

Members

Sen. Marvin Riegsecker, Chairperson
Sen. Rose Ann Antich
Rep. Sheila Klinker
Rep. Robert Alderman
Sylvia Marie Brantley
Christopher Durcholz
Suda Hopkins
Sally Lowery
Ervin Picha
Joanne Rains
Thomas Van Meter
Betty Williams



INDIANA COMMISSION ON MENTAL RETARDATION AND DEVELOPMENTAL DISABILITIES

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Authority: P.L. 245-1997, P.L. 272-1999

MEETING MINUTES¹

Meeting Date: October 13, 1999
Meeting Time: 10:00 A.M.
Meeting Place: State House, 200 W. Washington St.,
Room 233
Meeting City: Indianapolis, Indiana
Meeting Number: 5

Members Present: Sen. Marvin Riegsecker, Chairperson; Sen. Rose Ann Antich; Rep. Sheila Klinker; Rep. Robert Alderman; Sylvia Marie Brantley; Christopher Durcholz; Suda Hopkins; Sally Lowery; Ervin Picha; Joanne Rains; Betty Williams.

Members Absent: Thomas Van Meter.

Call to Order

Acting Chairperson Senator Rose Ann Antich called the meeting to order at approximately 10:15 a.m. Senator Antich explained the Senator Riegsecker would be arriving late due to car trouble and that she would be chairing the meeting until Senator Riegsecker's arrival. Senator Antich then had Commission members introduce themselves.

Presentation of Information Requested at Previous Meeting

John Hill, Deputy Director, Division of Disability, Aging, and Rehabilitative Services (DDARS), presented the Commission with information requested at the previous meeting regarding respite care. Mr. Hill stated that respite care is provided under both the Medicaid

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.ai.org/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

waivers (i.e., autism and ICF/MR) and a separate state respite care program overseen by the Bureau of Developmental Disabilities Services (BDDS). The average yearly cost for respite care under both programs is \$1,500. The separate state respite care program, which also uses local dollars and other funding, helps to subsidize respite care provided to approximately 1,150 people throughout the state by 21 agencies. The \$39 million appropriated in response to the 317 Task Force Plan will allow respite care services under the state program to be expanded over the next two years to cover twice the number of persons served now, in addition to allowing persons who are currently receiving respite care to receive more service. The hourly rate charged for providing respite care varies depending upon the agency and the location, but the maximum hourly rate is \$14.75 under both the Medicaid waivers and the state program. Under the separate state program, local guidelines based on community needs and resources determine the amount of respite care that a particular individual or family receives. To be eligible for respite care services under the separate state program, an individual must have a documented developmental disability and must apply for services.

In response to questions from Commission members, Mr. Hill remarked that 21 respite care agencies are probably not sufficient to provide the respite services needed across the state, but funding constraints and concerns about increasing the waiting list for services have prevented expansion of the program. The recent \$39 million appropriation may allow the program to be expanded to include additional service providers.

Lauren Polite, Legislative Liaison, Family and Social Services Administration (FSSA), gave Commission members a handout containing information requested at the previous meeting regarding the federal and state standards used to determine whether a person is eligible to receive care in a group home or an Intermediate Care Facility for the Mentally Retarded (ICF/MR). (See Exhibit A.)

Matt Hopper, Legislative Liaison, and Sue Hornstein, Director, Long Term Care, Indiana State Department of Health (ISDH), presented a handout to Commission members containing information requested at the previous meeting regarding the federal conditions of participation that group homes for the developmentally disabled must meet. (See Exhibit B.) In response to questions from Commission members, Mr. Hopper noted that all licensed group homes in Indiana are inspected annually by the ISDH.

Responding to questions from Commission members, Ms. Hornstein explained that a group home found to be out of compliance must submit a plan of correction to ISDH and ISDH conducts a follow-up study within 90 days to determine if the group home has come into compliance. All visits, including annual surveys, follow-up visits to determine compliance, and responses to complaints, are unannounced. Ms. Hornstein also reported that there is a toll-free telephone number for reporting complaints regarding group homes, and that complaints made through this number can be anonymous. If the complaint is not made anonymously, the ISDH will send a copy of the survey results to the complainant. Ms. Hornstein stated that group homes are not required to post that number, but each resident of a group home has an advocate (e.g., a family member or a case manager) and the advocate has the toll-free number. Ms. Hornstein commented that ISDH investigates all complaints regarding group homes that involve an alleged violation of federal rules and regulations and refer all other complaints to FSSA or the statewide developmental disabilities waiver ombudsman. The Commission directed staff to prepare a preliminary draft requiring group homes to post the toll-free number and requiring FSSA and ISDH to include the number on all materials given to group home residents and their families or guardians, including a statement that complaints may be made anonymously.

New Jersey Developmentally Disabled Offenders Program

Kim Dodson, Director of Governmental Relations and Development, The ARC of Indiana, gave Commission members a folder of information regarding the New Jersey Developmentally Disabled Offenders Program. (See Exhibit C.) Ms. Dodson noted that there is no exact count of how many developmentally disabled persons in Indiana are in state prisons, county jails, or on probation or parole. Studies have shown that in the United States, developmentally disabled persons make up about 2% of the general population, but approximately 4-10% of prison populations. Ms. Dodson asserted that problems that arise when developmentally disabled persons become involved with the criminal justice system are not due to any malice on the part of the system, but a lack of knowledge and services.

Ms. Dodson stated that the ARC of Indiana believes that providing services to developmentally disabled persons in the criminal justice system is critical. Ms. Dodson commented that New Jersey's Developmentally Disabled Offenders Program, which the ARC of Indiana suggests as a model, is recognized as one of the best such programs in the country. The New Jersey program provides alternatives to prosecution and imprisonment, serves as a clearinghouse of information, acts as a liaison between the developmental disabilities system and the criminal justice system, and monitors the progress of individuals in the program. Ms. Dodson noted that the monitoring component of the program is vital. Ms. Dodson declared that a study by the Department of Correction (DOC) is needed to determine how many persons with developmental disabilities are in prison or on parole and what special issues are presented by the incarceration of these individuals.

Nick Gulling, Sheriff of Hancock County, related a situation that occurred about three years ago with "Bobby," a Hancock County man with developmental disabilities who was arrested and prosecuted for breaking into a store. Sheriff Gulling related some of the difficulties that housing this man in the Hancock County jail presented, as he was a good-sized man who could become violent when upset and he suffered from several severe health problems. After Bobby was convicted, he was transferred to the custody of the DOC where, due to a lack of medical treatment, he died. Sheriff Gulling commented that smaller facilities like the Hancock County Jail, which can house 130 inmates, can often give the personal attention that inmates with developmental disabilities require, but the DOC cannot. Sheriff Gulling explained that not only are jail and prison staff not adequately trained to deal with developmentally disabled persons, but interaction with other inmates also presents problems. Sheriff Gulling declared that persons with developmental disabilities who commit crimes should be held accountable for their actions, but perhaps an approach different from than the traditional criminal justice system process is appropriate. Sheriff Gulling observed that some of the major problems that exist when developmentally disabled persons become involved with the criminal justice system are the identification of developmentally disabled suspects, having space to separate developmentally disabled inmates from other inmates, and lack of alternative placements (e.g., group homes, state hospitals or developmental centers). Sheriff Gulling remarked that the same types of problems that arise when dealing with developmentally disabled persons arise with persons who may not have been born with developmental disabilities, but who have similar limitations due to drug or alcohol abuse.

In response to questions from Commission members, Sheriff Gulling stated that his department is involved in taking persons into custody for involuntary commitment to mental health facilities about 4-5 times per week and that these individuals, who usually do not spend any time in the county jail before commitment, are usually released from the facility after only 24-48 hours, often to return to the community to cause the same trouble as

before. Sheriff Gulling reported that on many of the occasions when he has requested that an inmate with developmental disabilities be placed in Richmond State Hospital, he has been told that there is no space or that placement in the hospital is not appropriate. Representatives Alderman and Klinker commented that judges in their districts often order commitment to a mental health facility, preventing the facility from refusing to take the inmate.

Commission member Joanne Rains cautioned the Commission that it is important to remember the distinction between persons with mental retardation/developmental disabilities and persons with mental illness and to realize that treatment is not the same for both groups. Sheriff Gulling agreed that there are clinical distinctions between the two groups, but noted that similar problems arise in the criminal justice system with either group. Responding to Commission questions, Sheriff Gulling stated that having a separate facility for offenders with developmental disabilities might be a good alternative, but that would not address the problems at the county level because commitment to a DOC facility occurs only after conviction, and defendants are housed in county jails before conviction.

Senator Riegsecker arrived and assumed chairmanship of the Commission from Senator Antich.

Arlene Scroggham, Greenfield, told Commission members that she is the sister of "Bobby" referred to by Sheriff Gulling. She related additional details of her brother's situation, including efforts she made to intervene on Bobby's behalf before his death. Ms. Scroggham asserted that a separate facility is needed for persons with developmental disabilities to prevent abuse by other inmates and to address the many care needs the developmentally disabled often have. Ms. Scroggham also declared that incarcerated persons with developmental disabilities need advocates to help them make good decisions.

Pat Cockrum, Chief Executive Officer, Sycamore Services, Hendricks County, affirmed the comments made by previous witnesses and stated that local law enforcement officials are often hesitant to get involved with a developmentally disabled person, especially if the person has been found legally incompetent and a guardian has been appointed for the person.

Lynn Carson, Mental Health Association, Marion County, distributed a handout to Commission members regarding the Marion County Psychiatric Assertive Identification and Response Mental Health Diversion Project (PAIR). (See Exhibit D.) Ms. Carson explained that PAIR is a cooperative effort by the Marion County Superior Court, Marion County Prosecutor, Mental Health Association in Marion County, and various mental health services providers that utilizes the most appropriate community placement services to divert individuals meeting specific legal and psychiatric criteria from the usual criminal justice system and to monitor participants' compliance with diversion conditions. PAIR is one of 52 similar diversionary programs in the United States. The agencies involved in the program absorb their own costs and the participants pay the service providers, usually through the participants' receipt of Medicaid or Supplemental Security Income (SSI) payments. Ms. Carson stated that she sees no reason why the PAIR program could not be expanded to include persons with mental retardation and developmental disabilities.

Richard Dever, Professor Emeritus, Indiana University, Bloomington, informed the Commission that the imposition of the death penalty presents a particularly difficult problem when individuals with mental retardation are involved. Indiana law prohibits the imposition of the death penalty or life imprisonment without parole against a mentally retarded individual, but the process of proving that a defendant is mentally retarded is very

difficult, especially for those individuals who are mildly mentally retarded. Many times, the defense attorney does not recognize the need to have a client evaluated for mental retardation or if an evaluation is done, the evaluation is not sufficient (e.g., is conducted by an evaluator who does not have any expertise in mental retardation). Professor Dever suggested that evaluations be required to be conducted by individuals with experience in mental retardation and that the 10 categories of adaptive behavior listed in the Diagnostic and Statistical Manual of Mental Disorders (DSM-IV) be used to assess whether a defendant is mentally retarded.

Charles C. Burch, Executive Director, Law Enforcement Training Board, Indiana Law Enforcement Academy, reaffirmed that the distinction between persons with mental retardation and those with mental illness is a difficult one to make for everyone, including police officers. Mr. Burch urged the Commission not to rush to require more training for law enforcement officers or others involved in the criminal justice system (e.g., attorneys), but to give some serious thought to the issues involved and possible ways to address them.

Committee Discussion

Senator Riegsecker commented that the involvement of developmentally disabled persons with the criminal justice system raises many issues that should be studied carefully. The Commission directed staff to prepare a bill draft requiring the DOC and DDARS to conduct a study of these issues and to report back to the Commission next year.

Adjournment

There being no further business to come before the Commission, Senator Riegsecker adjourned the meeting at approximately 12:20 p.m.

Next Meeting

The Commission's next meeting will be Tuesday October 26, 1999, at 10:00 a.m. in Room 156-B of the State House. This will be the Commission's final meeting of the year. The Commission will consider proposed legislation and vote on the adoption of a final report.

(Indications of meeting date, time, and room location in these minutes are subject to change. Please refer to the most recent Calendar of Meetings distributed by the Legislative Information Center for official meeting information.)