Testimony to House Judiciary Committee on H.555

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The Committee tasked the Department of Mental Health (DMH) and Department of Aging and Independent Living with the finding out how other states around the country work with people who are dangerous as a result a Traumatic Brain Injury, who engage in dangerous behavior, are not competent to stand trial and yet remain dangerous in the community.

We spoke with forensic psychiatrists in Vermont and asked them about what they know about how other states are managing people with Traumatic Brain Injuries (TBI) who are not competent to stand trial. They report that most states have handled this with either inpatient or outpatient civil commitment but as an extension of the mental health incompetency law because mental illness generally has a broad definition. This is already true to some extent in Vermont. It isn't unusual for our hospitals to get patients where the primary problem is TBI. Although most states are doing this through the State Hospitals, they have indicated that this is not a good solution and many states are working to find better solutions to this problem. It is clear that many states are trying to figure out solutions to this problem just as we are.

As part of this research, I spoke with Dr. Pinals, who is considered an expert in this topic. She works for the MA Department of Mental Health. She spoke with me a couple of times, and discussed what a big concern this was for them and around the country. She knew of several patients in Mass who were not competent to stand trial but had achieved the benefit they could from hospitalization and yet they were not being discharged by the courts. Some of these are in the order of months/years beyond what the clinical care called for.

Vermont has designed its inpatient capacity without a dedicated forensic unit. Patients are being sent from court to one of three hospitals where they are admitted into general units and not specialized forensic units. Apart from the clinical treatment concerns which we discussed at the last testimony to this group, long term treatment in hospitals for acute care goes against CMS regulations and was one of the problems cited at the Vermont State Hospital and kept the hospital from being certified.

Dr. Pinals did mention that some states were doing pre-trial conditions for persons charged with crime and in some places this included people who had TBIs. So in these cases, there would be conditions placed by the court before a determination of incompetency was made or charges dismissed. These were pilots and after reviewing some, it seems they are only for people where public safety is not in question. I believe the origin of our (H. 555) bill is to find some way of addressing public safety when they are found not competent to stand trial. Pretrial conditions might not address that.

We also consulted Dr. Geller at the University of Massachusetts, a Professor of Psychiatry and well-known expert in matters like this. He also knew that this was a major problem across the country and that this problem seemed to be getting prominent with better understanding of TBI and learning about TBIs occurring even from aggressive sports such as football and not only from what were traditionally recognized areas such as child abuse, motor vehicle accidents and injuries from war.

Dr. Geller also said that if he were in the position of advising the legislature on this topic, he would recommend that the State create a separate TBI program with a separate budget and allocation of resource and capacity to care people with this specific need. He recommended that this facility since it would be small to be adjacent to a psychiatric unit so that there could be some sharing of resources and treatment expertise in areas where there is overlap and yet maintain specific expertise on TBI treatment. The adjacency would also help in response to emergency situations.

I was also referred me to Dr. George Parker in Indiana, an expert on these topics and also the author of the two articles. I have not heard back from him yet, but have read a couple of articles published by him on similar topics but not this exact topic.

I will gladly forward the articles if you would like but they are not directly helpful for our question at the moment.

In summary, the options that other states are using or trying are as follows. I do want to emphasize that these are what other states are doing and not necessarily the recommendations of the Agency of Human Services:

- Forensic hospitals with a dual mandate of clinical care (along with restoration of sanity) and public safety. The problem is that for some TBI folks one would not be able to restore competency due to the extent of the damage/injury.
- Pre-trial conditions but it seems to be limited to non-dangerous folks.
- Building a specific Traumatic Brain Injury Unit with expertise in the treatment of people suffering from consequences of these injuries.