

RECOMMENDATIONS FOR 2003

**THE CONTINUING EXAMINATION
OF THE TREATMENT OF PERSONS WITH MENTAL ILLNESS
WHO ARE INVOLVED
IN THE CRIMINAL JUSTICE SYSTEM**

**Report to the
Colorado General Assembly**

**Research Publication No. 508
December 2002**

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December 2002

To Members of the Sixty-third General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee for the Continuing Examination of Persons with Mental Illness who are Involved in the Criminal Justice System. This committee was created pursuant to Section 18-1.7-103, Colorado Revised Statutes.

At its meeting on October 15, 2002, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2003 session was approved.

Respectfully submitted,

/s/ Representative Doug Dean
Chairman
Legislative Council

DD/CJ/cs

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**THE CONTINUING EXAMINATION
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ILLNESS WHO ARE INVOLVED
IN THE CRIMINAL JUSTICE SYSTEM**

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EXECUTIVE SUMMARY

Committee Charge

Pursuant to Section 18-1.7-101, Colorado Revised Statutes (HB 00-1033), a six-member Legislative Oversight Committee and a 27-member Advisory Task Force were established to continue the examination of mentally ill offenders in the criminal justice system.

The Legislative Oversight Committee was responsible for appointing an ethnically, culturally, and gender diverse task force to continue to examine the identification, diagnosis, and treatment of persons with mental illness who are involved in the state's criminal justice system. The Task Force was directed to consider a wide range of issues related to adults and juveniles with mental illness who are involved with the criminal justice system including, but not limited to:

- prosecution and sentencing alternatives;
- the diagnosis, treatment, and housing of adults and juveniles who plead guilty, nolo contendere, or not guilty by reason of insanity or who are found to be incompetent to stand trial;
- the medication of adults and juveniles who are convicted or adjudicated and the availability of public benefits for such persons;
- ongoing assistance and supervision, especially with regard to medication, after discharge from sentence;
- the identification, diagnosis, and treatment of minorities and women with mental illness and persons with co-occurring disorders in the criminal justice system;
- the implementation of appropriate diagnostic tools to identify persons in the criminal justice system with mental illness; and
- any other issues concerning persons with mental illness who are involved in the state criminal justice system that arise during the course of the task force study.

In addition, the Legislative Oversight Committee was required to submit an annual report to the General Assembly regarding the findings and recommended legislation resulting from the work of the Task Force.

Committee Activities

The Advisory Task Force

The Task Force first met during the summer of 1999, and has met on a monthly basis for the last three years. Last year, the Task Force established new priorities as directed by the legislative charge and met to discuss public policies and corresponding resources regarding juvenile and adult persons with mental illness who are involved in the criminal justice system.

This year, the Task Force worked on legislative and non-legislative ways to address several issues but focused on three areas:

- psychiatric security review boards;
- SB 91-094-type community programs for persons with mental illness who are involved in the criminal justice system; and
- mental health treatment coverage.

In addition, at the request of the Legislative Oversight Committee, the Task Force developed a five-year plan to address specific issues under its charge.

Psychiatric security review boards. Psychiatric security review boards (PSRBs) are bodies to which a court commits offenders who are found not guilty by reason of insanity. A PSRB is responsible for reviewing the status of such offenders to determine and order the appropriate level of supervision and treatment. A PSRB could provide consistency in and increase the quality of decisions made regarding these individuals' treatment and status. Primarily because of budgetary limitations, the Task Force decided not to propose legislation this year implementing PSRBs in Colorado.

Senate Bill 91-094-type programs for persons with mental illness who are involved in the criminal justice system. Under SB 91-094, state and federal funds are distributed to local programs that provide services for juvenile offenders to help relieve overcrowding in state-operated juvenile facilities. The Task Force proposes a similar concept in the form of pilot programs to coordinate local services for adult offenders with mental illness.

The Division of Criminal Justice and the Division of Mental Health have submitted a grant proposal to provide services early in the process to prevent adults with mental illness from penetrating the criminal justice system. The pilot programs proposed by the Task Force would provide the base for expanded programs to be supported by the grant funding.

Mental health treatment coverage. Persons with mental illness who have criminal cases are often ordered by the court to receive some type of mental health treatment. Defendants who have insurance plans that cover such mental health treatment are often denied the benefit solely

because the court ordered the treatment. The Task Force proposes legislation that would require plans that provide coverage for mental health treatment to provide such coverage and treatment regardless of whether it occurs as the result of contact with the criminal or juvenile justice systems.

Five-year plan. Recognizing the need to continue efforts to find legislative solutions, and the opportunity to continue to implement non-legislative solutions to issues facing the criminal justice and mental health systems with regards to persons with mental illness, the Legislative Oversight Committee charged the Task Force with devising a five-year plan. The five-year plan was to outline the specific topics (within the legislative charge to the Task Force) the Task Force would discuss and a time frame in which the Legislative Oversight Committee could expect legislative proposals and non-legislative solutions.

The Legislative Oversight Committee

The Legislative Oversight Committee met three times during the year to monitor the progress of and review and examine the work, findings, and recommendations of the Task Force. Specifically, the Legislative Oversight Committee reviewed four issues for consideration during the upcoming legislative session. These issues included:

- psychiatric security review boards;
- Senate Bill 91-094-type programs for adults with mental illness who are involved in the criminal justice system;
- mental health treatment coverage; and
- continuation of the Legislative Oversight Committee and Task Force.

As noted above, the Task Force did not make a legislative recommendation regarding psychiatric security review boards. The Task Force drafted three bills for consideration by the Legislative Oversight Committee. The measures are listed below.

Committee Recommendations

As a result of the Task Force's discussion and deliberation, the Legislative Oversight Committee recommends three bills for consideration in the 2003 legislative session.

Bill A — Creation of a Local Initiative Committee Pilot Program for Management of Community-Based Programs for Adults with Mental Illness who Come Into Contact With the Criminal Justice System. The bill would create pilot programs for Senate Bill 91-094-type local initiative committees. The committees would manage community-based programs for adults with mental illness who come into contact with the criminal justice system. The pilot program committees would be established in at least three judicial districts over the course of three years beginning in January 2004.

Committee members would be appointed by the chief judge in each participating judicial district and would include the director of the Division of Criminal Justice, the director of the Division of Mental Health Services, a representative of the municipalities located within the judicial district, a representative of the Department of Public Health and Environment, a representative of the Judicial Department from the judicial district, and representatives from specified organizations in the judicial district.

Each committee would share information regarding, and supervise the coordination of services for adults with mental illness who come into contact with the criminal justice system, and develop and implement plans for the provision and coordination of services in that judicial district. The bill's legislative declaration states the General Assembly's intent that supervision of coordination and communication among the entities ultimately result in reduced recidivism among such offenders.

Bill B — Mental Health Treatment Coverage under Health Benefit Plans. The bill would require any individual or group health benefit plan that provides coverage for mental health services to provide coverage for such services regardless of whether the treatment is voluntary or court-ordered as a result of contact with the criminal justice system. Plans would only be required to provide coverage for those benefits that are medically necessary and that are otherwise covered under the plan. The bill would further specify that nothing in the law mandates that any health benefit plan must provide coverage for mental health services.

Bill C — Continuing Examination of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System. The bill would extend the repeal of the continuing study of the treatment of persons with mental illness who are involved in the criminal justice system from July 1, 2003, to July 1, 2008. The membership on the Task Force would be increased from 27 to 29 members by removing the member who represents community corrections and adding a member of the Judicial Branch with experience in adult criminal justice matters, a member who represents the Division of Children's Health and Rehabilitation, and a member who represents the Mental Health Planning and Advisory Council.

Under the bill, the Task Force's current charge is amended. The bill would require the Task Force to consider adoption of a common framework for addressing mental health issues of juveniles who come into contact with the criminal justice system and to develop a plan to modify current systems to serve such juveniles. The Task Force would be further required to consider the development and use of alternatives to court jurisdiction with regard to conditional release for persons found not guilty by reason of insanity.

The bill requires the Task Force to consider liability and safety issues more broadly as they relate to the identification, diagnosis, and treatment of persons with mental illness who are involved in the criminal justice system. The bill repeals the more narrow requirement that the Task Force study the liability of facilities housing persons with mental illness and the liability of staff who treat and supervise such persons. The bill would also set up a five-year time line for issues to be studied by the Task Force and specifies the dates the Task Force is to report to the Legislative Oversight Committee on those issues.

STATUTORY AUTHORITY AND RESPONSIBILITIES

Pursuant to Section 18-1.7-101, Colorado Revised Statutes (HB00-1033), a six-member Legislative Oversight Committee was established to continue the examination of mentally ill offenders in the criminal justice system.

The Oversight Committee was authorized to appoint a 27-member Advisory Task Force as specified in HB00-1033 to assist the committee in its study. The state departments, divisions, and private agencies represented on the Advisory Task Force are listed below, followed by the name of the individual(s) representing the state department, division, or private agency.

Department of Public Safety (1)	Raymond T. Slaughter, Director Division of Criminal Justice	
Judicial Department (3)	Susan Colling Probation Services Eric Philp Probation Services	Chief Judge Roxanne Bailin 20th Judicial District (Boulder)
Department of Corrections (2)	Dr. James T. Michaud Chief, Mental Health	Dr. Mary West Deputy Director of Operations
Department of Human Services (5)	Dr. Tom Barrett Division of Mental Health Meg Williams Child Welfare Services Steve Schoenmakers Acting Superintendent, Co. Mental Health Institute	Wendy Nading Division of Youth Corrections Janet Wood Div. of Alcohol & Drug Abuse
Department of Law (1)	Don Quick Deputy Attorney General	
Community Corrections (1)	E. Ann Moore Community Responsibility Ctr.	
Local Law Enforcement (2)	Sheriff George Epp Boulder County Sheriff's Dept.	Bruce Goodman, Chief Louisville Police Department
Colorado District Attorneys Council (1)	Kathy Sasak Assistant District Attorney	
Colorado Criminal Defense Bar (2)	Abraham Hutt Private Practice	David Kaplan Colorado Public Defender
Practicing Mental Health Professionals (2)	Maurice Williams Division of Youth Corrections	John Nicoletti Nicoletti-Flater Associates
Department of Education (1)	Heather Hotchkiss Colorado Dept. of Education	
Community Mental HealthCenters (1)	Harriet Hall Jefferson Mental Health	
Person with knowledge of public benefits and housing in the state (1)	Annette Heley Mental Health Corp. Denver	
Person who is a practicing forensic professional in the state (1)	Dr. Jonathan Olin Co. Mental Health Institute	
Members of the Public (3)	Kay Heil Steven White	Susan Spinken

The committee's charge included, but was not limited to, a study of:

- early identification, diagnosis, and treatment of adults and juveniles with mental illness in the criminal justice system;
- prosecution and sentencing alternatives for persons with mental illness that may involve treatment and ongoing supervision;
- diagnosis, treatment, and housing of adults and juveniles with mental illness who are convicted of crimes or plead guilty, nolo contendere, or not guilty by reason of insanity or who are found incompetent to stand trial;
- ongoing treatment, housing, and supervision of mentally ill adults and juveniles, especially with regard to medication, who are convicted or adjudicated and housed within the community and the availability of public benefits for such persons;
- ongoing assistance and supervision, especially with regard to medication, of persons with mental illness after discharge from a sentence;
- civil commitment of persons with mental illness who are criminally convicted, found not guilty by reason of insanity, or found incompetent to stand trial;
- identification, diagnosis, and treatment of minority persons with mental illness, women with mental illness, and persons with co-occurring disorders in the criminal justice system;
- modification of the criminal justice system to serve adults and juveniles with mental illness who are charged with or convicted of a crime;
- the liability of facilities that house persons with mental illness and the liability of the staff who treat or supervise persons with mental illness;
- the safety of the staff who treat or supervise persons with mental illness and the use of force against persons with mental illness; and
- the implementation of appropriate diagnostic tools to identify persons in the criminal justice system with mental illness.

The committee was also given authority to study, provide guidance, and make recommendations for any other issues that concern persons with mental illness who are in the criminal justice system. The task force must submit an annual report to the Oversight Committee with recommendations for legislative proposals to modify the criminal justice system.

COMMITTEE ACTIVITIES

House Joint Resolution 99-1042. The Study of the Treatment of Persons with Mental Illness in the Criminal Justice System was originally created by legislation adopted during the 1999 legislative session. Pursuant to that bill, a Legislative Oversight Committee and Advisory Task Force were formed and both the committee and Task Force first met during the summer of 1999. The work of the original Legislative Oversight Committee and Task Force focused on education and information gathering on a variety of issues related to the treatment of persons with mental illness in the criminal justice system. Colorado Legislative Council Research Publication No. 457, published in November 1999, is the final report of that committee. The report includes legislation proposed by the committee.

One of the proposals from that committee was to allow the Oversight Committee and Task Force to continue to study issues related to the treatment of persons with mental illness in the criminal justice system. Legislation adopted during the 2000 legislative session continued the Legislative Oversight Committee and re-organized the Task Force from a 19-member body to a 27-member body. The Task Force was authorized to continue to meet until January 1, 2003. The Task Force and Legislative Oversight Committee are repealed July 1, 2003.

House Bill 00-1033. The original Task Force identified numerous issues related to the treatment of persons with mental illness in the criminal justice system. After being re-formed during the summer of 2000, the Task Force met monthly to focus on solutions to some of the issues it had identified. In order to help focus its efforts, the Task Force developed a mission statement. The Task Force's mission was to:

develop and implement effective public policies and corresponding resources as to mental illness and the juvenile and adult justice systems that provide for:

- early intervention (including education, diagnosis and treatment);
- effective, continuing treatment; and
- justice systems that are appropriate and responsive to the needs of individuals and the public safety of our communities.

Having only been re-formed in late summer 2000, the Task Force made no legislative recommendations for the 2001 legislative session. However, the Task Force met monthly from late summer 2000 through the 2001 legislative interim and offered legislative proposals on the following topics for the 2002 legislative session:

- community treatment pilot programs;
- standardized screening; and
- Colorado's civil commitment process.

The Task Force also studied the guilty but mentally ill plea and crisis intervention teams but determined that the guilty but mentally ill plea would not benefit Colorado, and that crisis intervention teams could be implemented in Colorado without legislation. Colorado Legislative Council Research Publication No. 496 is the final report of the Oversight Committee's and the Task Force's work from the fall of 2000 through the 2001 legislative interim. The report includes legislation proposed by the Legislative Oversight Committee.

Work from the 2002 legislative interim. Among the topics the Task Force studied from the fall of 2001 through the 2002 legislative interim for legislation in the 2003 legislative session are the following:

- SB 91-094-type programs for offenders with mental illness;
- mental health treatment coverage;
- continuation of the Legislative Oversight Committee and Task Force; and
- psychiatric security review boards (no legislation proposed).

A discussion of the legislation on these topics recommended by the Task Force and approved by the Oversight Committee follows.

Legislation Approved by the Oversight Committee

Senate Bill 91-094-type Programs for Persons With Mental Illness who Are Involved in the Criminal Justice System

Background. Under S.B. 91-094, programs in local jurisdictions provide services for juvenile offenders to help relieve overcrowding in state-operated juvenile facilities. These local programs divert juveniles from state detention and commitment facilities and have slowed the growth in detention and commitment populations. The Task Force proposes a similar concept for offenders with mental illness.

Given the success the juvenile justice system has had in slowing the growth of detention and commitment populations, the Task Force worked to create a similar system to coordinate the efforts of programs that provide services to persons with mental illness who are involved in the criminal justice system. In creating such a system the Task Force sought to incorporate the following key elements:

- community boards in each jurisdiction whose members include Judicial Branch officials, mental health personnel, sheriffs, district attorneys, public defenders, and consumers;
- funding from a combination of state and local sources that will ultimately result in long-term cost savings for counties, the Judicial Branch, and the Department of Corrections;
- administration of programs at the local level including, but not limited to, those administered by community mental health centers; and
- use of the most effective proven therapeutic interventions.

The Task Force devised a plan to provide encouragement and incentives for local treatment, supervision, and case management services for persons with mental illness who, without such interventions, are likely to have further involvement in the criminal justice system.

In conjunction with the proposal, the Division of Mental Health, in cooperation with the Division of Criminal Justice, is pursuing a grant to provide services early in the process to prevent persons with mental illness from penetrating the criminal justice system. The pilot programs proposed by the Task Force would provide the base for expanded programs to be supported by the grant funding.

Recommendation. The Task Force and Legislative Oversight Committee recommend implementing a series of three local initiative pilot programs to manage community-based programs for adults with mental illness who come in contact with the criminal justice system. Local initiative committees would be established in three judicial districts over the course of three years. The committees would include representation from the Judicial Branch, the Division of Criminal Justice, the Division of Mental Health Services, the Department of Public Health and Environment, the municipalities located in the judicial district, and specified organizations located within the judicial district. The committees would be responsible for sharing information and coordinating services for adults with mental illness who come into contact with the criminal justice system with the express intent of eliminating further penetration into the system and reducing recidivism.

Mental Health Treatment Coverage

Background. The Task Force heard from community mental health service providers and from judges that when a court orders some type of mental health treatment (including an assessment or evaluation), defendants who happen to have insurance that provides for such treatment are sometimes denied the benefit because the treatment was ordered by the court. Members of the Task Force acknowledged that many defendants have no insurance and consequently have no mental health coverage. However, the judges indicated that for those defendants with no coverage, access to treatment is important because it can mean the difference between an accurate diagnosis and adequate treatment which results in a diversion from the criminal justice system, and no diagnosis or treatment which results in repeated and long-term involvement with the criminal justice system.

Task Force members addressed several questions on this issue including but not limited to:

- What kinds of mental health services do courts tend to order?
- Does "mental health services" include treatment, assessment, and treatment for biologically-based mental illness only?
- Will the bill require insurance companies to provide additional coverage not now provided?

Taking a cue from similar legislation that was adopted during the 2002 legislative session

which required insurance companies to pay for court-ordered drug treatment when the insured defendant has such coverage (H.B. 02-1263), the Task Force discussed proposing legislation that would require plans that provide coverage for mental health treatment to provide such coverage and treatment regardless of whether it occurs as the result of contact with the criminal or juvenile justice systems.

Recommendation. The Task Force and Legislative Oversight Committee recommend legislation, similar to H.B. 02-1263, that requires health benefit plans that provide coverage for mental health services to provide coverage for services regardless of whether the services are voluntary or ordered by the court because of contact with the criminal justice system. The Task Force and Oversight Committee recommend that health insurance plans only be required to provide coverage for benefits that are medically necessary and otherwise covered under the plan.

Continuation of the Legislative Oversight Committee and Task Force

Background. Persons with mental illness continue to be a growing segment of the probation, jail, and prison populations in the United States. According to the U.S. Department of Justice, Bureau of Justice Statistics, well over 250,000 mentally ill offenders are incarcerated in the nation's prisons and jails. Among the nation's probation population, well over 500,000 report either a mental illness or an overnight stay in a mental health facility.

In Colorado, the Department of Corrections estimates that 16 percent of its population meets the diagnostic criteria for major mental illness. The Division of Youth Corrections estimates that 24 to 27 percent of juveniles in the system are diagnosed with mental illness. Colorado's Task Force serves as a forum for the criminal justice and mental health communities to meet and discuss legislative solutions, as well as discuss and implement non-legislative solutions to the growing population of persons with mental illness who are involved in the criminal and juvenile justice systems.

Work of the original task force and legislative oversight committee. The original Task Force meetings in the summer of 1999 marked the first time state agencies, law enforcement personnel, defense attorneys, court personnel, private mental health service providers, and consumers were directed by law to engage in discussions to address the growing numbers of persons with mental illness in the criminal justice system. The Task Force quickly realized that the range of issues related to persons with mental illness and the criminal justice system was broad and that each agency had much to learn about other agencies' issues, practices, and policies. However, the original 19-member Task Force made, and the Legislative Oversight Committee approved, four legislative proposals:

- a three-year continuation of the Task Force and Legislative Oversight Committee with an expanded 27-member Task Force (HB 00-1033, signed into law);
- pilot programs for community-based intensive treatment management programs for adults and juveniles (HB 00-1034, signed into law for

juveniles only; report due to Joint Budget Committee and Judiciary Committees by January 15, 2003);

- an expedited application for "Aid to the Needy Disabled" benefits for persons with mental illness upon release from incarceration (SB 00-037, postponed indefinitely); and
- a standardized inter-agency screening process to detect mental illness in adults in the criminal justice system and juveniles in the juvenile justice system (SB 00-047, signed into law; report to be made to Judiciary Committees by March 1, 2002 on screening procedures developed and additional legislation needed to implement them; periodic review of implementation of the standardized procedures and use of screening instrument to be made by October 1, 2004).

Work of the current task force and legislative oversight committee. When HB 00-1033 was adopted to continue the work of the Task Force and Oversight Committee at the end of the 2000 legislative session, neither the Task Force nor the Oversight Committee had met since the fall of 1999. Given that the new bill continued the work of the Task Force and Oversight Committee for an additional three years, the Task Force did not begin meeting again until August 2000 and did not propose legislation for the 2001 legislative session.

However, the Task Force has met once each month (with four exceptions) since August 2000. During the 2001 legislative interim, the Task Force made, and the Legislative Oversight Committee approved, two legislative proposals:

- community-based intensive treatment management pilot programs for adults (SB 02-017, postponed indefinitely); and
- implementation of the screening guidelines for adults in the criminal justice system and juveniles in the juvenile justice system pursuant to S.B.00-047 (SB 02-016, signed into law; implementation to be reviewed by involved departments by October 1, 2004; report to the judiciary committees on implementation and use of the screening instruments by January 15, 2005).

The Task Force discussed civil commitments and the degree to which persons with mental illness who do not maintain their mental health on their own (taking medications, for instance) unnecessarily wind up in the criminal justice system. The Task Force recommended legislation that modified the certification process for the outpatient treatment of persons with mental illness. Because the proposed legislation was not limited to offenders with mental illness who are involved in the criminal justice system but included all persons with mental illness, the Legislative Oversight Committee deemed the proposal was not within the scope of the charge to the Task Force or Legislative Committee. The legislation was introduced by Oversight Committee members as a non-committee bill (HB 02-1104, postponed indefinitely).

In addition to these legislative proposals, the Task Force, in conjunction with the Division of Criminal Justice, worked to foster training and implementation of Crisis Intervention Teams

(CITs) in Colorado law enforcement agencies. Crisis intervention teams consist of law enforcement officers and mental health professionals who respond to police calls involving mentally ill persons. The teams enjoin law enforcement and community mental health professionals in providing services to mentally ill persons and their families. In Colorado, the Division of Criminal Justice has helped to implement two CIT projects. The CIT programs, in Denver and Jefferson County, have developed mission statements, curriculum, and policies and procedures, and have trained several groups of law enforcement officers in the use of verbal de-escalation techniques in crisis situations involving mentally ill persons. To date, 150 law enforcement officers have been trained and another 150 officers are scheduled to complete training by July 1, 2003.

Further, the Task Force has engaged in ongoing discussions on several issues:

- mental health courts (see Colorado Legislative Council Research Publication No. 496, page 7 for a discussion of this issue);
- therapeutic communities (see Colorado Legislative Council Research Publication No. 496, page 8 for a discussion of this issue);
- the guilty but mentally ill (GBMI) verdict (see Colorado Legislative Council Research Publication No. 496, page 11 for a discussion of this issue); and
- psychiatric security review boards (see below for a discussion of this issue).

While the Task Force has not submitted legislative proposals on any of these topics, the Task Force has committed to revisit any or all of these issues in the future and consider legislative proposals and non-legislative solutions where appropriate.

Recommendation. The Task Force and Legislative Oversight Committee recommend continuing their efforts. Recognizing the need to continue efforts to find both legislative and non-legislative solutions to the myriad issues facing the criminal justice and mental health systems with regards to persons with mental illness, the Legislative Oversight Committee charged the Task Force with devising a five-year plan. The Task Force has developed a five-year plan that outlines the specific topics (within the legislative charge) to study and a time frame in which the Legislative Oversight Committee can expect legislative proposals and non-legislative solutions.

Topics the Task Force Studied but Made No Legislative Recommendation

Psychiatric security review boards. Psychiatric security review boards (PSRBs) are bodies to which a court commits offenders who are found not guilty by reason of insanity. Psychiatric Security Review Boards are typically comprised of five or six members appointed by the Governor and confirmed by the General Assembly. The boards generally include a practicing attorney, a member of the public, a victim advocate, a psychologist, a psychiatrist, a probation officer, and a parole officer.

A PSRB is responsible for reviewing the status of offenders who have been found not guilty by reason of insanity to determine and order the appropriate level of supervision and treatment. Psychiatric security review boards receive periodic reports and conduct periodic hearings on the offender's condition and implement any change in the offender's status.

In Colorado, approximately 200 persons who have been found not guilty by reason of insanity are under supervision in state facilities (15 to 20 defendants successfully plead not guilty by reason of insanity in the state each year). A PSRB could provide some consistency in and increase the quality of decisions made regarding these individuals' treatment and status. The Task Force convened a subcommittee to address these issues and to answer several specific questions in considering a PSRB process for Colorado.

- What would be the powers of the board, particularly with regard to decisions to release the offender back into the community?
- Who would appoint the board?
- What would be the composition of the board?
- How would the board be funded and staffed?
- Would courts be allowed to give determinate or indeterminate sentences to offenders found not guilty by reason of insanity?

For a variety of reasons, including budgetary limitations, the Task Force decided not to propose legislation this year implementing PSRBs in Colorado. Additionally, many of the above questions require further consideration. The Task Force has included consideration of alternate oversight mechanisms to exercise jurisdiction over the release of persons found not guilty by reason of insanity, such as PSRBs, as part of its five-year plan.

SUMMARY OF RECOMMENDATIONS

As a result of the Task Force's discussion and deliberation, the Oversight Committee recommends three bills for consideration in the 2003 legislative session.

Bill A — Concerning the Creation of a Local Initiative Committee Pilot Program for Management of Community-Based Programs for Adults with Mental Illness who Come Into Contact With the Criminal Justice System

Recognizing that the effective management of community-based programs for adults with mental illness who come into contact with the criminal justice system will promote the efficient use of services, create service linkages among providers, allow for evaluation of existing and proposed services, engage the stakeholders in the community, and ultimately reduce recidivism among offenders, the bill creates Senate Bill 91-094-type local initiative committees, on a pilot program basis, for the management of these programs. The pilot committees would be established in at least three judicial districts over the course of three years beginning in January of 2004.

Committee members would be appointed by the chief judge in each participating judicial district and would include, but not be limited to, the director of the Division of Criminal Justice, the Director of the Division of Mental Health Services, a representative of the municipalities located within the judicial district, a representative of the Department of Public Health and Environment with expertise in substance abuse treatment, a representative of the Judicial Department from the judicial district, and representatives from the following organizations located within the judicial district:

- county department of social services;
- county sheriff's office;
- local probation office;
- local state parole office;
- local community corrections board;
- district attorney's office;
- public defender's office; and
- local community mental health office.

Each committee would be required to meet at least three times each year to supervise and share information regarding the coordination of services for adults with mental illness who come into contact with the criminal justice system and to develop and implement plans for the provision and coordination of services in that judicial district.

The bill requires that a copy of each local initiative committee plan adopted for the provision and coordination of services in the judicial district be submitted to the House and Senate

Judiciary committees. A written report evaluating each local initiative committee's provision and coordination of services for adults with mental illness who come into contact with the criminal justice system must be submitted to the House and Senate Judiciary committees by July 1, 2007. The committees may recommend legislation to continue or expand the local initiative committee pilot program.

Bill B — Concerning Mental Health Treatment Coverage under Health Benefit Plans

The bill requires any individual or group health benefit plan that provides coverage for mental health services to provide coverage for such services regardless of whether the treatment is voluntary or court-ordered as a result of contact with the criminal justice system. Plans would only be required to provide coverage for those benefits that are medically necessary and that are otherwise covered under the plan. The bill clarifies that nothing in the law mandates that any health benefit plan must provide coverage for mental health services.

Bill C — Concerning the Continuing Examination of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System

The bill extends the repeal of the continuing study of the treatment of persons with mental illness who are involved in the criminal justice system from July 1, 2003, to July 1, 2008 and directs the course of study for the Task Force for the five-year period.

In order to access the expertise needed for reasoned and fully informed discussions over the next five years, the membership on the Task Force would be increased from 27 to 29 and some of the specifications for the current membership would be refined as follows:

- the member who represents community corrections would be removed (the interests of community corrections are represented by other members of the Task Force);
- an additional member of the Judicial Branch would be added. That member must have experience in adult criminal justice matters;
- one of the two members representing local law enforcement agencies must be in active service; and
- two additional members from the Department of Human Services would be added: one member who represents Children's Health and Rehabilitation, and one member who represents the Mental Health Planning and Advisory Council.

Under the bill, the Task Force's current charge is amended as follows:

- the Task Force would be required to consider liability and safety issues more broadly as they relate to the identification, diagnosis, and treatment of persons with mental illness who are involved in the criminal justice system. The bill repeals the more narrow requirement that the Task Force study the liability of facilities housing persons with mental illness and the liability of staff who treat and supervise such persons;
- the Task Force must consider adoption of a common framework for addressing mental health issues, including competency and co-occurring disorders, of juveniles who come into contact with the criminal justice system and develop a plan to modify current systems to serve such juveniles; and
- the Task Force must consider the development and use of alternatives to court jurisdiction with regards to conditional release for persons found not guilty by reason of insanity, such as use of a psychiatric security review board.

The bill sets up a five-year time line for the Task Force to study these issues and specifies the dates by which the Task Force must report to the Legislative Oversight Committee on these issues.

RESOURCE MATERIALS

The resource materials listed below were provided to the committee or developed by Legislative Council Staff during the course of the meetings. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver, (303-866-2055). For a limited time, the meeting summaries and materials developed by Legislative Council Staff are available on our web site at:

www.state.co.us/gov_dir/leg_dir/lcsstaff/2002/02interim.htm

Meeting Summaries

Topics Discussed

Oversight Committee

July 10, 2002	Final disposition of legislation proposed by the Task Force during the legislative session; a review of issues the Task Force will study during the current interim including juveniles with mental health issues who are in the juvenile justice system, a member education program, and a SB 91-094-type program for adults with mental illness in the criminal justice system; psychiatric security review boards; continuation of the Task Force and Oversight Committee and a five-year plan to do so; a joint meeting between the Task Force and Oversight Committee; and the appointment of Dr. Jim Michaud to replace Dr. Dennis Kleinsasser as a representative from the Department of Corrections on the Task Force.
August 28, 2002	Review and approval of bill drafts for continuation of the Task Force and Interim Committee and for local initiative committee pilot programs; a schedule for the Task Force to meet while the continuation bill is under consideration by the General Assembly; a request for permission to draft legislation regarding insurance coverage for mental health services, for persons who have such coverage, that is ordered by the court; and the appointment of Steve Schoenmakers to replace Dr. Robert Hawkins as a representative from the Department of Human Services on the Task Force.
September 25, 2002 (unofficial meeting; quorum not present)	Draft insurance coverage bill, member education efforts, and information provided by the Office of Legislative Legal Services from The Council of State Governments and the Criminal Justice/Mental Health Consensus Project.
October 7, 2002	Review and approval of bill draft regarding insurance coverage for court-ordered mental health services and a review of bill drafts previously approved by the committee.

Task Force Meetings

- January 17, 2002 Transitioning offenders who are incarcerated and eligible for Medicaid; update on the status of legislation recommended by the Task Force; Representative Andrew Romanoff's proposed bill concerning enrollment in the Colorado Medical Assistance Act; and prioritization of future topics the Task Force will discuss.
- February 14, 2002 Update on the status of SB 02-016 (the screening bill); guilty but mentally ill (GBMI) verdicts; psychiatric security review boards (PSRBs); update on the status of SB 02-017 (community-based management pilot programs), HB 02-1114 (recertification bill), and SB 02-131 (insurance coverage for mental disorders); update on DOC transitional services; and a discussion of current repeal dates for the Task Force and Oversight Committee.
- March 21, 2002 Report from "SB 91-094" subcommittee; update on legislation in which the Task Force has an interest; PSRBs; presentation on Denver adult probation department program; crisis intervention teams (CITs); and program evaluation summary of community-based management pilot programs for youth with mental illness who are involved in the criminal justice system.
- April 18, 2002 Presentation of concerns from members of the Judicial Branch (including Denver Juvenile Court Judge Karen Ashby) on gaps in the Colorado Children's Code with regard to the treatment of juveniles with mental health issues; update on the status of SB 02-016 (screening device); and state law regarding evidentiary hearings and community corrections diversion clients.
- May 16, 2002 Update on legislation in which the Task Force has an interest; report on the conference on Mental Illness in the criminal justice system held in Orlando, Florida; U.S. Department of Justice mental health court announcement of the availability of grant funding; PSRBs; and unusually high numbers of certifications for commitment under Title 27, C.R.S., in certain jurisdictions.
- July 18, 2002 Report from juvenile justice subcommittee; report on the July 10 meeting of the Legislative Oversight Committee; update on the final status of legislation in which the Task Force had an interest; PSRBs; continuation legislation issues; jail diversion grant; and evidentiary hearings for revocations for community corrections diversion clients.
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August 15, 2002	Review of bill drafts for continuation of the Task Force and Oversight Committee and pilot programs for local initiative committees to manage community-based programs; jail diversion grant; and competency evaluations in the community.
September 12, 2002	Report on the August 28 meeting of the Legislative Oversight Committee; member education efforts; and review of bill drafts for continuation of the Task Force and Oversight Committee, local initiative committee pilot programs to manage community-based programs, and insurance coverage for court-ordered mental health services.

Reports

Report Provided to the Oversight Committee:

Report to the Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness who are Involved in the Criminal Justice System, October 1, 2002.

Reports Provided to the Task Force:

Youth with Disabilities in the Juvenile Justice System; Fact Sheet from U.S. Office of Special Education Programs, January 17, 2002.

Transitioning Mentally Ill Offenders From DOC to the Community; Presentation from Department of Corrections, February 14, 2002.

Juvenile Justice and Mental Health Juvenile Sub-committee; Report of Subcommittee, July 3, 2002.

July 10th Meeting of the Legislative Oversight Committee for the Continuing Study of the Treatment of Persons with Mental Illness Who are Involved in the Criminal Justice System; summary of meeting prepared by Division of Criminal Justice, July 17, 2002.

Psychiatric Security Review Board (PSRB); Report on PSRB in Oregon including costs of program, July 18, 2002.

Mental Illness in Colorado; Brochure prepared by the National Alliance for the Mentally Ill Colorado and the Colorado Psychiatric Society, September 12, 2002.