

Behavioral Health Care Subcommittee

Staff Review: Statutory Language on Barrier Crimes

September 7, 2010

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Barrier Crimes Study

- ❖ A two-year study was undertaken by JCHC in 2006, at the request of Senator Devolites-Davis.
- ❖ The study found that a number of individuals with serious mental illness have assault convictions and that often these assaults occurred when they were going through an involuntary commitment process.
 - There is no statutory provision to review the circumstances surrounding the assault convictions, so these convictions keep individuals from being employed even as peer counselors in adult treatment programs.
 - Being employed is obviously crucial to the individual's recovery process.
 - In addition, being able to employ additional peer counselors would help to address the workforce need for mental health staff.
 - In 2007, community services boards (CSBs) estimated that more than 40 mental health consumers would qualify for employment, if misdemeanor assault convictions were not an absolute barrier and the consumers could be assessed for rehabilitation in the same manner that Virginia allows individuals with a substance use disorder to be assessed.

2008 Legislative Action

- ❖ In 2008, HB 1203 (Melvin) and SB 381 (Martin) were introduced on behalf of JCHC in order to ease a few restrictions related to employment in adult substance abuse or mental health treatment programs.
- ❖ One provision of the introduced bills sought to allow an individual with a misdemeanor conviction of assault or assault and battery against a family member to be assessed by a CSB or a DBHDS-licensed private provider for possible employment in an adult program.
 - To be considered for employment, the assessment would have to determine that the individual's offense was substantially related to his mental illness and that subsequently he had been successfully rehabilitated.
 - This type of assessment has been allowed for individuals seeking to work in adult substance abuse programs since 2001 (*Code of VA* §§ 37.2-416 and 506).

2008 Legislative Action on HB1203/SB381

- ❖ The Health, Welfare and Institutions Committee voted to **REMOVE** from both bills, the provision that would allow for a conviction of assault and battery against a family or household member.
 - HB 1203 was amended appropriately.
 - However, in SB 381, the provision was removed from *Code* § 37.2-416 (addressing employment by DMHMRSAS-licensed providers) but was not removed from *Code* § 37.2-506 (addressing employment by CSBs).
 - The mistake was not discovered until after both bills were signed by the Governor, and since SB 381 was signed last, its provisions became law on July 1, 2008.
 - Approximately 90 felonies and 20 misdemeanors continued to be barriers to employment.

2009 Legislative Action

- ❖ During the 2009 General Assembly Session HB 2288 (Cline) and SB 1228 (Barker) were introduced on behalf of the JCHC.
- ❖ Both bills sought to **REMOVE** the provision allowing an individual with a conviction of assault and battery against a family member to be assessed for employment by community services boards.
 - Both bills were left in the Senate Education and Health Committee to allow JCHC to review the issue again.
 - Keeping the provision for CSBs, and having it also apply to licensed providers, adheres to the findings of the JCHC study, the preferences of CSBs and private providers, and the recommendation of the JCHC in 2008.

2010 Legislative Action

- ❖ SB 260 (Lucas) was introduced on behalf of the JCHC to amend the *Code of Virginia* § 37.2-416.C to **RETURN** provision allowing an individual with a conviction of assault and battery against a family or household member to be assessed for employment by private providers licensed by DBHDS.
- ❖ HB 867 (Cline) was introduced to amend the *Code of Virginia* § 37.2-506.C to **REMOVE** the provision allowing an individual with a conviction of assault and battery against a family or household member to be assessed for employment by CSBs.

NOW WHAT?

Policy Options

- ❖ **Option 1:** Take no action.
- ❖ **Option 2:** Introduce legislation to amend the *Code of Virginia* § 37.2-416.C to allow an individual with a conviction of assault and battery against a family or household member to be assessed for employment by providers licensed by DBHDS and to amend *Code* §§ 37.2-416.E and 37.2-506.E to make it clear that the provisions in subsection C do not affect the provision to allow hiring “persons who have been convicted of not more than one misdemeanor offense under §18.2-57 or §18.2-57.2, if 10 years have elapsed following the conviction, unless the person... [was] employed in a direct consumer care position.”

Policy Options

- ❖ **Option 3:** Introduce legislation to amend the *Code of Virginia* § 37.2-506.C to remove the provision allowing an individual with a conviction of assault and battery against a family or household member to be assessed for employment by community services boards and to amend *Code* §§ 37.2-416.E and 37.2-506.E to make it clear that the provisions in subsection C do not affect the provision to allow hiring “persons who have been convicted of not more than one misdemeanor offense under §18.2-57 or §18.2-57.2, if 10 years have elapsed following the conviction, unless the person... [was] employed in a direct consumer care position.”

Public Comments

- ❖ Written public comments on the proposed options may be submitted to JCHC by close of business on September 28, 2010.
- ❖ Comments may be submitted via:
 - E-mail: ksnead@jchc.virginia.gov
 - Fax: 804-786-5538
 - Mail: Joint Commission on Health Care
P.O. Box 1322
Richmond, Virginia 23218
- ❖ Comments will be summarized and reported during the October 6th JCHC meeting.

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Internet Address

Visit the Joint Commission on Health Care website:
<http://jchc.virginia.gov>

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