



**Report to the
Colorado General Assembly**

**The Continuing Examination
of the Treatment of
Persons with Mental Illness
Who Are Involved in
the Criminal and Juvenile
Justice Systems**

Prepared by

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**Legislative Oversight Committee for the
Continuing Examination of the Treatment of
Persons with Mental Illness Who Are Involved
in the Criminal and Juvenile Justice Systems**

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December 2013

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December 2013

To Members of the Sixty-ninth General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems. This committee was created pursuant to Senate Bill 04-037 and House Bill 09-1201 and is authorized through July 1, 2015. The purpose of the committee is to oversee an advisory task force that studies and makes recommendations concerning the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on November 14, 2013, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2014 session was approved.

Sincerely,

/s/ Senator Lucia Guzman
 Chairman

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This report is also available on line at:

<http://www.colorado.gov/lcs/MICJS>

Committee Charge

History

The advisory task force and legislative oversight committee first met in the summer of 1999. In 2000, the task force and oversight committee were reauthorized, and the reestablished task force met on a monthly basis through June 2003. The General Assembly considered legislation to continue the study of the mentally ill in the justice system beyond the 2003 repeal date, but the bill failed. In FY 2003-04, the task force continued its meetings and discussions at the request of the oversight committee. The task force and oversight committee were reauthorized and reestablished in 2004 through the passage of Senate Bill 04-037 and again in 2009 with the passage of House Bill 09-1021. The oversight committee was subject to Senate Bill 10-213, which suspended all interim activities during the 2010 interim. The task force and oversight committee are set to repeal on July 1, 2015.

A summary of the work accomplished by these groups from 1999 through 2012 is provided in the annual reports of the legislative oversight committee, which are located on the Legislative Council website in the committee archive section.

The Legislative Oversight Committee

The legislative oversight committee was created to oversee the work of the advisory task force. The six-member oversight committee reviews the task force's findings and may recommend legislative proposals. In calendar years 2005 through 2014, the oversight committee is required to meet at least three times annually. The oversight committee is required to submit an annual report to the General Assembly by January 15 of each year regarding recommended legislation resulting from the work of the task force. The task force recommended two pieces of legislation to the oversight committee during the 2013 interim.

The Advisory Task Force

The chair and vice-chair of the legislative oversight committee and the Chief Justice of the Colorado Supreme Court are responsible for appointing a task force that represents all areas of the state and is diverse in ethnicity, culture, and gender. The task force is directed to continue examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems, including an examination of liability, safety, and cost as they relate to these issues.

Charge. The advisory task force is statutorily charged with examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems. The authorizing legislation directs the task force, between July 1, 2011, and July 1, 2014, to consider, at a minimum, the following issues:



- the diagnosis, treatment, and housing of persons with mental illness or co-occurring disorders who are convicted of crimes or incarcerated, or who plead guilty, nolo contendere, or not guilty by reason of insanity, or who are found to be incompetent to stand trial;
- the diagnosis, treatment, and housing of juveniles with mental illness or co-occurring disorders who are adjudicated, detained, or committed for offenses that would constitute crimes if committed by adults, or who plead guilty, nolo contendere, or not guilty by reason of insanity, or who are found to be incompetent to stand trial;
- the ongoing treatment, housing, and supervision, especially with regard to medication, of adults and juveniles who are involved in the criminal and juvenile justice systems and who are incarcerated or housed within the community, and the availability of public benefits for these persons; and
- the safety of the staff who treat or supervise persons with mental illness and the use of force against persons with mental illness.

The authorizing legislation requires the task force to meet at least six times per year. To fulfill its charge, the task force is required to communicate with and obtain input from groups throughout the state affected by issues under consideration. The task force is not precluded from considering additional issues, or from considering or making recommendations on any of the issues listed above at any time during the existence of the task force.

Recommendations and reports. The task force must communicate its findings on the issues it is statutorily charged to study and make recommendations to the legislative oversight committee. The task force must submit a report to the oversight committee by October 1 of each year. The report must identify the following:

- issues to be studied in upcoming task force meetings and their respective prioritization;
- findings and recommendations about issues previously considered by the task force; and
- legislative proposals.

All legislative proposals of the task force must note the policy issues involved, the agencies responsible for implementing the changes, and the funding sources required for such implementation. The task force recommended two pieces of legislation to the legislative oversight committee during the 2013 interim.

Membership. Table 1 lists the members of the advisory task force and the agencies they represent. The advisory task force consists of 30 members, 4 of whom are appointed by the Chief Justice of the Colorado Supreme Court. The 26 remaining members are appointed by the chair and the vice-chair of the legislative oversight committee.

**Table 1
Advisory Task Force Appointees**

State or Private Agency	Representative(s) and Affiliation(s)	
Department of Public Safety (1)	Jeanne Smith	Division of Criminal Justice
Department of Corrections (2)	Vacant	
	Vacant	Division of Parole
Local Law Enforcement (2)	Rebecca Spiess	Undersheriff, Mesa County Sheriff's Office
	Clif Northam	Commander, El Paso County Sheriff's Office
Department of Human Services (5)	Marc Condojani	Division of Behavioral Health
	Ashley Tunstall	Division of Youth Corrections
	Melinda Cox	Division of Child Welfare
	Michele Manchester, Vice-chair	Colorado Mental Health Institute at Pueblo
	Libby Stoddard	Mental Health Planning and Advisory Council/Mental Health America of Colorado
County Department of Social Services (1)	Susan Walton, chair	Jefferson County Department of Human Services
Department of Education (1)	Michael Ramirez	Teaching and Learning Unit
State Attorney General's Office (1)	Janet Drake	Senior Assistant Attorney General
District Attorneys (1)	Vacant	
Criminal Defense Bar (2)	Vacant	
	Gina Shimeall	18th Judicial District Mental Health Court
Practicing Mental Health Professionals (2)	Fernando Martinez	San Luis Valley Mental Health Center
	Terri Hurst	Colorado Behavioral Healthcare Council
Community Mental Health Centers in Colorado (1)	Harriet Hall	Jefferson Center for Mental Health
Person with Knowledge of Public Benefits and Public Housing in Colorado (1)	Pat Coyle	Colorado Department of Local Affairs, Division of Housing
Colorado Department of Health Care Policy & Financing (1)	Camille Harding	Clinical Services Office
Practicing Forensic Professional (1)	Richard Martinez, M.D.	Denver Health Medical Center
Members of the Public (3)	David Mosher	Member with a mental illness who has been involved in the Colorado criminal justice system
	Deirdre Parker	Parent of a child who has a mental illness and who has been involved in the Colorado criminal justice system
	Barbara Stephenson	Member with an adult family member who has a mental illness and who has been involved in the Colorado criminal justice system
Colorado Department of Labor and Employment (1)	Patrick Teegarden	Director of Policy and Legislation
Judicial Branch (4)	Brenidy Rice	Division of Planning and Analysis
	Judge K.J. Moore	1st Judicial District
	Susan Colling	Juvenile Programs Coordinator, Probation Services
	Vacant	Probation



Legislative Oversight Committee Activities

The legislative oversight committee met twice in 2013 to monitor and examine the work, findings, and recommendations of the task force. Specifically the oversight committee:

- received information on upcoming projects and initiatives impacting people with mental illness who are involved in the criminal justice system;
- received an update on Colorado's problem-solving courts;
- made an appointment to fill a vacancy on the task force; and
- considered legislation recommended by the task force.

Upcoming Projects and Initiatives Impacting People with Mental Illness Who Are Involved in the Criminal Justice System

The legislative oversight committee received information from representatives of the Office of Behavioral Health in the Department of Human Services concerning jail-based mental health services, improvements to community capacity to provide community-based treatment services, expansion of in-patient psychiatric hospital capacity, and the jail-based mental health restoration program. The oversight committee discussed funding for various projects and the integration of community-wide crisis response systems.

Problem-Solving Courts

At the legislative oversight committee's March 2013 meeting, Brenidy Rice, representing the Judicial Branch, presented information on Colorado's problem-solving courts. There are 73 operational problem-solving courts in Colorado, with eight more planned, and the courts currently serve about 3,000 individuals. Colorado's problem-solving courts include:

- adult drug courts;
- DUI courts;
- family/dependency and neglect courts;
- juvenile drug courts;
- juvenile mental health courts;
- mental health courts;
- veterans/trauma courts; and
- hybrid courts.



Advisory Task Force Activities

The task force met monthly in 2013. The task force discussed follow-up work from its November 2012 strategic planning session; organized a legislative luncheon; and heard presentations about a jail-based mental health restoration program, housing issues, and Department of Corrections staff safety.

Strategic Planning Session Follow-up Activities

The task force worked on implementing changes to the task force resulting from its November 2012 strategic planning session. In an effort to implement the changes resulting from the strategic planning session, the previous subcommittees of the task force were disbanded, and a work group structure focused on study issues was established. There was an emphasis placed on advising the legislature, collaboration, and data collection and evaluation. The task force's juvenile subcommittee continued to provide updates on its work to address juvenile competency issues, resulting in one of the legislative recommendations for 2014.

Legislative Luncheon

The task force hosted a legislative luncheon on February 4, 2013. The luncheon provided an opportunity to raise awareness about the task force among the members of the General Assembly. It also allowed task force members and legislative members to meet

Jail-Based Mental Health Restoration Program

At its March meeting, the task force received information from Kenneth Cole, Office of Behavioral Health in the Department of Human Services, on the then-proposed jail-based mental health restoration program. The program provides competency restoration treatment in a therapeutic community to inmates who are stable on medication while they are restored to competency. The program is modeled after a California program.

In FY 2013-14, approximately \$2 million was appropriated to the Department of Human Services to create a contracted jail-based mental health restoration program. The 22-bed program is located at the Arapahoe County Detention Center. The department selected GEO Care as the program contractor. Program operations began in November 2013, and the service area includes Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, Jefferson, Larimer, and Weld Counties.

The goals of the program are to increase then number of civil beds available by diverting certain forensic patients to a community-based program, and to reduce the number of civil beds at the Colorado Mental Health Institute at Pueblo currently held by forensic patients in need of restoration. The program utilizes a variety of treatment modalities, including cognitive behavioral therapy for psychosis, the Substance Abuse and Mental Health Services Administration Illness Management and Recovery Program, and the Substance Abuse and Mental Health Services Administration anger management group. The competency restoration treatment is consistent with the Best Practices Model for Mental Competency.

Program participants meet with a multi-disciplinary team within the first 24 hours of admission. Participants then begin a five-day orientation program. After the orientation program, participants begin to engage in a structured treatment program. Assessments are performed by a psychologist after 15 days and 30 days of admission. Additionally, there are assessments of participant progress and barriers discussed in weekly treatment team meetings. Once the treatment team recommends a participant as ready for an evaluation of restoration of competency, the program director contacts the Office of Behavioral Health, the Colorado Mental Health Institute at Pueblo Court Services, and an outside evaluator to complete the evaluation. While there is no formal time period for a participant to be in the program, the target length of stay in the program is fewer than 90 days.

Housing Issues

At the task force's July meeting, John Parvensky, Colorado Coalition for the Homeless, and Pat Coyle, Colorado Division of Housing in the Department of Local Affairs, presented information concerning housing issues in Colorado. According to the information presented by Mr. Parvensky:

- 33 percent of households in Colorado are rentals;
- 166,729 or 24 percent of these households are extremely low-income;
- the maximum state-level income for an extremely low-income family of four is \$22,121;
- there is a shortage of 128,674 affordable units available to these low-income renters; and
- a rental household needs to earn \$17.26 per hour to afford a two-bedroom unit at the U.S. Department of Housing and Urban Development-determined Fair Market Rent.

Additionally, the task force received information on the emergency shelter system, the coalition's Housing First Program, the Colorado Division of Housing, and the Colorado Second Chance Housing and Reentry Program, which is designed to provide housing and mental health services to people who are eligible for parole, homeless, and in need of mental health and substance abuse services to reduce the recidivism rates. The task force discussed the need for funding and advocacy for housing issues.

Department of Corrections Staff Safety

Jackie McCall and Kellie Wasco, Department of Corrections, presented to the task force at its October meeting. Ms. McCall and Ms. Wasco explained the efforts of the department to ensure the safety of staff, offenders, and patients in their programs. The initiatives include:

- implementing residential treatment programs for men at the San Carlos Correctional and Centennial Correctional facilities, and a residential treatment program for female offenders in the Denver Women's Correctional Facility;
- tracking assaults by categories in order to capture data accurately to determine trends and gear solutions toward populations;
- increasing the number of positions for the Division of Psychiatry in order to better match ratios recommended by the American Psychological Association;
- developing programs to keep staff members assigned consistently with offenders as they physically move through a facility to allow for more guidance through the system;



- requiring personal protection training for all employees, and requiring mental health first aid training for specified staff members;
- implementing dialectical behavioral therapy;
- achieving a balance between a treatment model and a containment model, including identifying offenders who may suffer from mental health issues and placing them where they can receive treatment, continuity of care, and interaction with officers, therapists, and psychiatrists as part of their treatment plan; and
- making physical plant modifications instituted for staff safety, and encouraging department staff to suggest changes to maintain safety.

There was discussion of the challenges that may occur when an offender is re-integrated into the community, including the continuity of prescriptions and mental health treatment. It was suggested that it would be helpful to have a file available with an offender's diagnosis, treatment plan, and progress when they enter into a community setting after incarceration. The department is working to educate offenders about the importance of signing the clearance paperwork that allows the department to release certain information. There was discussion of the "one clinician to one offender" model to help establish the rapport needed so that the offender will approve the release of information. Ms. Wasco emphasized the importance of developing a treatment plan for an individual offender, rather than general treatment plans. Discussion of community corrections programs occurred, including concerns about these programs not accepting offenders with mental health diagnoses.

Upon release from Department of Corrections, an offender receives 30 days of prescription medications. Continuity of medication is an issue that the department continues to work to improve so that an approved treatment provider will be able to see a released offender within 30 days from the offender's release to avoid prescription gaps. New nurse case managers are expected to help in this regard. There was discussion of the Affordable Care Act benefits that are expected to enhance an offender's ability to obtain medications, and the efforts that are being made to assist offenders in enrolling for certain benefits.



Summary of Recommendations

As a result of the discussion and deliberation of the task force, the legislative oversight committee recommends the following bills for consideration in the 2014 legislative session.

Bill A — Persons with Mental Illness in the Criminal Justice Systems — The bill extends the repeal date for the Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems and associated task force from July 1, 2015, to July 1, 2020. The legislative oversight committee and task force are renamed the Legislative Oversight Committee and Task Force Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems, and the cash fund is renamed accordingly. Two new members are added to the task force, one from the Office of the Child's Representative and one from the Office of the Alternate Defense Counsel. The task force is assigned additional duties. Authorization is granted to provide travel compensation and reimbursement for members of the task force, subject to available funds.

Bill B — Juvenile Competency to Proceed Determination — The bill creates a definition of "incompetent to proceed" that is specific to juveniles in order to distinguish it from that used for adults in the criminal justice system.



Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<http://www.colorado.gov/lcs/MICJS>

Meeting Date and Topics Discussed

Legislative Oversight Committee

March 22, 2013

- ◆ Advisory task force activities
- ◆ Upcoming projects and initiatives impacting people with mental illness who are involved in the criminal justice system
- ◆ Bills of interest to the advisory task force
- ◆ Mental health courts

October 3, 2013

- ◆ Advisory task force activities
- ◆ Consideration of proposed legislation

Advisory Task Force

January 17, 2013

- ◆ Summary of strategic planning session
- ◆ Status of prior subcommittees and establishment of strategic planning work groups
- ◆ Legislation luncheon preparation
- ◆ Dissemination of study survey
- ◆ Training on the legislative process and the composition of the legislature
- ◆ Status of bills affecting the task force

February 21, 2013 (*meeting cancelled*)



March 21, 2013

- ◆ Status of study groups - response to survey
- ◆ Jail-based restoration project
- ◆ Status of bills affecting the task force
- ◆ Legislative oversight committee

April 18, 2013

- ◆ Update on study group: identification of issues to be studied
- ◆ Update on collaboration group: white paper and networking
- ◆ Report on House Bill 13-1296
- ◆ Question from the march meeting concerning 18-to-21 year olds receiving restoration services at the Colorado Mental Health Institute at Pueblo

May 16, 2013

- ◆ Update on study group: further discussion of three topics for study
- ◆ Update on the juvenile justice subcommittee
- ◆ Colorado Office of Behavioral Health jail-based restoration project
- ◆ Update on the legislative oversight committee meeting held on March 22, 2013
- ◆ Selection of a new task force chair

June 20, 2013

- ◆ Update on the juvenile justice subcommittee: discussion of proposed legislative changes and determination of task force support for proposed changes

July 18, 2013

- ◆ Housing
- ◆ Update on the juvenile justice subcommittee: discussion of issues from June 2013 meeting

August 15, 2013

- ◆ Follow-up on housing presentation
- ◆ Update on the juvenile justice subcommittee: presentation and consideration of proposed language for revision of juvenile competency statute
- ◆ Revision of task force enabling statutes

September 19, 2013

- ◆ Selection of a new task force chair
- ◆ Discussion and vote on proposed juvenile competency legislation
- ◆ Discussion and vote on proposed legislation extending the term of the task force



October 17, 2013

- ◆ Department of Corrections presentation on staff safety
- ◆ Legislative oversight committee update
- ◆ Review of proposed legislation
- ◆ Task force vacancies

November 21, 2013

- ◆ Review of proposed legislation
- ◆ Task force vacancies
- ◆ Prioritizing topics of study for the task force

December 19, 2013 (*meeting cancelled*)



Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL A

LLS NO. 14-0200.01 Jane Ritter x4342

SENATE BILL

SENATE SPONSORSHIP

Tochtrop and King, Newell

HOUSE SPONSORSHIP

Wright, Rosenthal

Senate Committees

House Committees

A BILL FOR AN ACT

101 CONCERNING THE TREATMENT OF PERSONS WITH MENTAL ILLNESS
102 WHO ARE INVOLVED IN THE CRIMINAL JUSTICE SYSTEMS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems. The bill extends the repeal date for the legislative oversight committee for the

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.

DRAFT *Dashes through the words indicate deletions from existing statute.*

17

continuing examination of the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems and associated task force from July 1, 2015, to July 1, 2020. The legislative oversight committee and task force are renamed the legislative oversight committee and task force concerning the treatment of persons with mental illness in the criminal and juvenile justice systems (oversight committee and task force), and the cash fund is renamed accordingly. Two new members are added to the task force, one from the office of the child's representative and one from the office of the alternate defense counsel. The task force is assigned additional duties. Authorization is granted to provide travel compensation and reimbursement for members of the task force, subject to available funds.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 18-1.9-102, **amend**
3 (2) as follows:

4 **18-1.9-102. Definitions.** As used in this article, unless the context
5 otherwise requires:

6 (2) "Task force" means the task force ~~for the continuing~~
7 ~~examination of~~ CONCERNING the treatment of persons with mental illness
8 ~~who are involved~~ in the criminal and juvenile justice systems established
9 pursuant to section 18-1.9-104.

10 **SECTION 2.** In Colorado Revised Statutes, 18-1.9-103, **amend**
11 (1) (a), (1) (d), (2) (a), and (2) (c) (I) as follows:

12 **18-1.9-103. Legislative oversight committee concerning the**
13 **treatment of persons with mental illness in the criminal and juvenile**
14 **justice systems - creation - duties.** (1) **Creation.** (a) There is hereby
15 created a legislative oversight committee ~~for the continuing examination~~
16 ~~of~~ CONCERNING the treatment of persons with mental illness ~~who are~~
17 ~~involved~~ in the criminal and juvenile justice systems.

18 (d) (I) Notwithstanding the provisions of section 2-2-307, C.R.S.,
19 the committee may receive payment of per diem and reimbursement for

1 actual and necessary expenses authorized pursuant to said section and any
2 other direct or indirect costs associated with the duties of the committee
3 set forth in this article only from moneys appropriated from the
4 ~~examination of the~~ treatment of persons with mental illness in the
5 criminal AND JUVENILE justice ~~system~~ SYSTEMS cash fund created in
6 section 18-1.9-106.

7 (II) The director of research of the legislative council and the
8 director of the office of legislative legal services may supply staff
9 assistance to the committee as they deem appropriate, within existing
10 appropriations. If staff assistance is not available within existing
11 appropriations, then the director of research of the legislative council and
12 the director of the office of legislative legal services may supply staff
13 assistance to the task force only if moneys are credited to the ~~examination~~
14 ~~of the~~ treatment of persons with mental illness in the criminal AND
15 JUVENILE justice ~~system~~ SYSTEMS cash fund created in section 18-1.9-106
16 in an amount sufficient to fund staff assistance.

17 (2) **Duties.** (a) ~~The committee shall meet at least once on or~~
18 ~~before August 1, 2004.~~ Beginning in 2005 and continuing each year
19 thereafter, ~~through 2014,~~ the committee shall meet at least three times
20 each year and at such other times as it deems necessary. ~~except that the~~
21 ~~committee shall not meet during the 2010 interim.~~

22 (c) (I) The committee shall submit a report to the general
23 assembly by January 15, 2005, ~~by each January 15 thereafter through~~
24 ~~January 15, 2010, and by January 15, 2012,~~ and by each January 15
25 thereafter. ~~through January 15, 2015.~~ The annual reports shall MUST
26 summarize the issues addressing the treatment of persons with mental
27 illness who are involved in the criminal and juvenile justice systems that
28 have been considered and any recommended legislative proposals, IF

1 ANY.

2 **SECTION 3.** In Colorado Revised Statutes, 18-1.9-104, **amend**
3 (1) (a), (1) (c) introductory portion, (1) (c) (IV) introductory portion, (1)
4 (c) (XV), (2) (a) introductory portion, (2) (b) introductory portion, (2) (c)
5 introductory portion, (2) (e) introductory portion, (2) (f) introductory
6 portion, (3), and (5); and **add** (1) (c) (XVII), (1) (c) (XVIII), and (2) (g)
7 as follows:

8 **18-1.9-104. Task force concerning treatment of persons with**
9 **mental illness in the criminal and juvenile justice systems - creation**
10 **- membership - duties.** (1) **Creation.** (a) There is hereby created a task
11 force ~~for the continuing examination of the treatment of persons with~~
12 CONCERNING TREATMENT OF PERSONS WITH mental illness ~~who are~~
13 ~~involved~~ in the criminal and juvenile justice systems in Colorado. The
14 task force shall consist of ~~thirty~~ THIRTY-TWO members appointed as
15 provided in paragraphs (b) and (c) of this subsection (1).

16 (c) The chair and vice-chair of the committee shall appoint
17 ~~twenty-six~~ TWENTY-EIGHT members as follows:

18 (IV) ~~Six~~ FIVE members who represent the department of human
19 services, as follows:

20 (XV) One member who represents the department of health care
21 policy and financing; ~~and~~

22 (XVII) ONE MEMBER WHO REPRESENTS THE OFFICE OF THE
23 CHILD'S REPRESENTATIVE; AND

24 (XVIII) ONE MEMBER WHO REPRESENTS THE OFFICE OF THE
25 ALTERNATE DEFENSE COUNSEL.

26 (2) **Issues for study.** The task force shall examine the
27 identification, diagnosis, and treatment of persons with mental illness
28 who are involved in the state criminal and juvenile justice systems,

1 including an examination of liability, safety, and cost as they relate to
2 these issues. The task force shall specifically consider, but need not be
3 limited to, the following issues:

4 (a) On or before July 1, 2005: ~~the following issues:~~

5 (b) On or before July 1, 2006: ~~the following issues:~~

6 (c) On or before July 1, 2007: ~~the following issues:~~

7 (e) On or before July 1, 2009: ~~the following issues:~~

8 (f) Beginning July 1, 2011, through July 1, 2014, ~~the following~~
9 ~~issues:~~

10 (g) ON OR AFTER JULY 1, 2014:

11 (I) HOUSING FOR A PERSON WITH MENTAL ILLNESS AFTER HIS OR
12 HER RELEASE FROM THE CRIMINAL OR JUVENILE JUSTICE SYSTEM;

13 (II) MEDICATION CONSISTENCY, DELIVERY, AND AVAILABILITY;

14 (III) BEST PRACTICES FOR SUICIDE PREVENTION, WITHIN AND
15 OUTSIDE OF CORRECTIONAL FACILITIES;

16 (IV) TREATMENT OF CO-OCCURRING DISORDERS;

17 (V) AWARENESS OF AND TRAINING FOR ENHANCED STAFF SAFETY,
18 INCLUDING EXPANDING TRAINING OPPORTUNITIES FOR PROVIDERS;

19 (VI) ISSUES RELATED TO ADMINISTRATIVE SEGREGATION FOR
20 PERSONS WITH MENTAL ILLNESS, ESPECIALLY CONCERNING SAFETY AND
21 DIRECT RELEASE INTO THE COMMUNITY; AND

22 (VII) ENHANCED DATA COLLECTION RELATED TO ISSUES
23 AFFECTING PERSONS WITH MENTAL ILLNESS IN THE CRIMINAL AND
24 JUVENILE JUSTICE SYSTEMS.

25 (3) **Additional duties of the task force.** The task force shall
26 provide guidance and make findings and recommendations to the
27 committee for its development of reports and legislative
28 recommendations for modification of the criminal and juvenile justice

1 systems, with respect to persons with mental illness who are involved in
2 these systems. In addition, the task force shall:

3 (a) On or before August 1, 2004, and by each August 1 thereafter,
4 ~~through August 1, 2013, except during the suspension of the committee~~
5 ~~during the 2010 interim,~~ select a chair and a vice-chair from among its
6 members;

7 (b) Meet at least six times each year, ~~from the date of the first~~
8 ~~meeting until January 1, 2015,~~ or more often as directed by the chair of
9 the committee; ~~except that the committee shall not meet during the 2010~~
10 ~~interim;~~

11 (c) Communicate with and obtain input from groups throughout
12 the state affected by the issues identified in subsection (2) of this section;

13 (d) Create subcommittees as needed to carry out the duties of the
14 task force. The subcommittees may consist, in part, of persons who are
15 not members of the task force. Such persons may vote on issues before
16 the subcommittee but shall not be entitled to a vote at meetings of the task
17 force.

18 (e) Submit a report to the committee by October 1, 2004, and by
19 each October 1 thereafter, ~~through October 1, 2009, and by October 1,~~
20 ~~2011, and by each October 1 thereafter through October 1, 2014,~~ THAT,
21 at a minimum, ~~specifying the following~~ SPECIFIES:

22 (I) Issues to be studied in upcoming task force meetings and a
23 prioritization of those issues;

24 (II) Findings and recommendations regarding issues of prior
25 consideration by the task force;

26 (III) Legislative proposals of the task force that identify the policy
27 issues involved, the agencies responsible for the implementation of the
28 changes, and the funding sources required for ~~such~~ implementation.

1 (5) **Compensation and reimbursement.** NOTWITHSTANDING THE
2 PROVISIONS OF SECTION 2-2-307, C.R.S., members of the task force ~~shall~~
3 ~~serve without~~ MAY RECEIVE compensation AND REIMBURSEMENT FOR
4 ACTUAL AND NECESSARY EXPENSES AUTHORIZED PURSUANT TO SAID
5 SECTION AND ANY OTHER DIRECT OR INDIRECT COSTS ASSOCIATED WITH
6 THE DUTIES OF THE TASK FORCE SET FORTH IN THIS SECTION, BUT ONLY IF
7 SUFFICIENT MONEYS ARE CREDITED TO THE TREATMENT OF PERSONS WITH
8 MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS CASH
9 FUND CREATED IN SECTION 18-1.9-106.

10 **SECTION 4.** In Colorado Revised Statutes, 18-1.9-105, **amend**
11 (2) as follows:

12 **18-1.9-105. Task force funding - staff support.** (2) The director
13 of research of the legislative council, the director of the office of
14 legislative legal services, the director of the division of criminal justice
15 within the department of public safety, and the executive directors of the
16 departments represented on the task force may supply staff assistance to
17 the task force as they deem appropriate within existing appropriations. If
18 staff assistance is not available from a governmental agency within
19 existing appropriations, then the executive directors of the departments
20 represented on the task force, the director of research of the legislative
21 council, and the director of the office of legislative legal services may
22 supply staff assistance to the task force only if moneys are credited to the
23 ~~examination of the~~ treatment of persons with mental illness in the
24 criminal AND JUVENILE justice ~~system~~ SYSTEMS cash fund created in
25 section 18-1.9-106 in an amount sufficient to fund staff assistance. The
26 task force may also accept staff support from the private sector.

27 **SECTION 5.** In Colorado Revised Statutes, **amend** 18-1.9-106
28 as follows:

1 **18-1.9-106. Treatment of persons with mental illness in the**
2 **criminal and juvenile justice systems cash fund - repeal.** (1) All
3 private and public funds received through grants, contributions, and
4 donations pursuant to this article shall be transmitted to the state treasurer,
5 who shall credit the same to the ~~examination of the~~ treatment of persons
6 with mental illness in the criminal AND JUVENILE justice ~~system~~ SYSTEMS
7 cash fund, which fund is hereby created and referred to in this section as
8 the "fund". The moneys in the fund shall be subject to annual
9 appropriation by the general assembly for the direct and indirect costs
10 associated with the implementation of this article. All moneys in the fund
11 not expended for the purpose of this article may be invested by the state
12 treasurer as provided by law. All interest and income derived from the
13 investment and deposit of moneys in the fund shall be credited to the
14 fund. Any unexpended and unencumbered moneys remaining in the fund
15 at the end of a fiscal year shall remain in the fund and shall not be
16 credited or transferred to the general fund or another fund. All
17 unexpended and unencumbered moneys remaining in the fund as of July
18 1, ~~2015~~ 2020, shall be transferred to the general fund.

19 (1.5) (a) ALL UNEXPENDED AND UNENCUMBERED MONEYS
20 REMAINING IN THE EXAMINATION OF THE TREATMENT OF PERSONS WITH
21 MENTAL ILLNESS IN THE CRIMINAL JUSTICE SYSTEM CASH FUND AS OF
22 JULY 1, 2014, SHALL BE TRANSFERRED TO THE TREATMENT OF PERSONS
23 WITH MENTAL ILLNESS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS
24 CASH FUND.

25 (b) THIS SUBSECTION (1.5) IS REPEALED, EFFECTIVE JULY 1, 2015.

26 (2) Compensation AND REIMBURSEMENT as provided in sections
27 18-1.9-103 (1) (d), 18-1.9-104 (5), and 18-1.9-105 (2) for members of the
28 general assembly, THE TASK FORCE, and for staff assistance to the

1 committee and task force provided by the director of research of the
2 legislative council and the director of the office of legislative legal
3 services ~~shall~~ MUST be approved by the chair of the legislative council
4 and paid by vouchers and warrants drawn as provided by law from
5 moneys appropriated for such purpose and allocated to the legislative
6 council from the fund.

7 **SECTION 6.** In Colorado Revised Statutes, **amend** 18-1.9-107
8 as follows:

9 **18-1.9-107. Repeal of article.** This article is repealed, effective
10 July 1, ~~2015~~ 2020.

11 **SECTION 7. Effective date.** This act takes effect July 1, 2014.

12 **SECTION 8. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.

Second Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 14-0199.01 Jane Ritter x4342

HOUSE BILL

HOUSE SPONSORSHIP

Rosenthal, Wright

SENATE SPONSORSHIP

Newell, Tochtrop

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE DETERMINATION OF COMPETENCY TO PROCEED FOR**
102 **INDIVIDUALS IN THE JUVENILE JUSTICE SYSTEM.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries.>)

Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems. The bill creates a definition of "incompetent to proceed" that is specific to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.

DRAFT Dashes through the words indicate deletions from existing statute.

27

juveniles in order to distinguish it from that used for adults in the criminal justice system.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 19-2-103, **add** (5.5),
3 (9.5), (9.6), (12.3), (12.4), and (14.3) as follows:

4 **19-2-103. Definitions.** For purposes of this article:

5 (5.5) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY THAT
6 IS MANIFESTED BEFORE THE PERSON REACHES HIS OR HER TWENTY-FIRST
7 BIRTHDAY, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE
8 AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO AN INTELLECTUAL
9 DISABILITY OR OTHER NEUROLOGICAL CONDITIONS WHEN THOSE
10 CONDITIONS RESULT IN IMPAIRMENT OF GENERAL INTELLECTUAL
11 FUNCTIONING OR ADAPTIVE BEHAVIOR SIMILAR TO THAT OF A PERSON
12 WITH AN INTELLECTUAL DISABILITY. UNLESS OTHERWISE SPECIFICALLY
13 STATED, THE FEDERAL DEFINITION OF "DEVELOPMENTAL DISABILITY", 42
14 U.S.C. SEC. 15001 ET SEQ., SHALL NOT APPLY.

15 (9.5) "INCOMPETENT TO PROCEED" MEANS THAT A JUVENILE, DUE
16 TO MENTAL DISABILITY, DEVELOPMENTAL DISABILITY, INTELLECTUAL
17 DISABILITY, OR LACK OF MENTAL CAPACITY, LACKS A REASONABLE
18 DEGREE OF RATIONAL AND FACTUAL UNDERSTANDING OF THE
19 PROCEEDINGS AGAINST HIM OR HER OR IS UNABLE TO CONSULT OR
20 COMMUNICATE WITH AND ASSIST HIS OR HER ATTORNEY IN PREPARING HIS
21 OR HER DEFENSE IN A MEANINGFUL MANNER.

22 (9.6) "INTELLECTUAL DISABILITY" MEANS A DISORDER WITH ONSET
23 DURING THE DEVELOPMENTAL PERIOD THAT INCLUDES BOTH
24 INTELLECTUAL AND ADAPTIVE FUNCTIONING DEFICITS IN CONCEPTUAL,
25 SOCIAL, AND PRACTICAL DOMAINS, AND INCLUDES THE FOLLOWING

1 CRITERIA:

2 (a) DEFICITS IN INTELLECTUAL FUNCTIONS, SUCH AS REASONING,
3 PROBLEM SOLVING, PLANNING, ABSTRACT THINKING JUDGMENT,
4 ACADEMIC LEARNING, AND LEARNING FROM EXPERIENCE, CONFIRMED BY
5 BOTH CLINICAL ASSESSMENT AND INDIVIDUALIZED, STANDARDIZED
6 INTELLIGENCE TESTING;

7 (b) DEFICITS IN ADAPTIVE FUNCTIONING THAT RESULT IN FAILURE
8 TO MEET DEVELOPMENTAL AND SOCIO-CULTURAL STANDARDS FOR
9 PERSONAL INDEPENDENCE AND SOCIAL RESPONSIBILITY. WITHOUT
10 ONGOING SUPPORT, THE ADAPTIVE DEFICITS LIMIT FUNCTIONING IN ONE OR
11 MORE ACTIVITIES OF DAILY LIFE, SUCH AS COMMUNICATION, SOCIAL
12 PARTICIPATION, AND INDEPENDENT LIVING, ACROSS MULTIPLE
13 ENVIRONMENTS, SUCH AS HOME, SCHOOL, WORK, AND COMMUNITY; AND

14 (c) THE ONSET OF INTELLECTUAL AND ADAPTIVE DEFICITS DURING
15 THE DEVELOPMENTAL PERIOD.

16 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO:

17 (a) COMPREHEND AND APPRECIATE THE CHARGES OR ALLEGATIONS
18 AGAINST HIM OR HER; OR

19 (b) UNDERSTAND THE ADVERSARIAL NATURE OF THE
20 PROCEEDINGS, INCLUDING THE ROLE OF THE JUDGE, DEFENSE COUNSEL,
21 PROSECUTING ATTORNEY, GUARDIAN AD LITEM OR COURT-APPOINTED
22 SPECIAL ADVOCATE, OR WITNESSES, AND BE ABLE TO ASSIST IN HIS OR HER
23 DEFENSE; OR

24 (c) COMPREHEND AND APPRECIATE THE CONSEQUENCES THAT MAY
25 BE IMPOSED BY THE COURT OR RESULT FROM THE PROCEEDINGS.

26 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
27 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
28 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH

1 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
2 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
3 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
4 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
5 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
6 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
7 A MENTAL DISABILITY.

8 (14.3) "RESTORATION HEARING" MEANS A HEARING TO DETERMINE
9 WHETHER A DEFENDANT WHO HAS PREVIOUSLY BEEN DETERMINED TO BE
10 INCOMPETENT TO PROCEED HAS ACHIEVED OR IS RESTORED TO
11 COMPETENCY.

12 **SECTION 2.** In Colorado Revised Statutes, 19-2-1301, **amend**
13 (2) as follows:

14 **19-2-1301. Mental incompetency to proceed - effect - how and**
15 **when raised.** (2) A juvenile shall not be tried or sentenced if the juvenile
16 is incompetent to proceed, as defined in section ~~16-8.5-101 (11)~~, C.R.S.
17 19-2-103 (9.5), at that stage of the proceedings against him or her.

18 **SECTION 3.** In Colorado Revised Statutes, 19-2-1302, **amend**
19 (3), (4) (a), and (4) (c) as follows:

20 **19-2-1302. Determination of incompetency to proceed.** (3) If
21 the question of a juvenile's incompetency to proceed is raised after a jury
22 is impaneled to try the issues raised by a plea of not guilty or after the
23 court as the finder of fact begins to hear evidence and the court
24 determines that the juvenile is incompetent to proceed or orders the
25 juvenile referred for a competency examination, the court may declare a
26 mistrial. If the court declares a mistrial under these circumstances, the
27 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
28 regard to the charges at issue. The juvenile may be tried on, and sentenced

1 if adjudicated for, the same charges after he or she has been found to ~~be~~
2 ACHIEVE OR BE restored to competency.

3 (4) (a) If the court orders a competency evaluation, the court shall
4 order that the competency evaluation be conducted in the least-restrictive
5 environment, INCLUDING HOME OR COMMUNITY PLACEMENT IF
6 APPROPRIATE, taking into account the public safety and the best interests
7 of the juvenile.

8 (c) The competency evaluation ~~shall~~ MUST, at a minimum, include
9 an opinion regarding whether the juvenile is ~~competent~~ INCOMPETENT to
10 proceed as defined in section ~~16-8.5-101 (4)~~, C.R.S. 19-2-103 (9.5). If the
11 evaluation concludes the juvenile is incompetent to proceed, the
12 evaluation ~~shall~~ MUST include a recommendation as to whether the
13 juvenile may ACHIEVE OR be restored to competency and identify
14 appropriate services to restore the juvenile to competency.

15 **SECTION 4.** In Colorado Revised Statutes, 19-2-1304, **amend**
16 (1) and (3) as follows:

17 **19-2-1304. Restoration to competency.** (1) The court may order
18 a restoration hearing, as defined in section ~~16-8.5-101 (13)~~, C.R.S.
19 19-2-103 (14.3), at any time on its own motion, on motion of the
20 prosecuting attorney, or on motion of the juvenile. The court shall order
21 a hearing if a mental health professional who has been treating the
22 juvenile files a report certifying that the juvenile is ~~mentally~~ competent
23 to proceed.

24 (3) At the hearing, the court shall determine whether the juvenile
25 HAS ACHIEVED OR is restored to competency.

26 **SECTION 5.** In Colorado Revised Statutes, 19-2-1305, **amend**
27 (1) and (2) as follows:

28 **19-2-1305. Procedure after hearing concerning restoration to**

1 **competency.** (1) If a juvenile is found to ~~be~~ HAVE ACHIEVED OR BEEN
2 restored to competency after a hearing, as provided in section 19-2-1304,
3 or by the court during a review, as provided in section 19-2-1303 (2), the
4 court shall resume or recommence the trial or sentencing proceeding or
5 order the sentence carried out. The court may credit any time the juvenile
6 spent in confinement or detention while incompetent against any term of
7 commitment imposed after ACHIEVEMENT OF OR restoration to
8 competency.

9 (2) If the court determines that the juvenile remains ~~mentally~~
10 incompetent to proceed and the delinquency petition is not dismissed, the
11 court may continue or modify any orders entered at the time of the
12 original determination of incompetency or enter any new order necessary
13 to facilitate the juvenile's ACHIEVEMENT OF OR restoration to ~~mental~~
14 competency.

15 **SECTION 6. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, and safety.