



Perspectives on Victims of Persons with Mental Illness

NASMHPD Forensic Directors Meeting

September 22, 2008

James J. Morris, Ph.D.

Virginia DMHMRSAS

Who are Victims in Virginia?

- B. For purposes of this chapter, "victim" means
- (i) a person who has suffered **physical, psychological or economic harm** as a direct result of the commission of a felony or of assault and battery in violation of § [18.2-57](#) or § [18.2-57.2](#), stalking in violation of § [18.2-60.3](#), sexual battery in violation of § [18.2-67.4](#), attempted sexual battery in violation of § [18.2-67.5](#), maiming or driving while intoxicated in violation of § [18.2-51.4](#) or § [18.2-266](#),
- (ii) a spouse or child of such a person,
- (iii) a parent or legal guardian of such a person who is a minor,
- (iv) for the purposes of subdivision A 4 of this section only, a current or former foster parent or other person who has or has had physical custody of such a person who is a minor, for six months or more or for the majority of the minor's life, or
- (v) a spouse, parent, sibling or legal guardian of such a person who is physically or mentally incapacitated or was the victim of a homicide;
- however, "victim" does not mean a parent, child, spouse, sibling or legal guardian who commits a felony or other enumerated criminal offense against a victim as defined in clause (i).

Scope of Violence in Virginia, FY 2007

- 453,025 arrests
- 225,000 admitted to jails
- 22,792 violent crimes reported, (44.2% occurred in the home)
- 2,000 Competency/Sanity Evaluations.
- 975 defendants admitted to state hospitals for evaluation/treatment (roughly 60% alleged violent)
- 63 new NGRI acquittees/60% violent charges
- **Approx. 2-3% of violent crimes charged to Persons with Mental Illness (PMI)**

Virginia Victims Rights Law, I

- **Virginia Constitution:**

- Section 8-A. Rights of victims of crime.**

- That in criminal prosecutions, the victim shall be accorded fairness, dignity and respect by the officers, employees and agents of the Commonwealth and its political subdivisions and officers of the courts and, as the General Assembly may define and provide by law, may be accorded rights to reasonable and appropriate notice, information, restitution, protection, and access to a meaningful role in the criminal justice process. These rights may include, but not be limited to, the following:

1. The right to protection from further harm or reprisal through the imposition of appropriate bail and conditions of release;
2. **The right to be treated with respect, dignity and fairness at all stages of the criminal justice system;**
3. The right to address the circuit court at the time sentence is imposed;
4. **The right to receive timely notification of judicial proceedings;**
5. **The right to restitution;**
6. **The right to be advised of release from custody or escape of the offender, whether before or after disposition; and**
7. The right to confer with the prosecution.

Virginia Victims Rights Law, II

- § 19.2-11.013. Notices.
- a. Victims and witnesses shall be (i) provided with appropriate employer intercession services to ensure that employers of victims and witnesses will cooperate with the criminal justice process in order to minimize an employee's loss of pay and other benefits resulting from court appearances and (ii) advised that pursuant to § [18.2-465.1](#) it is unlawful for an employer to penalize an employee for appearing in court pursuant to a summons or subpoena.
- b. **Victims shall receive advance notification when practicable from the attorney for the Commonwealth of judicial proceedings relating to their case and shall be notified when practicable of any change in court dates in accordance with § [19.2-265.01](#) if they have provided their names, current addresses and telephone numbers.**
- c. Victims shall receive notification, if requested, subject to such reasonable procedures as the Attorney General may require pursuant to § [2.2-511](#), from the Attorney General of the filing and disposition of any appeal or habeas corpus proceeding involving their case.
- d. Victims shall be notified by the Department of Corrections or a sheriff or jail superintendent (i) in whose custody an escape, change of name, transfer, release or discharge of a prisoner occurs pursuant to the provisions of §§ [53.1-133.02](#) and [53.1-160](#) or (ii) when an accused is released on bail, if they have provided their names, current addresses and telephone numbers in writing. Such notification may be provided through the Virginia Statewide VINE (Victim Information and Notification Everyday) System or other similar electronic or automated system.
- e. Victims shall be advised that, in order to protect their right to receive notices and offer input, all agencies and persons having such duties must have current victim addresses and telephone numbers given by the victims. Victims shall also be advised that any such information given shall be confidential as provided by § [19.2-11.2](#).

Contrast: Health/MH Confidentiality

- **§ 32.1-127.1:03. *Health records privacy.***
- A. There is hereby recognized an individual's right of privacy in the content of his health records. Health records are the property of the health care entity maintaining them, and, except when permitted or required by this section or by other provisions of state law, no health care entity, or other person working in a health care setting, may disclose an individual's health records.
- ***Federal HIPAA Statutes***

Virginia MH Regulations, I

- **12VAC35-115-80. Confidentiality.** Each individual is entitled to have all identifying information that a provider maintains or knows about him remain confidential. *Each individual has a right to give his authorization before the provider shares identifying information about him or his care unless another state law or regulation, or these regulations specifically require or permit the provider to disclose certain specific information.*
- **Virginia also has Tarasoff statute**

State MH Regulations, II

- **12VAC35-115-80. B. The provider's duties.**
- **1. Providers shall maintain the confidentiality of any information that identifies an individual.**
- **If an individual's services record pertains in whole or in part to referral, diagnosis or treatment of substance use disorders, providers shall disclose information only according to applicable federal regulations (see 42 CFR Part 2, Confidentiality of Alcohol and Drug Abuse Patient Records).**
- Providers may encourage individuals to name family members, friends, and others who may be told of their presence in the program and general condition or well-being. Except for information governed by 42 CFR Part 2, providers may disclose to a family member, other relative, a close personal friend, or any other person identified by the individual, information that is directly relevant to that persons involvement with the individual's care or payment for his health care, if
 - (i) the provider obtains the individual's agreement,
 - (ii) the provider provides the individual with the opportunity to object to the disclosure, and
 - (iii) the individual does not object or the provider reasonably infers for the circumstances, based on the exercise of professional judgment, that the individual does not object to the disclosure.
- If the opportunity to agree or object cannot be provided because of the individual's incapacity or an emergency circumstance, the provider may, in the exercise of professional judgment, determine whether the disclosure is in the best interest of the individual and, if so, disclose only the information that is directly relevant to the person's involvement with the individual's health care.

Current Victim Access

- All citizens have the right to contact state MH officials, judges, etc. re: concerns about state hospital status of patients who've victimized
- Virginia prosecutors can provide information to victims about hearings and court findings/orders regarding forensic clientele
- NGRI and other forensic clientele w/sex offense history are listed on sex offender registry
- Some state laws address victim notice

Current Forensic Statutes: NGRI Victim Notice, I

- § 19.2-182.6. Petition for release; conditional release hearing; notice; disposition.
- ***The Commissioner shall give notice of the hearing to any victim of the act resulting in the charges on which the acquittee was acquitted or the next of kin of the victim at the last known address, provided the person submits a written request for such notification to the Commissioner.***

Current Forensic Statutes: NGRI Victim Notice, II

§ 19.2-182.4. Confinement and treatment; interfacility transfers; out-of-hospital visits; notice of change in treatment.

- ***B. The Commissioner shall give notice of the granting of an unescorted community visit to any victim of a felony offense against the person punishable by more than five years in prison that resulted in the charges on which the acquittee was acquitted or the next-of-kin of the victim at the last known address, provided the person seeking notice submits a written request for such notice to the Commissioner.***
- C. The Commissioner shall notify the attorney for the Commonwealth for the committing jurisdiction in writing of changes in an acquittee's course of treatment which will involve authorization for the acquittee to leave the grounds of the hospital in which he is confined.

The Challenge

- ***Reconciling adherence to “Galen’s Law” and professional ethics with responding to the rights of victims of PMI***
 - Fact: Forensic Hospital clientele are our ***Patients***
 - Need to clarify how the concepts of victim rights apply legally to those who’ve been *acquitted* of crimes, or who are *unrestorably incompetent to stand trial*?
 - How do we safely promote recovery and least restrictive, community-focused treatment concepts with our clientele while responding to goals of victim advocates?
 - In what ways could increased access of victims to information about forensic clientele be harmful/beneficial to the client’s well being?
 - What are the proper routine limits for victim notification in situations involving PMI (privacy vs. intrusion)?
 - Are there creative ways to enhance patient care and respond to victim advocacy?

Identifying Fair Options

- Place full responsibility for notification on Courts and Prosecutors (no role conflict)
- Victim education re: moral, legal and societal value of NGRI plea, trial incompetency laws, violence and mental illness, to promote understanding, if not empathy
- Inform victims of current treatment methods/risk management
- When appropriate, addressing issue with clientele:
 - Should (competent) patients be approached to release info to victims?
 - Under what circumstances?
 - How would this benefit the forensic patient?
 - How would we determine which clientele are eligible for this activity
- Consider use of Restorative Justice, MH court concepts