

Report of the
Task Force for the
Review of the Treatment of the
Criminally Insane



October 1997



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October 30, 1997

Governor Christine Todd Whitman
Trenton, New Jersey

Dear Governor Whitman:

I am pleased to transmit with this letter the report of the Task Force for the Review of the Treatment of the Criminally Insane.

The Task Force was created by Executive Order No. 58 (1996), to study the current practices employed by State psychiatric facilities in housing and handling the criminally insane, and in particular, security issues and the rights of patients and persons who reside near State psychiatric institutions. In its review, the Task Force visited three State psychiatric hospitals and held one public hearing and four additional meetings.

The membership of the Task Force brought together experts from varied backgrounds and perspectives. The genesis of this Task Force was the earlier Senate Task Force on Greystone Park Psychiatric Hospital, which I also chaired, that held numerous hearings and reported its findings in June 1996. The present Task Force awaited the outcome of the U.S. Supreme Court's decision in Kansas v. Hendricks and weighed and assessed its implications for New Jersey, which resulted in the two month delay of this report. I would like to take this opportunity to thank the other members of the Task Force for giving generously of their time and for their valuable contributions to this report.

On behalf of the Task Force, I also would like to thank Albert Porroni, Executive Director of the Office of Legislative Services (OLS) and Glenn E. Moore, III, Director of the Central Management Unit at OLS, for authorizing the very capable and professional Irene M. McCarthy, Associate Counsel, to assist me in the preparation of this report.

I sincerely hope that the recommendations of the Task Force will lead to improvements in the State's psychiatric institutions and will allow New Jersey to be at the forefront for the development of effective policies for the treatment of the criminally insane.

Very truly yours,

Robert J. Martin
Chairman

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Task Force for the Review of the Treatment of the Criminally Insane

INTRODUCTION

The Task Force for the Review of the Treatment of the Criminally Insane was created by Governor Christine Todd Whitman's Executive Order No. 58 (1996) to review the current practices employed by State psychiatric facilities in caring for the criminally insane. The Task Force was charged with considering security issues at State psychiatric facilities and the rights of patients and persons who reside nearby, and identifying possible options for the housing and handling of the criminally insane. This Governor's Task Force grew out of the Senate Task Force on Greystone Park Psychiatric Hospital's 1996 recommendation and subsequent legislation concerning security and the need to separate those patients who, because of their violent past history, are likely to pose security risks.

To fulfill its responsibilities, the Task Force for the Review of the Treatment of the Criminally Insane held an organizational meeting on January 31, 1997, and visited three psychiatric hospitals in conjunction with Task Force meetings: The Forensic Psychiatric Hospital in Trenton on March 12, 1997, Ancora Psychiatric Hospital in Hammonton on April 16, 1997, and Greystone Park Psychiatric Hospital in Greystone Park on May 21, 1997.

The Task Force held a public hearing on May 13, 1997, in the Freeholder's Meeting Room in the Morris County Administration and Records Building in Morristown. Testimony was provided by local officials, members of the Morris County Prosecutor's Office, Greystone Park Psychiatric Hospital trustees, union representatives, a member of the community, a clinical psychologist, a former patient and representatives of nonprofit agencies concerned with patient rights and inmate treatment. All who wished to testify were given the opportunity to be heard and those who were unable to attend were invited to submit written testimony.

On June 24, 1997, the Task Force met with two representatives from the Human Services Police and also discussed the U. S. Supreme Court's opinion in Kansas v. Hendricks which was decided June 23, 1997. This opinion upheld the Kansas Sexually Violent Predator Act, which allows Kansas to civilly commit sexually violent predators who have completed their term of incarceration. Professor John Kip Cornwell, a professor at Seton Hall University School of Law, who specializes in issues pertaining to the treatment of the mentally ill, was invited to participate at several meetings to explain the ramifications of Hendricks and other court rulings.

The last two meetings of the Task Force were work sessions, which were held on July 9, 1997, and September 25, 1997, to discuss recommendations for this report. It should be noted that Judge Cohen did not participate in the formulation of the recommendations. At the July 9th meeting, he advised that he had met with Supreme Court Chief Justice Deborah Poritz to discuss his role as her representative on the Task Force and they agreed that it would be inappropriate for him to take part in determining recommendations because the Court may be required to act on them in the future. The

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other members of the Task Force reviewed their written recommendations and a preliminary listing of recommendations was then circulated for comment. At the final meeting, the members of the Task Force reached a consensus on the recommendations which are contained in the report which follows.

RECOMMENDATIONS

I. Placement of Sexually Violent Predators

- A. The Governor and Legislature should enact legislation which is generally similar to the Kansas Sexually Violent Predator Act.
 - 1. Sexually violent predators should be centralized and treated in a single secure unit operated by the Department of Corrections, with treatment to be provided in consultation with the Division of Mental Health Services in the Department of Human Services.
 - 2. The definition for a sexually violent predator should include "mental abnormality" and "personality disorder." Sex offenses should be defined as those specified in N.J.S.A. 2C:7-2b.
 - 3. This legislation should be in addition to the current New Jersey civil commitment statutes and should include provisions for treatment.
- B. Prior to enactment of this legislation, dangerous sexual offenders who have completed their maximum term of incarceration and are committed, either voluntarily or involuntarily, to the custody of the Division of Mental Health Services, should be centralized for treatment in one secure location rather than "mainstreamed" with hospitalized individuals with mental illness.

II. Competency Evaluations For Persons Charged and Awaiting Trial

- A. The Governor and Legislature should enact legislation to permit on-site, court-ordered inmate competency evaluations at jails or prisons for persons charged and awaiting trial.
 - 1. The State may contract with community mental health agencies for evaluation teams to provide competency evaluations and related services at jails or prisons.
 - 2. The Administrative Office of the Courts should be requested to develop procedures for competency evaluations to ensure that such evaluations meet "due process" requirements.

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- B. Persons charged and awaiting trial whose clinical condition warrants inpatient treatment outside of their jail or prison should be permitted to undergo court-ordered competency evaluations in a specially designated secure unit in a State psychiatric hospital.

III. Hospitalization and Treatment of Persons with Specific Criminal Designations

- A. Incarcerated persons who are mentally ill but not in need of inpatient psychiatric treatment should be provided treatment at the jail or prison. The Governor and Legislature should enact legislation which specifies that participation in prescribed treatment be considered as part of the "cooperation" required for possible release by the State Parole Board under P.L.1997, c.213, (A-21/S-339 signed by Governor Whitman on Tuesday, August 19, 1997).
- B. Persons with detainer status¹ and persons found incompetent to stand trial (IST), who meet the involuntary commitment standard² and who require inpatient psychiatric treatment, should be hospitalized in a specially designated secure unit in a State psychiatric hospital. However, in those limited cases where hospitalization in a specially designated secure unit would be clinically inappropriate and where the patient does not represent a security or escape risk, that patient may be hospitalized in a more appropriate unit of a State psychiatric hospital.³

IV. Commitment Hearings for Mentally Ill and Dangerous Sexual Offenders

The Administrative Office of the Courts should be requested to conduct commitment hearings for mentally ill and dangerous sexual offenders by designated Superior Court judges of the Criminal Part who will remain continuously assigned to ongoing cases, rather than by judges of the Civil Part on a rotational basis. Similar to commitment hearings for Krol patients,⁴

¹Detainer status means persons who are either facing criminal charges or serving sentences for criminal charges.

²The involuntary commitment standard referred to herein means the definition provided in N.J.S.A. 30:4-27.2m.

³For example, a patient with debilitating, physical health conditions or special circumstances due to advanced age may warrant hospitalization in a gero-psychiatric hospital.

⁴Krol patients are those patients in New Jersey who are found not guilty by reason of insanity.

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commitment hearings for mentally ill and dangerous sexual offenders should have State representation provided by county prosecutors or the Attorney General, not by county counsel. The presiding criminal court judge should be responsible for approval of recommendations for increased hospital privileges, transfers from a more secure facility to a less secure facility, and the discharge of patients into the community.

V. Security Considerations at Individual State Psychiatric Hospitals

A. The Task Force finds that the level of security at The Forensic Psychiatric Hospital in Trenton and the Ancora Psychiatric Hospital in Hammonton is sufficient to protect the individual patient, other patients, employees and the surrounding community and does not need to be improved at this time. (The Task Force did not visit the Senator Garrett W. Hagedorn Gero-Psychiatric Hospital or Trenton Psychiatric Hospital and makes no specific recommendations regarding these facilities.)

B. Greystone Park Psychiatric Hospital

1. The following three security changes should be made at Greystone: (1) fencing should be improved; (2) high-security sally ports should be located at certain buildings; and (3) security cameras for patients with high-security needs should be installed and monitored.
2. Detainer and IST patients should be removed from Greystone because this facility does not provide adequate security to house such patients.
3. The Greystone Security Council should continue to assess the needs and review performance of the police officers at Greystone.

VI. Security Considerations for High-Security-Risk Patients and Krol Patients

A. Those patients who do not have a specific criminal designation but who nonetheless have high-security needs should be hospitalized in a high-security unit until their condition no longer requires such security.

B. To balance security with treatment needs, treatment should also be increased for patients in high-security units.

C. Security and Treatment of Krol Patients

1. The current system for confinement of Krol patients, prohibiting Krol patients

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charged with a crime of personal violence or potential personal violence⁵ from being grouped with other mentally ill patients upon admission, should be continued. These Krol patients are first admitted to The Forensic Psychiatric Hospital in Trenton and, after a criminal judge determines their level of dangerousness, may then be transferred to another State psychiatric hospital in accordance with the criminal judge's assessment of the security and escape risks.

2. Based upon testimony provided at a public hearing and statistical information provided by the Division of Mental Health Services, the Task Force determines that Krol patients have not proven to be a greater security risk than the general population of State hospitals and, therefore, do not warrant a change in current procedures.

VII. Creation of a Forensic Clinical Review Panel

The Division of Mental Health Services should institute a panel, separate from hospital treatment teams, to review and approve privilege and discharge recommendations proffered by hospital treatment teams. The panel should review, as expeditiously as possible, recommendations for IST patients, Krol patients, mentally ill and dangerous sexual offenders, and violent patients⁶ who pose a serious security risk. The review panel should function at a level above that of the hospital and be directly supervised by the Director of the Division of Mental Health Services or a designee, thereby replacing the current level of review conducted by the division director's office.

VIII. Recommendations for Human Services Police Officers

The Department of Human Services should review its deployment plan and other operational procedures to assure that Human Services police officers maximize the time they perform on security-related tasks. (Although the prolonged time spent by Human Services police officers transporting high-security-risk clients to treatment centers and court appearances appears

⁵As used here, a crime of personal violence includes such offenses as the following: murder (N.J.S. 2C:11-3); manslaughter (N.J.S. 2C:11-4); sexual assault (N.J.S. 2C:14-2); aggravated criminal sexual contact (N.J.S. 2C:14-3a.); robbery in the first degree (N.J.S. 2C:15-1a.); aggravated assault (N.J.S. 2C:12-1b. (1), (2), (3), (4), (7)); and aggravated arson (N.J.S. 2C:17-1 (a)).

⁶As used here, violent patients means patients who have performed violent acts against themselves or other persons.

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unavoidable, better and more coordinated use of police should be adopted.) With respect to court appearances, the court administrator in the county where the hearings are held should arrange and provide for transportation of the client.

IX. Creation of an Institute of Law and Psychiatry

In association with an existing program such as the Center for Health Law Policy at Seton Hall University School of Law, an Institute of Law and Psychiatry should be developed. The institute should monitor progress involving both treatment and security in New Jersey and review and evaluate programs in other states. In addition, the institute should keep abreast of reform legislation and court rulings in other states. The institute should seek participation from and disseminate information to agencies and State offices such as the Mental Health Association in New Jersey, Office of the Attorney General, Office of the Public Defender, Division of Mental Health Services and the Department of Corrections.

X. Final Recommendations and Observations

Assuming that these recommendations are accepted by the Governor, representatives of the Task Force should testify before the appropriate committees in the Legislature to ensure that sufficient funding is made available to support the proposals contained herein. It is further recommended that the Department of Human Services, in cooperation with the Department of Corrections, Office of the Attorney General, Office of the Public Defender, and any other agencies, as appropriate, prepare fiscal estimates of costs, if any, for each of the specific recommendations.

Furthermore, the Task Force has found it very valuable to have visited three State psychiatric hospitals (Trenton Forensic, Ancora and Greystone Park). The Task Force has become aware that there are several different methods for providing security at the various psychiatric hospitals in New Jersey. The Task Force was impressed with the security for high-risk clients at The Forensic Psychiatric Hospital in Trenton and Ancora Psychiatric Hospital in Hammonton. The Task Force was disturbed and distressed with security conditions and conditions in general at Greystone Park Psychiatric Hospital. While the Task Force understands that some of the problems with Greystone have resulted because of the age and condition of the buildings and the changing clientele housed at that facility, it nevertheless believes that some of the problems at Greystone can be improved by adoption of these recommendations and other management initiatives.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

EXECUTIVE ORDER NO. 58

WHEREAS, the State of New Jersey seeks to preserve the safety of its neighborhoods and communities while recognizing the rights of persons at State psychiatric facilities who have been found to be criminally insane; and

WHEREAS, recent events at Greystone Park Psychiatric Hospital evidence a need to assess the manner in which the State houses and handles the criminally insane;

NOW, THEREFORE, I, CHRISTINE TODD WHITMAN, Governor of the State of New Jersey, by virtue of the authority vested in me by the Constitution and by the Statutes of this State, do hereby ORDER and DIRECT:

1. The creation of the Task Force for the Review of the Treatment of the Criminally Insane (hereinafter "Task Force") to study the current practices employed by State psychiatric facilities in housing and handling the criminally insane.

2. The Task Force shall be composed of the Attorney General or his designee; the Commissioner of the Department of Human Services or his designee; a designee of the New Jersey Supreme Court Chief Justice; a Senator to be appointed by the Senate President; an Assembly member to be appointed by the Assembly Speaker; and not more than five members of the public appointed by the Governor who may be professionals or advocates experienced in the field of either criminal justice or mental health. The Governor shall designate a chairman and vice-chairman of the Task Force from among the members of the Task Force. The members shall serve without compensation, but shall be reimbursed for necessary expenses incurred in the performance of their duties subject to the availability of funds

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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therefor. The Department of Human Services and all other State departments and agencies are hereby directed, to the extent not inconsistent with law and within budgetary constraints, to cooperate with the Task Force and to furnish it with such information, personnel and assistance as are necessary to accomplish the purposes of this Order.

3. The Task Force is charged with considering such issues as security at State psychiatric facilities and the rights of patients and persons who reside nearby. Among the issues the Task Force will consider are community notification of the identity of patients who leave hospital grounds who have been found not guilty by reason of insanity, and whether the current practice of housing the criminally insane with the general facility population is appropriate. The Task Force shall also identify possible options for the housing and handling of the criminally insane.

4. The Task Force shall complete its study and report to the Governor within six months of the date the Task Force first convenes.

5. This Order shall take effect immediately.

GIVEN, under my hand and seal
this 12 th day of September
in the Year of Our Lord, One
Thousand Nine Hundred and
Ninety Six, and of the
Independence of the United
States, the Two Hundred and
Twenty-First.

/s/ Christine Todd Whitman
GOVERNOR

[seal]

Attest:

/s/ Michael P. Torpey
Chief Counsel to the Governor

2C:7-2. b. For the purposes of this act a sex offense shall include the following:

(1) Aggravated sexual assault, sexual assault, aggravated criminal sexual contact, kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1 or an attempt to commit any of these crimes if the court found that the offender's conduct was characterized by a pattern of repetitive, compulsive behavior, regardless of the date of the commission of the offense or the date of conviction;

(2) A conviction, adjudication of delinquency, or acquittal by reason of insanity for aggravated sexual assault; sexual assault; aggravated criminal sexual contact; kidnapping pursuant to paragraph (2) of subsection c. of N.J.S.2C:13-1; endangering the welfare of a child by engaging in sexual conduct which would impair or debauch the morals of the child pursuant to subsection a. of N.J.S.2C:24-4; endangering the welfare of a child pursuant to paragraph (4) of subsection b. of N.J.S.2C:24-4; luring or enticing pursuant to section 1 of P.L.1993, c.291 (C.2C:13-6); criminal sexual contact pursuant to N.J.S.2C:14-3b. if the victim is a minor; kidnapping pursuant to N.J.S.2C:13-1, criminal restraint pursuant to N.J.S.2C:13-2, or false imprisonment pursuant to N.J.S.2C:13-3 if the victim is a minor and the offender is not the parent of the victim; or an attempt to commit any of these enumerated offenses if the conviction, adjudication of delinquency or acquittal by reason of insanity is entered on or after the effective date of this act or the offender is serving a sentence of incarceration, probation, parole or other form of community supervision as a result of the offense or is confined following acquittal by reason of insanity or as a result of civil commitment on the effective date of this act;

(3) A conviction, adjudication of delinquency or acquittal by reason of insanity for an offense similar to any offense enumerated in paragraph (2) or a sentence on the basis of criteria similar to the criteria set forth in paragraph (1) of this subsection entered or imposed under the laws of the United States, this State or another state.