of 10
members*

1 (3) The Commission shall meet at such times as may reasonably be
2 necessary to carry out its duties, but at least once in each calendar quarter.

3 (e) In any case subject to review by the Commission, upon written request
4 of the Commission, a person who possesses information or records that are
5 necessary and relevant to a fatality or serious bodily injury review shall, as
6 soon as practicable, provide the Commission with the information and records.

subpoena

7 A person who provides information or records upon request of the
8 Commission is not criminally or civilly liable for providing information or
9 records in compliance with this section.

10 (f) The proceedings and records of the Commission are confidential and are
11 not subject to subpoena, discovery, or introduction into evidence in a civil or
12 criminal action. The Commission shall disclose conclusions and
13 recommendations upon request, but may not disclose information, records, or
14 data that are otherwise confidential, such as autopsy records. The Commission
15 shall not use the information, records, or data for purposes other than those
16 designated by subsections (a) and (b) of this section.

*to whom,
when and
why?*

17 (g) The Commission is authorized to require any person appearing before it
18 to sign a confidentiality agreement created by the Commission in order to
19 maintain the confidentiality of the proceedings. In addition, the Commission
20 may enter into agreements with nonprofit organizations and private agencies to
21 obtain otherwise confidential information.

*remedy for
breach*

1 (h) Commission meetings are confidential and shall be exempt from
2 1 V.S.A. chapter 5, subchapter 2 (the Vermont Open Meeting Law). Except as
3 otherwise provided in subsection (f) of this section, Commission records are
4 exempt from public inspection and copying under the Public Records Act and
5 shall be kept confidential.

6 (i) Notwithstanding 2 V.S.A. § 20(d), the Commission shall report its
7 findings and recommendations to the Governor, General Assembly, and Chief
8 Justice of the Vermont Supreme Court on or before January 15 of the first year
9 of the biennium. The report shall be available to the public through the Office
10 of the Attorney General.

11 Sec. 2. EFFECTIVE DATE

12 This act shall take effect on July 1, 2017.