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

The Colorado Legislative Council
Research Publication No. 618
December 2012

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

Members of the Committee

Representative Cindy Acree, Chair
Senator Betty Boyd, Vice-Chair

Senator Lois Tochtrop
Senator Steve King
Representative Kathleen Conti
Representative Jeanne Labuda

Legislative Council Staff

Hillary Smith, Research Associate
Kerry White, Fiscal Analyst
Bill Zepernick, Fiscal Analyst

Office of Legislative Legal Services

Jane Ritter, Senior Staff Attorney

December 2012

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

ROOM 029 STATE CAPITOL
DENVER, COLORADO 80203-1784
E-mail: lcs.ga@state.co.us
303-866-3521 FAX: 303-866-3855 TDD: 303-866-3472

December 2012

To Members of the Sixty-eighth 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.

The legislative oversight committee did not recommended any bills to the Legislative Council for the 2013 legislative session.

Sincerely,

/s/ Representative Frank McNulty
Chairman

Table of Contents

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 concerning the continued examination of the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems 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. However, pursuant to Senate Bill 10-213, regarding the suspension of 2010 interim committees, neither the committee nor the task force met during the 2010 interim. The committee is set to repeal on July 1, 2015.

A summary of the work accomplished by these groups from 1999 through 2011 is provided in the annual reports of the 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 committee reviews the task force's findings and may recommend legislative proposals. In calendar years 2005 through 2014, the 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, except for 2011, regarding recommended legislation resulting from the work of the task force. The task force did not recommend any legislation to the oversight committee during the 2012 interim.

The Advisory Task Force

The legislative oversight committee is 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 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.

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. Between July 1, 2009, and July 1, 2014, the task force is required to study 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.

Subcommittees. The task force currently oversees five subcommittees that undertake an in-depth study of certain issues, including:

- medication, health care, and public benefits;
- medication consistency;
- juvenile justice;
- administrative segregation; and
- issues related to the plea of not guilty by reason of insanity.

At the monthly meetings of the task force, members of the subcommittees provide an update on their work. Subcommittees may be created and dissolved at any time as necessary, and include both members and nonmembers 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 on or before August 1 of each year. In addition, the task force must submit a written report to the 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 did not recommend any legislation to the oversight committee during the 2012 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 task force.

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)	Joan Shoemaker	Clinical Services
	Tim Hand	Adult Parole, Community Corrections, Youthful Offender System
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
	Caren Leaf	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	Jefferson County Department of Human Services
Department of Education (1)	Michael Ramirez	School Improvement and Turnaround
State Attorney General's Office (1)	Janet Drake	Senior Assistant Attorney General
District Attorneys (1)	Bruce Langer	Boulder County District Attorney's Office
Criminal Defense Bar (2)	Kathleen McGuire, Chair	Colorado Office of the State Public Defender
	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)	Gregory Kellermeyer, 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 2012 to monitor and examine the work, findings, and recommendations of the task force. The committee also considered presentations concerning the provision of mental health services in the criminal justice system and an update on Senate Bill 08-066, concerning the suspension of Medicaid benefits for confined persons. Finally, the committee received an update on the implementation of Senate Bill 09-006, concerning county jail identification units. The task force did not recommend any legislation for the committee's consideration for introduction during the 2013 legislative session.

The Provision of Mental Health Services in the Criminal Justice System

The legislative oversight committee heard a presentation from a representative of the Colorado Behavioral Health Council and the Community Outreach Center concerning the provision of mental health services in the criminal justice system. The committee discussed services provided by the Colorado Department of Corrections (DOC) and the DOC's partnership with community mental health centers. The presentation also described the DOC's work on the Evidence-Based Practice Implementation for Capacity (EPIC) Project to provide statewide training to law enforcement officers concerning mental health first aid. Discussion then turned to the use of Crisis Intervention Team (CIT) Training to assist law enforcement agencies in their response to individuals who may have mental illnesses. In its discussions, the committee focused on the availability of bed space at community mental health centers and the obstacles to expanding this bed space, including a lack of funding and difficulties finding bed space for people who do not have insurance. Later conversation considered the effect of federal health care reform on the provision of mental health services for those involved in the criminal justice system.

The Implementation of Senate Bill 08-006, Concerning Medicaid Suspension

In 2008, the legislative oversight committee, on the recommendation of the advisory task force, proposed Senate Bill 08-006. The bill, which was enacted, specifies that persons who are eligible for Medicaid just prior to their confinement in a jail, juvenile commitment facility, DOC facility, or Department of Human Services facility must have their Medicaid benefits suspended, rather than terminated, during the period of their confinement. The bill also clarified that juveniles retain Medicaid eligibility when held in a facility operated by or under contract with the Division of Youth Corrections or Department of Human Services if care within that facility qualifies for federal financial participation.

In January 2012, the advisory task force discussed concerns from legislators that SB 08-006 was not being implemented due to information technology costs and questions about federal law, including the effects of federal health care reform. In March 2012, the task force sought guidance from the legislative oversight committee concerning how to determine the status of the bill. The committee asked a representative from the Colorado Department of Health Care Policy and Financing (HCPF) to brief the committee on this issue.

In July 2012, a representative from HCPF explained that SB 08-006 has not been implemented due to several complicating factors. First, Colorado law requires that a person can only be eligible for Medicaid if there are available matching federal funds. However, federal policies do not permit Medicaid coverage while a person is incarcerated. In addition, federal policies

require that when a person becomes incarcerated, he or she be immediately redetermined for eligibility, because incarceration necessitates that a person be classified as a household of one.

The representative from HCPF further explained that Colorado has very few resources to cover single individuals on Medicaid. In 2009, House Bill 09-1293 implemented the hospital provider fee to help expand Medicaid to adults without dependent children and incomes of up to 100 percent of the federal poverty level. As of April 2012, the state began to enroll those single adults in Medicaid. However, because there is insufficient funding to cover all eligible individuals in this category, the state has implemented an enrollment cap of 10,000 persons. That enrollment cap has already been met, and the state has implemented a waiting list. If the state were to implement the provisions of SB 08-006 now, it would result in Medicaid slots being held for persons while they are incarcerated, negatively impacting the department's ability to serve other low-income adults.

Following this presentation, the committee discussed existing state programs that provide assistance to persons incarcerated in state facilities to apply for public benefits prior to their release. The representative from HCPF suggested that the issue will be resolved in January 2014, when the federal Patient Protection and Affordable Care Act will be fully implemented and the eligibility modernization project for the Colorado Benefits Management System is complete.

The Implementation of Senate Bill 09-006, Concerning County Jail Identification Units

In 2009, the legislative oversight committee, on the recommendation of the advisory task force, proposed Senate Bill 09-006. The bill directed the Colorado Department of Revenue (DOR) to create a new County Jail Mobile Identification Unit vehicle to travel to jails in Adams, Arapahoe, Boulder, Broomfield, Denver, Douglas, and Jefferson Counties and issue new identification cards to prisoners who lacked such cards, but had all proper documentation. The bill authorized the DOR to accept gifts, grants, and donations in order to implement the bill.

At its February 2012 meeting, the legislative oversight committee requested an update on the implementation of SB 09-006. Under SB 09-006, its provisions were only to be implemented if the DOR received sufficient gifts, grants, and donations to operate the unit by June 15, 2012, and notified the Revisor of Statutes of this fact by June 30, 2012. Because the department received no gifts, grants, or donations to fund the mobile identification unit, this notice was not transmitted, and the act was repealed.

Prior to the act's repeal, the DOR undertook a study to determine the exact costs of implementation, and concluded that it would need a total of at least $179,000, which includes:

- between $111,000 and $132,000 in initial equipment costs for a mobile identification unit housed in a bus, van, or trailer;
- approximately $56,000 in annual personal services costs to staff the unit; and
- between $12,000 and $24,000 annually for ongoing costs such as data circuits and wireless service.

The DOR also discussed the possibility of installing stationary units at various jails, and concluded that the cost to install one unit would range from $24,000 to $33,000, not including ongoing costs.

Advisory Task Force Activities

The advisory task force met monthly in 2012, during which it primarily focused on issues surrounding the plea of not guilty by reason of insanity. The task force heard presentations about a number of issues including:

- the role of defense attorneys and the Colorado Office of the State Public Defender;
- what occurs after a plea of not guilty by reason of insanity is entered;
- legal and procedural issues that are raised after the Colorado Mental Health Institute at Pueblo (CMHIP) finds a person insane;
- treatment of persons found not guilty by reason of insanity at the CMHIP;
- the perspectives of patients who were found not guilty by reason of insanity; and
- conditional release and oversight by mental health centers.

In addition, the task force discussed a presentation from the DOC on treatment issues related to persons with mental illness who are incarcerated, and proposed legislation from the Juvenile Justice Subcommittee concerning competency evaluations for juveniles. The task force ultimately decided that more discussion was needed prior to recommending legislation to the legislative oversight committee.

In November 2012, the task force held a strategic planning session to determine what issues to focus on during 2013. The task force identified its four fundamental purposes as follows:

- identifying, prioritizing, and studying specific issues related to persons with mental illness involved in the criminal justice system;
- advising the legislature on a regular and on an as-needed basis;
- collaborating and communicating with other similar groups and stakeholders; and
- developing a system of ensuring that the task force meets its legislative charge.

In order to accomplish its purposes, the task force decided that the subcommittees that had previously been in place are no longer needed in the same format. Although the subcommittee members will continue to monitor issues that arise that may be of interest to the task force, and the Juvenile Justice Subcommittee will continue to study issues of juvenile competency, much of the work of the task force in 2013 will be done by work groups that will be established to develop curriculum for specific areas of study. The exact areas of study will be determined at a later date and with feedback from the legislative oversight committee.

Colorado Law Concerning the Plea of Not Guilty by Reason of Insanity

In 2011, a panel of presenters, consisting of a district attorney, a public defender, and a representative from the CHMIP provided an overview of the legal issues involved in determinations of sanity when a defendant pleads not guilty by reason of insanity. An October 2011 editorial in *The Denver Post* concerning whether the prosecution should have the right to conduct its own sanity examination of defendants who plead not guilty by reason of insanity prompted additional discussion. Ultimately, the task force decided that further research into the issues raised by the plea of not guilty by reason of insanity was warranted. A subcommittee was appointed to gather further information and to organize a series of educational presentations throughout 2012. The following sections summarize state law on the plea of not guilty by reason of insanity, and the next section provides an overview of the information discussed during each educational presentation on the topic.

Plea of not guilty by reason of insanity. At arraignment, a defendant has the option to plead not guilty by reason of insanity. The court, for good cause shown, may also permit the plea to be entered at any time prior to trial. If a client refuses to enter a plea of not guilty by reason of insanity, a defense attorney may do so on his or her behalf. In this case, the court must conduct an investigation in order to determine whether a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant. If the court finds that such a plea is necessary, the plea has the same effect as if it had been voluntarily entered by the defendant.

Definition of not guilty by reason of insanity. For defendants charged with offenses committed on or afer July 1, 1995, the applicable test of insanity is:

- a person was so diseased or defective in mind at the time of the commission of the act as to be incapable of distinguishing right from wrong; or
- a person suffered from a condition of mind caused by a mental disease or defect that prevented the person from forming a culpable mental state that is an essential element of a crime charged.

However, Colorado law notes that care should be taken not to confuse a mental disease or defect with moral obliquity, mental depravity, or passion growing out of anger, revenge, hatred, or other motives and kindred evil conditions. If the act is determined to have been induced by these causes, the actor is deemed accountable. Furthermore, the law notes that "diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or other antisocial conduct. In addition, "mental disease or defect" is defined as including only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance.

Initial sanity examination. After a defendant pleads not guilty by reason of insanity, the court must order a sanity examination. In order to conduct the examination, the defendant may be committed to the Colorado psychiatric hospital in Denver, the CMHIP, the place where he or she is in custody, or any other public institution designated by the court. Priority for placement is generally given to the place where the defendant is in custody, unless circumstances require otherwise. During the examination, one or more psychiatrists observe and examine the defendant.

Other sanity examinations. In addition to the sanity examination ordered by the court, the defendant has the right to order a separate sanity examination from a psychiatrist, psychologist, or other expert of his or her choice. For good cause shown, upon the motion of the prosecution, the defense, or the court, the court may order other or further examinations. Case law indicates that for a court to order any additional examination, there must be some basis, other than counsel's opinion, for showing that the first examination was inadequate.[1] Copies of all sanity examination reports must be provided to the defense, the prosecution, and the court.

Confidentiality. A defendant who pleads not guilty by reason of insanity waives any claim of confidentiality or privilege concerning his or her communications with a physician or psychologist during an examination or treatment. For defendants charged with offenses committed on or after July 1, 1999, the defendant must cooperate with psychiatrists and other personnel conducting a sanity examination. Failure to do so may be used to rebut any evidence introduced by the defendant with regard to his or her mental condition. Statements made by the defendant in the

[1] *People v. Garcia,* 87 P.3d 159 (Colo. App. 2003); 113 P.3d 775 (Colo. 2005).

course of the sanity examination may only be used to rebut claims of insanity or as evidence at a sentencing hearing. Because such statements are not admissible as evidence concerning the charges against the defendant, case law indicates that a defendant's constitutional right against self-incrimination is preserved.[2]

Procedure following the sanity examination. Upon receiving the report of the sanity examination, the court must immediately set the case for trial. Generally, every defendant is presumed to be sane. However, once any evidence of insanity is introduced, the prosecution has the burden of proving sanity beyond a reasonable doubt.

If the court finds a defendant not guilty by reason of insanity, the defendant must be committed to the custody of the DHS until he or she is found eligible for release. According to information presented to the task force, defendants who are found not guilty by reason of insanity stay at the CMHIP for an average of eight years.

Release hearing. The court may order a release hearing at any time on its own motion or on the motion of the defense or the prosecution. In addition, the court is required to order a release hearing if the chief officer of the institution in which the defendant is committed reports that the defendant no longer requires hospitalization. A release hearing is also required upon a defendant's request made 180 days after the initial commitment order. Except for the first hearing following the initial commitment order, the defendant is not entitled to a hearing within one year of a previous hearing, unless the court finds good cause to do otherwise.

After a motion for a release hearing has been made, if no sanity examination reports indicate that the defendant should be released, and the defendant is unable to show any evidence in favor of release from a medical expert in mental disorders, his or her release will be denied. A release hearing may be conducted via a jury trial upon the request of the defendant. At the hearing, if any evidence that the defendant does not meet the criteria for release is introduced, the defendant has the burden of proving by a preponderance of the evidence that he or she has no abnormal mental condition which would be likely to cause him or her to be a danger to him or herself or to the public in the reasonably foreseeable future.

Conditional release. If the court or jury finds the defendant eligible for release, the court may impose terms and conditions that it determines are in the best interests of the defendant and the community. Such terms and conditions must be reviewed at least every 12 months.

A defendant who has been conditionally released remains under the supervision of the DHS until the court enters a final order of unconditional release. The director of any community mental health center charged with the continued treatment of a defendant who was conditionally released must submit written reports concerning the status of the defendant every three months to the DHS and to the district attorneys for both the jurisdiction in which the defendant was committed and in which he or she receives treatment. Such reports must include all known violations of the defendant's terms of release and any changes in the defendant's mental status which would indicate that he or she has become ineligible for release.

If a defendant on conditional release leaves Colorado without consent or fails to comply with any conditions requiring him or her to establish, maintain, and reside at a specific residence and his or her whereabouts are therefore unknown, the defendant will be charged with escape.

---

[2] *Lewis v. Thulemeyer*, 189 Colo. 139, 538 P.2D 441 (1975); *People v. Osborn,* 42 Colo. App. 376, 599 P.2D 937 (1979); *People v. Herrera,* 87 P.3d 240 (Colo. App. 2003).

Revocation of conditional release. Whenever the superintendent of the CMHIP has probable cause to believe that a defendant is ineligible to remain on conditional release, the superintendent must notify the district attorney for the district in which the defendant was committed. Following this notification, the district attorney or the CMHIP must apply for a warrant directing a sheriff or peace officer to take custody of the defendant. Once the defendant is in custody, he or she must submit to a sanity examination. The district attorney for the district in which a defendant was committed may also file a petition for the revocation of a defendant's conditional release. Within 30 days after a defendant has been committed to the CMHIP for a sanity examination, the court must hold a hearing to determine whether the defendant's conditional release should be revoked.

Denver Post editorial on sanity examinations. On October 11, 2011, *The Denver Post* published an editorial concerning sanity examinations for defendants who plead not guilty by reason of insanity.[3] The editorial referred to a case in Jefferson County in which prosecutors were denied the ability to have their own psychiatrist examine a defendant who pleaded not guilty by reason of insanity. The editorial expressed the opinion that defendants who raise the affirmative defense of not guilty by reason of insanity open themselves to examination by the prosecution. Furthermore, the editorial cited Colorado law placing the burden of proof of sanity on the prosecution. The editorial called for more discussion on this issue, and suggested that legislation to clarify the law may be beneficial.

The task force discussed the issues raised by the editorial. Conversation initially focused on whether the task force had the necessary legal expertise to examine the complicated questions raised by this issue. In particular, the task force focused on how a sanity evaluation requested by the prosecution would relate to the defendant's right against self-incrimination and to the prosecution's responsibility to prove beyond a reasonable doubt that a defendant is sane. Several members of the task force suggested that, given the task force's advisory role, further study of the issues raised by the editorial would benefit the legislature if legislation on this topic were to be introduced during a future legislative session.

Appointment of subcommittee. Ultimately, the task force decided that further research into the issues raised by the plea of not guilty by reason of insanity, including the concerns of *The Denver Post's* editorial, was warranted. A subcommittee was appointed to gather further information and to organize a series of educational presentations throughout 2012. A summary of each of those presentations is included in the following sections.

Educational Presentations on the Plea of Not Guilty by Reason of Insanity

Throughout 2012, the task force heard six educational presentations concerning the plea of not guilty by reason of insanity and the role of various parties in the process.

Legal and constitutional implications of the plea of not guilty by reason of insanity. In February 2012, two representatives of the Office of the State Public Defender, Tamara Brady and Andrew Heher, summarized the constitutional and statutory rights available to criminal defendants and Colorado's procedure for a plea of not guilty by reason of insanity. The task force was particularly interested in the confidentiality of mental health evaluation records. It was noted that if severe mental illness is suspected, the defense has the option of hiring a forensic psychiatrist

[3] "Editorial: Bring Balance to Insanity Cases," *The Denver Post:* October 11, 2011, www.denverpost.com/opinion/ci_19083532

to conduct a confidential evaluation at the detention facility. If the defendant enters a plea of not guilty by reason of insanity, he or she is transferred to the CMHIP to undergo state-supervised testing. At this stage, treatment records are also made available to the court because confidentiality is deemed waived. CMHIP currently evaluates between 10 and 15 not guilty by reason of insanity cases per year.

Task force members also discussed the relationship between substance abuse and severe mental illness in the not guilty by reason of insanity process. The presenters noted that Colorado law provides direction on the matter, defining mental disease or defect as a condition that does not arise from voluntary ingestion of alcohol or illicit substances.

What occurs after a plea of not guilty by reason of insanity is entered. In March 2012, the task force heard a presentation by Dr. Richard Martinez, a psychiatry and law professor and the Director of Forensic Psychiatry at Denver Health, about the number of sanity and mental condition evaluations in Colorado. Dr. Hal Wortzel, a psychiatry professor and the Director of Mental Illness Research, and Clinical Center and Neuropsychiatric Consultation Services at the Denver Veterans Hospital, presented information about the differences in the roles of clinical and forensic practitioners in conducting evaluations and the process for requesting second opinions. The task force discussed opportunities to clarify statutory language around second opinions.

Legal and procedural issues after a person is found insane. In April 2012, 4th Judicial District Attorney Dan May described the evolution of the relationship between a defendant's mental health and the ability to raise a defense against criminal charges, noting that a unifying principle for both sanity and mental condition arguments is that juries are now entitled to have full access to mental health records. The task force continued to discuss potential options for addressing requests for second evaluations, such as having a panel of experts review findings or establishing criteria that would automatically trigger second evaluations. Discussion also centered on the differences between adults and juveniles under current state law, as well as the effect of different types of evaluations. According to Mr. May, if a juvenile tried in juvenile court is found legally insane, he or she is released without mandatory treatment. If an adult is found legally insane, he or she is sent to CMHIP. However, Mr. May said that if a jury finds that an adult was not able to form intent due to mental illness, he or she is also released. Discussion ensued concerning the practices of various jurisdictions on this issue.

Treatment of persons found not guilty by reason of insanity at the Colorado Mental Health Institute at Pueblo. Dr. Ken Locke, a doctor at CMHIP, presented information in May 2012, about the condition of psychosis as it relates to criminal conduct. He also provided a historical perspective on the treatment of psychotic persons, noting the development of community-based treatment options and a growing focus on individualized treatment plans. Dr. Jon Eggert, also a doctor at CMHIP, followed with a presentation on the process and tools for conducting risk assessments, which help to identify the specific factors leading to violence and aggression and plot an appropriate course of treatment for patients. The task force discussed various aspects of treatment within CMHIP, noting that:

- most people stay eight to ten years;
- there is a privilege system within the facility; and
- the goal of treatment is to decrease violence and aggression so that a patient may ultimately be reintegrated into the community.

Patients' perspectives. In June 2012, several former CMHIP patients shared their stories with the task force. These included David from Pueblo, Rusty from Pueblo, and Beth from Denver. Each former patient relayed their criminal history and treatment methodology, describing the manner in which they were able to become reintegrated into the community and how this has affected their current lifestyle.

Conditional release and oversight by mental health centers. In July 2012, Bambi Creek of Forensic Community Service Programs at CMHIP gave an overview of community-based supervision programs and treatment goals. According to Ms. Creek, less than 1 percent of felony not guilty by reason of insanity patients are granted a conditional release to such a program. She noted that community placement can last from one to nine years, depending on the patient's needs, and described how a patient may transition from CMHIP to a conditional release program. According to Ms. Creek, most community-based supervision patients are male (87 percent), the average age is 55, and nearly three-quarters (73 percent) have schizophrenia or a psychotic disorder. Dr. Cheryl Clark, a psychiatrist, continued with a discussion of the continuum of services provided by the Mental Health Center Denver (MHCD), which is the third-largest provider for both conditional release and community placement. Within MHCD, five levels of service are offered, and patient needs are reassessed every six months. The group discussed challenges for this population, including obtaining housing for sex offenders and ensuring access to medical care.

Treatment of Persons with Mental Illness at the Department of Corrections

In September 2012, representatives from the DOC presented an overview of mental health services and treatment options for persons with mental illness who are incarcerated. The presentation summarized treatment options for offenders with mental illnesses or developmental disabilities, crisis intervention for acutely disturbed or self-injurious offenders, rehabilitation programs, and the coordination of transitional services when offenders with mental health needs are released. The DOC also provides alcohol and drug treatment and sex offender treatment for any offenders in need of such services.

Provision of services. The representatives from the DOC explained that offenders receive services while in the general population through group and individual therapy, crisis intervention, and referrals to special placements. For acute care, the DOC relies on the use of infirmaries, facility mental health watches, intermediate or long-term placements in the San Carlos Correctional Facility or the Denver Women's Correctional Facility, and hospitalizations at CMHIP when necessary.

Offenders with Mental Illness program. In the Offenders with Mental Illness (OMI) program at the Colorado State Penitentiary, there are three separate treatment categories for offenders, depending on their predominant mental health issue. The first category is for offenders with the most severe mental illnesses, the second category is for offenders with other mental illnesses such as antisocial behavior or borderline personality disorder, and the third category is for offenders with mental illnesses such as mood disorders. One treatment track used at the OMI program focuses on managing severe mental illness, and the other track focuses on cognitive behavioral treatment for individuals who engage in criminal thinking.

The task force discussed various issues concerning the treatment of offenders with mental illness, including the administration of medication, different treatment needs for male and female offenders, and recidivism rates. The task force also discussed whether a standard ratio of mental

health providers to offenders would be useful. The representatives from the DOC explained that there is a ratio for psychiatrists, but there is not currently a ratio for clinicians.

Transitioning offenders with mental illnesses back to the community. Finally, the task force discussed DOC efforts to improve the transition of offenders with mental illness from DOC facilities to community mental health centers. The representatives from the DOC explained that the department has worked with the Behavioral Healthcare Council and community mental health centers to devise a collaborative services plan that focuses on providing an evidence-based continuity of care. However, grant funding for this project was denied, and the department must reapply or reevaluate how funding will be provided. The task force briefly discussed the Evidence-Based Practices Implementation for Capacity (EPIC) Project, which was created by the Colorado Commission on Criminal and Juvenile Justice to implement evidence-based practices into the criminal justice system. The representatives from the DOC expressed the department's appreciation for the program, and the task force then discussed funding issues concerned with the continuation of the program.

Competency Evaluations for Juveniles

In June and July of 2012, the advisory task force discussed a proposal from the Juvenile Justice Subcommittee concerning competency evaluations for juveniles tried in juvenile delinquency cases. The task force ultimately decided that more discussion on the issue was needed prior to submitting a bill recommendation to the legislative oversight committee.

House Bill 05-1034. The task force considered a presentation from a representative of the Division of Criminal Justice within the Colorado Department of Public Safety concerning House Bill 05-1034, which was enacted after being recommended by the advisory task force and the legislative oversight committee. The act was modeled after existing adult competency statutes, with a few modifications. It requires the issue of competency to be raised if there is reason to believe that the juvenile in question is incompetent, specifies who has the standing to raise an issue of competency at trial, and details the process and procedures by which a court determines competency and orders restoration. For juveniles found competent to proceed, the act allows a court to make modifications to aid the juvenile's understanding of court processes and procedures. A juvenile who is found incompetent to proceed may not be tried or sentenced. For those juveniles found incompetent to proceed but restorable, the court must order restoration services, unless it makes a finding that such services would be inappropriate. The court must review the juvenile's progress toward competency at least every 90 days. For those juveniles found incompetent and not restorable, the court is allowed to order the development of a plan to manage or treat the juvenile's behavior. Finally, the court is given several options for proceeding once it finds that a juvenile has or has not been restored to competency.

If the court orders a competency evaluation, Colorado law specifies that the evaluation must be conducted in the least-restrictive environment possible, taking public safety and the best interests of the juvenile into account. The evaluation must be filed with the court within 30 days after the evaluation was ordered if the juvenile is held within a secure detention facility, and within 45 days after the evaluation was ordered if the juvenile is not held in a secure detention facility, unless there is good cause for delay in either case.

Evaluation deadline. The Juvenile Justice Subcommittee suggested that the competency evaluation deadline could be changed. Specifically, the subcommittee recommended that, for juveniles held in a secure detention facility, the clause permitting an extension of the 30-day deadline for good cause should either be removed or should be clarified by defining "good cause." In addition, the subcommittee recommended that data should be kept on juvenile competency evaluations, including the number of juveniles for whom evaluations are requested, where the juveniles are placed during the evaluation, and the number of days it takes to receive the evaluation. Finally, the subcommittee suggested that language should be added to state law requiring juveniles to be released from secure detention facilities to community placement with mental health services when appropriate.

A forensic examiner from the CMHIP described the process of competency evaluations and discussed various factors that can change the length of time it takes to complete an evaluation. She noted that parties involved must share discovery prior to the evaluation, prompting the task force to consider whether deadlines should be put in place concerning when discovery must be made available. Conversation among task force members also addressed whether community resources are available throughout the state to enable juveniles to be released to community placement centers, and whether judges may be placing juveniles in secure detention facilities because no other options are available. Ultimately, the task force decided that more data and discussion on this issue was needed.

Clarifications of language concerning competency to proceed. The Juvenile Justice Subcommittee made several recommendations for ways to clarify language concerning competency to proceed in juvenile cases. Specifically, the subcommittee recommended:

- defining competency based on a juvenile-specific definition, rather than in relation to the statute concerning competency for adults; and
- clarifying what criteria are used by a competency evaluator when determining competency, and consider using juvenile-specific definitions that are not based on age or other non-mental health criteria.

The task force asked the subcommittee to study its recommendations further and to bring possible definitions forward for consideration.

Restoration procedures and criteria. The Juvenile Justice Subcommittee suggested that state law needs more structure concerning the restoration process, including details about services, payment for services, and a definition of roles and responsibilities for overseeing and implementing the restoration plan. The task force discussed various issues raised by this suggestion, including input provided to the subcommittee by district attorneys and public defenders. Conversation ensued concerning funding sources and ways to provide parameters without incurring a large fiscal cost. Ultimately, the task force asked the subcommittee to study the issue more and to report back in 2013.

Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings of the legislative oversight committee and related attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-4900). 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

February 17, 2012

- Overview of the work of the task force
- Discussion of 2012 goals for the advisory task force and the legislative oversight committee
- Presentation from the Colorado Behavioral Health Council concerning providers of mental health services in the criminal justice system
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice

July 19, 2012

- Overview of the work of the task force
- Update from the Colorado Department of Health Care Policy and Financing on Senate Bill 08-006, concerning the suspension of Medicaid for confined persons
- Discussion of goals for the legislative oversight committee

Advisory Task Force

January 19, 2012

- Not guilty by reason of insanity education curriculum and subcommittee update
- Discussion of Senate Bill 08-006, concerning the suspension of Medicaid for confined persons
- Advisory task force vacancies
- Subcommittee updates
- Behavioral Health Transformation Council update

February 16, 2012

- Not guilty by reason of insanity education curriculum: presentation by the Colorado Office of the State Public Defender
- Task force vacancies
- Behavioral Health Transformation Council update

March 15, 2012

- Not guilty by reason of insanity education curriculum: what happens once of plea of not guilty by reason of insanity is entered
- Subcommittee updates
- Behavioral Health Transformation Council update

April 19, 2012

- Not guilty by reason of insanity education curriculum: legal and procedural issues after the Colorado Mental Health Institute at Pueblo finds a person insane
- Subcommittee updates
- Behavioral Health Transformation Council update

May 17, 2012

- Not guilty by reason of insanity education curriculum: Treatment of the persons found not guilty by reason of insanity at the Colorado Mental Health Institute at Pueblo
- Subcommittee updates
- Behavioral Health Transformation Council update

June 21, 2012

- Not guilty by reason of insanity education curriculum: patients' perspectives
- Subcommittee updates
- Behavioral Health Transformation Council update

July 19, 2012

- Not guilty by reason of insanity education curriculum: conditional release and oversight by mental health centers
- Subcommittee updates
- Behavioral Health Transformation Council update

August 16, 2012

- Discussion of proposed legislation from the juvenile justice subcommittee
- Subcommittee updates
- Behavioral Health Transformation Council update
- Update on the July 19, 2012, legislative oversight committee meeting
- Strategic planning workshop scheduled for November 29, 2012

September 20, 2012

- Presentation from the Colorado Department of Corrections on treatment issues related to persons with mental illness who are incarcerated
- Subcommittee updates
- Behavioral Health Transformation Council update

October 18, 2012

- Summary of the not guilty by reason of insanity education curriculum
- Subcommittee updates
- Behavioral Health Transformation Council update
- Discussion of November 29, 2012, strategic planning workshop

November 29, 2012

- Strategic planning workshop