

**TO: Mental Health Criminal Justice Review Committee**

**FROM: Bob Carolla, CSB Member**

**July 23, 2019**

**RE: Behavioral Health Docket Application**

These are my personal views only.

Before attending the July 17 public hearing, my inclination was to let the process keep moving forward as planned and “not let the perfect become the enemy of the good,” especially since it is considered a first step. Answers in the hearing provided important clarifications; however, questions remain, including unasked ones or new ones that emerged.

I recommend that submission of the application be delayed for a period of time, subject to further refinement and/or an accompanying DHS statement of intent, process and timetable for study of defined issues. Questions or issues to consider:

**What happens if the application is delayed?**

The perception is that the application to the Virginia Supreme Court (VSC) was to be submitted in September 2019 so that implementation could begin (“up and running”) in January 2020. But is there an external deadline or timeline driving it?

- What are the consequences of a 3-6 month delay?
- Does the VSC consider applications simply upon submission within a set period of time for review; only between certain dates; or in an open-ended, uncertain timeframe?
- Is the timing related to an application process for funding from any source?
- An important point was made in the hearing that without the BHD in place—I hope that I am characterizing it correctly-- judges will continue to lack leverage or tools for conditions and compliance in some cases. (That is the status quo. Delay won’t result in taking steps backward). Is there an estimate of how many individual cases will be disadvantaged during each month of delay?

**“Other things happening” in Arlington—or not happening---need to be considered relative to timing of the application:**

- A new Commonwealth Attorney will take office in January 2020, with a stated intention of making procedural reforms.
- Virginia Hospital Center is moving to establish an outpatient treatment facility/program. Do we know its timetable and details and its potential interface and contributions with the “Intercept 4” phase?
- **At the CSB’s Mental Health Committee’s June meeting, it was pointed out that the FY2020 DHS budget does not take into account any increase in capacity that may be needed for BHD-ordered cases.** (Left unasked was

whether such case can still nonetheless be adequately handled). Ironically, on the same day as the hearing, the Washington Post [published a story](#), (“In some big cities, reform-minded prosecutors and police chiefs have been at odds. Here’s what happened when they met in D.C,” July 17, 2019, p. A3) in which the Philadelphia Police Commissioner was quoted as saying that “we have to be very, very careful **about the timing** [emphasis added] of some of these reforms”; i.e., that “emptying jails without having services in place for those leaving them, or launching diversion programs without people available to manage those diverted from arrest is a problem.” What is true in big cities, holds true for Arlington.

### **Broader public input is needed to refine the proposal.**

- At its July 17 meeting, the CSB voted to have an actual CSB member, rather than only staff, be involved in finalizing the application.
- The president of the Arlington NACCP stated at the hearing that he had been informed of the hearing and/or received a copy of the proposal only a couple (or a few) days)before the hearing. (Notice was circulated about two weeks prior).
- At the CSB meeting, we were advised that there had been no outreach to Hispanic or other, broader Arlington communities.
- Has there been consultation with the Arlington Public School system? The BHD will apply to adults 18 or over; this population may include older high school students. How will APS procedures and/or programs interface with the BHD or be affected?

### **Besides Charlottesville and Loudon County, what other Virginia jurisdiction models should be closely considered? How do they compare? How long have they been in effect?**

The public hearing provided important clarifications on this point. The details are complicated. Overall, it points to a need for careful consideration and explanation both now and in the future (See below). I may have misheard or am recalling incorrectly, however, I left the hearing with the impression that:

- No one looked at Alexandria’s experience, because it does not have an approved BHD court. However, some claimed that the city does have a process with considerable flexibility. It should be looked at.
- It was stated that Newport News has the only true pre-plea model. How long has it been in effect? Only a year? Longer? Is there any data to evaluate it?
- It was explained that Fairfax County’s model may be pre-plea technically, but requires stipulations of fact that still lead to waiver of rights; i.e., it may be a distinction without a difference. Has the Virginia Supreme Court actually approved the Fairfax BHD or like Arlington is it in the process of submission? (This was unclear). If it has been implemented, for how long? Is there data that can be considered?

**This is a first step. What will the next steps be?**

- A statement of intent inside the proposal itself or as a separate statement of policy might provide greater public confidence, rather than leaving next steps wholly indefinite.
- It's unrealistic to expect that a new or modified BHD application to the VSC will be submitted only one or two years from now. However, it is reasonable to state an intention that a comprehensive study, with comparative data relative to other jurisdictions, will be conducted over a period of a few years. This is consistent—perhaps in conjunction with—or surpassing—VSC Specialty Docket Rule 1:25's requirement that the local court provide information “necessary for the continuing evaluation of the effectiveness and efficiency” of the BHD.
- Stating such an intent, might position Arlington to help take a lead in seeking a regional, evidence-based study (if one does not already exist) for future refinement of alternatives or reforms—ideally with federal or state support and involvement of Virginia universities. That may seem too bold an intent for the immediate purpose of submission, but there might be some value in stating it.

**The Arlington BHD will be limited to Arlington residents. What happens to non-residents?**

- This is outside the scope of the application, but worth explaining to the public.
- There may be existing mechanisms of which I am unaware, but is there a way that Arlington BHD cases and/or supervision of conditions be transferred to “home court” jurisdictions?
- The question is relevant both to jailing costs incurred by Arlington County and to the goal of getting individuals with serious mental health conditions the most appropriate help and support they need.
- Perhaps it's an issue for future state or regional study and discussion, which again, might be included in a statement of intent.

###