

Vulnerable Persons Living with a Mental Disability Task Force

9 Areas of Examination

1. Supported Decision-Making

Key Points to Consider:

- Formalize clear language that defines, empowers, and enables supported decision making
- Concerted energy and effort into building capacity and competency around ending social isolation, loneliness. People must have social connections to have access to supported decision making.
- Create policy and systems that ensure that substitute decision making is truly a last resort. This must target CFS/CDS workers, CSWs, VPA staff/hearing panel personnel, education system, banks, RHAs and CLdS service providers.
- Teach people how to do supported decision making well. This needs to include the difference between a social network and a support network. We want to avoid impacting people's current friendships by giving them all support jobs. Not all friends want to be on someone's support network and vice versa.
- Regarding checks and balances (money) - Can the current requirements of family members who are SDMs (Substitute Decision Makers) for Finance not be reviewed to see if they can create a similar accountability mechanism?

With Whom to Consult:

- ◆ People with lived experience of using substitute and supported decision making.
- ◆ Families of people above - what worries them about supported decision making, what gets in the way. Why are they opting for Substitute Decision-Making instead?
- ◆ Service providers
- ◆ VPA Commissioner - what is getting in the way? what are they currently doing to ensure that Substitute decision making is the last resort? (see resource from American Bar above)
- ◆ BC and Yukon stakeholders involved in Representative Agreements
- ◆ Michael Bach -IRIS

Resources and What's Happening in Other Jurisdictions:

- PILC Report
- IRIS (Michael Bach) conducts in-depth research and analysis of SDM models across the world and has some pilot project happening right now. Current projects: https://irisinstitute.ca/priority_area/right-to-legal-capacity/
- Video: Michael Bach speaking about Supported Decision Making - <https://www.opensocietyfoundations.org/voices/looking-differently-disability-and-decision-making>
- A basic guide that explores the questions that you need to answer as you move towards supported decision making (at a systemic level): <https://inclusion-international.org/wp-content/uploads/2014/07/Appendix-3-SDM-Dialogue-Guide.pdf>

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- Supported Decision Making in the US (Report done in 2017): <https://www.c-q-l.org/resources/guides/supported-decision-making-in-the-u-s/>
- BC's *Representative Agreement*: <http://waindividualisedservices.org.au/wp-content/uploads/2014/06/Case-study-British-Columbia-Canada-UN-CPRD-Artilce-12.pdf>
- Yukon reportedly built on BC's representative law and created their own version, outlined here: https://hss.yukon.ca/pdf/supported_dm_booklet.pdf
- Guide on how to avoid guardianship and/or substitute decision making and enable supported decision making, The American Bar Association: https://www.americanbar.org/groups/law_aging/resources/guardianship_law_practice/practical_tool/
- Leading Practice Guidelines on Informed Consent and Decision Making: <https://abilitiesmanitoba.org/docs/leading-practice-guidelines/voice/informed-consent-decision-making/>
- Leading Practice Guidelines on Supporting Choice and Control: <https://abilitiesmanitoba.org/docs/leading-practice-guidelines/voice/supporting-choice-control/>
- It's My Choice Toolkit - Inclusion Melbourne - <http://inclusion.melbourne/resources/choice/>
- The Essentials of Supporting Choice - The Council on Quality and Leadership: <https://c-q-l.org/resource-library/resource-library/all-resources/the-essentials-of-supporting-choice>

2. Substitute Decision-Making

Key Points to Consider:

- When a vulnerable person's support network has exhausted other mechanisms, and must resort to allowing a member of the network to apply to be a substitute decision maker, the *Act* and its regulation should not be a barrier to doing so.
- Members of the vulnerable person's support networks, including family and friends, have observed an excess of unnecessary red tape that has prolonged the application process or prevented individuals from choosing to apply to be substitute decision-makers.
- Applicants report navigating an overwhelming amount of bureaucracy, and being treated as suspicious and untrustworthy when appearing before hearing panels, the advisory panels established to provide the Vulnerable Persons' Commissioner with recommendations regarding substitute decision making appointments. Consideration should be given to addressing the barriers faced by those applying to be substitute decision-makers for personal care and/or property management, where such an arrangement has been shown to be necessary.

With Whom to Consult:

- ◆ People with lived experience.
- ◆ Families.

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- ◆ Substitute Decision Makers.
- ◆ Public Guardian and Trustee office.

Resources and What's Happening in Other Jurisdictions:

- United Nations Convention on the Rights of Persons with Disabilities
<https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

3. Issues Around Abuse (definition, reporting, investigating, punishing, the adult abuse registry)

Key Points to Consider:

- Recommendations around the definition of abuse.
- More on Prevention - In particular, equipping people served with information and resources on how to be safe and how to tell others when they are not. What little prevention is done is focused mostly on staff. If people had more skills to keep themselves safe, understand their rights and how to protect them, they would be safer, more empowered, and more bad actors would be exposed.
- System must Ensure Protection - Current practices can result in people with intellectual disabilities experiencing an alternative system than everyone else when reporting abuse. When someone hits a person without an Intellectual/Developmental Disability (IDD), that person has the right to call the police. While 'technically' that is the case for people served – the system is skewed and focused on reporting through agency and DoF first and letting them decide whether police are involved. This can result in a significant loss of protection and justice. Understandably, there is a need to balance workload on police, etc. However, it sends a message that abuse of people with IDD is less important than others. How do we create a system that ensures that people have the same protection and then layer on additional protection through DoF for those things that would not meet the criminal code?
- The Protection Unit should be required to consider recommendations related to the rights of people as victims. Need to ask what information should they or their decision makers receive. What support or follow up should they have access to, as victims. If the system of supports resulted in abuse or neglect, then there should be some responsibility for that system to mitigate impact of this abuse. There is no current policy requirement to even provide closure to the person after they come forward with an

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allegation. They are interviewed and then may never hear anything further. While some service providers may do this, it should be required.

- Community Services Workers (CSWs) should not have the role reviewing cases and referring allegations to the Protection Unit. This current process relies on a large and diverse workforce to have very specialized knowledge, skills and competencies. This means the experience of people with disabilities is inconsistent and at times inadequate. This is too important of a task to leave to chance.
- Consider institutional abuse in any revised definition of abuse.
- Service organizations should never be placed in a position of having to investigate situations that occur within their own organization. How do we create a system that ensures that agencies are not put in a position where they must investigate themselves? Trust and transparency in this process requires objective investigations.
- Consider creating a role like the Children's Advocate.
- Are there any changes that could be considered in public facing reporting on abuse rates? The prevalence and incidences of abuse of people with disabilities is largely unknown except for those that are working in the sector.
- As the Province is wanting to put more people into home share situations, they have a responsibility for ensuring that people are protected. The power balance, living arrangements and oversight available are different in this model and bring with it some unique requirements to enable safety.
- Expand the understanding and interpretation of abuse to take into consideration the actions of others receiving services alongside the person. In our current system, we do not frame instances of violence and other abusive acts directed at 'roommates' or 'coworkers' as abuse. We do not count them as such and we do not follow them up in similar ways. This leaves people subject to abuse and mistreatment daily without formal follow up and correction. Just because the abuser has a disability does not mean that the abused is not being harmed. Our response needs to be comparable.

With Whom to Consult:

- ◆ People with lived experience.
- ◆ Families.
- ◆ Service Providers.
- ◆ Office of the Children's Advocate.

Resources and What's Happening in Other Jurisdictions:

- Research paper on a framework for understanding emotional and psychological harm and how this relates to the definition of abuse is quite interesting and thought provoking:
https://research-repository.griffith.edu.au/bitstream/handle/10072/47425/80101_1.pdf?sequence=1

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- Ottawa resource on definition of abuse related to those living with a disability:
<https://www.crimepreventionottawa.ca/wp-content/uploads/2019/02/CODA-Definitions-of-Abuse.pdf>
- UK resource on systemic framework for abuse prevention and reporting:
https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/194272/No_secrets_guidance_on_developing_and_implementing_multi-agency_policies_and_procedures_to_protect_vulnerable_adults_from_abuse.pdf
- Leading Practice Guidelines on Freedom from mistreatment, abuse, neglect, and exploitation:
<https://abilitiesmanitoba.org/docs/leading-practice-guidelines/section-4/freedom-from-mistreatment-abuse-neglect-exploitation/>
- Curriculum on safety and abuse prevention - Australia -
https://www.nds.org.au/images/events/files/zt_guide_supervisors.pdf

4. Individual Planning Issues



Key Points to Consider:

- ❑ Ensuring Plans are truly person-centred:
 - Need a clear definition of “person-centred”
 - How can true person-centered planning be ensured? How can a uniform approach be avoided? How can individual planning become more than a box checked annually?
 - How are wills and preferences of individuals reflected in plans? Can the person find their own vision, choose their own PCP tools/method, have unpaid supporters help in carrying out the plan? What is / should be the extent of individual participation in the plan?
 - Can person-centered planning be done in an effective way even with government at the helm? “PCP is messy.” (John O’Brian). PCP process can take resources and hours of coordination: getting the “right” people to participate, taking time to do the plan according to how the person wants their planning session(s) done, using the correct planning tools (PATHs, MAPs, etc.)
 - Does SIS tool and current post-planning process in MB inhibit true person-centered planning?
 - Current VPA states that the Person-Centered Plan (PCP) must be completed for every individual receiving services and that the agency’s Executive Director is responsible. Is this currently being supported/managed by government?
 - Can an objective 3rd party create and monitor the PCP, rather than agency or government? Or are we setting people up to fail once PCP is complete and then 3rd party leaves before implementation. What would be 3rd party roles?
- ❑ **Creating vs. Implementing A Person-Centered Plan**
 - PCPs (Person Centered Plan) can be easy to create. The tough part is the actualization of the plan. What is the follow up to the plan?
 - Who will oversee that the plan is being carried out? Some agencies (ex. Larger agencies like New Directions, St Amant) are tasked to hold PCP meetings and to implement the PCP, but this is tough for agencies.

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- Who monitors a plan and its implementation –frequency?
 - Who will review the plan on a regular basis?
 - When multiple agencies are supporting the person (day and residential services, for example, who’s role is it to support the person in the plan? Sometimes, residential agencies do not share PCP with day service. Is the plan only to be carried out when person is at home?
- ❑ **PCP and Quality of Life**
- Are dollars spent by the department creating quality of life for individuals?
 - Can individual planning move towards an outcomes-based approach, where the plan is used as a measure of whether the individual is receiving the service they require? E.g. Quality assurance pilot project.
 - Good PCP happens when supporters are committed to the person. Having the “right” people there in the planning phase may set up the PCP to be more person-centered and thus more successful when carried out.
 - If PCPs are mandated/policed, then we run the risk of people rushing through to check all the boxes and may lose person-centeredness. However, if there are no expectations, then PCPs might not happen at all. We need to find a balance.
- ❑ There has already been too much off-loading to agencies. How will agencies be supported if agencies are responsible for PCP and implementation?
- ❑ In the 1990s, “Citizen Advocate” – can they provide the 3rd party advocate needed to help review the PCP? They would be looking out for the person’s best interest. The review would be done outside of the agency, lending more objectivity, and providing people with more choice and decision-making opportunities such as where they live, with whom they live, the services they access, etc. Provides more safeguards for people when reviews are external to service providers.

With Whom to Consult:

- ◆ People with lived experience (self-advocates)
- ◆ CLdS-funded Service Providers (agencies)
- ◆ Families
- ◆ Government (CSWs, Program Managers)

Resources and What’s Happening in Other Jurisdictions:

- Leading Practice Guidelines – Abilities Manitoba - <https://abilitiesmanitoba.org/docs/leading-practice-guidelines/voice/person-centred-planning-discovery/> and <https://abilitiesmanitoba.org/docs/leading-practice-guidelines/voice/support-plan-documentation/>

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5. Role of the Office of the Vulnerable Persons Commissioner

Key Points to Consider:

- Changes should be human rights compliant – specifically look at Article 12 of the Convention of Rights for Persons with Disability.
- The Vulnerable Persons' Commissioner, is tasked with implementing substitute decision-making provisions of the *Act*. The Vulnerable Persons' Commissioner's office is empowered to conduct preliminary investigations for substitute decision making applications to appoint substitute decision makers and hearing panels, to receive and investigate complaints about substitute decision makers, and to provide information to vulnerable persons and supporters about the *Act*, their rights, and their responsibilities.
- Stakeholders have expressed a desire for the Vulnerable Persons' Commissioner's role to be more active than it is currently. Article 12(3) of the CRPD (Convention on the Rights of Persons with Disabilities) mandates that "State Parties shall take appropriate measures to provide access by persons with disabilities to the support they may require in exercising their legal capacity". The Canadian Association for Community Living interprets this as imposing a positive obligation on governments to provide supports that allow vulnerable people to exercise their legal capacity. While Manitoba is home to advocacy organizations that provide some of these supports, the office, of the Vulnerable Persons' Commissioner should be mandated to work alongside these organizations acting in a protection role rather than solely an administrative one.
- The Act should be amended to clarify the role and duty of the Vulnerable Persons' Commissioner. Part of the Office's duty should include ensuring that substitute decision making remains a last resort by providing resources that encourage and empower supported decision making.
- The Commissioner should conduct periodic, meaningful reviews of substitute decision making appointments, including those made with the Public Guardian and Trustee, to determine which can be converted to supported decision making, and how.
- To this end, the Office should provide ongoing, proactive outreach to all stakeholders about the principles, provisions, and processes that are involved in administering the Act. Stakeholders to be considered include persons with a disability, families, community service workers, advocacy agencies, service providers in the fields of healthcare, banking, social services and law. This should include orientation, education and training, which should be available on a continuing basis, accommodating staff turnover, changes to support networks and best practices. Information about the *Act* and its related policies and practices should be easily accessible, provided in plain language, and must clarify key concepts in the *Act*, to ensure uniform understanding and application among

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agencies and their staff, individuals with an intellectual disability and family members who may play a role in administering the Act. Online training and informational resources should be considered.

- The Vulnerable Persons' Commissioner should track examples of systemic barriers that have stood between vulnerable persons and their right to exercise their legal capacity, and make these barriers known to the relevant Ministry and to the general public as part of the Report.

With Whom to Consult:

- ◆ People with lived experience (self-advocates)
- ◆ CLdS-funded Service Providers (agencies)
- ◆ Families
- ◆ VPCO
- ◆ Department of Families

Resources and What's Happening in Other Jurisdictions:

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6. Role of the Public Guardian and Trustee (PGT)

Key Points to Consider:

- A better, more user-friendly, and person-centred process is needed!
- Recommendations made need to be human rights compliant (as per the UN Convention on the Rights of Persons with Disabilities). Currently, risk management supersedes 'best interest of person'. PGT should move away from a protection focus to a developmental focus. Build skills and capacity.
- Access to thoughtful, meaningful consultation after hours for health care decisions. The PGT only gives their after-hours number to hospitals (who regularly lose it) and not to agencies. Why? Agencies are a consistent ally and can help make a difficult situation easier if empowered to do so.
- Bureaucracy: Currently a lack of direct and clear processes between Administrator, CLdS, and agencies to ensure decisions are in keeping with the person's wishes and needs. Delayed decisions, missed opportunities, (e.g. travel, social events), increased financial risk for person and agencies due to barriers.
- Closing accounts leaving people without access to funds and without notice

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- Providers required to pay for items out of necessity-risk if PGT does not approve. Staff paying for items = financial abuse potential.
- Direct payment of portion of rent person is responsible for. Risk of unpaid/delayed rent = potential for eviction with shortage of overall housing options throughout Province.
- Limiting places to purchase items based on PGT approved direct suppliers. Choice is limited, may pay more for item. Rigid approach that does not consider individual and personal preferences.
- People deemed unable to manage bank accounts despite no formal or valid assessment of skill or competency. Service providers being sent cheques on person's behalf instead of into bank account. Not the role of service providers, requires agency to combine personal and agency funds creating issues with audits, etc.
- Restrictive limits placed on how much \$ is left in people's bank accounts to access or on approvals to gain access for funds held by PGT. Funds have consistently been dropped to below \$200 - \$100 balance in bank accounts. Does not allow for ready access in the case of emergency or spontaneous convenient access within approved personal budgets.
- Funds are removed from bank accounts without notice to the person.
- Lack of consultation and willingness to collaborate with others (e.g. support providers) who are not legal decisions makers but can assist to ensure person is informed of all medical treatment options and associated risks. Existing process and lack of consultation has resulted in at least 1 death.
- Delay of treatment/prolonged decision making = poor health outcomes (increased pain, increased risk of more complicated illness) for undue lengths of time.
- When an individual wants to participate in an activity such as photos, videos, research, PGT will not check with person and deny permission. Person's wishes not considered. Little to no attempt/effort to explore options and consult with person to determine if all associated risks/benefits are understood by individual.
- Provision of blanket consent by PGT prior to surgery without letting the person or their caregivers know that a full range of options were consented to. The person and their care providers believe they are going in for a routine minor surgery and the result is something more significant that they had no ability to provide input on or plan for.
- Confusion as to what restrictions or orders are in place. Lack of consistent communication between person, families, agencies, Substitute Decision Maker.
- Takes too long to get PGT approval.
- Make PTO accountable to their clients. Multiple letters and hoops required from family, PTO and agency staff to maintain ongoing funding and agreements already in place. Lack of clarity on who has signing authority, making people vulnerable to financial abuse.

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- ❑ Eliminate personal comfort monies that the agencies are responsible for and have bank accounts for all.
- ❑ Be able to deal directly with the Substitute Decision Maker when it is the public guardian, instead of having to go through the Community Support Worker (CSW) first.
- ❑ Emergency access to Public Trustees Office is unreliable. Need full access for emergency and end of life decisions.
- ❑ PGT needs to enable access to technology/social media not block it. Especially now. If they are worried about the risks than invest in teaching people about digital literacy.
- ❑ Consider this language regarding how people should be assisted for decision making:
Recognise persons with disabilities as individuals with rights before the law equal to all other persons; accept that persons with disabilities have full legal capacity on an equal basis as others,³² including in financial matters; ensure that where assistance is necessary to exercise that legal capacity: the assistance is proportional to the degree of assistance required by the person concerned and tailored to their circumstances, and does not interfere with the legal capacity, rights and freedoms of the person. Relevant decisions are taken only in accordance with a procedure established by law and with the application of relevant legal safeguards;³³ ensure that persons with disabilities who experience difficulty in asserting their rights, in understanding information, and in communicating, have access to assistance to understand information presented to them and to express their decisions, choices and preferences, as well as to enter into binding agreements or contracts, to sign documents, and act as witnesses;³⁴

With Whom to Consult:

- ◆ People with lived experience (self-advocates)
- ◆ Families
- ◆ Service Agencies

Resources and What's Happening in Other Jurisdictions:

- Article 12 of the UN Convention on the Rights of Persons with Disabilities (CRPD) states in part: 4) *“Parties shall ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse in accordance with international human rights law. Such safeguards shall ensure that measures relating to the exercise of legal capacity respect the rights, will and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the person's circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall be proportional to the degree to which such measures affect the person's rights and interests. 5) Subject to the provisions of this article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans, mortgages and other forms of financial credit, and shall ensure that persons with disabilities are not arbitrarily deprived of their property.”*

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7. Role of Community Services Workers

Key Points to Consider:

- CSWs can play vastly distinct roles depending on whether they are working in a rural or urban region. The differences in resources and needs between rural vs urban must always be recognized and considered when revising CSW job descriptions.
- Supported individuals, families and agencies need consistency of experience and oversight throughout the province. All parties need to know what they can expect from the department.
- Residential Care Licensing and Community Service Worker positions overlap and duplicate information – and yet both are unavailable often. Seems vast improvements could occur in both areas. CSW role can be accomplished by an impartial, non-profit and save immensely. Some CSW's don't respond for several weeks, and sometimes never, creating delays in progress and negative impacts on quality of life.

With Whom to Consult:

- ◆ CLdS committees looking at revisions to the CSW job description
- ◆ CSWs
- ◆ Family members
- ◆ People with lived experience
- ◆ Participants in the Case Management Project

Resources and What's Happening in Other Jurisdictions:

- Access current CSW job description
- Access current RCL job description

8. Principles of the Act

Key Points to Consider:

- Issues with this legislation arise in the gap between these principles and the policies and processes provided for by the Act. For instance, when making decisions on behalf of vulnerable people their "best

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interests" are too often determined according to what is considered safe, appropriate, efficient or in the best interests of family, friends and supporters, rather than according to what the vulnerable person wants and dreams.

- Most of these issues are best addressed by amending the legislation and clarifying its language bringing the provisions of the Act in closer alignment with the progressive principles intended to guide them. However, some amendments to the principles, recommended by the Canadian Association for Community Living, would facilitate better promotion and protection of the vulnerable peoples' rights.
- The principles of the Act should be expanded to note that decisions made with or on behalf of the vulnerable person should be determined according to their will, preferences and rights, or the best interpretation thereof. Here, "best interpretation" means the most reasonably justified inference of the vulnerable person's will and preferences, where the support network can provide a reasonable account for their interpretation and for the decision made. Similar language is used in the CRPD, in British Columbia's Representation Agreement Act, and recommended by the Law Commission of Ontario by the Canadian Association for Community Living (CACL).
- The Act should identify The Human Rights Code, The Canadian Charter of Rights and Freedom and the CRPD as the primary sources of guidance for interpreting the Act. As well, the definitions provided in the Act should be consistent and compliant with the CRPD, reflecting the social model of disability and protecting the right of people with intellectual disabilities to enjoy legal capacity and social inclusion.

With Whom to Consult:

- ◆ CRPD
- ◆ People with lived experience
- ◆ Families
- ◆ Service Providers

Resources and What's Happening in Other Jurisdictions:

- Canadian Charter of Rights and Freedoms
- UN Convention on Rights for Persons with Disabilities

9. Review Clause

Key Points to Consider:

- This Act should include a mechanism for systematic statutory review as a proactive means of ensuring the Act is effective and up-to-date, reflecting lessons as they are learned.

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- ❑ The systematic review could be structured so that the Minister may choose to appoint a board of three to five people who are not affiliated with the Commissioner's office or the Public Guardian and Trustee. Every three years, this appointed board should commence a review of the Act, including eligibility criteria, decision-making and individual planning mechanisms, and the roles of the Vulnerable Persons' Commission, the Public Guardian and Trustee and other system players.
- ❑ During the review, the reviewing board should provide an opportunity for public consultations, obtaining advice and recommendations from experts and persons or groups of persons affected by the Act. While the board may be free to determine how to conduct this consultation, people with intellectual disabilities should be prioritized and centred as experts in their own experiences. The board may also choose to appoint experts, or persons with special knowledge, to assist in the review.
- ❑ Within six months of commencing the review, the board should be tasked with preparing and submitting a report to the minister, detailing a description of the consultation and results of the consultation, and the board's recommendations about the reviewed matters. The minister should subsequently review the effectiveness of the Act and its regulations, and decide whether to recommend changes or to require further review.

With Whom to Consult:

- ◆ People with lived experience
- ◆ Families
- ◆ Service Providers
- ◆ Community members and general public

Resources and What's Happening in Other Jurisdictions:

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