

# COMMONWEALTH of VIRGINIA



## OFFICE OF THE COMMONWEALTH'S ATTORNEY CITY OF PORTSMOUTH



February 20, 2019

### Open Letter to the Virginia General Assembly RE: In-Custody Death of Jamycheal Mitchell

Va. Code § 18.2-369 criminalizes the abuse and neglect of mentally incapacitated adults, among other individuals. This statute applies to individuals like Jamycheal Mitchell, a young man who was mentally incapacitated due to a serious mental illness and deemed incompetent to stand trial. Mr. Mitchell was incarcerated in the Hampton Roads Regional Jail (HRRJ) in Portsmouth, VA for alleged trespass and the alleged petty theft of \$5 worth of snacks from a gas station. The maximum punishment Mr. Mitchell could have faced for these crimes was 12 months of incarceration and a \$2,500 fine on each charge, but instead, he died during his incarceration.

Our investigative process was marred by obstacles and delays because we were forced to deal with the medical services provider on their own time, without subpoena power. Our jurisdiction has a standing multijurisdictional grand jury, and we considered using that body to investigate this case after our request to empanel a special grand jury was denied. However, the authority of a multijurisdictional grand jury to investigate crimes is limited to a certain list. A multijurisdictional grand jury cannot investigate violations of § 18.2-369, and we believe that § 19.2-215.1 should be amended to grant multijurisdictional grand juries such authority.

Our investigation revealed that Mr. Mitchell allegedly refused necessary medical and mental health treatments and medications while incarcerated on a consistent basis. During his incarceration at HRRJ, Mr. Mitchell was found to be incompetent to stand trial by a psychiatrist and a Portsmouth General District Court judge. Additionally, multiple employees recognized that Mr. Mitchell was psychotic, seriously mentally ill, and unable to understand or communicate intelligently with medical

services providers about his health and treatment. During an interview at our office, one employee of HRRJ's medical services provider went so far as to opine that Mr. Mitchell was "incompetent."

During his incarceration, Mr. Mitchell's purported signature appeared on various lengthy documents containing complex explanations of medical concepts like informed consent. When interviewed by our office, no medical employee recalled explaining the concept of informed consent to Mr. Mitchell and attempting to get him to acknowledge it. However, employees claimed that such questions were standard as part of all intake screenings.

According to interviews of NaphCare employees, Jamycheal Mitchell appeared to have given informed consent and indicated that he understood the consequences of refusing medical and mental health treatments. Mr. Mitchell later died at HRRJ after allegedly refusing a significant number of the treatments offered to him. He likely did not understand what could happen to him if he refused these treatments, yet the existing language of § 18.2-369 allows correctional medical service providers to avoid criminal liability by claiming they followed proper informed consent procedures.

The affirmative defense of informed consent contained in Va. Code § 18.2-369 is logically flawed. The section defines an incapacitated person an adult "who is impaired by reason of mental illness . . . to the extent that they lack sufficient understanding or capacity to make, communicate, and carry out reasonable decisions concerning [their] well-being." Yet the same code section allows those who neglect incapacitated persons to defend against criminal liability by claiming that the incapacitated person gave their informed consent to be treated as they were. Mentally incapacitated persons cannot give informed consent.

Jail is not the appropriate place to house the mentally ill, but we recognize that the mentally ill unavoidably spend time in local jails across the Commonwealth. The official position of the Commonwealth of Virginia should be to disincentivize correctional medical services providers from allowing incarcerated persons to fall into the same cracks and loopholes in their systems as Jamycheal Mitchell did. This should begin with the adoption and passage into law of a statutory

definition of “serious mental illness,” a proposal that has been offered in past legislative sessions but never has passed. We further urge the adoption of Virginia Code § 18.2-369.1 as described below, which limits the defense of informed consent when incapacitated adults are allegedly neglected:

**Jamycheal’s Law (Va. Code § 18.2-369.1)**

**Neglect of Incapacitated Adult; Limitation of Defense of Informed Consent**

In any prosecution initiated under § 18.2-369 for the neglect of an incapacitated adult, it shall not be a defense that a responsible person acted in accordance with the informed consent of an incapacitated person when the incapacitated person is an inmate in a local, regional, or state correctional facility and the incapacitated person (a) is the subject of a competency restoration order by a court of competent jurisdiction; or (b) has been diagnosed with a serious mental illness.

Incarcerated persons with serious mental illnesses are often helpless to carry out their own wishes. They sometimes cannot communicate clearly or understand the complexities of medical and mental health decision-making. So that prosecutors have all available tools possible to investigate in-custody deaths, we call for the addition of Va. Code § 18.2-369 to the list of crimes into which a multijurisdictional grand jury can investigate. We call for the creation of a clear statutory definition of serious mental illness. We further urge the adoption of proposed § 18.2-369.1 to remove the shield of informed consent from those who are responsible for ensuring the safety and well-being of society’s most vulnerable members.

Very truly yours,



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Commonwealth’s Attorney  
City of Portsmouth