



Human Writes

State Human Rights Committee Newsletter

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Welcome to the Fall 2011 edition of Human Writes, a newsletter from the State Human Rights Committee (SHRC). The purpose of this newsletter is to share ideas, problems, solutions and other items of mutual interest among the Local Human Rights Committees and the SHRC. Please submit your thoughts and ideas to:

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Visit the OHR web site at:
<http://www.dbhds.virginia.gov/OHR-default.htm>

MEET THE ADVOCATE OF THE QUARTER

Stewart Prost

The first thing that you notice about Stewart is that he is a one man wrecking crew. He is all business. The moment that he accepts a case for someone, he gives the case all he has. Never have I seen him leave any thing on the table. He is an Advocate that I would want fighting for me. But alas he is working on the other side of the state. The next thing that you notice is the fact that he is legally blind. However he never lets his disability, slow him down. Even when some would cause them not to do anything. He is very active in advocating, for those with disabilities. However, we are here to talk about his work in the field of Human Rights. He has worked in all kinds of positions in widely diverse types of jobs and settings. He started working for the department in 1998 in the Department of Behavioral Health and Disability Services. Within the department, and his work with the blind of Virginia, this writer thinks Stewart has found his calling in life. If you have read this article then you have found that Stewart started out as a part-time worker and worked *his way up to his full time job as an Advocate*. Sorry Ladies, Stewart is married.

LHRC HONOREE MEMBER OF THE QUARTER

This Quarter There Will Not Be An LHRC Honoree Member.

I was given the task of writing this portion of the newsletter, by the Editor, Mr. Joe Lynch. I

have decided to change the way that it is completed, by myself. I hope that this is approved by the SHRC.

The change is simple, the person will be picked, by the person, or people, from the SHRC, from the pool of candidate are chosen by the LHRC committees, across the state. This will give the local committee's more say in what the newsletter contains, and provide a greater group of possible members to use to Honor each Quarter.

As the person that writes this part of the Newsletter, I can tell you that each LHRC has some outstanding member that they feel should be honored. So, if I receive proper approval, of this change, it will go into effect next quarter. This does not cause less work for me, it really means more work.

I am hoping that this will be approved at the next meeting of the SHRC. If it is, you, each LHRC, will be notified on how to submit your choice.

Thank You, Randy Johnsey.

MEET SHRC MEMBER OF THE QUARTER

Joe Lynch

Some may say, that since Joe, is the Editor, of the Newsletter, that he instructed me to write this article, to make himself look good. Please let me inform you, that the opposite is true. He leaves the choice about whom, to write about, up to me. The only time that he even comes close to helping me decide, is when he reminds me, that, an advocate might have a person, that has an interesting story, or an SHRC member, has an unique prospective, on how they think, the way things should be conducted, by the SHRC. What I am trying to say is this, I had to ask, if he would do the interview, for this article.

Now to the essence, of the man. Joe has served on so many committees, advisory boards, and, so many other, policy panels, that affect changes, that frankly, I wonder how he finds time, to do all of it. You know the old saying, the past is great, but what have you done lately, well, Joe, just won an award, that bears his name, Joseph George Lynch. An award, that will be given to those who have excelled, in their lifetime, outstanding work, in the mental health field. You might not know this, but Joe Co-founded, an organization to help anyone, facing any kind, of mental distress.

Since Joe, is allowing me to talk about him, I 'm going to tell you, some things, that he might not want, to be said. The first thing that you notice about him, is his willingness, to teach people, in a way that does not make the person feel like they have done something, so bad, that they should never open their mouth again. The first time I became aware, of this was at my first SHRC meeting. You see, I was still under the impression, that things should be fixed, at the rate that they were at the local level. As I was chair, of a local level committee, we told providers, to fix problems, by the next meeting, and unless something major prevented it from occurring, it was completed. My very first motion, caused silence in the room, Joe, then made a motion that caused the room, to come back to life. I leaned over, and said, thank you, his response "no problem, we are here to help each other". You see, that brings up another thing about this man, that I admire, even though he has a back ground that any one, would envy, he continues to teach others with the humbleness, that makes you feel like he is still learning. To put it in mountain language "he never acts like he is to big for his britches."

One last thing about this man, "who, I hope, call's me a friend "he is the most prepared, of any of the members, for the meeting's. While some read the material, when they get to their room, the night before the meeting, Joe, has his plan, for the entire meeting, mapped out, and is totally prepared, for any situation.

Joe, I, and, anyone who is even endowed, with at least half a brain, looks up to you.

PATIENT FUND ACCOUNTS

The SHRC has been concerned about the Department's policy on Patient Funds Accounts at DBHDS facilities. In June 2010 Ms. Margaret Walsh, Director Office of Human Rights, reported on her research into common practices for handling patient funds at state facilities. The SHRC asked Commissioner Stewart to consider revising Departmental Instruction # 206 to be consistent with the Human Rights regulations and more consistent across the state facilities. In October 2010 Ms. Walsh reported that the Commissioner's office was studying the issue and expected to report on its findings in six months. After much delay, at the September 9, 2011 SHRC meeting Assistant Commissioner of Behavioral Health Services Mr. John Pezzoli, presented a draft of a new Departmental Instruction on Patient Fund Accounts. After reviewing the draft of the new policy the SHRC expressed continuing concerns about the draft policy and the potential violation of human rights. Assistant Commissioner Pezzoli invited the SHRC to provide further input and an Ad-Hoc committee of the SHRC was formed. At the SHRC October 28, 2011 meeting the SHRC approved send the Ad-Hoc committee's report to Assistant Commissioner Pezzoli for his consideration. Below are some of the items in the Ad-Hoc committees report. For a complete copy of the report contact the Office of Human Rights:

margaret.walsh@dbhds.virginia.gov

SPECIFIC GUIDANCE:

- In order to implement any policy that places any restriction on patient access to private funds accounts (PFA) the facility director must document the specific risk to safety of the individual, other patients or the facility.
- In order to implement any policy that places any restriction on patient access to PFA the facility director must document the specific risk to the orderly environment of the facility.
- Any risk so identified must not be remote but must be imminent and documentation of harm that has occurred as a result of no restriction on the freedom to have and spend personal money must be presented as part of the substantiation of the risk.
- Any policy that restricts the right of the individual to have and spend personal money must document how the policy enhances the following Virginia Principals of Person Centered Practices:
 - Listening,
 - Community,
 - Self Direction,
 - Talents and Gifts,
 - Responsibility
- Any policy that restricts the right of the individual to have and spend personal money shall specifically have procedures for receipt, deposit, disbursement, and accountability of private funds which facilitate the option of family member's gift of funds to the patient during visits by patient's family members.
- While each facility director has flexibility in developing policies taking into account the unique characteristics of each facility, the individual's right to have and spend personal money shall not be restricted in an arbitrary manner or simply for the convenience of the facility.

PATIENT TRANSFER

Assistant Commissioner of Behavioral Health Services Mr. John Pezzoli, presented "Proposal for Addressing Forensic Waiting Lists at State Facilities" report to the SHRC at the October 28, 2011 meeting.

Below are highlights from the report. For a complete copy of the report contact Mr. Pezzoli at: john.pezzoli@dbhds.virginia.gov

Action Step	Move older, non-violent civil patients at ESH to the empty areas of the geriatric unit in order to free up beds in the adult hospital	Aggressively pursue the conditional release of NGRI acquittees at ESH to make beds available	Begin admitting low-risk CSH misdemeanor restoration cases to civil beds	Place new, low-risk NGRI acquittees directly in civil facilities
Expected Impact	Up to 25 beds become available for forensic admissions at ESH adult units.	5 conditional release plans are now pending; if all are released 5 beds become available at ESH	Up to 10 beds available; 3 persons admitted so far, with 2 more scheduled	Will divert unnecessary admissions from CSH to make beds available for others
Timeline	Assessment of patients has begun, and transfers to geriatrics are anticipated to be complete by September 29, 2011.	Dependent on court dockets; approximately 2 months	Started on 7/28/11; admissions will be ongoing	Assessment has begun; may divert approximately 1 admission per month at CSH
CSH Anticipated Outcome	<ul style="list-style-type: none"> All persons waiting for transfer to ESH from CSH are moved out of the forensic unit after transfer of older, non-violent ESH civil patients to the geriatric unit 20 beds will become available at CSH in the near future by transferring persons to ESH and using civil beds for forensic admissions. At least 5 of those will go to new NGRI acquittees. 15 beds would then be available to restoration defendants (presently 29 on the CSH list). Assuming CSH's average length of time to restoration of about 68 days, with this improved accessibility to bed space all 29 restoration defendants currently on the CSH list could be admitted within approximately 11 weeks (while continuing to admit persons to existing beds at the current rate). 			
ESH Anticipated Outcome	<ul style="list-style-type: none"> All persons at ESH who currently have conditional release plans pending are ordered to be released, and 5 beds are made available 25 persons are moved to the geriatric unit, freeing another 15 beds, for a total of 30. 			
	<ul style="list-style-type: none"> About 15 of those will go to persons waiting to transfer from CSH. The remaining 15 beds would be available to restoration defendants. Assuming ESH's average length of time to restoration of about 59 days, with this additional bed space all 38 restoration defendants currently on the ESH list could be admitted within approximately 6 months (while continuing to admit persons to existing beds at the current rate). 			

READY FOR DISCHARGE STATUS

Mr. Russell Payne Community Support Specialist with the Office of Behavioral Health Community Support Services reported to the SHRC at the October 28, 2011 meeting on those consumers who are Ready for Discharge but experience some barrier to discharge. Below is a summary of Mr. Payne's report. For a complete copy of the report please contact Mr. Payne at russell.payne@dbhds.virginia.gov

Statewide Total Ready for Discharge > 30 days	182
Statewide Total/Operational Beds	1293
Statewide Total Ready for Discharge > 365 days	25

NATURE OF BARRIERS	NUMBER OF CONSUMER EXPERIENCING THIS BARRIER
1. Not Guilty by Reason of Insanity	7
2. Guardianship/legal-property issues	4
3. Availability of Nursing Home Beds	4
4. Discharge resistant	3
5. Family Opposition/Geographic	2
6. Aberrant Behaviors/Provider/DAP	1
7. Citizenship/Benefits	1
8. Traumatic Brain Injury Provider	1
9. MR Waiver	1
10. Placement Established/ Waiting List	1

WHEN DOES AN LHRC MEMBER MAKING A PHONE CALL TO ANOTHER LHRC MEMBER BECOME A PUBLIC MEETING UNDER VA FOIA?

As it turns out there are conditions under which a simple phone call from one LHRC member to another LHRC member could be considered a public meeting and thus must adhere to the requirements of the Virginia Freedom of Information Act (Code of Virginia §2.2-3700 to §2.2-3714).

Assistant Attorney General Ms. Karen DeSousa, DBHDS Special Counsel, alerted the SRRC at the September 9, 2011 meeting of a recent Official Advisory Opinion issued on August 5, 2011 by Attorney General Kenneth T. Cuccinelli, II. The issues arose in response to a request for an opinion from the Goochland County Board of Elections that was composed of only three members. The opinion (in part) states:

It is my opinion that the discussion of the business of the electoral board by two members of the Board constitutes a meeting of the Board under the Act that must be conducted in public and properly noticed as required by the Act. It is further my opinion that the transaction of public business includes conversations over the telephone involving "rescheduling board meetings, submitting agenda items, commenting on unapproved draft minutes of prior meetings" and other similar matters. Such matters, however, may be discussed via electronic mail. Electronic mail lacks the simultaneous feature of telephone meetings and, therefore, does not constitute a "meeting" under the Act.

The Goochland County Board of Elections is composed of three individuals. A quorum is therefore present when one member of the Board telephones another member to discuss the business of the electoral board.? Consequently, under the Act, the discussion of the affairs of the Board between two members over the telephone constitutes a meeting. It would constitute an "informal assemblage" of the members of the Board.

The LHRC and also the SHRC are held to the same standard of VA FOIA and thus any LHRC committee or subcommittee with three or less members would be required to follow VA FOIA. To read the complete Attorney General opinion go to:

<http://www.vaag.virginia.gov/Opinions%20and%20Legal%20Resources/Opinions/2011opns/11-096-Lind.pdf>

SHRC Subcommittee on LHRC Structure

The Code of Virginia § 37.2-204 Appointments to state and local human rights committees, identifies the composition of the state and local human rights committees to include the following:

"...One-third of the appointments made to the state or local human rights committees shall be current or former consumers or family members of current or former consumers, with at least two consumers who are receiving or who have received within five years of their initial appointment public or private mental health, mental retardation, or substance abuse treatment or habilitation services on each committee. In addition, at least one appointment to the state and each local human rights committee shall be a health care provider..." <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.2-204>

The SHRC has been concerned with the fact that some LHRC's have had "Code mandated member" vacancies, sometimes for extended periods of time. The SHRC asked the Office of Human Rights to track data for each of the six Regions of the Commonwealth concerning Code mandated membership vacancies. Below are a summary of the results as of October 11, 2011 and a map of the six Regions.



The SHRC has identified the following LHRC's as being without a Code mandated member for more than a year and a study is underway on consolidation of these LHRC's:

REGION	NAME OF LHRC	REGION	NAME OF LHRC
1	Loudoun County	4	Richmond Unified
1	Commonwealth Center for Children and Adolescents	5	Bay Regional
3	Catawba	5	Southeastern Virginia Training Center
4	Tuckahoe	6	Central Virginia Training Center
4	Central State Hospital	6	Goochland-Powhatan CSB
4	Metropolitan	6	Danville-Pittsylvania County Regional
4	Petersburg Regional	6	Heartland Regional
4	Richmond Tri-Cities	6	Southside CSB

REGION	# OF LHRC'S	IF ALL POSITIONS FILLED-CAPACITY OF LHRC	CODE MANDATED MEMBER VACANCIES (Number of vacancies and date of vacancy)								
			CONSUMER MEMBER #1		CONSUMER MEMBER # 2		FAMILY MEMBER		HEALTH CARE PROVIDER		TOTAL
REGION 1	10	72	1	6/30/10	0	----	0	----	1	12/30/08	
TOTAL REGION 1											2
REGION 2	9	55	1	6/30/11	0	----	0	----	0	----	1
			1	3/1/11	0	----	0	----	0	----	1
			1	1/31/11	0	----	0	----	0	----	1
TOTAL REGION 2											3
REGION 3	8	58	0	----	1	2009	0	----	0	----	1
			0	----	1	?	0	----	0	----	1
TOTAL REGION 3											2
REGION 4	17	113	0	----	1	6/30/11	0	----	0	----	1
			1	?	1	?	0	----	0	----	2
			0	----	1	?	0	----	0	----	1
			0	----	1	6/30/10	0	----	0	----	1
			1	?	1	?	0	----	0	----	2
			0	----	0	----	0	----	1	?	1
			0	----	1	10/23/09	1	10/23/09	0	----	2
			0	----	0	----	1	6/30/11	0	----	1
			1	2/11/09	0	----	0	----	0	----	1
			0	----	1	6/30/09	0	----	0	----	1
			0	----	1	6/30/09	0	----	0	----	1
			0	----	1	6/30/07	0	----	0	----	1
TOTAL REGION 4											15
REGION 5	26	142	1	11/14/11	0	----	0	----	0	----	1
			1	6/30/10	0	----	0	----	0	----	1
			0	----	0	----	0	----	1	9/9/11	1
			1	10/31/11	0	----	0	----	0	----	1
			1	7/25/11	0	----	0	----	0	----	1
			1	10/1/09	0	----	0	----	0	----	1
			1	12/9/11	0	----	0	----	0	----	1
			1	7/15/11	1	11/4/11	0	----	0	----	2
TOTAL REGION 5											9
REGION 6	8	58	0	----	0	----	0	----	1	12/30/09	1
			0	----	1	2/3/10	0	----	1	7/3/10	2
			1	7/1/09	0	----	0	----	0	----	1
			1	7/20/10	0	----	0	----	0	----	1
			1	11/1/11	0	----	1	6/30/11	0	----	1
			0	----	1	7/01/07	0	----	1	7/1/07	2
TOTAL REGION 6											8
TOTAL	78	498	TOTAL CODE MANDATED LHRC MEMBER VACANCIES AS OF 12/21/11								39

Of the 39 vacancies at least 18 have been vacant for more than one year, some have been vacant since 2007.

The Cooperative Agreement between the Affiliated Provider and the LHRC instructs the provider on their role in recruiting members for the LHRC. It states:

"...The Provider will actively recruit potential members for these vacancies, including distributing applications for LHRC membership...The provider will limit its activities to identifying potential members and submitting information about these potential members to the LHRC for review and recommendation for appointment by the SHRC..."

Providers are required by licensing to be affiliated with an LHRC. The responsibility is clearly on the affiliated providers to support membership recruitment for the LHRC in order for there to be an LHRC that exist for the provider to maintain that affiliation and meet the requirements of licensure.

BY-LAWS REVISION

Upon the advice of DBHDS Special Counsel, Ms. Karen DeSousa, the SHRC adopted revision of its By-Laws to address retention of reports and records by SHRC members. The SHRC revisions are also recommended to be implemented as revisions in LHRC By-Laws as well. The SHRC will send communication on this directly to the LHRC's. The revisions are as follows:

- 8.4 *SHRC members will return all meeting documents containing confidential information to the Office of Human Rights at the close of each meeting for shredding. Members shall personally maintain only those documents with non-confidential information such as agendas, minutes, bylaws and general information.*
- 8.5 *The Office of Human Rights shall ensure that the shredding of the documents is carried out in a manner that protects confidentiality.*
- 8.6 *The Office of Human Rights will maintain one complete agenda packet for each meeting of the SHRC in accordance with the Library of Virginia Record Retention Policy.*

JALARC Review of the Civil Commitment of Sexually Violent Predators

The General Assembly as part of the 2011 Appropriation Act instructed the Joint Legislative Audit and Review Commission (JLARC) to "...undertake a comprehensive review of the civil commitment of sexually violent predators at the Virginia Center for Behavioral Rehabilitation (VCBR)..."

On November 14, 2011 (JLARC) released a Commission Briefing (available at: <http://jlarc.virginia.gov/meetings/November11/SVPbrf.pdf>). JLARC also released a DRAFT of the full report on November 14, 2011 which is available at: <http://jlarc.virginia.gov/meetings/November11/SVP.pdf> The briefing notes that the "Virginia risk assessment process is flawed, and does not provide enough flexibility or sufficiently use consensus to determine whether to proceed with civil commitment." VCBR opened in 2003 and the General Assembly initially identified 4 predicate crimes that could be considered for the Sexually Violent Predator (SVP) designation. In 2006 the General Assembly increased to 28 the number of predicate crimes that qualified for the SVP designation. From 2006 to the fall of 2011 the VCBR census grew 1,374% to 270 patients and the FY 2011 cost for VCBR was \$24.5 million. The "expansion of SVP predicate crimes led to moderate portion of overall increase" in the census. The briefing identifies that the "switch to Static-99 (an actuarial sex offender risk assessment instrument) led to 450% increase" in the census. The scientifically validated instrument (the Static-99) to be used to assess risk was specified (with an option for the Commissioner of the Department of Behavioral Health and Developmental Services to designate another scientifically validated instrument to be used) in the Code of Virginia § 37.2-903 B:

B. Each month, the Director shall review the database and identify all such prisoners who are scheduled for release from prison within 10 months from the date of such review who receive a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, or a score of four on the Static-99 or a similar score on a comparable, scientifically validated instrument if the sexually violent offense mandating the prisoner's evaluation under this section was a violation of § 18.2-67.3 where the victim was under the age of 13 and suffered physical bodily injury and any of the following where the victim was under the age of 13: § 18.2-61, 18.2-67.1, or 18.2-67.2.
(the "Director" refers to the Director of the Department of Corrections and the "Commissioner" is the Commissioner of DBHDS. The statute is available at: <http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+37.2-903>)

The DRAFT report makes 15 Recommendations. A sample of them is listed below. Again the full DRAFT report is available at: <http://jlarc.virginia.gov/meetings/November11/SVP.pdf>

COMMISSION DRAFT - NOT APPROVED

1. The General Assembly may wish to amend §37.2-903.B of the *Code of Virginia* to remove the reference to "a score of five or more on the Static-99 or a similar score on a comparable, scientifically validated instrument designated by the Commissioner, or a score of four or more on the Static-99 or a similar score on a comparable, scientifically validated instrument." (p. 40).

2. The General Assembly may wish to amend §37.2-903.B of the *Code of Virginia* to direct the Department of Behavioral Health and Developmental Services to choose a current and scientifically-validated actuarial risk assessment instrument to identify individuals that merit further assessment as a possible sexually violent predator. The statute should give qualified professionals the authority to designate the instrument, develop a threshold score as a guideline, and deviate from the threshold when justified. (p. 40).

6. The Office of Sexually Violent Predators (OSVP) should review instances in which an individual's SVP evaluation includes a diagnosis that is subsequently changed during the initial diagnosis made once the individual is at the Virginia Center for Behavioral Rehabilitation. The purpose of the review should be to make the evaluator(s) aware of the difference and give them the feedback needed to correct any issues with their diagnostic approach in future evaluations. OSVP should develop specific criteria to assess whether the evaluator has addressed the issues and at what point the evaluator's contract with the State should be terminated. (p. 50).

14. The Department of Corrections and the Department of Behavioral Health and Development Services should assess the feasibility of providing additional treatment to violent sex offenders while they are in prison. The assessment should consider whether this additional treatment would be a prudent and cost effective way to make conditional release a more realistic alternative for certain sexually violent predators. (p. 103).

15. The Department of Behavioral Health and Developmental Services should consult with state staff at the Florida sexually violent predator program if it decides to proceed with considering privatizing the Virginia Center for Behavioral Rehabilitation in Nottoway County or a future facility. The consultation should address the specific requirements and provisions of Florida's contract, including how a facility can be designed and operated to minimize costs and staffing levels. (p. 121)

SHRC MEETINGS

SHRC meetings are held around the state at both facility and community program locations. SHRC meetings are open to the public except for portions which are in executive session as allowed under the provisions of the Virginia Freedom of Information Act. The SHRC met at the following locations:

- March 4, 2011 at the Charlottesville Region Ten CSB and toured the Crisis Stabilization Program facility.
- April 15, 2011 at the Goochland-Powhatan Community Services .
- June 10, 2011 at the Southside Virginia Training Center in Petersburg.
- July 8, 2011 at the Spotsylvania Regional Medical Center in Fredericksburg.
- September 9, 2011 at Blue Ridge Behavioral Healthcare, Children and Family Services Center in Roanoke.
- October 28, 2011 at the Southeastern Virginia Training Center in Chesapeake.

At the SHRC meeting in October, the Director, Dr. Robert Shrewsberry led the SHRC members on a tour of one of the 15 new 5 bedroom homes that are designed for various levels of mobility and behavior. Below are some photos of the tour.



5 bedroom home



HR Advocates
& SHRC Member



Kitchen



Mechanical lift
in bedroom



SHRC member
and OHR staff



Dr. Schrewsberry
Director SEVTC

Minutes of the SHRC meetings are available on the Department's web site. <http://www.dbhds.virginia.gov>