

Final
STAFF SUMMARY OF MEETING

TREATMENT OF PERSONS WITH MENTAL ILLNESS IN THE CRIMINAL JUSTICE
SYSTEM

Date: 09/12/2014

ATTENDANCE

Time: **09:02 AM to 11:12 AM**

King	E
Rosenthal	X
Tochtrop	X
Wright	X
Newell	X
Labuda	X

Place: HCR 0112

This Meeting was called to order by
Representative Labuda

This Report was prepared by
Amanda King

X = Present, E = Excused, A = Absent, * = Present after roll call

Bills Addressed:	Action Taken:
Introductions and Welcomes	Witness Testimony and/or Committee Discussion Only
Consideration of Proposed Legislation	Recommendation(s) Approved
Discussion of Advisory Task Force Activities	Witness Testimony and/or Committee Discussion Only
Presentation on Housing Issues	Witness Testimony and/or Committee Discussion Only

09:02 AM -- Introductions and Welcomes

Representative Labuda called the meeting to order. A quorum was present. The committee was provided with a meeting agenda, a memorandum providing an overview of the committee and its charge, and a list of current advisory task force members (Attachments A, Attachment B, and Attachment C).

Susan Walton, Chair of the Task Force Concerning the Treatment of Persons with Mental Illness who are Involved in the Criminal and Juvenile Justice Systems (MICJS), introduced herself to the committee, and requested that committee first take up the proposed legislation because one of the presenters needed to leave early.

09:05 AM -- Consideration of Proposed Legislation

Michele Manchester, MICJS task force Co-Chair, and Colorado Mental Health Institute at Pueblo, discussed the background of Bill 1 (Attachment D). She stated that there were still some concerns about the proposed legislation, and specifically that representatives of the therapeutic and legal communities had concerns about the definitions that are included in the bill. The concerns included what specific things the evaluators would be accessing and whether the definitions would result in a large increase in the number of evaluations requested. Representative Labuda asked why the bill does not refer to the Diagnostic and Statistical Manual of Mental Disorders, 5th Edition (DSM-5).

09:08 AM

Sheri Danz, Office of the Child's Representative, discussed her involvement with the MICJS task force and the work group that had been involved in drafting Bill 1. She stated that the Office of the Child's Representative does support the bill in its current form. Ms. Danz responded to the question about why bill does not directly reference the DSM-5 and discussed state law concerning adult competency. She stated that the bill updates definitions to be more consistent with the DSM-5, but does not include specific diagnoses from the DSM-5. She discussed how the bill updates definitions to be more reflective of the DSM-5. She stated that the charge of the work group was to develop a definition of "incompetent to proceed" that is specific to juveniles, since currently the juvenile statute concerning incompetency refers to the definition in the adult competency statutes. Ms. Danz discussed how the definition of "incompetent to proceed" was arrived at by the work group and MICJS task force. She discussed the inclusion of mental capacity in the definitions included in the bill.

09:15 AM

Ms. Manchester responded to questions about the evaluations that would be conducted and who would be doing the evaluations for juveniles. She stated they are usually conducted by either a psychologist or a psychiatrist, and they are used to determine whether the juvenile can assist his or her attorney with the court proceedings. In response to a question, Ms. Manchester stated that the juveniles are often seen by private practitioners and are not referred to the Colorado Mental Health Institute at Pueblo. Senator Tochtrop asked whether the bill should specify who should be conducting the evaluations. Ms. Danz discussed the need to address restoration services for juveniles in the future. She discussed why intellectual disability was removed from the list of determining factors on page 5, lines 17 and 18 of the draft. In response to a questions, Ms. Danz stated that representatives of the district attorneys still have concerns about the bill in its current form.

09:25 AM

Representative Labuda suggested that the potential bill sponsors work with the district attorneys to see if the bill can be amended to address their concerns. Senator Newell discussed establishing parity between juvenile and adults concerning competency issues. Representative Rosenthal asked whether a compromise on the bill could be achieved. Ms. Danz discussed the legislative declaration that was added to the bill to help achieve more consensus, but the language in the legislative declaration may need to be amended. She stated that the Attorney General's Office has concerns about the definition of "mental capacity" in the bill. Ms. Danz expressed concerns about changing certain language in the bill to address some of the concerns from the current opposition, because it may not effectuate the desired change of making the statutes that apply to juveniles concerning competency distinct from those for adults. Ms. Danz stated that the Department of Human Services representatives have advised the task force that the language on page 6, lines 7 and 8, concerning conducting the evaluations in home or community placements will result in a fiscal note. Ms. Danz referenced adolescent brain development research. Representative Rosenthal asked about the intent of adding the legislative declaration to the proposed legislation.

09:35 AM -- Matthew Durkin, Colorado Attorney General's Office, testified on the proposed bill draft. He discussed the position of the Attorney General's Office on the bill, and stated that the prosecutors are concerned that the definitions could be used to find all juveniles intellectually disabled. He discussed the role of a guardian ad litem in a court proceeding involving a juvenile and the other individuals that may be involved in such a proceeding. Mr. Durkin and Ms. Danz responded to questions about the concerns regarding the definition of "intellectual disability" in the bill. Mr. Durkin discussed language on page 3, line 7 to 13 of the draft bill that references deficits in adaptive functioning.

09:46 AM

Representative Wright discussed the proposed legislation. Mr. Durkin responded to questions about the definition of "mental capacity" in the draft bill and the standard it may establish. Senator Newell asked whether compromise language could be arrived at on the "mental capacity" definition, to which Mr. Durkin responded. Ms. Danz responded to a question about how other states are addressing mental capacity for juveniles. Mr. Durkin responded to questions about how the legislation would be applied practically in court proceedings. Mr. Durkin discussed issues concerning restoring juveniles to competency. Ms. Danz discussed when the issue of competency would be raised and the juvenile competency procedures that are currently in place that are not being amended by the draft bill. She reiterated that the work group does feel restoration is an issue that needs to be reviewed. Ms. Danz discussed the time period that it take to restore a juvenile to competency. She discussed diversion programs for juveniles and the possible consequences of certain pleas.

10:04 AM -- Gina Shimeall, criminal defense attorney, provided a historical perspective on the task force's work concerning juvenile competency issues. She discussed the different perspectives of prosecutors and defense attorneys concerning juvenile competency issues. Ms. Shimeall stated that anybody who is a party to the case can raise an issue of competency. She discussed how Colorado law concerning juvenile competency compares to other states. In response to a question, Ms. Shimeall referenced the expertise of Dr. Tom Grisso and Dr. Richard Martinez on the issue of competency. Ms. Walton stated that the current statutes address the qualification of an evaluator and that the bill does not seek to change those qualifications. Ms. Walton offered to set up a meeting with Dr. Martinez, Dr. Grisso, and the committee members. Ms. Walton reiterated that there is not consensus about the bill from the task force, but that she wanted to have the committee's input on the bill.

10:17 AM

Senator Newell commented on about the bill and the need for possible amendments to the bill after it is introduced. Senator Newell requested research from Legislative Council Staff about comparative language from other states on juvenile competency. Ms. Danz urged the continued involvement of the work group on any amendments to the bill.

BILL:	Consideration of Proposed Legislation	
TIME:	10:20:50 AM	
MOVED:	Newell	
MOTION:	Moved that Bill 1 (Attachment D) be forwarded by the MICJS Legislative Oversight Committee to Legislative Council. The motion passed on a vote of 5-0, with one member excused.	
SECONDED:	Rosenthal	
		VOTE
	King	Excused
	Rosenthal	Yes
	Tochtrop	Yes
	Wright	Yes
	Newell	Yes
	Labuda	Yes
YES: 5 NO: 0 EXC: 1 ABS: 0 FINAL ACTION: PASS		

''

10:21 AM

Senator Tochtrop made comments about the mission of the MICJS Legislative Oversight Committee. Representative Labuda identified Representative Rosenthal as the House sponsor and Senator Newell as the Senate sponsor, and stated that the bill would start in the House. The committee confirmed that the bill should include a safety clause.

10:24 AM -- Discussion of Advisory Task Force Activities

Ms. Walton provided an update to the committee on the MICJS task force's recent activities. She stated that a lot of work had been done on Bill 1 (Attachment D). Ms. Walton said the task force is working on the issue of medication consistency and that Dr. Martinez is the task force's representative on the Behavioral Health Transformation Council's work group on the issue. She assured the committee that efforts are not being duplicated by the two entities on the issue.

Ms. Walton explained the steps the task force is taking to review the issue of staff safety, including understanding what training is currently happening through the various law enforcement organizations and how that training can be improved and expanded. She discussed the importance of this issue for rural areas due to gaps in training. Ms. Walton stated that Sheriff Rebecca Spiess, who is a task force member, is organizing some presentations on the issue for the task force. Ms. Walton referenced the presentation that was made at the August 21 task force meeting by the Boulder County Sheriff's Office on staff safety issues.

Ms. Manchester responded to questions about the efforts that are being made concerning medication consistency. She stated that often times medications are changed when patients are transferred between facilities. Ms. Manchester discussed the leadership by the Behavioral Health Transformation Council on this issue and the partnering that has occurred with the task force. She referenced the survey that was sent to various correctional facilities by the Behavioral Health Transformation Council, and stated that the results of the survey are currently being compiled. Ms. Walton commented on the effect the Affordable Care Act is having on the medication consistency issue, as well as the efforts by the Regional Care Collaborative Organizations to assist certain patients.

Ms. Walton discussed the efforts of the task force to address data collection. She discussed efforts in other states to connect Medicaid data with criminal justice and juvenile justice data. She referenced a grant that was received by the Department of Health Care Policy and Financing from the Brookings Institution for a comprehensive data dashboard. Ms. Shimeall discussed medication consistency, how medications are dictated by the insurance company of the jails, and how prescriptions are filled. She discussed the need to provide bridging medication when individuals are released from jail and how those prescriptions are filled, especially in non-metro areas. She responded to questions about whether judges can order certain medications be provided. Representative Labuda discussed charging the juvenile competency work group with studying restoration.

10:43 AM -- Housing Issues

Ms. Walton stated that Boulder County was the first in the nation to combine the Division of Housing with the Division of Human Services. She discussed how this merger has been advantageous, including how it allows various funding sources to be better utilized.

10:46 AM

Pat Coyle, Division of Housing in the Department of Local Affairs, presented on the efforts of the division to address housing, especially for persons involved in the criminal justice system. He provided an outline of his presentation (Attachment E). He discussed what stable housing provides to an individual, including employment and education possibilities. He discussed the Colorado Second-Chance Act Housing and Reentry Program (C-SCHARP). He stated that the U.S. Department of Justice provided the Colorado Department of Local Affairs grants in 2010 and 2013 for C-SCHARP for intensive supportive services for previous offenders with co-occurring substance abuse and mental health disorders. These services include the Assertive Community Treatment (ACT) model. Sixty individuals were enrolled in C-SCHARP under the first grant, and an additional 30 individuals were enrolled under the second grant. Mr. Coyle discussed recidivism reduction through C-SCHARP and the potential cost savings to various state agencies. He discussed the challenges of finding neighborhoods, landlords, and property managers that are willing to allow previous offenders to live in their communities. He discussed how the Division of Housing partners with the mental health providers, the human services systems, and the parole system to provide supportive services to individuals so that landlords do not have to provide those services.

10:52 AM

Mr. Coyle responded to questions about the success of placing people discharged from jails and prisons in neighborhood housing. He stated that felons can be housed in public housing. He outlined the offenses that federal law prohibits someone from being living in public housing, which are producing methamphetamines, arson, or certain sex offenses. Mr. Coyle said that local housing authorities can place other restrictions on their properties. Mr. Coyle responded to questions about what is happening in rural areas. He referenced Southwest Transitions in Durango that provides transitional housing and services for homeless offenders on parole. He discussed the importance of connecting housing programs with job programs. Ms. Walton discussed expanding existing programs that are working, and possibly expanding budgets for these successful programs. Senator Newell asked Ms. Walton to advise her and Representative Rosenthal about potential budget requests related to housing they may need to advocate for during the budget discussions. Mr. Coyle discussed the mental health vouchers. Ms. Walton discussed more effectively using the various moneys that are being used to house individuals with mental illness who have been involved in the criminal justice system.

11:03 AM

Ms. Shimeall discussed previous housing incentives legislation proposed by the task force, an apartment building purchased by the Arapahoe/Douglas Mental Health Network apartment, and the ACT model.

11:08 AM

The committee thanked the task force for the work that is being done. Senator Newell thanked the members who are leaving the committee. The committee members made concluding remarks about the task force. The committee adjourned.

AGENDA

Legislative Oversight Committee Concerning the Treatment of Persons With Mental Illness in the Criminal and Juvenile Justice Systems

Friday, September 12, 2014
9:00 a.m.

House Committee Room 0112
State Capitol Building

Call to Order

I. Introductions and Welcomes

- *Representative Jeanne Labuda, Chair, Legislative Oversight Committee*

II. Discussion of Advisory Task Force Activities

- *Susan Walton, Park County Department of Human Services, Task Force Chair*

III. Presentation on Housing Issues

- *Pat Coyle, Director of the Division of Housing, Department of Local Affairs, and Task Force Member*

IV. Consideration of Proposed Legislation

- *Bill 1 - Concerning Competency to Proceed for Juveniles Involved in the Juvenile Justice System*

V. Public Comment

Adjourn



**Colorado
Legislative
Council
Staff**

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MEMORANDUM

June 4, 2014

TO: Members of the Legislative Oversight Committee and Task Force Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems

FROM: Amanda King, Research Analyst, 303-866-4332

SUBJECT: Overview of the Legislative Oversight Committee and Task Force Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems

Summary

This memorandum provides an overview of the 2014 membership of the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems (MICJS), the charge of the MICJS committee, the charge of the MICJS task force, the bill limits, the request deadlines applicable to the legislative oversight committee, and information regarding legislative oversight committee staff and the legislative oversight committee website.

2014 Committee Membership

The six members of the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems (MICJS) are appointed by legislative leadership as outlined in state law. The chair and vice-chair are designated by either the President of the Senate or the Speaker of the House of Representatives on an alternating annual basis. Typically, the appointments of chair and vice-chair are made at the beginning of session. The following is the list of 2014 MICJS legislative oversight committee members:

<i>Representative Jeanne Labuda,</i> <i>Chair</i>	<i>Senator Linda Newell,</i> <i>Vice-Chair</i>
Representative Paul Rosenthal	Senator Steve King
Representative Jared Wright	Senator Lois Tochtrop

Meeting Dates

The MICJS legislative oversight committee last met on March 21, 2014. Further meeting dates have yet to be determined. The MICJS legislative oversight committee is statutorily required to meet at least three times annually. However, the MICJS legislative oversight committee has not met this requirement since 2007.

The MICJS legislative oversight committee members may receive *per diem* and reimbursement for attending meetings held outside of the legislative session.

Committee Details and Charge

The six-member MICJS legislative oversight committee was created to oversee the work of the 32-member advisory task force. According to Colorado law, four members of the MICJS task force are appointed by the Chief Justice of the Supreme Court, and the remaining 28 members are appointed by the chair and vice-chair of the MICJS legislative oversight committee. However, the recent practice has been for the chair of the MICJS task force to find people who are willing to serve as the remaining 28 task force members. In making the appointments to the task force, the appointing authorities should ensure the task force membership reflects the ethnic, cultural, and gender diversity of the state, and includes representation of all areas of the state. Senate Bill 14-021 reauthorized both the MICJS legislative oversight committee and the task force until July 1, 2020.¹

The MICJS legislative oversight committee reviews the MICJS task force's findings and may recommend legislative proposals. The MICJS legislative 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 MICJS task force. The MICJS task force recommended the following two bills to the MICJS legislative oversight committee during the 2013 interim:

- **Senate Bill 14-021**, which was enacted, 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.
- **House Bill 14-1025**, which was postponed indefinitely, would have created 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.

Task Force Detail and Charge

Charge. The MICJS task force is directed to examine 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. On and after July 1, 2014, the task force is required to study the following issues:

- housing for a person with mental illness after his or her release from the criminal or juvenile justice system;
- medication consistency, delivery, and availability;
- best practices for suicide prevention, within and outside of correctional facilities;
- treatment of co-occurring disorders;

¹Section 18-1.9-101, *et. seq.*, C.R.S.

- awareness of and training for enhanced staff safety, including expanding training opportunities for providers; and
- enhanced data collection related to issues affecting persons with mental illness in the criminal and juvenile justice systems.

Meeting requirements. The authorizing legislation requires the MICJS task force to meet at least six times per year. The current practice of the task force is to hold meetings on the third Thursday of each month. To fulfill its charge, the MICJS task force is required to communicate with and obtain input from groups throughout the state affected by the issues under consideration. The MICJS 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.

Reporting and legislation requirements. The MICJS task force must submit a report to the MICJS legislative oversight committee by **October 1** of each year. The report must identify:

- issues to be studied in upcoming MICJS task force meetings and their respective prioritization;
- findings and recommendations about issues previously considered by the MICJS task force; and
- legislative proposals that identify the policy issues involved, the agencies responsible for implementing the changes, and the funding sources required for implementation.

Committee Recommendations to Legislative Council

Bill limits. The MICJS legislative oversight committee may report up to five bills or other measures to the Legislative Council, unless the Executive Committee of the Legislative Council approves a greater number. Bills approved by the Legislative Council do not count against a member's five-bill limit for the regular legislative session.²

Legislative Council review. The Legislative Council must meet by **October 15, 2014**, to approve draft legislation. Bills not approved by Legislative Council may be introduced into the regular session, but such bills will count against a member's five-bill limit. Interim committee bills must have prime sponsors prior to consideration by the Legislative Council.³ Legislative Council Staff will apprise the committee of the date of the Legislative Council meeting once it is confirmed.

Requirements for bill drafts. Bills should be requested and must be approved at a public meeting of the committee. Bills generally must be finalized two weeks prior to the Legislative Council meeting. The Office of Legislative Legal Services generally requests that bills be requested at least 21 days prior to the meeting at which the committee will approve legislation. Therefore, any meeting at which the committee makes requests for legislation should be held no later than **September 10, 2014**, and the meeting at which the committee approves any draft legislation should be held no later than **October 1, 2014**. However, since the general practice of the committee is to consider legislative proposals from the MICJS task force, the legislation is typically drafted in advance of a meeting of MICJS legislative oversight committee. Thus, only one MICJS legislative oversight committee meeting is required to be held by **October 1, 2014**, unless the MICJS legislative oversight committee would like to make changes to the proposed legislation prior to taking a final vote on the proposals.

² Joint Rule 24 (b) (1) (D).

³ Joint Rule 24 (b) (1) (E).

Committee Staff and Website

The Legislative Council Staff is charged with assisting the MICJS legislative oversight committee in its activities. Additionally, the Legislative Council Staff acts as a liaison between the MICJS legislative oversight committee and the MICJS task force. If you have any questions or would like any additional information about the MICJS legislative oversight committee or issues concerning the committee, please contact:

Amanda King, Research Analyst, amanda.king@state.co.us, 303-866-4332.

The MICJS task force provides its own support staff to prepare any minutes, reports, or other documents.

Additional information about the MICJS legislative oversight committee and the task force can be found on the committee's website at: <http://www.colorado.gov/lcs/MICJS>.

MICJS Advisory Task Force Members

State or Private Agency	Representative(s) and Affiliation(s)	
Department of Public Safety (1)	Peggy Heil	Division of Criminal Justice
Department of Corrections (2)	Kerry Pruett	Mental Health Programs Administrator
	Walt Pesterfield	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	Park 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)	Dave Young	17th Judicial District Attorney's Office
Criminal Defense Bar (2)	Karen Knickerbocker	Office of the Colorado State Public Defender
	Gina Shimeall	18th Judicial District Mental Health Court
Practicing Mental Health Professionals (2)	Fernando Martinez	San Luis Valley Mental Health Center
	vacant	
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.	Colorado Office of Behavioral Health/UCDSOM
Members of the Public (3)	vacant	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
Office of the Child's Representative (1)	Sheri Danz	Deputy Director
Office of the Alternate Defense Counsel (1)	Kathy McGuire	Private attorney
Colorado Department of Labor and Employment (1)	Patrick Teegarden	Director of Policy and Legislation
Judicial Branch (4)	Brendy Rice	Division of Planning and Analysis
	Judge K.J. Moore	1st Judicial District
	Susan Colling	Juvenile Programs Coordinator, Probation Services
	Tobin Wright	Chief Probation Officer in the 16th Judicial District

Updated: July 31, 2014

**First Regular Session
Seventieth General Assembly
STATE OF COLORADO**

DRAFT 8.29.14

BILL 1

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LLS NO. 15-0058.01 Jane Ritter x4342

INTERIM COMMITTEE BILL

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

A BILL FOR AN ACT

101 **CONCERNING COMPETENCY TO PROCEED FOR JUVENILES INVOLVED IN**
102 **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 Treatment of Persons with Mental Illness Who Are Involved in the Criminal Justice Systems. The bill establishes a juvenile-specific definition of "incompetent to proceed" for juveniles involved in the juvenile justice system, as well as specific definitions for "developmental disability",

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"intellectual disability", "mental capacity", and "mental disability" when used in this context. The bill clarifies the procedures for establishing incompetency, as well as for establishing the restoration of competency.

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 DOES
16 NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH HIS OR HER
17 ATTORNEY WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING
18 IN ORDER TO ASSIST IN THE DEFENSE OR THAT HE OR SHE DOES NOT HAVE
19 A RATIONAL AS WELL AS A FACTUAL UNDERSTANDING OF THE
20 PROCEEDINGS AGAINST HIM OR HER.

21 (9.6) "INTELLECTUAL DISABILITY" MEANS A DISORDER WITH ONSET
22 DURING THE DEVELOPMENTAL PERIOD THAT INCLUDES BOTH
23 INTELLECTUAL AND ADAPTIVE FUNCTIONING DEFICITS IN CONCEPTUAL,
24 SOCIAL, AND PRACTICAL DOMAINS AND INCLUDES THE FOLLOWING

**First Regular Session
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DRAFT 8.29.14

BILL 1

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23 INTELLECTUAL AND ADAPTIVE FUNCTIONING DEFICITS IN CONCEPTUAL,
24 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 A
8 FAILURE TO MEET DEVELOPMENTAL AND SOCIO-CULTURAL STANDARDS
9 FOR 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 MEET ALL OF THE FOLLOWING CRITERIA:

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

20 (b) UNDERSTAND THE ADVERSARIAL NATURE OF THE
21 PROCEEDINGS, INCLUDING THE ROLE OF THE JUDGE, THE DEFENDANT'S
22 ATTORNEY, THE PROSECUTING ATTORNEY, THE DEFENDANT'S GUARDIAN
23 AD LITEM, IF APPLICABLE, OR WITNESSES, AND BE ABLE TO ASSIST IN HIS
24 OR HER DEFENSE;

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

27 (d) DISCLOSE TO COUNSEL FACTS PERTINENT TO THE PROCEEDINGS

1 AT ISSUE;

2 (e) DISPLAY APPROPRIATE COURTROOM BEHAVIOR; AND

3 (f) TESTIFY RELEVANTLY.

4 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
5 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
6 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH
7 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
8 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
9 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
10 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,
11 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
12 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
13 A MENTAL DISABILITY.

14 (14.3) "RESTORATION TO COMPETENCY HEARING" MEANS A
15 HEARING TO DETERMINE WHETHER A DEFENDANT WHO HAS PREVIOUSLY
16 BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS ACHIEVED OR IS
17 RESTORED TO COMPETENCY.

18 **SECTION 2.** In Colorado Revised Statutes, **add** 19-2-1300.2 as
19 follows:

20 **19-2-1300.2. Legislative declaration.** (1) THE GENERAL
21 ASSEMBLY FINDS AND DECLARES THAT:

22 (a) THE JUVENILE JUSTICE SYSTEM IS CIVIL IN NATURE AND
23 FOCUSED ON TREATMENT RATHER THAN PUNISHMENT;

24 (b) IT IS CRUCIAL TO AVOID THE NEGATIVE CONSEQUENCES OF
25 PROSECUTION WHENEVER NECESSARY AND POSSIBLE, AND TO PROMOTE
26 MENTAL HEALTH TREATMENT PATHWAYS FOR JUVENILES IN THE JUVENILE
27 JUSTICE SYSTEM;

1 (c) JUVENILES DIFFER IN SIGNIFICANT AND SUBSTANTIVE WAYS
2 FROM ADULTS; THEREFORE, DIFFERENT STANDARDS FOR COMPETENCY ARE
3 NECESSARY FOR JUVENILES AND ADULTS;

4 (d) JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO
5 PROCEED UNTIL SUCH TIME AS THEY ARE FOUND INCOMPETENT TO
6 PROCEED THROUGH A FORMAL COMPETENCY EVALUATION; AND

7 (e) AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
8 WITHOUT A FINDING THAT THE YOUTH ACTUALLY LACKS THE RELEVANT
9 CAPACITIES FOR COMPETENCE.

10 **SECTION 3.** In Colorado Revised Statutes, 19-2-1301, **amend**
11 (2) as follows:

12 **19-2-1301. Incompetency to proceed - effect - how and when**
13 **raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is
14 incompetent to proceed, as defined in section ~~16-8.5-101 (11)~~, C.R.S.
15 19-2-103 (9.5), at that stage of the proceedings against him or her. A
16 DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION OF
17 DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL
18 CAPACITY.

19 **SECTION 4.** In Colorado Revised Statutes, 19-2-1302, **amend**
20 (3), (4) (a), and (4) (c) as follows:

21 **19-2-1302. Determination of incompetency to proceed.** (3) If
22 the question of a juvenile's incompetency to proceed is raised after a jury
23 is impaneled to try the issues raised by a plea of not guilty or after the
24 court as the finder of fact begins to hear evidence and the court
25 determines that the juvenile is incompetent to proceed or orders the
26 juvenile referred for a competency examination, the court may declare a
27 mistrial. If the court declares a mistrial under these circumstances, the

1 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
 2 regard to the charges at issue. The juvenile may be tried on, and sentenced
 3 if adjudicated for, the same charges after he or she has ACHIEVED OR been
 4 ~~found to be~~ restored to competency.

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

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

18 **SECTION 5.** In Colorado Revised Statutes, 19-2-1304, **amend**
 19 (1) and (3) as follows:

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

27 (3) At the RESTORATION TO COMPETENCY hearing, the court shall

1 determine whether the juvenile HAS ACHIEVED OR is restored to
2 competency.

3 **SECTION 6.** In Colorado Revised Statutes, 19-2-1305, amend
4 (1) and (2) as follows:

5 **19-2-1305. Procedure after restoration to competency hearing.**

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

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

20 **SECTION 7. Safety clause.** The general assembly hereby finds,
21 determines, and declares that this act is necessary for the immediate
22 preservation of the public peace, health, and safety.

**State and Local examples Supportive Housing Programs
for ex-offenders with mental health disorders**

September 12, 2014

1. **Colorado Second-Chance Act Housing & Reentry Program (C-SHARP):** Supportive Housing Program funded by the U.S. Department of Justice (DOJ) is administered by the Colorado Department of Local Affairs (DOLA). DOJ Funding was awarded in 2010 (C-SHARP 1) and 2013 (C-SHARP 2) for intensive supportive services, including an Assertive Community Treatment (ACT) model.

- Key Partners: Colorado Department of Corrections (DOC), and three Community Mental Health Centers: Denver, Aurora, and Arapahoe/Douglas Counties
- Division of Housing matches the DOJ funds with two years of federally funded rental assistance for each participant

C-SHARP 1- enrollment target of 60 ex-offenders with co-occurring substance abuse and mental health disorders and demonstrated the following results:

- Recidivism reduction: only **27%** of C-SHARP participants were had their parole revoked or were arrested for a new crime; **well below the estimated recidivism rate for this population without housing and services of 52%**
- **79%** of C-SHARP participants maintained their housing
- **23%** of C-SHARP participants obtained employment

C-SHARP 2- enrollment of 30 ex-offenders (less federal funding available) with co-occurring substance abuse and mental health disorders

- DOH has partnered with the Corporation for Supportive Housing (CSH), Enterprise Community Partners, and the Mental Health Center of Denver to commission a program evaluation specifically focused on capturing the cost-savings to the state generated by this supportive housing intervention. The evaluation will focus on the feasibility of this project for a "Pay for Success"/Social Impact Bond model
- This evaluation will commence in January, 2015, partnering with an independent third party evaluator
- C-SHARP 2 is currently in the start-up phase, as new participants began paroling into the program in June, 2014 and the project is enrolling 6-9 participants per month
- C-SHARP is also a model under consideration for a supportive housing pilot between DOLA, CDHS, and DOC; there is interest in scaling the intervention statewide.

2. **Denver Frequent User Service Enhancement (FUSE) Program:** The FUSE model is a supportive housing program designed to help communities break the cycle between incarceration and homelessness among individuals with complex behavioral health

challenges (often co-occurring with substance abuse). This program in Denver is targeting the highest users of jails, homeless shelters, and other crisis services (e.g. emergency room, and detoxification services).

- FUSE increases housing stability and reduces recidivism as well as the use of multiple crisis services systems, resulting in public costs offsets.
- This program targets the top 500 users of the jail system in Denver with co-occurring substance abuse and mental health disorders and began with the first referral in the fall of 2011. To date:
 - 45 individuals have been referred to the program
 - 20 individuals are actively participating and housed
 - 5 individuals have graduated from the program

3. ***Southwest Transitions: Durango, CO:*** In 2013 DOLA funded the acquisition and rehab (with Housing Development Grant funds) of a 14 unit building providing Transitional Housing and services for homeless ex-offenders on parole.

- Phase II is planned for 2015-16 to add an additional site and 10-12 units for the same population
- Participants housed for up to 12 months and pay 30% of their monthly income towards rent
- Supportive services provided by staff and volunteers include: job training and financial literacy; DOC provides case management and access to mental health services via Community Parole Officers
- This project is the only supportive housing for homeless ex-offenders in Southwest Colorado, where approximately 240 individuals are paroled each year, and up to 30% are homeless