

**RECOMMENDATIONS FOR 2005**

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

**Report to the  
Colorado General Assembly**

**Research Publication No. 533  
November 2004**

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November 2004

To Members of the Sixty-fifth 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 Justice System. This committee was created pursuant to Senate Bill 04-037. The purpose of the committee is to oversee an Advisory Task Force that is studying and making recommendations on the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on October 15, 2004, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bill herein for consideration in the 2005 session was approved.

Respectfully submitted,

/s/ Representative Lola Spradley  
Chairman

LS/JH/jh

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# RECOMMENDED BILL AND FISCAL NOTE

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The fiscal note was not available on the date of printing and will be posted on the committee's website when it is completed.

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

**Members of the Committee**

Senator Norma Anderson  
Chair

Senator Steve Johnson  
Senator Sue Windels

Representative Mark Cloer  
Vice-Chair

Representative Debbie Stafford  
Representative Cheri Jahn

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# EXECUTIVE SUMMARY

## **Committee Charge**

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Senate Bill 04-037 reauthorized the establishment of a 6-member Legislative Oversight Committee and a 29-member Advisory Task Force to continue the examination of persons with mental illness in the justice system.

The committee was responsible for appointing an ethnically, culturally, and gender diverse task force that represents all areas of the state. The task force was directed to continue examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems for the next five years. In FY 2004-05, the task force will seek to adopt a common framework for effectively addressing the mental health issues of juveniles in the justice system, including competency and disorders that co-occur with substance abuse. The task force's discussions will center on the diagnosis, treatment, and housing of these juveniles.

The task force was required to submit a written report of its findings and recommendations to the committee by October 1. The committee is required to submit an annual report to the General Assembly regarding recommended legislation resulting from the work of the task force.

## **Committee Activities**

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### **The Advisory Task Force**

The Advisory Task Force first met in the summer of 1999, and has met on a monthly basis for the last five years. In 2003 and 2004, the task force continued its meetings and discussions despite the failure of House Bill 03-1030, which sought to continue the study of the mentally ill in the justice system beyond the 2003 repeal date. During the last year, the task force made progress on a number of issues. Its primary accomplishments include the following:

- developing the five-year work plan that is outlined in Senate Bill 04-037;
- designing a pilot program for parolees with mental illness;
- continuing to develop and expand training for law enforcement officers to work more effectively with persons with mental illness (crisis intervention teams); and

- continuing discussions on mental health courts, juvenile competency, and the reinstatement of Medicaid benefits for offenders upon release from incarceration.

Following reauthorization in June 2004, the task force met three times and focused its attention on the issues of juvenile competency, a Jefferson County pilot program for parolees with mental illness, and juvenile mental health courts.

### **The Legislative Oversight Committee**

The Legislative Oversight Committee met twice in 2004 following reauthorization by Senate Bill 04-037. During its meetings, the committee monitored and examined the work, findings, and recommendations of the task force. Specifically, the committee:

- made appointments to the task force;
- was briefed on issues under consideration by the task force (juvenile competency, pilot program for adult parolees with mental illness, and juvenile mental health courts);
- reviewed the implementation of prior legislation recommended by the task force (interagency mental health screening procedures and community-based intensive treatment programs for juveniles); and
- considered legislation recommended by the task force.

The recommendation is described below.

### **Committee Recommendation**

As a result of the discussion and deliberation of the Advisory Task Force, the Legislative Oversight Committee recommends one bill for consideration in the 2005 session.

***Bill A — Concerning Creation of a Competency-to-Proceed Statute For Juvenile Delinquency Actions.*** The bill is modeled after existing adult competency statutes with a few modifications. The bill defines who has 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 to be competent to proceed, the bill would allow a court to make modifications to aid the juvenile's understanding of court processes and procedures. A juvenile who is found incompetent to proceed would be prohibited from being tried or sentenced. For those juveniles found to be incompetent but restorable, the bill would require a court to order restoration services unless the court makes a finding that such services would be inappropriate. For those juveniles found to be incompetent and not restorable, the bill would allow a court to order the development of a plan to manage or

treat the juvenile's behavior. Finally, the court would be given several options for proceeding once it finds that a juvenile has or has not been restored to competency.

## STATUTORY AUTHORITY AND RESPONSIBILITIES

Senate Bill 04-037 reauthorized the establishment of a six-member Legislative Oversight Committee to continue the examination of persons with mental illness in the criminal justice system.

The bill creates a 29-member Advisory Task Force to assist the committee in its study. The authorizing legislation directs the committee to appoint to the task force individuals who represent various state and private agencies. The task force members and the agencies they represent are listed below in Table 1.

**Table 1  
Advisory Task Force Appointees**

State or Private Agency	Representative(s)	
Department of Public Safety (1)	Ray Slaughter Division of Criminal Justice	
Department of Corrections (2)	Barry Pardus Clinical Services	Jeaneene Miller Division of Parole
Local law enforcement (2)	Bill Kilpatrick Golden Police Department	George Epp County Sheriffs of Colorado
Department of Human Services (6)	Debra Kupfer Division of Mental Health Maurice Williams Division of Youth Corrections Melinda Cox Office of Child & Family Services Janet Wood Division of Alcohol & Drug Abuse Michele Manchester Colorado Mental Health Institute at Pueblo Diana Dilka Colorado Mental Health Advisory Council	
County departments of social services (1)	Cindy Dicken Clear Creek County	
Department of Education (1)	Heather Hotchkiss Exceptional Student Services	
State Attorney General's office (1)	Michael Goodbee Deputy Attorney General	
District Attorneys (1)	Kathy Sasak Assistant District Attorney, 1 <sup>st</sup> Judicial District	
Criminal Defense Bar (2)	David Kaplan Colorado Public Defender	Abe Hutt Private Practice



State or Private Agency	Representative(s)
Practicing mental health professionals (2)	Michael Cugini Intervention Services Carrie Merscham Private Practice
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)	Chistine Highnam Supportive Housing & Homeless Programs, Dept. of Human Services
Practicing forensic professional (1)	Richard Wihera Private Practice
Members of the public (3)	Kay Heil Steve White Deirdre Parker
Judicial Department (4)	Eric Philp Probation Services Susan Colling Probation Services Judge Karen Ashby Denver Juvenile Court Judge Martin Gonzales Alamosa Combined Courts

### The Advisory Task Force

The Advisory Task Force is charged with examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems. Table 2 outlines the specific issues to be studied by the task force during each of the next five years.

**Table 2**  
**The Advisory Task Force's Five-year Study Plan**

Deadline	Issues to be Studied
July 1, 2005	<ul style="list-style-type: none"> <li>• Diagnosis, treatment, and housing of juveniles with mental illness who are involved in the criminal justice system or the juvenile justice system</li> <li>• Adoption of a common framework for effectively addressing the mental health issues of these juveniles, including competency and disorders that co-occur with substance abuse</li> </ul>
July 1, 2006	<ul style="list-style-type: none"> <li>• Prosecution of and sentencing alternatives for persons with mental illness that may involve treatment and ongoing supervision</li> <li>• Commitment of persons with mental illness who have been convicted of a criminal offense, found not guilty by reason of insanity, or found to be incompetent to stand trial</li> <li>• Development of a plan to effectively and collaboratively service the population of juveniles involved in the criminal justice system or the juvenile justice system</li> </ul>

Deadline	Issues to be Studied
July 1, 2007	<ul style="list-style-type: none"> <li>• Diagnosis, treatment, and housing of adults with mental illness who are involved in the criminal justice system</li> <li>• Ongoing treatment, housing, and supervision (especially regarding 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 such persons</li> <li>• Ongoing assistance and supervision (especially regarding medication) of persons with mental illness after discharge from sentence</li> <li>• Identification of alternative entities to exercise jurisdiction regarding release for persons found not guilty by reason of insanity (e.g., development and use of a psychiatric security review board), including recommendations related to the indeterminate nature of the commitment imposed</li> </ul>
July 1, 2008	<ul style="list-style-type: none"> <li>• Identification, diagnosis, and treatment of minority persons with mental illness, women with mental illness, and persons with co-occurring disorders in the criminal and juvenile justice systems</li> </ul>
July 1, 2009	<ul style="list-style-type: none"> <li>• Early identification, diagnosis, and treatment of adults and juveniles with mental illness who are involved in the criminal and juvenile justice systems</li> <li>• Modification of the criminal and juvenile justice systems to most effectively serve adults and juveniles with mental illness who are involved in these systems</li> <li>• Implementation of appropriate diagnostic tools to identify persons in the criminal and juvenile justice systems with mental illness</li> <li>• Any other issues concerning persons with mental illness who are involved in the state criminal and juvenile justice systems that arise during the course of the task force study</li> </ul>

Senate Bill 04-037 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 in Table 2 at any time during the existence of the task force.

The task force must communicate its findings on the issues in Table 2 and make recommendations to the Legislative Oversight Committee on or before August 1. In addition, the task force must submit a written report to the committee by October 1. 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 Legislative Oversight Committee**

The Legislative Oversight Committee was created to oversee the work of the Advisory Task Force. The committee reviews the task force's findings and may recommend legislative proposals. In calendar years 2005 through 2009, the committee is required to meet at least three times annually.

# COMMITTEE ACTIVITIES

The Advisory Task Force and Legislative Oversight Committee first met in the summer of 1999. A brief summary of the prior work of these groups is provided below to provide a historical context for a discussion of their work in 2004.

**1999 interim.** *House Joint Resolution 99-1042* created a Legislative Oversight Committee and Advisory Task Force to study the treatment of persons with mental illness in the criminal justice system. Pursuant to the resolution, the 6-member committee and the 19-member task force first met during the summer of 1999. Their work 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.

After their initial study, the committee and task force discovered that the issues under consideration presented a greater challenge to the criminal justice and mental health systems than originally anticipated. The groups determined that a long-term study would be necessary to understand the depths of these issues and to adequately address them. As a result, the committee proposed legislation to continue the study for three more years. In addition, the committee recommended legislation concerning intensive treatment management programs, standardized mental health screening, and the resumption of medical benefits upon release from incarceration. Colorado Legislative Council Research Publication No. 457, published in November 1999, is the final report of the 1999 committee and task force and includes the committee's legislative proposals.

**2000 interim and 2001 interim.** *House Bill 00-1033* continued the Legislative Oversight Committee and Advisory Task Force through July 1, 2003. The bill also increased the task force membership from 19 to 27 members to take advantage of additional expertise and to foster interagency collaboration. After being re-formed, the new task force met monthly from late summer 2000 through the 2001 legislative interim and sought solutions to some of the issues previously identified. Although the task force made no legislative recommendations for the 2001 legislative session, it discussed or fostered non-legislative solutions regarding:

- treatment, services, and supervision for persons with mental illness who come in contact with the justice system;
- sentencing law related to mental illness; and
- training to help criminal justice professionals work more effectively with persons with mental illness (crisis intervention teams).

The task force offered legislative proposals for the 2002 legislative session on community treatment pilot programs, standardized mental health screening, and Colorado's civil commitment process. Colorado Legislative Council Research Publication No. 496 is the final report of the work of the committee and the task force in 2000 and 2001. The report includes legislation proposed by the committee.

**2002 interim.** The Advisory Task Force studied several issues from the fall of 2001 through the 2002 legislative interim, and made legislative proposals for the 2003 session concerning the following issues:

- Senate Bill 91-094-type programs for offenders with mental illness;
- mental health treatment coverage; and
- continuation of the committee and task force.

The committee also discussed psychiatric security review boards but decided to study the issue further before recommending a proposal. Colorado Legislative Council Research Publication No. 508 is the final report of the 2002 meetings of the committee and the task force and includes the committee's legislative proposals.

**2003 interim.** The General Assembly considered *House Bill 03-1030* to again reauthorize the Legislative Oversight Committee and the Advisory Task Force. However, the bill was lost in the House, and the committee and task force were repealed. Before the repeal, the committee met to determine the future of the groups' efforts. The committee directed the task force to continue its monthly meeting schedule in order to develop a five-year work plan and draft new legislation. From May 2003 through May 2004, the group of former task force members examined a number of issues, including mental health courts, juvenile competency, the reinstatement of Medicaid benefits for offenders upon release from incarceration, parole eligibility for inmates with mental illness, and a five-year work plan.

Several outcomes of the group's work in 2003 and 2004 are noteworthy. The group recommended one legislative proposal to implement a five-year work plan and reauthorize the committee and task force. The group agreed to continue studying most of the other issues. Regarding parole for inmates with mental illness, a subcommittee began meeting to design a pilot program. The pilot targets adults parolees with serious mental illness living in Jefferson County and inmates with serious mental illness who have passed their first parole date. Residential, non-residential, case management, mental health, and substance abuse counseling services will be provided. Members of the subcommittee began working to secure a federal grant to fund the pilot.

**2004 interim.** *Senate Bill 04-037* reauthorized a 6-member Legislative Oversight Committee and reestablished a 29-member Advisory Task Force through July 1, 2010. After passage of the legislation, the task force met three times and discussed the following issues:

- juvenile competency;
- Jefferson County pilot program for parolees with mental illness; and
- juvenile mental health courts.

A discussion of these topics and proposed legislation relating to juvenile competency follows.

## **Juvenile Competency**

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**Background.** Current law provides for a preadjudication evaluation of juveniles who appear to have a mental illness or developmental disability (Section 19-2-702, C.R.S.). The statute lays forth the evaluation procedure and suspends criminal proceedings until it is determined whether a juvenile is deemed to have a mental illness or a developmental disability. If evaluation reveals that the juvenile has a mental illness, a court must proceed according to Title 27, Article 10 (Care and Treatment of the Mentally Ill). If evaluation reveals that the juvenile has a developmental disability, the court may proceed according to Title 27, Article 10.5 (Care and Treatment of the Developmentally Disabled), or may adopt any of the recommendations of the community board that conducted the evaluation. If it is determined that the juvenile does not have a mental illness or a developmental disability, the criminal proceedings may resume.

A subcommittee of the task force was formed in late summer 2002 to address juvenile justice issues in general. One issue the subcommittee focused on was a standard for measuring competency in juveniles. Subcommittee members widely believed that Section 19-2-702, C.R.S., does not adequately establish or address a juvenile's competency to proceed with the trial. The current statute is geared toward juveniles who are unlikely to be restored to competency, and there are no provisions for juveniles who are not identified as mentally ill or developmentally disabled but who are incompetent to continue criminal proceedings. The subcommittee also believed that it was necessary to develop a juvenile competency statute similar to the adult competency statute. Based upon these concerns, the subcommittee spent time examining the competency standards of other states. In July 2004, the subcommittee suggested to the task force that a process be developed to identify a juvenile offender's level of competency and potential for restoration, to make modifications with age-appropriate language for instruction on court procedures and charges, and to develop standards for the restoration proceedings. The task force asked the subcommittee to create a legislative proposal that encompasses these suggestions.

**Recommendation.** The task force and committee recommend a bill that follows the subcommittee's suggestions and is modeled after the adult competency statutes in Sections 16-8-110 through 114, C.R.S., with a few modifications.

Bill A defines who has standing to raise the issue of competency to proceed at trial. It also lays forth procedures by which a court can determine a juvenile's competency and order restoration as necessary. For juveniles found to be competent to proceed, court proceedings could be modified in order to aid the juvenile's understanding of court processes and procedures. A juvenile who is found incompetent to proceed would be prohibited from being tried or sentenced. For juveniles found to be incompetent to proceed but restorable, the court would be required to order restoration services unless the court makes a finding that such services would be inappropriate. For juveniles found to be incompetent to proceed and not restorable, the court could order the development of a plan to manage or treat the juvenile's behavior. Finally, a court has several options for proceeding once the court finds that a juvenile has or has not been restored to competency.

## **Jefferson County Pilot Program For Parolees with Serious Mental Illness**

A pilot program for Jefferson County parolees with serious mental illness was initiated in response to an increasing population of offenders with serious mental illness in the Department of Corrections and the rising number of parole revocations. Offenders with serious mental illness are more likely to be refused parole because the Parole Board is not satisfied that their treatment and supervision plans are adequate. Moreover, parolees with serious mental illness are more likely to have their parole revoked. Programs such as Boulder County's Partnership for Active Community Engagement (PACE) are designed to address these problems. The PACE program reports 73 to 90 percent reductions in the number of days participants were incarcerated when comparing the year after admission to the program with the year before admission. Only 11.8 percent of the adults who participated in the PACE program in 2000 had been re-arrested by 2003. The Jefferson County pilot program is modeled after Boulder County's program.

The pilot program has several goals. Its primary purpose is to reduce parole revocations and arrests for new offenses by increasing stability in areas such as sobriety, housing, employment, and the maintenance of psychiatric medications. The program seeks to reduce social costs and hospital bed-stays while maintaining community safety.

The program was designed by a partnership of representatives from the following agencies:

- Department of Public Safety, Division of Criminal Justice;
- Department of Human Services, Division of Mental Health;
- State Parole Board;
- Department of Corrections;
- Jefferson County Community Justice Services Department;
- Jefferson County Sheriff's Office;
- 1<sup>st</sup> Judicial District Attorney;
- Jefferson Center for Mental Health;
- Intervention, a private community corrections provider; and
- County Sheriffs of Colorado.

The partnership developed the concept of a combination residential/non-residential program for adult parolees with serious mental illness living in Jefferson County, Colorado. The pilot program would supervise 10 to 15 adult parolees in a residential halfway house setting and 20 to 25 adult parolees in non-residential settings. A multi-disciplinary team will be responsible for providing services from one location for correctional supervision, electronic monitoring, mental health treatment, psychiatric medicine management, substance abuse treatment, housing and employment assistance, and life-skills training. The program will include an evaluation component to assess its effectiveness. The projected budget is \$458,450, including \$163,300 from federal grant moneys and \$295,150 from redirected state and local resources that are currently providing these services. The federal grant is being pursued through the U.S. Bureau of Justice Assistance.

## **Juvenile Mental Health Courts**

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Mental health courts are specialized courts similar to drug courts that divert offenders with mental illness to treatment and services instead of incarceration. From June 2003 through May 2004, the task force considered the possibility of implementing pilot mental health courts for juveniles in Colorado. To examine the issue, the task force received technical assistance from the Council of State Governments (CSG) in the form of CSG staff, a judge from New Mexico, and a court administrator from New York who met with the task force in September 2003. Also, in the early months of 2004, several task force members visited with judges and law enforcement officials in Colorado to see if they might be receptive to implementing a voluntary or pilot mental health court in their jurisdiction. However, the avenues explored by the group yielded neither clear direction nor solid support for implementing a pilot project.

The task force revisited the issue in August 2004 in a discussion facilitated by a guest speaker who helped design a juvenile mental health court in California. The task force learned that the Court for the Individualized Treatment of Adolescents (CITA) follows a multi- and cross-disciplinary approach. Other key elements of the court listed below were the center of the discourse.

- Avoidance of the mental health stigma – CITA's name reflects its mission without reinforcing a stigma.
- Narrow, formally defined eligibility criteria – CITA participants must have a biologically-based brain disorder that does not co-occur with substance abuse.
- Treatment does not substitute for punishment – Juveniles in CITA are still adjudicated for their criminal actions after receiving treatment.

As a result of the presentation and ensuing discussion, the task force took several steps forward to develop pilot juvenile mental health courts. First, it was suggested that legislation was not necessary to implement this type of court in Colorado. The group decided to hold a judicial forum to create the court's structure, then solicit judges for rotating participation in the court. One viable option is to build off the existing drug court programs in Colorado because the concepts of drug courts and mental health courts are similar. Recognizing that few judges will be interested in doing juvenile mental health adjudications full-time, the task force believes it necessary to establish a structure whereby judges could rotate through the mental health court. To facilitate the planning and implementation process, a subcommittee was formed and charged with further examining juvenile mental health courts in Colorado.



# SUMMARY OF RECOMMENDATIONS

As a result of the committee's activities, the following bill is recommended to the Colorado General Assembly.

## **Bill A — Concerning Creation of a Competency-to-Proceed Statute For Juvenile Delinquency Actions**

The bill creates a competency-to-proceed statute for juvenile delinquency cases that is modeled largely on Colorado's current adult competency statutes (Sections 16-8-110 through 114, C.R.S.). Certain parties could raise the issue of competency at trial if there was a belief that a juvenile is incompetent to proceed. The bill only grants this standing to a court, prosecutor, defense counsel, guardian ad litem, probation department, parent, or legal guardian. When the issue of competency is raised, a court would be required to make a preliminary finding about whether the juvenile is competent to proceed. The court would be permitted to order a competency evaluation to aid in making a preliminary finding. A preliminary finding would become a final determination if such finding was not challenged through a procedure created in the bill.

A juvenile who is found incompetent to proceed would be prohibited from being tried or sentenced. If a court determined a juvenile is incompetent to proceed, it would be required to determine whether the juvenile could be restored to competency. If a court finds a juvenile restorable, it must stay the proceedings and order restoration services in the least restrictive environment, taking into account public safety and the best interests of the juvenile. A court would be required to review a juvenile's progress toward competency at least every 90 days. Also, a court would be permitted to order a restoration hearing on its own motion or upon a motion of the prosecution or juvenile. Once a court finds a juvenile is restored, the criminal proceedings would be resumed.

If a court found a juvenile is not restorable, it would be required to develop a management plan for the juvenile that is based upon the court's findings of the least restrictive environment, taking into account public safety and the best interests of the juvenile. The management plan must address treatment of the juvenile, supervisory responsibility for the juvenile, and behavior management tools, if these are not part of the treatment plan.

The bill would repeal Section 19-2-702, C.R.S., and statutory references to this citation.

# 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 Oversight Committee meetings as well as materials distributed during those meetings are available at the Division of Archives, 1313 Sherman Street, Denver, Colorado (303-866-2055). For a limited time, the summaries of Task Force and Oversight Committee meetings and materials developed by Legislative Council Staff are available on our web site at:

[www.state.co.us/gov\\_dir/leg\\_dir/lcsstaff/2004/04interim.htm](http://www.state.co.us/gov_dir/leg_dir/lcsstaff/2004/04interim.htm)

<b>Meeting Summaries</b>	<b>Topics Discussed</b>
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*Legislative Oversight Committee*

July 20, 2004

Overview of the provisions of Senate Bill 04-037, which reauthorizes the committee; review of letters of interest from potential task force appointees; appointment of task force members; review of issues previously examined by task force and outcomes of the task force's prior work; and an overview of issues currently under consideration by the task force (juvenile competency, Jefferson County Parole Pilot Project, juvenile mental health courts).

September 17, 2004

Review of recent meetings and business of the task force; overview of the legislative proposal regarding juvenile competency; presentation by the Judicial Department, Division of Probation Services, on the standardized interagency mental health screening procedures that have been implemented for juveniles and adults pursuant to Senate Bill 00-047 (legislation recommended by the task force in 1999); and a presentation by the Division of Criminal Justice, Office of Research and Statistics, reporting cost-saving measures associated with community-based intensive treatment programs for juveniles that have been implemented pursuant to Senate Bill 00-0134 (legislation recommended by the task force in 1999).

### ***Advisory Task Force***

- July 15, 2004 Election of chair and vice-chair; discussion of Senate Bill 04-037, task force membership requirements, and the scope of the task force's charge pursuant to the legislation; discussion of potential legislative proposals for the 2005 session; update from the juvenile subcommittee on the issue of competency and its progress on drafting a legislative proposal to address the subcommittee's concerns about the inadequacy of Section 19-2-702, C.R.S.; and an update on supervision and funding sources for the Jefferson County Parole Pilot Project.
- August 19, 2004 Review of the July 20 meeting of the Legislative Oversight Committee; update on criteria being collected for the Jefferson County Parole Pilot Project to measure its effectiveness once implemented; update from the juvenile subcommittee on its progress drafting the legislative proposal to address competency; discussion of mental health courts facilitated by a guest speaker from California (Dr. David Arredondo of the Office of Child Development, Neuropsychiatry, and Mental Health); and a discussion about providing task force members with an overview of the legislative process, the criminal justice system, and the mental health system at a future meeting.
- September 16, 2004 Discussion of the provisions of a legislative proposal to address the issue of juvenile competency (see Bill A); update on Medicaid eligibility for persons who are held in a correctional facility or a mental health facility; and an update on the Jefferson County Parole Pilot Project.

### **Memoranda and Reports**

#### **Materials provided to the Legislative Oversight Committee:**

*Report to the Oversight Committee for the Continuing Examination of the Treatment of Person with Mental Illness Who Are Involved in the Justice System;* Report prepared by the Advisory Task Force, October 1, 2004.

*Community-Based Intensive Treatment Pilot Programs for Juveniles with Mental Illness Who Are Involved in the Criminal Justice System;* Report prepared by the Department of Public Safety, Division of Criminal Justice, Office of Research and Statistics, October 1, 2004.

*Persons with Mental Illness in the Criminal Justice System: The Challenge and Colorado's Response*; Legislative Council Staff Issue Brief, July 20, 2004.

*Issues and Outcomes from the Oversight Committee and Task Force for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal Justice System*; Memorandum prepared by Legislative Council Staff, July 20, 2004.

*Overview of Senate Bill 04-037*; Memorandum prepared by Legislative Council Staff, July 15, 2004.

**Materials provided to the Advisory Task Force:**

*Juvenile Mental Health Courts: Rationale and Protocols*; Abstract co-authored by several judicial and mental health professionals, including Dr. David Arredondo, Fall 2001 Juvenile and Family Court Journal.

*Persons with Mental Illness in the Criminal Justice System: The Challenge and Colorado's Response*; Legislative Council Staff Issue Brief, July 20, 2004.

*Issues and Outcomes from the Oversight Committee and Task Force for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal Justice System*; Memorandum prepared by Legislative Council Staff, July 20, 2004.

*Overview of Senate Bill 04-037*; Memorandum prepared by Legislative Council Staff, July 15, 2004.

## Bill A

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### HOUSE SPONSORSHIP

Stafford, Cloer, and Jahn

### SENATE SPONSORSHIP

Windels, Anderson, and Johnson S.

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### A BILL FOR AN ACT

CONCERNING CREATION OF A COMPETENCY-TO-PROCEED STATUTE FOR  
JUVENILE DELINQUENCY ACTIONS.

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#### Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**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.** Creates a competency-to-proceed statute for juvenile delinquency cases. Prohibits a juvenile who is incompetent to proceed from being tried or sentenced. Requires the court, prosecution, defense, guardian ad litem, probation department, parent, or legal guardian to raise the issue of competency if there is a belief the juvenile is incompetent to proceed. When the issue of competency is raised, requires the court to make a preliminary finding regarding whether the juvenile is competent to proceed. Permits the court to order a competency evaluation to aid in making the preliminary finding. Creates a procedure for a party to challenge the preliminary finding. States the preliminary finding becomes a final determination if there is no challenge to the preliminary finding.

If the court determines the juvenile is incompetent to proceed, requires the court to determine whether the juvenile may be restored to competency. If the court finds the juvenile restorable, directs the court to stay the proceedings and order restoration services in the least restrictive environment, taking into

account public safety and the best interests of the juvenile. Requires the court to review the juvenile's progress toward competency at least every 90 days. Permits the court to order a restoration hearing on its own motion or upon motion of the prosecution or juvenile. Once the court finds the juvenile restored, directs the court to resume the proceedings.

If the court finds the juvenile is not restorable, compels the court to develop a management plan for the juvenile. Directs that the management plan be based upon court findings of the least restrictive environment, taking into account public safety and the best interests of the juvenile. Directs the management plan to address treatment for the juvenile, supervisory responsibility for the juvenile, and behavior management tools, if not part of the treatment plan.

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

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**SECTION 1.** Article 2 of title 19, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW PART to read:

#### PART 13

#### COMPETENCY TO PROCEED

**19-2-1301. Mental incompetency to proceed - effect - how and when raised.** (1) A JUVENILE SHALL NOT BE TRIED OR SENTENCED IF THE JUVENILE IS INCOMPETENT TO PROCEED, AS DEFINED IN SECTION 16-8-102 (3), C.R.S., AT THAT STAGE OF THE PROCEEDINGS AGAINST HIM OR HER.

(2) WHEN A PARTY SPECIFIED IN THIS SUBSECTION (2) HAS REASON TO BELIEVE THAT A JUVENILE IS INCOMPETENT TO PROCEED IN A DELINQUENCY ACTION, THE PARTY SHALL RAISE THE QUESTION OF THE JUVENILE'S COMPETENCY IN THE FOLLOWING MANNER:

(a) ON ITS OWN MOTION, THE COURT SHALL SUSPEND THE PROCEEDING AND DETERMINE THE COMPETENCY OR INCOMPETENCY OF THE JUVENILE AS PROVIDED IN SECTION 19-2-1302.

(b) BY MOTION OF THE PROSECUTION, PROBATION OFFICER, GUARDIAN AD LITEM, OR DEFENSE, MADE IN ADVANCE OF THE COMMENCEMENT OF THE PARTICULAR PROCEEDING. THE MOTION MAY BE FILED AFTER THE COMMENCEMENT OF THE PROCEEDING IF, FOR GOOD CAUSE SHOWN, THE MENTAL CONDITION OF THE JUVENILE WAS NOT KNOWN OR APPARENT BEFORE THE COMMENCEMENT OF THE PROCEEDING.

(c) BY THE JUVENILE'S PARENT OR LEGAL GUARDIAN.

(3) IF THE ISSUE OF COMPETENCY IS RAISED AT THE TIME CHARGES ARE FILED OR AT ANY TIME THEREAFTER AND THE JUVENILE IS NOT REPRESENTED BY COUNSEL, THE COURT SHALL IMMEDIATELY APPOINT COUNSEL AND MAY ALSO APPOINT A GUARDIAN AD LITEM TO ASSURE THE BEST INTERESTS OF THE JUVENILE ARE ADDRESSED.

**19-2-1302. Determination of incompetency to proceed.**

(1) WHENEVER THE QUESTION OF A JUVENILE'S COMPETENCY TO PROCEED IS RAISED, THE COURT SHALL MAKE A PRELIMINARY FINDING THAT THE JUVENILE IS OR IS NOT COMPETENT TO PROCEED. IF THE COURT FEELS THAT THE INFORMATION

AVAILABLE TO IT IS INADEQUATE FOR MAKING SUCH A FINDING, IT SHALL ORDER A COMPETENCY EXAMINATION OR USE ANOTHER EVALUATION THAT ADDRESSES COMPETENCY, AS THE COURT DEEMS APPROPRIATE.

(2) THE COURT SHALL IMMEDIATELY NOTIFY THE PROSECUTING ATTORNEY AND DEFENSE COUNSEL OF THE PRELIMINARY FINDING REGARDING COMPETENCY. THE PROSECUTING ATTORNEY OR THE DEFENSE COUNSEL MAY REQUEST A HEARING ON THE PRELIMINARY FINDING BY FILING A WRITTEN REQUEST WITH THE COURT WITHIN TEN DAYS AFTER THE DATE ON WHICH THE COURT ISSUES THE PRELIMINARY FINDING, UNLESS THE COURT EXTENDS THE TIME PERIOD FOR GOOD CAUSE. THE PRELIMINARY FINDING BECOMES A FINAL DETERMINATION IF NEITHER THE PROSECUTING ATTORNEY NOR DEFENSE COUNSEL REQUESTS A HEARING. UPON THE TIMELY WRITTEN REQUEST OF EITHER THE PROSECUTING ATTORNEY OR DEFENSE COUNSEL, THE COURT SHALL HOLD A COMPETENCY HEARING. IF THE COURT DID NOT ORDER A COMPETENCY EXAMINATION OR OTHER EVALUATION PRIOR TO ITS PRELIMINARY DETERMINATION AND THE COURT DETERMINES ADEQUATE MENTAL HEALTH INFORMATION IS NOT AVAILABLE, THE COURT SHALL REFER THE JUVENILE FOR A COMPETENCY EXAMINATION PRIOR TO THE HEARING. AT THE CONCLUSION OF THE COMPETENCY HEARING, THE COURT SHALL MAKE A FINAL DETERMINATION

REGARDING THE JUVENILE'S COMPETENCY TO PROCEED. AT A COMPETENCY HEARING HELD PURSUANT TO THIS SUBSECTION (2), THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE ARE UPON THE PARTY THAT CHALLENGES THE PRELIMINARY FINDING REGARDING COMPETENCY. THE PARTY THAT CHALLENGES THE PRELIMINARY FINDING HAS THE RIGHT TO HAVE AN INDEPENDENT COMPETENCY EVALUATION PERFORMED.

(3) IF THE QUESTION OF A JUVENILE'S INCOMPETENCY TO PROCEED IS RAISED AFTER A JURY IS IMPANELED TO TRY THE ISSUES RAISED BY A PLEA OF NOT GUILTY OR AFTER THE COURT AS THE FINDER OF FACT BEGINS TO HEAR EVIDENCE AND THE COURT DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED OR ORDERS THE JUVENILE REFERRED FOR A COMPETENCY EXAMINATION, THE COURT MAY DECLARE A MISTRIAL. IF THE COURT DECLARES A MISTRIAL UNDER THESE CIRCUMSTANCES, THE JUVENILE SHALL NOT BE DEEMED TO HAVE BEEN PLACED IN JEOPARDY WITH REGARD TO THE CHARGES AT ISSUE. THE JUVENILE MAY BE TRIED ON, AND SENTENCED IF ADJUDICATED FOR, THE SAME CHARGES AFTER HE OR SHE HAS BEEN FOUND TO BE RESTORED TO COMPETENCY.

(4)(a) IF THE COURT ORDERS A COMPETENCY EVALUATION, THE COURT SHALL MAKE FINDINGS THAT THE COMPETENCY EVALUATION IS BEING CONDUCTED IN THE LEAST-RESTRICTIVE ENVIRONMENT, TAKING INTO ACCOUNT

THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE.

(b) A COMPETENCY EVALUATION SHALL BE CONDUCTED BY A LICENSED MENTAL HEALTH PROFESSIONAL WHO, TO THE EXTENT PRACTICAL, POSSESSES TRAINING AND EXPERIENCE SPECIFIC TO WORKING WITH JUVENILES AND FORENSIC TRAINING IN THE EVALUATION OF JUVENILES.

(c) THE COMPETENCY EVALUATION SHALL, AT A MINIMUM, INCLUDE AN OPINION REGARDING WHETHER THE JUVENILE IS COMPETENT TO PROCEED. IF THE EVALUATION CONCLUDES THE JUVENILE IS INCOMPETENT TO PROCEED, THE EVALUATION SHALL INCLUDE A RECOMMENDATION AS TO WHETHER THE JUVENILE MAY BE RESTORED TO COMPETENCY AND IDENTIFY APPROPRIATE SERVICES TO RESTORE THE JUVENILE TO COMPETENCY.

(d) THE EVALUATOR CONDUCTING THE COMPETENCY EVALUATION SHALL FILE THE EVALUATION WITH THE COURT WITHIN:

(I) THIRTY DAYS AFTER ISSUANCE OF THE ORDER FOR THE COMPETENCY EVALUATION, UNLESS GOOD CAUSE IS SHOWN FOR A DELAY, IF THE JUVENILE IS HELD IN A SECURE DETENTION FACILITY;

(II) FORTY-FIVE DAYS AFTER ISSUANCE OF THE ORDER FOR THE COMPETENCY EVALUATION, UNLESS GOOD CAUSE IS SHOWN FOR A DELAY, IF THE JUVENILE IS NOT HELD IN A SECURE DETENTION FACILITY.

**19-2-1303. Procedure after determination of competency or**

**incompetency.** (1) IF THE COURT FINALLY DETERMINES PURSUANT TO SECTION 19-2-1302 THAT THE JUVENILE IS COMPETENT TO PROCEED, THE COURT SHALL ORDER THAT THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL HAS BEEN DECLARED, SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE. THE COURT MAY ORDER ADJUSTMENTS TO COURT PROCEEDINGS FOR JUVENILES WHO ARE COMPETENT TO PROCEED, BUT STILL IN NEED OF ASSISTANCE TO ADEQUATELY UNDERSTAND AND PARTICIPATE IN THE PROCEEDINGS.

(2) IF THE COURT FINALLY DETERMINES PURSUANT TO SECTION 19-2-1302 THAT THE JUVENILE IS INCOMPETENT TO PROCEED, BUT MAY BE RESTORED TO COMPETENCY, THE COURT SHALL STAY THE PROCEEDINGS AND ORDER THAT THE JUVENILE RECEIVE SERVICES DESIGNED TO RESTORE THE JUVENILE TO COMPETENCY, BASED UPON RECOMMENDATIONS IN THE COMPETENCY EVALUATION UNLESS THE COURT MAKES SPECIFIC FINDINGS THAT THE RECOMMENDED SERVICES IN THE COMPETENCY EVALUATION ARE NOT APPROPRIATE. THE COURT SHALL MAKE FINDINGS THAT THE RESTORATION SERVICES ORDERED ARE BEING PROVIDED IN THE LEAST-RESTRICTIVE ENVIRONMENT, TAKING INTO ACCOUNT THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE. THE COURT SHALL REVIEW THE JUVENILE'S

PROGRESS TOWARD COMPETENCY AT LEAST EVERY NINETY DAYS UNTIL COMPETENCY IS RESTORED. THE COURT SHALL NOT MAINTAIN JURISDICTION LONGER THAN THE MAXIMUM POSSIBLE SENTENCE FOR THE ORIGINAL OFFENSE, UNLESS THE COURT MAKES SPECIFIC FINDINGS OF GOOD CAUSE TO RETAIN JURISDICTION. HOWEVER, IN NO CASE SHALL THE JUVENILE COURT'S JURISDICTION EXTEND BEYOND THE JUVENILE'S TWENTY-FIRST BIRTHDAY.

(3) (a) IF THE COURT FINALLY DETERMINES THAT THE JUVENILE IS INCOMPETENT TO PROCEED AND CANNOT BE RESTORED TO COMPETENCY, THE COURT SHALL DETERMINE WHETHER A MANAGEMENT PLAN FOR THE JUVENILE IS NECESSARY, TAKING INTO ACCOUNT THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE. IF THE COURT DETERMINES A MANAGEMENT PLAN IS NECESSARY, THE COURT SHALL DEVELOP THE MANAGEMENT PLAN AFTER MAKING FINDINGS THAT THE JUVENILE IS PLACED IN THE LEAST-RESTRICTIVE ENVIRONMENT, TAKING INTO ACCOUNT THE PUBLIC SAFETY AND BEST INTERESTS OF THE JUVENILE. IF THE COURT DETERMINES A MANAGEMENT PLAN IS UNNECESSARY, THE COURT MAY CONTINUE ANY TREATMENT OR PLAN ALREADY IN PLACE FOR THE JUVENILE. THE MANAGEMENT PLAN SHALL, AT A MINIMUM, ADDRESS TREATMENT FOR THE JUVENILE, IDENTIFY THE PARTY OR PARTIES RESPONSIBLE FOR THE JUVENILE, AND SPECIFY APPROPRIATE BEHAVIOR



MANAGEMENT TOOLS, IF THEY ARE NOT OTHERWISE PART OF THE JUVENILE'S TREATMENT.

(b) THE MANAGEMENT PLAN MAY INCLUDE:

(I) PLACEMENT OPTIONS INCLUDED IN ARTICLE 10 OR 10.5 OF TITLE 27, C.R.S.;

(II) A TREATMENT PLAN DEVELOPED BY A LICENSED MENTAL HEALTH PROFESSIONAL;

(III) AN INFORMED SUPERVISION MODEL;

(IV) INSTITUTION OF A DEPENDENCY AND NEGLECT PETITION; OR

(V) INSTITUTION OF A GUARDIANSHIP PETITION.

(c) IF THE CHARGES ARE NOT DISMISSED EARLIER BY THE DISTRICT ATTORNEY, THE CHARGES AGAINST A JUVENILE FOUND TO BE INCOMPETENT AND UNRESTORABLE SHALL BE DISMISSED NO LATER THAN TWO YEARS AFTER THE DATE OF THE COURT'S FINDING OF INCOMPETENT AND UNRESTORABLE, UNLESS THE COURT MAKES SPECIFIC FINDINGS OF GOOD CAUSE TO RETAIN JURISDICTION. HOWEVER, IN NO CASE, SHALL THE JUVENILE COURT'S JURISDICTION EXTEND BEYOND THE JUVENILE'S TWENTY-FIRST BIRTHDAY.

(4) A DETERMINATION UNDER SUBSECTION (2) OF THIS SECTION THAT A JUVENILE IS INCOMPETENT TO PROCEED SHALL NOT PRECLUDE THE COURT FROM

CONSIDERING THE RELEASE OF THE JUVENILE ON BAIL UPON COMPLIANCE WITH THE STANDARDS AND PROCEDURES FOR SUCH RELEASE PRESCRIBED BY STATUTE. AT ANY HEARING TO DETERMINE ELIGIBILITY FOR RELEASE ON BAIL, THE COURT MAY CONSIDER ANY EFFECT THE JUVENILE'S INCOMPETENCY MAY HAVE ON THE JUVENILE'S ABILITY TO INSURE HIS OR HER PRESENCE FOR TRIAL.

**19-2-1304. Restoration to competency.** (1) THE COURT MAY ORDER A RESTORATION HEARING, AS DEFINED IN SECTION 16-8-102 (7), C.R.S., AT ANY TIME ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING ATTORNEY, OR ON MOTION OF THE JUVENILE. THE COURT SHALL ORDER A HEARING IF A MENTAL HEALTH PROFESSIONAL WHO HAS BEEN TREATING THE JUVENILE FILES A REPORT CERTIFYING THAT THE JUVENILE IS MENTALLY COMPETENT TO PROCEED.

(2) AT THE HEARING, IF THE QUESTION IS CONTESTED, THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE SHALL BE UPON THE PARTY ASSERTING THAT THE JUVENILE IS COMPETENT.

(3) AT THE HEARING, THE COURT SHALL DETERMINE WHETHER THE JUVENILE IS RESTORED TO COMPETENCY.

**19-2-1305. Procedure after hearing concerning restoration to competency.** (1) IF A JUVENILE IS FOUND TO BE RESTORED TO COMPETENCY

AFTER A HEARING, AS PROVIDED IN SECTION 19-2-1304, OR BY THE COURT DURING A REVIEW, AS PROVIDED IN SECTION 19-2-1303 (2), THE COURT SHALL RESUME OR RECOMMENCE THE TRIAL OR SENTENCING PROCEEDING OR ORDER THE SENTENCE CARRIED OUT. THE COURT MAY ORDER ADJUSTMENTS TO COURT PROCEEDINGS FOR JUVENILES WHO ARE RESTORED, BUT STILL IN NEED OF ASSISTANCE TO ADEQUATELY UNDERSTAND AND PARTICIPATE IN THE PROCEEDINGS. THE COURT MAY CREDIT ANY TIME THE JUVENILE SPENT IN CONFINEMENT OR DETENTION WHILE INCOMPETENT AGAINST ANY TERM OF COMMITMENT IMPOSED AFTER RESTORATION TO COMPETENCY.

(2) IF THE COURT DETERMINES THAT THE JUVENILE REMAINS MENTALLY INCOMPETENT TO PROCEED AND THE DELINQUENCY PETITION IS NOT DISMISSED, THE COURT MAY CONTINUE OR MODIFY ANY ORDERS ENTERED AT THE TIME OF THE ORIGINAL DETERMINATION OF INCOMPETENCY OR ENTER ANY NEW ORDER NECESSARY TO FACILITATE THE JUVENILE'S RESTORATION TO MENTAL COMPETENCY.

(3) EVIDENCE OBTAINED DURING A COMPETENCY EVALUATION OR DURING TREATMENT RELATED TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY AND THE DETERMINATION AS TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY ARE NOT ADMISSIBLE ON THE ISSUES RAISED BY A PLEA OF NOT

GUILTY.

**SECTION 2. Repeal.** 19-2-702, Colorado Revised Statutes, is repealed.

**SECTION 3.** 19-2-508 (3)(b)(III), Colorado Revised Statutes, is amended to read:

**19-2-508. Detention and shelter - hearing - time limits - findings - review - confinement with adult offenders - restrictions.** (3) (b) (III) When the mental health professional finds, as a result of the prescreening, that the juvenile may be mentally ill, the mental health professional shall recommend to the court that the juvenile be evaluated pursuant to section 27-10-105 or 27-10-106, C.R.S. ~~and the court shall proceed as provided in section 19-2-702.~~

**SECTION 4. Effective date - applicability.** This act shall take effect July 1, 2005, and shall apply to delinquency petitions filed on or after said date.

**SECTION 5. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.