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Mental Health in Virginia

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MENTAL HEALTH EDITORIALS

MENTAL HEALTH IN VIRGINIA

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Since the April 16, 2007 tragedy at Virginia Tech, the public's attention has focused on Virginia's mental health system.[1] Like far too many public policy issues that face the government, it often takes a tragedy to bring an issue to the point where real action is taken.

Over the years, one of the major issues facing Virginia has been how to best meet the needs of its citizens requiring mental health services. This is not a new issue. Since 1949 there have been many studies of Virginia's mental health system.[2] These studies have emphasized the same issues over and over again that need to be addressed. Many, if not all, of the recommendations from these studies identify funding as a major deficit in our current system.[3]

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1. *See* COMMONWEALTH OF VA. COMM'N ON MENTAL HEALTH LAW REFORM, PRELIMINARY REPORT AND RECOMMENDATIONS v (2007), http://www.courts.state.va.us/cmh/2007_0221_preliminary_report.pdf [hereinafter COMM'N ON MENTAL HEALTH].

2. *See, e.g.*, COMM'N ON MENTAL HEALTH, *supra* note 1, at iv; REP. OF THE JOINT COMM. TO EVALUATE THE FUTURE OF PUBLICLY FUNDED MENTAL HEALTH, MENTAL RETARDATION, AND SUBSTANCE ABUSE SERVICES, H. Doc. No. 101, at 3 (2000), *available at* http://leg2.state.va.us/dls/h&sdocs.nsf/By+Year/HD1012000/$file/ HD101_2000.pdf [hereinafter H. Doc. No. 101] (presenting the findings of the most recent legislative study of mental health services by the Hall-Gartlan Commission); HAMMOND COMM'N ON COMMUNITY SERVICES AND INPATIENT CARE, CROSSROADS OF REFORM: POSITIVE DIRECTION FOR VIRGINIA'S MENTAL HEALTH, MENTAL RETARDATION AND SUBSTANCE ABUSE SERVICES SYSTEM (1998), http://hammond.vipnet.org/images/hammond%20report.pdf (setting forth a chronology of mental health developments in Virginia); Dep't of Mental Health, Mental Retardation, and Substance Abuse Servs., *Regional Partnership Planning*, PARTNERSHIP PRESS, May 2003, at 2, *available at* http://www.dmhmrsas.virginia.gov/documents/adm-PPressVol1Issue1May03.pdf (listing the conclusions of the Bagley Commission, the Hammond Commission, and the Hall-Gartlan Commission).

3. *See, e.g.,* H. Doc No. 101, *supra* note 2, at 7.

To address this deficiency, over the past two years, the Virginia General Assembly and Governor Kaine have supported a state budget that included a more than twenty percent increase in funding for mental health services.[4] Even so, the tragedy at Virginia Tech on April 16, 2007 highlighted the need to do more.

It should be noted that prior to the Virginia Tech tragedy, Chief Justice Leroy Hassell of Virginia's Supreme Court convened a commission in October 2006 to review the Commonwealth's current mental health laws.[5] The twenty-six member commission includes officials from all three branches of state government as well as consumer and family representatives, service providers, and the legal community.[6]

It has been more than thirty years since Virginia adopted statutes establishing a community-based system of mental health treatment and more than twenty years since the legislature focused on this topic. [7] To concentrate on the issues facing the mental health system, the Commission divided its extensive review into five task force areas: access to services, the commitment process, children and adolescents, consumer empowerment, and the criminal justice system.[8]

Besides a lack of funding for services, complaints about the system include a lack of due process for mentally ill offenders,[9] unclear statutory requirements,[10] and little uniformity in how judges interpret and apply those requirements.[11] In addition, many are dissatisfied by the lack of services for children and adolescents,[12] the lack of short-term alternatives to hospitalization,[13] the absence of effective means to mandate outpatient treatment,[14] the unrealistic statutory time requirements for evaluating

4. The increase in general funds allocated to the Department of Mental Health, Mental Retardation, and Substance Abuse Services from $445,005,639 in 2006 to $535,733,680 represents a 20.4% increase. *See* VA. DEP'T OF PLANNING & BUDGET, 2008 EXEC. BIENNIAL BUDGET: AMENDMENTS TO THE 2007 APPROPRIATIONS ACT, B-113 (2007), *available at* http://dpb.virginia.gov/budget/buddoc08/pdf/partb/healthandhumanresources.pdf.

5. COMM'N ON MENTAL HEALTH, *supra* note 1, at v.

6. *Id.* at 45.

7. *See* H. Doc. No. 101, *supra* note 2.

8. COMM'N ON MENTAL HEALTH, *supra* note 1, at iii.

9. *See id.* (noting that most respondents are unaware of the right to have personal health information kept confidential and, in practice, fail to invoke this right thereby opening their highly sensitive personal records to public view).

10. *Id.* at 3.

11. *Id.*

12. *Id.* at 31.

13. *Id.* at 1-2.

14. COMM'N ON MENTAL HEALTH, *supra* note 1, at 3-4 (noting that Community Services Boards lack the capacity to provide and monitor less restrictive alternatives to inpatient treatment, such as mandatory outpatient treatment, and confusion exists over the proper procedure to implement such treatment

offenders,[15] and the increasing number of individuals with mental illnesses populating Virginia's jails and prisons.[16]

Like most other states, Virginia must deal with the unnecessary criminalization of people with mental illness.[17] Over the last two years, the Virginia General Assembly increased funding to forty community service boards that administer crisis intervention and case management services by $29.4 million in an effort to provide more community-based services to address this issue.[18] This funding aims to achieve a better community mental health infrastructure, which provides mentally ill citizens with treatment prior to any interaction with the criminal justice system.

Hopefully, through the development of more regional Crisis Stabilization Centers, such services will become increasingly available throughout the Commonwealth.[19] If successful, Virginia could reduce the number of mentally ill people who are sent to jail and prison. More importantly, additional short term alternatives will improve citizens' access to needed care in a more timely and community-based manner. These short-term Crisis Stabilization Centers combined with additional resources for case management offer an opportunity to address the community-based effort that began over thirty-seven years ago with the creation of the Community Services Board system in Virginia.[20]

As Virginia grapples with how to better serve those with mental illnesses, it must make a long-term commitment to providing the necessary resources to make the services available. It must also make policy changes that facilitate better access to such services in an environment that does not

orders).

15. *See id.* at 1 (reporting that a magistrate can issue an emergency custody order if there is probable cause that a person meets commitment criteria so that a mental health evaluation can be preformed, but current law only allows four hours for this evaluation).

16. *See id.* at 1, 27 (explaining that current law encourages law enforcement officers to arrest mentally ill individuals rather than taking them to a more therapeutic setting although individuals with mental illnesses should be diverted from the criminal justice system).

17. David Ress, *Lost Behind Bars*, RICH. TIMES-DISPATCH, Oct. 7, 2007, at A12.

18. *Compare* Act of April 4, 2007, ch. 847, 2007 Va. Acts 1599 *with* Act of May 4, 2005, ch. 951, 2005 Va. Acts 1862.

19. VA. TECH REVIEW PANEL, MASS SHOOTING AT VIRGINIA TECH: REPORT OF THE REVIEW PANEL 61 (2007), http://www.vtreviewpanel.org/report/report/07_SUMMARY.pdf (recommending that the number and capacity fo crisis stabilization centers be expanded). The Virginia Association of Community Services Boards, Inc. has also recognized the need for urgent and crisis care, and includes the development of crisis management services as a top budget priority. VA. ASS'N OF CMTY. SERVS. BD., VACSB BUDGET PRIORITIES FOR 2008-2010 1, http://www.vacsb.org/documents/2008_10_VACSB_Budget_Priorities.pdf (last visited April 2, 2008).

20. *See* VA. CODE ANN. §37.2-500 (Repl. Vol. 2005) (mandating localities to establish community services boards to provide emergency services and case management services to the community). This statute was enacted in 1968. Act of April 4, 1968, ch. 477, 1968 Va. Acts 645.

stigmatize those needing assistance.

Until recently, funding for mental health services has lagged behind the rate of inflation and utilization.[21] As a result, there is still much to achieve in order to build the mental health infrastructure thereby increasing access to such services for children, adolescents, and adults in Virginia. This is a challenge that must be addressed to improve the quality of life for many citizens and their families.

During the 2008 legislative session, House Bill 499 was introduced as a comprehensive initiative to improve the process and accountability of the Commonwealth's complex mental health structure.[22] A primary component of this legislation establishes a new standard for involuntary outpatient treatment. The new standard authorizes involuntary commitment where the person

has a mental illness and there is a substantial likelihood that, as a result of mental illness, the person will, in the near future, (1) cause serious physical harm to himself or others as evidenced by recent behavior causing, attempting, or threatening harm and other relevant information, if any, or (2) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.[23]

In addition to the change in the commitment criteria, House Bill 499, or the omnibus Mental Health Law Reform Bill, includes the following reforms:

•Allows the period of emergency custody to be extended from four hours to six hours, if necessary, to complete the required mental health and medical examinations and to locate an appropriate placement for the individual in need of services;[24]

•Establishes clear procedures for ordering, delivering, and monitoring court-ordered mandatory outpatient treatment;[25]

•Increases the oversight and accountability of Community Services Boards;[26]

•Clarifies the types of evidence that may be considered during the

21. Funding for many public services suffer from this same delay.

22. H.B. 499, Va. Gen. Assembly (Reg. Sess. 2008).

23. *Id.*

24. H.B. 449, Va. Gen. Assembly (Reg. Sess. 2008).

25. *Id.*

26. *See id.* (listing provisions that increase the oversight and accountability of Community Services Boards).

involuntary commitment process;[27]

•Requires the Community Services Boards to have a representative present, in person or electronically, at every civil commitment hearing;[28]

•Requires that Temporary Detention Orders remain in effect for a minimum of twenty-four hours and a maximum of forty-eight hours unless the detention order covers a weekend or holiday when evaluation services are not available.[29]

Although these policy changes are important, the critical component to any policy is funding. This year, the General Assembly appropriated $41 million to address the projected costs in implementing these reforms.[30] This funding is a positive first step to what will hopefully become a long-term commitment to addressing the community-based infrastructure needs of Virginia's mental health system.

27. *Id.*
28. *Id.*
29. *Id.*
30. VA. DEP'T OF PLANNING & BUDGET, *supra* note 4, at E-96.