

**Report to
The Vermont Legislature**

Forensic Working Group Report

In Accordance with Act 57, Section 6

- Submitted to:** Joint Legislative Justice Oversight Committee
Chairs of the House Committees on Corrections and Institutions, on Health Care,
and on Judiciary
Chairs of the Senate Committees on Health and Welfare and on Judiciary
- Submitted by:** The Forensic Care Working Group Members, through
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- Prepared by:** Forensic Care Working Group Members, with help from
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Health
- Report Date:** January 15, 2023



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Legislative Charge

Sec. 6. REPORTS; FORENSIC CARE WORKING GROUP; PROSECUTOR NOTIFICATION; COMPETENCY RESTORATION MODELS

(b)(1) On or before August 1, 2022, the Department of Mental Health shall submit a final report to the Joint Legislative Justice Oversight Committee and the Chairs of the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and of the Senate Committees on Health and Welfare and on Judiciary addressing:

(A) any gaps in the current mental health and criminal justice system structure related to individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity;

(B) opportunities to:

(i) improve public safety and address the treatment needs for individuals incompetent to stand trial or who are adjudicated not guilty by reason of insanity; and

(ii) consider the importance of victims' rights in the forensic care process;

(C) competency restoration models used in other states, including both models that do not rely on involuntary medication to restore competency and how cases where competency is not restored are addressed;

(D) models used in other states to determine public safety risks and the means used to address such risks, including guilty but mentally ill verdicts in criminal cases;

(E) due process requirements for defendants held without adjudication of a crime and presumed innocent;

(F) processes regarding other mental conditions affecting competence or sanity, including intellectual disabilities, traumatic brain injury, and dementia;

(G) models for forensic treatment, including the size, scope, and fiscal impact of any forensic treatment facility; and

(H) any additional recommendations.

(2) On or before January 15, 2022, the Department shall submit a preliminary report to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary summarizing the work completed pursuant to subdivision (1) of this subsection to date, except with regard to the work completed pursuant to subdivision (1)(G).

(c) On or before February 15, 2022, the Department of Mental Health shall submit a report to the House Committees on Corrections and Institutions, on Health Care, and on Judiciary and to the Senate Committees on Health and Welfare and on Judiciary that:

(1) assesses the necessity of notification to the prosecutor upon becoming aware that individuals on orders of nonhospitalization pursuant to 18 V.S.A. § 7618 are not complying with the order or that the alternative treatment is not adequate to meet the individual's treatment needs, including any recommendations:

(A) necessary to clarify the process;

(B) addressing what facts and circumstances should trigger the Commissioner's duty to notify the prosecutor; and

(C) addressing steps that the prosecutor should take after receiving the notification;

and (2) summarizes the work completed to date by the working groups regarding the models for forensic treatment, including the size, scope, and fiscal impact of any forensic treatment facility, pursuant to subdivision (b)(1)(G) of this section.

(d)(1) In conducting the work required by this section, including evaluations for forensic treatment facility models, pursuant to subsections (b) and (c) of this section, the working group shall ensure:

(A) that social and racial equity issues are considered, including issues related to transgender and gender nonconforming persons;

and (B) consistency with the General Assembly's policy in 18 V.S.A. § 7629(c) of working "toward a mental health system that does not require coercion or the use of involuntary medication."

(2) These considerations shall be reflected in the final report submitted pursuant to subdivision (b)(1) of this section and the report submitted pursuant to subsection (c) of this section.

(e) The Department shall access regional or national expertise to present models to the working group for review, including any model recommended by members of the working group.

(f) The final report submitted pursuant to subdivision (b)(1) of this section and the report submitted pursuant to subdivision (c)(1) of this section shall include proposed draft legislation addressing any identified needed changes to statute.

(g) Members of the working group who are neither State employees nor otherwise paid to participate in the working group in their professional capacity shall be entitled to per diem compensation and reimbursement of expenses for attending meetings as permitted under 32 V.S.A. § 1010.

Executive Summary

The Forensic Care Working Group, comprised of 24 members (not including Department of Mental Health (DMH) staff), was tasked with addressing several large issues confronting Vermont regarding the intersection of the criminal justice system, the civil mental health system, and the civil systems housed within the Department of Disabilities, Aging, and Independent Living (DAIL). The strength of this workgroup was in its diversity of members, as each member had an important and unique perspective. However, members had various degrees of knowledge about the current system and came with very different backgrounds and experiences. While these differences made the composition so important, it meant that complicated legal discussions were at times difficult for everyone to follow and/or participate in. The varied composition also meant that there was a wide variety of opinions on the various topics discussed and the group was unable to reach any sort of large consensus.

Members of the workgroup, however, heard a lot of various presentations as well as provided their own recommendations to be included in this report. This report should be seen as a resource for the legislature as it moves forward this session in discussions around a potential forensic system of care.

Included in this report are links to presentations heard by the workgroup on various topics as well as a few articles and a webinar. The recommendations section of the report includes 9 presentations by workgroup members. These presentations cover a variety of topics (competency, sanity, a forensic facility, treatment vs. punishment, DOC services, ONHs) and include both very specific suggestions as well as overarching things for the legislature to consider. Workgroup members spent a lot of time developing their recommendations, and we urge the legislature to review their presentations in their entirety.

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Introduction

The forensic work group met 13 times over a year and a half – from July 15, 2021, through December 15, 2022. The group was comprised of 24 individuals (plus DMH staff) including:

- DOC
- DAIL
- BGS
- Judiciary
- State’s Attorneys
- Attorney General’s Office
- Defender General
- Director of Health Care Reform
- Vermont Care Partners representative
- Vermont Legal Aid’s Mental Health Law Project
- Vermont Medical Society representative
- (3) Crime Victim representatives
- Mental Health Care Ombudsman
- Vermont Association of Hospitals and Health Systems representative
- (3) members with lived experience
- Vermont Developmental Disabilities Council representative
- (3) additional interested parties permitted by the Commissioner of DMH

DMH first attempted to break up all the required topic areas into different meetings and have presentations and discussions on each. However, DMH staff noticed this format led to some confusion, and not enough time for questions or actual discussion and contemplation. Based on feedback from members about how confusing this approach was, in November 2021 DMH took a new approach by attempting to slow things down and level set as well as focusing on a just few topics as opposed to trying to cover several.

Out of that discussion came a few key areas DMH thought the group could begin to have deeper discussions about: diversion programs, competency restoration, and a forensic facility. Tied to all of those was a discussion around definitions of who these programs would apply to and a larger discussion of the overlap between DMH, DAIL, and substance abuse.

While DMH appreciated that those three were massive topics, and fully expected that not all members would agree, DMH did think it could create a forum for discussion, analysis, and, if not agreement, at least common understanding of everyone's positions and an ability to articulate potential options. DMH soon realized the difference of opinions were perhaps farther apart than originally thought, making it a challenge to have detailed discussions. In addition, the legal complexities and nuances around competency restoration and a forensic facility continued to cause confusion.

DMH took a step back and once again reevaluated how best to accomplish the important goals of the forensic workgroup. DMH decided to break the larger group into two smaller groups – one to focus on competency restoration and a forensic facility comprised mostly of the attorneys along with representatives from Vermont Psychiatric Survivors, victim's advocates, and a forensic psychiatrist and another group to focus on diversion programs while also included a representative from Vermont Psychiatric Survivors.

The idea was to use people's strengths and knowledge from smaller groups they could best fully participate in. DMH wanted those groups to come up with specific, concrete ideas they could then bring to the larger group for large group discussion. Unfortunately, it did not go as well as DMH had hoped. The groups struggled with finding common ground.

After that, DMH once again took a step back to reevaluate the workgroup and think about how to best approach the last 6 months. It had become clear to DMH that the group would likely not be able to put forward consensus recommendations. The various approaches DMH tried with the workgroup had not been successful, so DMH decided to try an alternative approach. The idea was to rely more on the stakeholders for their ideas as DMH had previously struggled with assuring all members felt they had the space to present their ideas and suggestions.

DMH asked members to brainstorm, research, and draft concrete ideas, potentially partnering with other members to do so. The last several meetings were used as a forum for presentations and related discussions. All the presentations are included in this report.

Presentations to the Workgroup

The working group heard a variety of presentations as they worked together as a group to understand Vermont's current system as well as how some other states approach these topics.

- The Vermont Cooperative for Practice Improvement started off the workgroup's first meeting by discussing Creating Community and Change in Collaboration to help the group think about how to find a share framework, strategies for community-building, and offering tools and resources to consider.
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/VCPI_Forensic_WG_Community_07152021.pdf
- Vermont Legal Aid's Mental Health Law Project gave a presentation on hospitalization hearings by reviewing relevant statutes and talking about how the process works.
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/MHLP_Representation_in_Hospitalization_Hearings_0.ppt
- The DMH attorneys from the Attorney General's Office also have an overview of the relevant statutes and provided the attached system flowchart.
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Criminal_Court_Flow_Chart.pdf
- The head of Connecticut's Director of Forensic Services at Department of Mental Health & Addiction Services spoke to the group about their model of forensic care, which is overviewed in this article he provided.
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Norko_et_al_The_CT_Experience_with_Sell_Legislation.pdf
- DAIL presented on Act 248, TBI, dementia and guardianship
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Forensic_Working_Group_Act_248.ppt
- The Crime Research Group presented on the Sequential Intercept Model
 - [Criminal Justice System Sequential Intercept Model | SAMHSA](#)

Workgroup members were also sent several articles as well as a webinar to review:

- Article from Behavioral Sciences and the Law discussing insanity acquittees in Connecticut
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Nork_et_al_Assessing_Insanity_Acquittee_Recidivism_in_CT.pdf
- Information on Colorado's criminal justice system
 - https://leg.colorado.gov/sites/default/files/documents/2018A/bills/2018a_251_enr.pdf
- Draft of the Colorado Bill on Competency Restoration which was signed into law.
 - [Senate Bill 19-223 | Department of Mental Health \(vermont.gov\)](#)
- Michael Norko, Director of Forensic Services in Conn.: Presentation on Competency to Stand Trial
 - <https://mentalhealth.vermont.gov/document/competency-stand-trial-connecticut-michael-norko-md>
- SAMHSA webinar on Competency Restoration
 - [GAINS Webinar: Competence to Stand Trial & Restoration - YouTube](#)

- NRI's Competency Restoration: Use of State Hospitals, Community-Based, and Jail-Based Approaches
 - https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Competency_Restoration_Use_State_Hospitals%2C_Community-Based%2C_and_Jail-Based_Approaches_0.pdf

Recommendations/Workgroup Member Presentations

Dr. Simha Ravven presented on competency restoration, oversight for persons found not guilty by reason of insanity and dedicated forensic hospital beds.

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Dr_Simha_Ravven_Presentation_10262022.pdf

Dr. Margaret Bolton presented on a hub and spoke model for a forensic system.

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Dr_Peg_Bolton_Presentation_Notes_10262022.pdf

Kelly Carroll and Joanne Kortendick presented *Prosecutorial Notification and Competency Restoration: Statutory Suggestions from a Victim's Perspective*.

Summary of Statutory Recommendations for Prosecutorial Notification and Restoration of Competency:

Prosecutorial Notification

1. Draft language that identifies non-compliance with a Non-Hospitalization Order as a trigger.
2. Include a hierarchy of cases where the notification requirement is triggered
3. Specify that notice be given to the Commissioner in cases where the type of noncompliance could present a danger to either the victim or the public.
4. Revisions of DMH statutes to include public safety mandate

Competency Restoration:

Enact a statute that requires that competency services be provided to a defendant who is adjudged incompetent and requires the defendant to participate in a competency program and establishes a statutory framework which should include:

1. Standards and processes for diverting those with lesser crimes.
2. Identification of an entity or agency responsible for bridging the gap between the mental health and criminal justice systems and consideration of the use of liaisons/forensic navigators in accomplishing that.

Summary of their presentation:

[Summary Paragraphs S 3 Report.pdf \(vermont.gov\)](#)

Full Presentation and attached narrative:

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Prosecutorial_Notification_and_Compentency_Restoration_Victim%E2%80%99s_Perspective_Narrative.pdf

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Prosecutorial_Notification_Competency_Restoration_Statutory_Suggestions_Victim%27s_Perspective.pdf

Kimberly Blake, MD presented on mental health and substance use treatment needs in correctional settings.

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/Presentation_Kimberly_Blake_MD_11162022.pdf

https://mentalhealth.vermont.gov/sites/mentalhealth/files/doc_library/FWG_Help_Wanted.pdf

<https://www.youtube.com/watch?v=ZBoPSQU3ZzA&feature=youtu.be>

The Defender General offered a statement around observed points of agreement and proposed action areas.

Proposed Action Items:

1. VT should establish a new forensic mental health treatment facility
2. Vermont should change the statute to allow doctorate level psychologists (PhD or PsyD) to opine on the competency and sanity of individuals who present as mentally ill in the criminal justice system.
3. Vermont should establish more robust follow-up with individuals on orders of non-hospitalization to ensure their stability in the community.
4. Judicial review of DMH decisions to release mentally ill individuals involved in the criminal justice system who have been initially held on an order of hospitalization (whether incompetent or insane) for certain serious crimes.
5. The ODG does not oppose State and victim notification regarding the community release of individuals who have previously demonstrated a danger to others.
6. Individuals with specific mental health treatment credentials should be embedded with law enforcement to address mental health emergencies in the community.
7. Significant additional resources should be dedicated to early recognition and treatment of mental illness.

[Act.57 S.3 Forensic Mental Health Study Committee Statement of Office of Defender General | Department of Mental Health \(vermont.gov\)](#)

VAHHS and the Vermont Medical Society provided comments around the foundations of a forensic mental health system of care, a hub and spoke model, and competency restoration.

<https://mentalhealth.vermont.gov/document/forensic-report-feedback-vahhs-vms>

Heidi Henkel from Vermont Psychiatric Survivors presented on a series of issues.

Summary of her presentation:

<https://mentalhealth.vermont.gov/document/heidi-henkel-presentation-outline>

Full presentation:

<https://mentalhealth.vermont.gov/document/forensic-workgroup-presentation-heidi-henkel>

Zach Hughes from Vermont Psychiatric Survivors presented on the need to treat people in the least restrictive setting, keeping punishment and politics out of treatment, setting conditions conducive to what is needed for treatment, and noting that peers should be included on relevant boards, including ONH review meetings.

<https://mentalhealth.vermont.gov/document/lens-what-forensics-system-vermont-should-be-zachary-hughes>

Jared Bianchi from the State Attorney's Office presented on a new approach to forensics in Vermont through amendments to Title 13.

Proposal details:

- Create an office tasked with maintaining community safety while serving justice involved persons who cannot be adjudicated
- Remove "ID"/"MH" silos and diagnostic pre-requisites
- Create a new process distinct from the civil/DMH/DAIL process to oversee justice involved persons during their period of incompetency or following and adjudication of insanity.
- Expand options for community and forensic facility supervision
- Separate the processes for sanity and competency evaluations

[13 VSA Ch. 157 Draft Revisions Bianchi | Department of Mental Health \(vermont.gov\)](#)

Comments that were received by DMH after the Workgroup's Final Meeting

Two individuals, Jack McCullough from Vermont Legal Aid and Lindsey Owen from Disability Rights Vermont, submitted comments after the Workgroup had their final meeting. Certain members would like it noted that because these comments came in after our meetings, they did not have a chance to review or respond to them and while they agree the group failed to reach consensus, they want it noted that best efforts were made by most of the group, as reflected in the presentations, the materials, and the reports to address the Legislature's questions.

Jack McCullough from Vermont Legal Aid had some closing comments on the Workgroup:

[Vermont Legal Aid - Summary Comments | Department of Mental Health](#)

Lindsey Owen from Disability Rights Vermont submitted the following statement:

Disability Rights Vermont, Vermont's Mental Health Care Ombudsman, agrees with the summary comments put forth by Vermont Legal Aid. Most notably, that the most important area of need that will have the biggest positive impact on the mental health system in Vermont is increased funding and supports for community based mental health treatment with an emphasis on trying to provide care such that we avoid crises and possible involvement with the criminal justice system before it happens.

Appendix A – Forensic Care Working Group Members

<u>Forensic Care Working Group Members</u>	
A representative from the Department of Corrections	Annie Ramniceanu, Colleen Nilsen
A representative from the Department of Disabilities, Aging, and Independent Living	Stuart Schurr
A representative from the Department of Buildings and General Services	Erik Filkorn
Juiciary	Judge Carlson
A representative from the Department of State’s Attorneys and Sheriffs	Jared Bianchi
A representative from the Office of the Attorney General	Domenica Padula
A representative from the Office of the Defender General	Matt Valerio
The Director of Health Care Reform or designee	Ena Backus/ Julie Parker
A representative, appointed by Vermont Care Partners	Michael Hartmann
A representative, appointed by Vermont Legal Aid’s Mental Health Project	Jack McCullough
A representative, appointed by the Vermont Medical Society	Dr. Simha Ravven
Three crime victims’ representatives, appointed by the Vermont Center for Crime Victim Services	JoAnne Kortendick, Rhonda Palmer, Deb Loring
The Mental Health Care Ombudsman established pursuant to 18 V.S.A. § 7259 or designee	Lindsey Owen, Ludovica Brown, Henry Hauck
A representative of the designated hospitals, appointed by the Vermont Association of Hospitals and Health Care Systems	Emma Harrigan, Devon Green
Three individuals with lived experience of mental illness, at least one of whom has lived experience of the criminal justice system or the civil commitment system, or both, appointed by Vermont Psychiatric Survivors	Karim Chapman, Zack Hughes, Heidi Henkel
A representative, appointed by the Vermont Developmental Disabilities Council	Susan Aranoff
Any other interested party permitted by the Commissioner of Mental Health	Dr. Margaret Bolton, Dr. Kim Blake, Kelly Carroll
DMH Staff	Karen Godnick Barber, Samantha Sweet, Matt Viens, Dr. Kelley Klein