



**Report to the
Colorado General Assembly**

**Legislative Oversight
Committee
Concerning the
Treatment of Persons
with Mental Health
Disorders in the
Criminal and Juvenile
Justice Systems**

Prepared by

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**Legislative Oversight Committee Concerning the
Treatment of Persons with Mental Health Disorders in the
Criminal and Juvenile Justice Systems**

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January 2018

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January 2018

To Members of the Seventy-first General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. This committee was created pursuant to Article 1.9 of Title 18, C.R.S. The purpose of this committee is to oversee an advisory task force that studies and makes recommendations concerning the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on November 15, 2017, the Legislative Council reviewed the report of this committee. A motion to forward this report and three of the bills herein for consideration in the 2018 session was approved.

Sincerely,

/s/ Senator Kevin J. Grantham
Chairman

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This report is also available on line at:

[https:// leg.colorado.gov/committees/treatment-persons-mental-health-disorders-criminal-justice-system/2017-regular-session](https://leg.colorado.gov/committees/treatment-persons-mental-health-disorders-criminal-justice-system/2017-regular-session)

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Committee Charge

Pursuant to Article 1.9 of Title 18, C.R.S., a legislative oversight committee and an advisory task force concerning the treatment of persons with mental health disorders in the criminal and juvenile justice systems are established.

History

The advisory task force and legislative oversight committee concerning the treatment of persons with mental illness in the criminal and juvenile justice systems first met in the summer of 1999. In 2000, the task force and oversight committee were reauthorized, and the reestablished task force met on a monthly basis through June 2003. The General Assembly considered legislation to continue the study of the mentally ill in the justice system beyond the 2003 repeal date, but the bill failed. In FY 2003-04, the task force continued its meetings and discussion at the request of the oversight committee. The task force and oversight committee were reauthorized and reestablished in 2004 through the passage of Senate Bill 04-037 and again in 2009 with the passage of House Bill 09-1021. The oversight committee was subject to Senate Bill 10-213, which suspended interim activities during the 2010 interim. During the 2014 legislative session, the task force and legislative oversight committee were once again reauthorized and reestablished by Senate Bill 14-021. During the 2017 legislative session, Senate Bill 17-246 changed the name of the committee from “Legislative Oversight Committee Concerning the Treatment of Persons with *Mental Illness* in the Criminal and Juvenile Justice Systems” to “Legislative Oversight Committee Concerning the Treatment of Persons with *Mental Health Disorders* in the Criminal and Juvenile Justice Systems.” The committee and advisory task force are set to repeal on July 1, 2020.

General Charge

The oversight committee is responsible for the oversight of the advisory task force and recommending legislative changes. The advisory task force is directed to examine the identification, diagnosis, and treatment of persons with mental illness who are involved in the criminal and juvenile justice systems, including the examination of liability, safety, and cost as they relate to these issues. The oversight committee is required to submit an annual report to the General Assembly by January 15 of each year regarding the recommended legislation resulting from the work of the task force.

Advisory Task Force Charge

General Charge

The authorizing legislation directs the advisory task force to consider, at a minimum, the following issues:

- housing for a person with mental health disorder after his or her release from the criminal and juvenile justice system;
- medication consistency, delivery, and availability;
- best practices for suicide prevention, within and outside of correctional facilities;
- treatment of co-occurring disorders;
- awareness of and training for enhanced staff safety, including expanding training opportunities for providers; and
- enhanced data collection related to issues affecting persons with mental illness in the criminal and juvenile justice systems.

The legislation authorizes the advisory task force to work with other task forces, committees, or organizations that are pursuing policy initiatives similar to those listed above. The advisory task force is required to consider developing relationships with other groups to facilitate policy-making opportunities through collaborative efforts.

Recommendations and Reports

The advisory task force is required to submit a report of its findings and recommendations to the legislative oversight committee annually by October 1. This year, the task force did not submit this report.

All legislative proposals of the task force must note the policy issues involved, the agencies responsible for implementing the changes, and the funding sources required for such implementation. The task force recommended four pieces of legislation to the legislative oversight committee during the 2017 interim; additionally, the committee requested that two additional bills be drafted, however these draft bills were not approved by the committee. The recommended legislation is discussed in the Committee Activities section of this report.

Membership

Table 1 lists the members of the advisory task force and the agencies they represent. The advisory task force consists of 32 members, four of whom are appointed by the Chief Justice of the Colorado Supreme Court. The 28 remaining members are appointed by the chair and vice-chair of the legislative oversight committee.

**Table 1
MHDCJS Advisory Task Force Members**

State or Private Agency	Representative(s) and Affiliation(s)	
Department of Public Safety (1)	Peggy Heil	Division of Criminal Justice
Department of Corrections (2)	Joy Hart	Division of Clinical Services
	<i>vacant</i>	Division of Parole
Local Law Enforcement (2) - one of whom will be in active service and one of whom shall have experience dealing with juveniles in the juvenile justice system	Commander Thomas DeLuca	El Paso County Sheriff's Office (active service representative)
	Chris Johnson	County Sheriffs of Colorado (representative with experience dealing with juveniles in the juvenile justice system)
Department of Human Services (5)	Camille Harding, co-chair	Office of Behavioral Health
	Ashley Tunstall	Division of Youth Corrections
	Melinda Cox	Division of Child Welfare
	<i>vacant</i>	Colorado Mental Health Institute at Pueblo
	Moe Keller	Mental Health Planning and Advisory Council
County Department of Social Services (1)	Susan Walton, co-chair	Park County Department of Human Services
Department of Education (1)	Michael Ramirez	Teaching and Learning Unit
State Attorney General's Office (1)	Cynthia Kowert	Assistant Deputy Attorney General
District Attorneys (1)	Tariq Sheikh	17th Judicial District - District Attorney's Office
Criminal Defense Bar (2)	Karen Knickerbocker	Office of the Colorado State Public Defender
	Gina Shimeall	Criminal Defense Bar
Practicing Mental Health Professionals (2)	<i>vacant</i>	
	Lisa Thompson	Colorado Coalition for the Homeless
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)	Alison George	Colorado Department of Local Affairs, Division of Housing
Department of Health Care Policy & Financing (1)	<i>vacant</i>	
Practicing Forensic Professional (1)	Richard Martinez, M.D.	Colorado Office of Behavioral Health/UCDSOM
Members of the Public (3)	Bethe Feltman	Member with a mental illness who has been involved in the Colorado criminal justice system
	Deirdre Parker	Parent of a child who has a mental illness and who has been involved in the Colorado criminal justice system
	Jack Zelkin	Member with an adult family member who has a mental illness and who has been involved in the Colorado criminal justice system
Office of the Child's Representative (1)	Sheri Danz	Deputy Director
Office of the Alternate Defense Counsel (1)	Kathy McGuire	Private attorney
Colorado Department of Labor and Employment (1)	Patrick Teegarden	Director of Policy and Legislation
Judicial Branch (4)	Magistrate Denise Peacock	4th Judicial District
	Judge K.J. Moore	1st Judicial District
	Susan Colling	Juvenile Programs Coordinator, Probation Services
	Tobin Wright	16th Judicial District

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Committee Activities

The committee held one meeting during the 2017 legislative session and three meetings during the 2017 interim. Briefings and presentations were made by task force members, the Colorado State Public Defender's Office, the Colorado District Attorneys Council, and the Department of Human Services (DHS) on a wide range of subjects, including:

- advisory task force activities;
- vacant state-owned buildings;
- state housing voucher programs; and
- juveniles who have committed a sexual offense;

Additionally, the committee considered legislation. The following sections discuss the committee's activities during 2017.

MHDCJS Advisory Task Force Updates

The oversight committee received updates on recent activities of the task force, which met monthly throughout 2017. Task force subcommittees focused on housing, data and information sharing, prevention, and competency restoration, as those topics relate to persons with mental health disorders who are involved in the criminal and juvenile justice systems.

Members of the advisory task force who also serve on the Behavioral Health Transformation Council provided periodic updates about the council's activities. Additionally, the task force received outside presentations from the Sex Offender Management Board, the Second Chance Center, and DHS. Finally, the advisory task force regularly discussed the challenges faced in filling task force vacancies given the amount of time required for participation, in addition to task force members' other job duties.

Prevention. After the task force's day-long spring retreat, a prevention subcommittee was created to focus on decisional capacity of minors, disciplinary actions, and the prevention of suspension and expulsion from school.

Data and information sharing. The data and information sharing activities focused on the feasibility of developing a statewide, electronic, criminal justice health information exchange. While many metro-area jails use electronic health records and may be able to connect records, many rural jails do not have the capability to use or connect electronic health records. The subcommittee also examined the data-sharing involved in the implementation of medication consistency requirements under Senate Bill 17-019.

Committee recommendations. As a result of its discussions, the committee recommends Bill D, which concerns incentive plans to attract additional Department of Corrections mental health providers.

The committee requested that a bill on adding jails approved by the executive director of DHS to the definition of "facility" in Article 65 of Title 27, be drafted, but the draft bill was not approved by the committee.

Competency Restoration

For several years, the advisory task force has discussed issues concerning juvenile justice and the standard for measuring competency in juveniles and adults. The task force received monthly updates from the Competency Restoration subcommittee on its discussions revolving around juvenile justice and the standard for measuring and restoring competency in juveniles. The subcommittee also examined the gap in Colorado law regarding minor decisional capacity. Decisional capacity describes whether a client is able to make a rational, informed decision and is therefore able to give legal consent. Current statute contemplates decisional capacity for persons aged 18 and older, but because minors aged 15 and over are able to consent to receive mental health services, there is a gap where the law does not specify who may make a capacity assessment.

The oversight committee and task force also received updates throughout the year on the passage and implementation of SB 17-012, recommended by the legislative oversight committee for the 2017 legislative session, which established the Office of Behavioral Health in DHS as the agency responsible for restoration education and the coordination of competency restoration services. On June 26, 2017, Dr. Patrick Fox, Chief Medical Director, DHS, briefed the legislative oversight committee on the Office of Behavioral Health's efforts to implement a curriculum to establish adult competency, as well as on the curriculum in place at the Colorado Mental Health Institute at Pueblo and in the Jail Restoration Program in Arapahoe County.

Committee recommendations. As a result of its discussions, the committee recommends Bill A, which concerns competency evaluations, the definition of competency, and restoration services for juveniles.

The committee also requested that a bill on the provision of competency restoration services in the place in which a defendant is in custody at the time of a determination be drafted, but the draft bill was not approved by the committee.

Housing

The Housing subcommittee met monthly to discuss ways to address the housing shortage for persons with mental illness who are exiting the criminal justice system and worked with two law school interns to develop research on the topic. The subcommittee provided monthly updates to the advisory task force about its progress to identify possible solutions to address housing shortages for persons with mental health disorders who are exiting the criminal justice system.

Senate Bill 17-021. The oversight committee and task force received updates throughout the year on the passage and implementation of Senate Bill 17-021, recommended by the legislative oversight committee for the 2017 legislative session, which created the Housing Assistance for Persons Transitioning from the Criminal or Juvenile Justice System Cash Fund.

Housing white paper. In the spring, the housing subcommittee presented the final version of a white paper [Appendix A] started the previous year proposing changes to the state's housing voucher programs to expand housing options for persons with mental health disorder who are involved in the criminal and juvenile justice systems. The advisory task force housing subcommittee also focused on rental housing applications and the fees collected by landlords for prospective tenant applications and background checks. Bill C addresses the timing of notice of a landlord's tenant selection criteria.

Committee recommendations. As a result of its discussions, the committee recommends Bill B, which concerns indefinitely continuing the one-time General Fund transfer in Senate Bill 17-021. The committee also recommended Bill C, which concerns landlord disclosure of selection criteria. Bill C was not approved by Legislative Council at its meeting on November 15, 2017.

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Summary of Recommendations

As a result of the committee's activities, the committee recommended four bills to the Legislative Council for consideration in the 2018 session. At its meeting on November 15, 2017, the Legislative Council approved three recommended bills for introduction. The approved bills are described below.

Bill A — Competency to Proceed Juvenile Justice System

The bill defines mental and developmental disabilities, competent to proceed, incompetent to proceed, and mental capacity in the Children's Code. Bill A also defines a restoration to competency hearing and specifies that the determination of a juvenile's competency must include an evaluation of developmental disabilities, mental disabilities, and mental capacity. The bill also states that age alone cannot be a determining factor of juvenile incompetency without a finding that the juvenile lacks relevant competence. Under current law, if the court orders a competency evaluation, the evaluation must be conducted in the least restrictive environment possible while taking public safety and the juvenile's best interests into account. Bill A specifies that the evaluation can occur in the home or in a community placement, if appropriate.

Bill B — Fund Transitioning from Criminal and Juvenile Justice Systems

Senate Bill 17-021 created a one-time General Fund transfer of unspent community corrections funding in the Department of Public Safety (DPS) to the Housing Assistance for Persons Transitioning from the Criminal or Juvenile Justice System Cash Fund in the Department of Local Affairs (DOLA). Bill B continues this transfer of unspent community corrections funds to DOLA indefinitely.

Bill D — Inmate Treatment Incentive Plans

The bill requires the Department of Corrections (DOC) to track data on inmates who are not receiving mental health treatment specified in their rehabilitation report and to develop incentive plans to attract additional mental health providers to the geographic areas where inmates are not receiving treatment and services. Incentives may include additional fees, travel reimbursement, bonuses, and other financial incentives. The DOC must report annually to the Joint Budget Committee each December 1, starting in 2019, on the number of inmates requiring treatment and services provided by a mental health professional and the number of inmates unable to receive these services, both statewide and for any area for which an incentive plans is developed. The DOC must also report specific details about incentive plans developed under Bill D, including measures of their effectiveness.

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Resource Materials

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

<https://leg.colorado.gov/content/committees>

Meeting Date and Topics Discussed

Legislative Oversight Committee

April 21, 2017

- ◆ General overview of advisory task force recent activities
- ◆ Advisory task force membership update and discussion of vacancies
- ◆ Competency Restoration subcommittee update
- ◆ Data and Information Sharing subcommittee update
- ◆ Housing subcommittee update
- ◆ Vacant buildings update

June 26, 2017

- ◆ General overview of advisory task force recent activities and accomplishments
- ◆ Advisory task force membership update and discussion of vacancies
- ◆ Recent legislation update
- ◆ Competency Restoration subcommittee update
- ◆ Data and Information Sharing subcommittee update
- ◆ Housing subcommittee update
- ◆ Prevention subcommittee update

September 18, 2017

- ◆ General overview of advisory task force recent activities and accomplishments
- ◆ Advisory task force membership update and discussion of vacancies
- ◆ Competency Restoration subcommittee update
- ◆ Discussion of Sex Offender Management Board recommendations
- ◆ Department of Human Services legislative proposals
- ◆ Data and Information Sharing subcommittee update
- ◆ Housing subcommittee update

- ◆ Committee discussion and votes on motions to request bill drafts

November 1, 2017

- ◆ Update of advisory task force recent activities
- ◆ Advisory task force membership update and discussion of vacancies
- ◆ Discussion and votes on proposed legislation

Advisory Task Force

January 19, 2017

- ◆ Mental Health Hold Task Force recommendations
- ◆ Housing subcommittee update
- ◆ Competency restoration subcommittee update
- ◆ Data and Information Sharing subcommittee update
- ◆ Behavioral Health Transformation Council update
- ◆ Membership updates and vacancies discussion
- ◆ Legislative update

February 16, 2017

- ◆ Mental Health Hold Task Force bill draft review
- ◆ Housing subcommittee update and white paper discussion
- ◆ Competency restoration subcommittee update
- ◆ Data and Information Sharing subcommittee update
- ◆ Behavioral Health Transformation Council update

March 16, 2017

- ◆ Legislative update
- ◆ Sex Offender Management Board presentation
- ◆ Behavioral Health Transformation Council update
- ◆ Discussion of task force charge and areas of priority

April 20, 2017

- ◆ Second Chance Center, Inc. presentation
- ◆ Review of annual retreat
- ◆ Strategic planning for legislative session
- ◆ Subcommittee updates
- ◆ Behavioral Health Transformation Council update
- ◆ Legislative update

May 18, 2017

- ◆ Legislative update
- ◆ Housing subcommittee update
- ◆ Competency Restoration subcommittee update
- ◆ Prevention subcommittee update

June 15, 2017

- ◆ Membership updates
- ◆ Legislative update
- ◆ Oversight committee update and preparation
- ◆ Housing subcommittee update
- ◆ Competency Restoration subcommittee update
- ◆ Prevention subcommittee update
- ◆ Behavioral Health Transformation Council update
- ◆

July 20, 2017

- ◆ Presentation on health care and justice transitions
- ◆ Presentation on juvenile sex offenders
- ◆ Presentation on RISE Program
- ◆ Behavioral Health Transformation Council update
- ◆ Election of chair and vice-chair
- ◆ Oversight committee update
- ◆ Housing subcommittee update
- ◆ Competency Restoration subcommittee update
- ◆ Prevention subcommittee update
- ◆ Membership updates and vacancies discussion

August 17, 2017

- ◆ Presentation on juveniles accused of sexual offenses
- ◆ Subcommittee updates
- ◆ Discussion of legislative priorities

September 21, 2017

- ◆ Bill request process update
- ◆ Legislative update

October 19, 2017

- ◆ Presentation on housing and re-entry
- ◆ Discussion of draft bills
- ◆ Membership updates and vacancies discussion

November 16, 2017

- ◆ Discussion of legislative report
- ◆ Discussion of task force process for reviewing bills
- ◆ Legislative update
- ◆ Membership updates and vacancies discussion

December 21, 2017

- ◆ Membership updates and vacancies discussion
- ◆ Legislative update
- ◆ Competency Restoration subcommittee update
- ◆ Housing subcommittee update
- ◆ Discussion of future priorities

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL A

LLS NO. 18-0277.02 Jane Ritter x4342

HOUSE BILL

HOUSE SPONSORSHIP

Singer, Benavidez

SENATE SPONSORSHIP

Fields, Martinez Humenik

House Committees

Senate Committees

A BILL FOR AN ACT

101 CONCERNING COMPETENCY TO PROCEED FOR JUVENILES INVOLVED IN
102 THE JUVENILE JUSTICE SYSTEM.

Bill Summary

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

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. The bill establishes a juvenile-specific definition of "competent to proceed" and "incompetent to proceed" for juveniles involved in the juvenile justice system, as well as specific definitions for "developmental disability", "mental capacity", and "mental

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

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

15

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

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

2 **SECTION 1.** In Colorado Revised Statutes, 19-2-103, **amend** the
3 introductory portion; and **add** (3.3), (5.5), (9.5), (12.3), (12.4), and (14.3)
4 as follows:

5 **19-2-103. Definitions.** For purposes of this ~~article~~ ARTICLE 2:

6 (3.3) "COMPETENT TO PROCEED" MEANS THAT A JUVENILE HAS
7 SUFFICIENT PRESENT ABILITY TO CONSULT WITH HIS OR HER ATTORNEY
8 WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO
9 ASSIST IN THE DEFENSE AND THAT HE OR SHE HAS A RATIONAL AS WELL AS
10 A FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR HER.

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

21 (9.5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON AN
22 INTELLECTUAL OR DEVELOPMENTAL DISABILITY, MENTAL DISABILITY, OR
23 LACK OF MENTAL CAPACITY, A JUVENILE DOES NOT HAVE SUFFICIENT
24 PRESENT ABILITY TO CONSULT WITH HIS OR HER ATTORNEY WITH A

1 REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST
2 IN THE DEFENSE OR THAT HE OR SHE DOES NOT HAVE A RATIONAL AS WELL
3 AS A FACTUAL UNDERSTANDING OF THE PROCEEDINGS AGAINST HIM OR
4 HER.

5 (12.3) "MENTAL CAPACITY" MEANS A JUVENILE'S CAPACITY TO
6 MEET ALL OF THE FOLLOWING CRITERIA:

7 (a) APPRECIATE THE CHARGES OR ALLEGATIONS AGAINST HIM OR
8 HER;

9 (b) APPRECIATE THE NATURE OF THE ADVERSARIAL PROCESS,
10 WHICH INCLUDES HAVING A FACTUAL AND RATIONAL UNDERSTANDING OF
11 THE PARTICIPANTS IN THE PROCEEDING AND THEIR ROLES, INCLUDING THE
12 JUDGE, DEFENSE COUNSEL, PROSECUTOR, AND, IF APPLICABLE, THE
13 GUARDIAN AD LITEM AND THE JURY;

14 (c) APPRECIATE THE RANGE AND NATURE OF ALLOWABLE
15 DISPOSITIONS THAT MAY BE IMPOSED BY THE COURT;

16 (d) THE ABILITY TO COMMUNICATE TO COUNSEL INFORMATION
17 KNOWN TO THE JUVENILE REGARDING THE ALLEGATIONS AGAINST THE
18 JUVENILE, AS WELL AS INFORMATION RELEVANT TO THE PROCEEDING AT
19 ISSUE; AND

20 (e) UNDERSTAND AND APPRECIATE THE RIGHT TO TESTIFY AND TO
21 VOLUNTARILY EXERCISE THE RIGHT.

22 (12.4) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF
23 THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN
24 MARKED FUNCTIONAL DISABILITY AND SIGNIFICANTLY INTERFERES WITH
25 ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE
26 INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, ANY CONDITION
27 MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE
28 IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER,

1 SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL
2 DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE
3 A MENTAL DISABILITY.

4 (14.3) "RESTORATION TO COMPETENCY HEARING" MEANS A
5 HEARING TO DETERMINE WHETHER A JUVENILE WHO HAS PREVIOUSLY
6 BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS ACHIEVED OR IS
7 RESTORED TO COMPETENCY.

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

10 **19-2-1300.2. Legislative declaration.** (1) THE GENERAL
11 ASSEMBLY FINDS AND DECLARES THAT:

12 (a) THE JUVENILE JUSTICE SYSTEM IS CIVIL IN NATURE AND
13 FOCUSED ON REHABILITATION RATHER THAN PUNISHMENT;

14 (b) JUVENILES DIFFER IN SIGNIFICANT AND SUBSTANTIVE WAYS
15 FROM ADULTS, THEREFORE, DIFFERENT STANDARDS FOR COMPETENCY ARE
16 NECESSARY FOR JUVENILES AND ADULTS; AND

17 (c) NOTWITHSTANDING THE DIFFERENCES BETWEEN ADULTS AND
18 JUVENILES, AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
19 WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT
20 CAPACITIES FOR COMPETENCE.

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

23 **19-2-1301. Incompetency to proceed - effect - how and when**
24 **raised.** (2) A juvenile shall not be tried or sentenced if the juvenile is
25 incompetent to proceed, as defined in ~~section 16-8.5-101 (11), C.R.S.~~
26 SECTION 19-2-103 (9.5), at that stage of the proceedings against him or
27 her. JUVENILES, LIKE ADULTS, ARE PRESUMED COMPETENT TO PROCEED,
28 AS DEFINED IN SECTION 19-2-103 (3.3), UNTIL SUCH TIME AS THEY ARE

1 FOUND INCOMPETENT TO PROCEED THROUGH A DECISION BY THE COURT.
2 A DETERMINATION OF COMPETENCY MUST INCLUDE AN EVALUATION OF
3 DEVELOPMENTAL DISABILITIES, MENTAL DISABILITIES, AND MENTAL
4 CAPACITY. AGE ALONE IS NOT DETERMINATIVE OF INCOMPETENCE
5 WITHOUT A FINDING THAT THE JUVENILE ACTUALLY LACKS THE RELEVANT
6 CAPACITIES FOR COMPETENCE.

7 **SECTION 4.** In Colorado Revised Statutes, 19-2-1302, **amend**
8 (3), (4)(a), and (4)(c) as follows:

9 **19-2-1302. Determination of incompetency to proceed.** (3) If
10 the question of a juvenile's incompetency to proceed is raised after a jury
11 is impaneled to try the issues raised by a plea of not guilty or after the
12 court as the finder of fact begins to hear evidence and the court
13 determines that the juvenile is incompetent to proceed or orders the
14 juvenile referred for a competency examination, the court may declare a
15 mistrial. If the court declares a mistrial under these circumstances, the
16 juvenile ~~shall~~ MUST not be deemed to have been placed in jeopardy with
17 regard to the charges at issue. The juvenile may be tried on, and sentenced
18 if adjudicated for, the same charges after he or she has ACHIEVED OR been
19 ~~found to be~~ restored to competency.

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

25 (c) The competency evaluation ~~shall~~ MUST, at a minimum, include
26 an opinion regarding whether the juvenile is ~~competent~~ INCOMPETENT to
27 proceed as defined in ~~section 16-8.5-101 (4), C.R.S.~~ SECTION 19-2-103
28 (9.5). If the evaluation concludes the juvenile is incompetent to proceed,

1 the evaluation ~~shall~~ MUST include a recommendation as to whether THERE
2 IS A LIKELIHOOD THAT the juvenile may ACHIEVE OR be restored to
3 competency and identify appropriate services to restore the juvenile to
4 competency.

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

7 **19-2-1304. Restoration to competency hearing.** (1) The court
8 may order a restoration TO COMPETENCY hearing, as defined in ~~section~~
9 ~~16-8.5-101 (13), C.R.S.~~ SECTION 19-2-103 (14.3), at any time on its own
10 motion, on motion of the prosecuting attorney, or on motion of the
11 juvenile. The court shall order a RESTORATION OF COMPETENCY hearing
12 if a ~~mental health professional who has been treating the juvenile~~
13 COMPETENCY EVALUATOR WITH THE QUALIFICATIONS DESCRIBED IN
14 SECTION 19-2-1302 (4)(b) files a report certifying that the juvenile is
15 **mentally** competent to proceed.

16 (3) At the RESTORATION TO COMPETENCY hearing, the court shall
17 determine whether the juvenile HAS ACHIEVED OR is restored to
18 competency.

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

21 **19-2-1305. Procedure after restoration to competency hearing.**
22 (1) If a juvenile is found to ~~be~~ HAVE ACHIEVED OR BEEN restored to
23 competency after a RESTORATION TO COMPETENCY hearing, as provided
24 in section 19-2-1304, or by the court during a review, as provided in
25 section 19-2-1303 (2), the court shall resume or recommence the trial or
26 sentencing proceeding or order the sentence carried out. The court may
27 credit any time the juvenile spent in confinement or detention while
28 incompetent TO PROCEED against any term of commitment imposed after

1 ACHIEVEMENT OF OR restoration to competency.

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

8 **SECTION 7. Effective date.** This act takes effect July 1, 2018,
9 and applies to acts committed on or after July 1, 2018.

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

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Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL B

LLS NO. 18-0280.01 Jerry Barry x4341

SENATE BILL

SENATE SPONSORSHIP

Martinez Humenik and Fields,

HOUSE SPONSORSHIP

Singer, Benavidez

Senate Committees

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE REPEAL DATE FOR THE TRANSFER OF MONEY FROM**
102 **COMMUNITY CORRECTIONS TO THE HOUSING ASSISTANCE FOR**
103 **PERSONS TRANSITIONING FROM THE CRIMINAL OR JUVENILE**
104 **JUSTICE SYSTEM CASH FUND.**

Bill Summary

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

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. In 2017, the general assembly enacted a

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

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

23

provision requiring at the end of the 2016-17 fiscal year the state treasurer to transfer unexpended and unencumbered money appropriated for community corrections programs to a new fund to assist persons transitioning from the criminal or juvenile justice systems. The act repealed the provision in 2018.

The bill eliminates the repeal of the provision so that the transfer occurs at the end of each state fiscal year.

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

2 **SECTION 1.** In Colorado Revised Statutes, 17-27-108, **amend**
3 (7) as follows:

4 **17-27-108. Division of criminal justice of the department of**
5 **public safety - duties - community corrections contracts.**

6 (7) (a) Notwithstanding any law to the contrary, for the fiscal year
7 commencing July 1, 2016, AND FOR EACH FISCAL YEAR THEREAFTER, any
8 money appropriated from the general fund to the division of criminal
9 justice for the purposes of this article 27 that is unexpended or
10 unencumbered as of the close of that fiscal year shall not revert to the
11 general fund, and the state treasurer and the controller shall transfer such
12 money to the housing assistance for persons transitioning from the
13 criminal or juvenile justice system cash fund created pursuant to section
14 24-32-721 (4)(d).

15 (b) ~~This subsection (7) is repealed, effective July 1, 2018.~~

16 **SECTION 2. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

BILL D

LLS NO. 18-0282.01 Jerry Barry x4341

HOUSE BILL

HOUSE SPONSORSHIP

Benavidez, Singer

SENATE SPONSORSHIP

Fields,

House Committees

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING INCENTIVES TO PROVIDE INMATES WITH NEEDED**
102 **SERVICES.**

Bill Summary

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

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. The bill requires the department of corrections to institute an incentive plan to contract for more mental health professionals in difficult-to-serve geographic areas if the number of inmates who need a treatment or service in the area exceeds the number

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

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

25

of available spaces by 20%.

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

2 **SECTION 1.** In Colorado Revised Statutes, **add** 17-1-115.9 as
3 follows:

4 **17-1-115.9. Hiring and retention incentives for mental health**
5 **professionals - report - legislative declaration.** (1) THE GENERAL
6 ASSEMBLY FINDS THAT:

7 (a) A LARGE NUMBER OF INMATES ARE NOT RECEIVING THE
8 TREATMENT OR SERVICES THAT WERE IDENTIFIED IN THEIR RECOMMENDED
9 REHABILITATION REPORTS PREPARED PURSUANT TO THE COLORADO
10 DIAGNOSTIC PROGRAM ESTABLISHED IN SECTION 17-40-102;

11 (b) ACCORDING TO THE DEPARTMENT, THE LACK OF TREATMENT
12 OR SERVICES IS DUE IN PART BECAUSE THE DEPARTMENT HAS BEEN
13 UNABLE TO CONTRACT FOR A SUFFICIENT NUMBER OF MENTAL HEALTH
14 PROFESSIONALS WHO ARE INTERESTED IN PROVIDING THE TREATMENT OR
15 SERVICES IN DIFFICULT-TO-SERVE GEOGRAPHIC AREAS;

16 (c) AS A RESULT OF THE LACK OF TREATMENT OR SERVICES, SOME
17 INMATES ARE BEING RELEASED INTO THE COMMUNITY WITHOUT RECEIVING
18 THEIR IDENTIFIED TREATMENT OR SERVICES, AND OTHER INMATES ARE
19 BEING DENIED PAROLE AND FORCED TO REMAIN IN PRISON DUE TO THE
20 LACK OF TREATMENT OR SERVICES;

21 (d) THE FAILURE TO PROVIDE NEEDED TREATMENT OR SERVICES
22 CREATES A RISK WHEN AN INMATE IS RELEASED INTO THE COMMUNITY AND
23 INCREASES EXPENSES WHEN AN INMATE REMAINS IN PRISON DUE TO HIS OR
24 HER FAILURE TO RECEIVE TREATMENT OR SERVICES; AND

25 (e) IN ORDER TO PROVIDE THE NECESSARY TREATMENT AND

1 SERVICES IN DIFFICULT-TO-SERVE AREAS IN A TIMELY MANNER, THE
2 DEPARTMENT MUST HAVE THE FLEXIBILITY TO OFFER INCENTIVES TO
3 MENTAL HEALTH PROFESSIONALS TO PROVIDE SUCH TREATMENT AND
4 SERVICES IN SUCH AREAS.

5 (2) THE DEPARTMENT SHALL MONITOR THE NUMBER OF INMATES
6 WHO HAVE A SPECIFIED TREATMENT OR SERVICE IDENTIFIED IN THE
7 INMATE'S RECOMMENDED REHABILITATION REPORT AND WHO ARE NOT
8 RECEIVING THE TREATMENT OR SERVICE DUE TO A LACK OF TREATMENT OR
9 SERVICE PROVIDERS. IN EACH GEOGRAPHIC AREA, IF, FOR ANY TREATMENT
10 OR SERVICE, THE NUMBER OF INMATES IDENTIFIED AS NEEDING THE
11 TREATMENT OR SERVICE EXCEEDS THE NUMBER OF SPACES AVAILABLE FOR
12 SUCH TREATMENT OR SERVICE IN THE AREA BY TWENTY PERCENT OR
13 MORE, THE DEPARTMENT SHALL INSTITUTE AN INCENTIVE PLAN TO
14 CONTRACT FOR MORE MENTAL HEALTH PROFESSIONALS TO PROVIDE THE
15 NEEDED TREATMENT OR SERVICES IN THE GEOGRAPHIC AREA PURSUANT TO
16 THIS SECTION.

17 (3) THE DEPARTMENT SHALL DEVELOP AN INCENTIVE PLAN FOR
18 EACH TREATMENT OR SERVICE AND EACH GEOGRAPHIC AREA REQUIRING
19 SUCH AN INCENTIVE PLAN. THE INCENTIVE PLAN MUST INCLUDE SPECIFIC
20 INCENTIVES TO CONTRACT WITH THE NECESSARY MENTAL HEALTH
21 PROFESSIONALS AND MAY INCLUDE INCREASES IN FEES AND TRAVEL
22 REIMBURSEMENTS PAID, BONUSES, AND OTHER FINANCIAL INCENTIVES.

23 (4) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-1-136
24 (11), ON OR BEFORE DECEMBER 1, 2019, AND EACH DECEMBER 1
25 THEREAFTER, THE DEPARTMENT SHALL SUBMIT A REPORT TO THE JOINT
26 BUDGET COMMITTEE THAT MUST INCLUDE:

27 (a) THE STATEWIDE NUMBER OF INMATES REQUIRING EACH
28 TREATMENT AND SERVICE PROVIDED BY A MENTAL HEALTH PROFESSIONAL

1 AND THE NUMBER OF INMATES UNABLE TO RECEIVE SUCH TREATMENT OR
2 SERVICE; AND

3 (b) FOR EACH INCENTIVE PLAN DEVELOPED PURSUANT TO THIS
4 SECTION, THE NUMBER OF INMATES REQUIRING THE TREATMENT OR
5 SERVICE, THE NUMBER OF INMATES STILL UNABLE TO RECEIVE THE
6 TREATMENT OR SERVICE, A DESCRIPTION OF THE INCENTIVE PLAN
7 DEVELOPED, AND A REPORT ON THE EFFECTIVENESS OF ANY INCENTIVE
8 OFFERED BY THE DEPARTMENT UNDER THE PLAN.

9 **SECTION 2. Act subject to petition - effective date.** This act
10 takes effect at 12:01 a.m. on the day following the expiration of the
11 ninety-day period after final adjournment of the general assembly (August
12 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a
13 referendum petition is filed pursuant to section 1 (3) of article V of the
14 state constitution against this act or an item, section, or part of this act
15 within such period, then the act, item, section, or part will not take effect
16 unless approved by the people at the general election to be held in
17 November 2018 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.

Incorporating Justice Involved Persons with Mental Illness into Sustainable Supportive
Housing

Sustainable Supportive Housing Recommendations

for

Justice-Involved Individuals with Mental Illness

A Recommendation from the Housing Sub-committee
of the Legislative Task Force Concerning the Treatment of Persons with
Mental Illness in the Criminal and Juvenile Justice Systems

Problem:

Individuals with serious mental illness, (SMI), transitioning out of criminal justice facilities into the community, frequently released homeless and have difficulty accessing supportive services. As a result, these individuals can decompensate in the community and oftentimes cycle between the justice system, emergency rooms, and

homelessness. According to a study by Calhan et al.,¹ homeless individuals with severe mental illness who received supportive housing had reductions in their use of shelters, hospitalizations, and incarcerations over controls that did not receive supportive housing. Overall, the cost of supportive housing was less expensive than the cost of services for individuals who remained homeless.

Quick Facts about the SMI population in Colorado:

Stats on SMI deinstitutionalization, without adequate increases in community services, resulted a shift to increased criminal justice involvement, criminalizing mental health issues and making our new institutions jails and prisons; this process is often referred to as the criminalization of mental illness.

Of the \$887 million in known expenditures for behavioral health in 2010, just over 53 percent was spent through Colorado's formal public behavioral health system.² The rest was spent in prison and jail systems, child welfare system, and hospitals. The state prison and county jail systems spent \$93,000,000 of taxpayer's money alone on basic mental health services for "humane confinement" to contain individuals in correctional institutions.³ This comes to a total of \$2,083 per prisoner for mental health services.⁴ Furthermore, these dramatic figures do not truly represent the problem; they are averaged out over all prisoners with, and without, mental health issues (figures would be higher if applied only to the mentally ill population). Different entities within Colorado found that a small percentage of individuals are attributable to most of the expenditure. University of Colorado's Bridge's to Care Program studied 96 of the highest users of emergency department visits. Over a six-month period, prior to intervention, these 96 high users of emergency departments incurred \$5,869,852 in medical costs. After clinical and social intervention, the costs were reduced to 3,668,567. Likewise, Aurora Municipal Problem Solving Court is focusing on high end users; it found that the in a three-year period fifty individuals accounted for 913 arrests. (Aurora Safety Dept . presentation 2016) Colorado's DOC recidivism rate for individuals with mental health issues in 2011 was 55%. In 2012, CDOC statistics showed that 64% of females had a mental health diagnosis of severe and persistent mental illness, (P3to P5). Combine this with high recidivism rates amongst those who are mentally ill, and you have an extremely costly system.

¹ Culhane, D.P., Metraux, S., & Hadley, T. (2002). Public Service Reductions Associate with Placement of Homeless Persons with Severe Mental Illness in Supportive Housing. Retrieved from http://repository.upenn.edu/spp_papers/65.

² TriWest Group. (2011). The Status of Behavioral Health Care in Colorado – 2011 Update. Advancing Colorado's Mental Health Care: Caring for Colorado Foundation, The Colorado Health Foundation, The Colorado Trust, and The Denver Foundation: Denver, CO.

³ TriWest Group (2011).

⁴ TriWest Group (2011).

Nearly a quarter of mentally ill state prisoners and jail inmates, compared to a fifth of those without mental health issues, had served 3 or more prior incarcerations.⁵ In addition, mentally ill inmates spend 5 ½ times longer in jail than the average inmate.⁶ Penrose's law, which states that, as the number of available mental health beds decreases, the number of inmates with mental illness will increase, appears to be occurring before our very eyes.⁷ While this country once was on the cutting edge of treating and caring for individuals with mental illness in humane and caring ways, time, and the drive to cut budgets, have pushed patients out of state run hospitals and into localized care that is, itself, lacking funding.⁸ Now, 20%-25% of homeless persons suffer from some form of mental illness.⁹ The end result has meant having to turn those with mental illness away from inpatient facilities and onto the streets, where those former patients soon find themselves in jails and prisons.¹⁰

Not only does this trend burden the jail and prison systems with mental health care (a costly solution), it is an inhumane solution. A 2013 report found that 87 prisoners who had mental health issues were locked up in solitary confinement in Colorado alone.¹¹ In 2012, over half of all prisoners in solitary confinement suffered from some form of mental illness.¹² The average period spent in solitary confinement by those with mental health issues was 16 months.¹³

In 2016, a study conducted by the Treatment Advocacy Center, found that these results in Colorado, far from being isolated, are a part of a much larger trend. The 2016 study surveyed 230 sheriff's departments, in 39 states, and found that two-thirds of all respondents found a noticeable increase in mentally ill inmates compared to 10 years ago; over half of the departments had been forced to change their housing policies to accommodate their mentally ill population.¹⁴ Less than half of all respondent jails indicated that they provided any kind of mental health treatment for

⁵ James, D. J., & Glaze, L. E. (n.d.). Mental Health Problems of Prison and Jail Inmates. Retrieved from <http://www.bjs.gov/content/pub/pdf/mhppji.pdf>

⁶ A Model Law for Inmate Treatment. (n.d.). Retrieved from <http://tacereports.org/treatment-behind-bars/colorado>

⁷ 4 U. Denv. Crim. L. Rev. 103, 110 (2014)

⁸ *Id.* at 108-110.

⁹ NATIONAL COALITION FOR THE HOMELESS, MENTAL ILLNESS AND HOMELESSNESS 1 (2009)(available at: http://www.nationalhomeless.org/factsheets/Mental_Illness.pdf).

¹⁰ *See Id.* at 110.

¹¹ ACLU-CO, OUT OF SIGHT, OUT OF MIND 1 (2013)

¹² *Id.* at 4.

¹³ *Id.*

¹⁴ AZZA ABUDAGGA, ET. AL., INDIVIDUALS WITH SERIOUS MENTAL ILLNESSES IN COUNTY JAILS: A SURVEY OF JAIL STAFF'S PERSPECTIVES ii-iii (July 14, 2016).

their mentally ill population, and less than 25% had any support system, what so ever, for released inmates.¹⁵

The State of Colorado's Mental Health Services

In a 2009 report: Grading the states: A report on America's Health Care System for Serious Mental Illness, Colorado received a **D** grade for community integration, (there has been an attempt to address this issue through the addition of funding for crisis services).¹⁶ The state overall received a C grade, but severely lacked community integration services.¹⁷ The same 2009 report recognized alternatives to incarceration as an urgent need, citing increased stress on jails and emergency rooms.¹⁸ Unfortunately, despite these steps, Mental Health America has dropped Colorado's ranking, from 17th to 25th among the 50 states, in the time period between 2011 and 2014.¹⁹

A 2010 report on mental health services in Colorado estimated that 158,000 adults, and another 52,000 children, are living with a serious mental illness in the State.²⁰ Of this population, only 15.9% were receiving any treatment from the State's mental health services.²¹ These statistics give some insight as to why, in 2011, Colorado ranked 6th in the nation for number of suicides.²²

Further research reveals that simple mental health treatment may not be enough for those with serious mental health issues. While research shows that 6 in 10 of those with serious mental health issues could succeed at work with the proper support, only about 20% of those with serious mental health issues are employed.²³ Even for those in the mental health system, only 1.7% are receiving supportive employment services.²⁴ This means that for many, social security disability benefits are the only financial support they are able to receive; mental illness is the fastest growing segment of disability social security payments (SSDI).²⁵ In Colorado, where in 2010 the average studio apartment costs 90% of the average SSDI payment, we can very easily trace the path from mental illness to homelessness, and then to jail and prison.²⁶

¹⁵ *Id.* at iii.

¹⁶ L. Aron, R. Honberg, K. Duckworth et al. (2009) *Grading the States 2009: A Report on America's Health Care System for Adults with Serious Mental Illness*, Arlington, VA: National Alliance on Mental Illness

¹⁷ L. Aron, R. Honberg, K. Duckworth et al. (2009)

¹⁸ L. Aron, R. Honberg, K. Duckworth et al. (2009)

¹⁹ www.mentalhealthamerica.net/issues/ranking-states

²⁰ NATIONAL ALLIANCE ON MENTAL ILLNESS, *STATE STATISTICS: COLORADO 1* (2010).

²¹ *Id.*

²² *ADVANCING COLORADO'S MENTAL HEALTH CARE, THE STATUS OF BEHAVIORAL HEALTH CARE IN COLORADO 3* (2011).

²³ NATIONAL ALLIANCE ON MENTAL ILLNESS, *ROAD TO RECOVERY: EMPLOYMENT AND MENTAL ILLNESS 4* (2014).

²⁴ *Id.*

²⁵ *Id.* at 5.

²⁶ *Supra* n.17.

These statistics do not address individuals who clearly qualify for SSDI, yet are denied due to improper applications, homelessness, and mental illness inability to fill out and follow application process. The latter individuals are denied and are left with no benefits during the lengthy appeal process.²⁷

Using a Housing First Approach Works:

The reality is that mental health and homelessness are more than just questions of costs and benefits. These are literally questions of life and death with, on average, those individuals with mental health issues dying 25 years earlier, and homeless individuals dying 30 years earlier, than the general population.²⁸ However, in Colorado, we have already seen one approach that has been dramatically more successful than the traditional “mental health and addiction stability first then offer housing” approach in addressing homelessness among the mental health population; provide housing first, then offer treatment.

Colorado Coalition for the Homeless’ (CCH) Housing first model, a model similar to the program proposed here, has served more than 400 individuals as of 2012, with a housing retention rate of 96%.²⁹ CCH’s approach addressing homelessness first, rather than the causes of homelessness, has been wildly successful in reducing costs and improving outcomes.

In 2006, CCH released a study evaluating the Housing First model. The study found a 72.95 percent reduction in emergency services for chronically homeless individuals with disabilities.³⁰ Utilization of emergency room care, inpatient medical and psychiatric care, detox services, incarceration, and emergency shelters were significantly reduced with the total cost savings averaged \$31,545 per participant.³¹ This cost savings includes a 76% decrease in incarceration days and costs among the patient population.³² In addition, 43% had improved mental health status. CCH’s model of access to case management and support, employment services, and support with drug related treatment and therapy helped improve the living conditions of

²⁷ Under the current ideation of Health First Colorado, it is common consensus that parity for mental health treatment has yet to be achieved. This lack of payment parity further supports the need for independent funding of wrap around services.

²⁸ NATIONAL ALIANCE ON MENTAL HEALTH, MENTAL HEALTH BY THE NUMBERS (*available at*: <http://www.nami.org/Learn-More/Mental-Health-By-the-Numbers>); BETHAN THOMAS, HOMELESSNESS KILLS: AN ANALYSIS OF THE MORTALITY OF HOMELESS PEOPLE IN EARLY TWENTY-FIRST CENTURY ENGLAND 33 (CRISIS 2012).

²⁹ COLORADO COALITION FOR THE HOMELESS, HOUSING FIRST WORKS, 2 (2012)

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

individuals with mental illness who have a high likelihood of ending up incarcerated or homeless.

Housing for those who are severely mentally ill is crucial not only from a monetary and budget perspective, but from a human rights perspective. Failing to stem the flow of mental health patients and inmates from the revolving door between our streets and our prisons only increases costs and decreases life. James and Glaze (2006) found that prison and jail inmates with mental health problems, in comparison to those who did not have mental health problems, were twice as likely to have experienced homelessness the year prior their arrest. CCH has shown us that we have the means by which to stop this cycle. Now all that remains is the political will to see it done.

Goals:

To address the present never ending revolving door: homelessness- jail - Dept. of Corrections - the streets, by ensuring that justice involved individuals with serious mental illness (SMI) have stable housing, with supportive services, to successfully live in the community as productive citizens.

Objective:

To create housing opportunities, with supportive housing services, throughout the state to meet the needs of the SMI population who are exiting the criminal justice system. Supportive housing services will consist of, but are not limited to, Medicaid enrollment assistance, mental health treatment services (psychiatric & counseling), case management, medication monitoring, employment/vocational services, peer specialist support, & positive recreational activities.

Proposed Solutions:

Housing Options:

- 1) Vouchers- Expand vouchers for individuals transitioning out of Colorado Mental Health Institutes to individuals that are released from the Criminal Justice System.***

The Current System

- The Task Force is requesting 135 new vouchers for DOLA, collaborating with the Department of Human Services (CDHS) and the

Office of Behavioral Health (OBH), for the State Housing Voucher Program (SHV). This cost is **\$1,000,000** of to support 135 additional SHV for our target group and to expand the definition of eligible individuals in the target group for the presently existing vouchers.

- Presently, the existing vouchers are limited to/restricted to rental assistance for individuals who are homeless or in jeopardy of being homeless. We recommend that OBH expands its definition, and gives placement priority, for individuals suffering with mental illness exiting county jails or prison.
- The Colorado Choice Transitions Program (CCT) presently is allotted 240 vouchers, which are reserved for individuals leaving specific institutional settings, such as nursing homes and other long term care.
- The CCT voucher program helps transition Health First Colorado (Colorado's Medicaid Program) members out of nursing homes, and long-term care facilities, and into home and community-based settings. As a member of the CCT program, a person is eligible to receive home and community-based waiver services (HCBS) plus CCT-enhanced supports and services designed to promote your independence. These funds are prioritized /restricted, to help individuals transitioning from a mental health institutes and hospitals to community assisted living placements. We recommend that individuals with a mental health issues, exiting jails, DOC, or like institutions, that are homeless or about to be homeless, also qualify, and prioritize, for these vouchers and services.

Limitations to the Current System:

The Department of Health Care Policy and Financing has set the following qualifications for these funds:

- Must meet Long-Term Care Health First Colorado eligibility requirements.
- Must currently reside in a nursing facility for a period of no less than ninety (90) consecutive days (rehabilitation days do not count toward the 90 days).
- Must be moving to qualified housing defined as:
 - Home owned or leased by the owner or your family;
 - Community-based residence with not more than four unrelated individuals living together (like a group or host home); or an apartment with an individual lease in a unit where services are not a condition of tenancy

Advantages to the Suggested Changes:

- HUD requirements do not apply to this program.
- Target group is very similar to those who receive funding already

Solution:

- Overall, there are available vouchers that could be used for housing those with severe mental illnesses coming out of the criminal justice system. What we need is to expand what is considered an institutional setting, and have these programs applied to those who are transitioning out of the criminal justice system. The current funding needs to be increased to meet the housing needs of the criminal justice target population.
- As stated previously, the state of Colorado spends \$2,083 of taxpayer dollars per prisoner on basic mental health services alone. (The Task Force reiterates that these cost numbers are averaged out across all inmates rather than those who have mental health issues). Colorado jails act as quasi-mental health facilities due to the number of inmates struggling with mental illness, and the funds allocated each year to mental health services, in the state prison and jail systems. Because of this, we believe that these institutional settings should be included in this program, as it serves a similar population and meets the main objectives of the program.
- We need to request appropriate funding, from the existing DOLA voucher program, or pass legislation expanding the current funding and scope of the program.

2) ***Federal Tax Credits for Public Housing Construction:***

The Current System:

- Continuum of Care Entities allocate a limited amount of tax credits to project developers who build housing structures, of which a portion will be allocated to individuals below a specific Average Median Income (AMI).
- Credits for tax rates 3% or 9% are available to developers with a limited number of each type of tax credit available in each year.

These tax credits can be sold by the developers to corporations to raise capital for their development projects.

- There are 3 Continuum of Care Entities currently in Colorado (CCEs: El Paso County, MDHI, and the 3rd covers the rest of the state).
- The CCEs are boards that allocate the credits credits
- These structures can be tailored to meet the needs of specific high needs populations

Advantages to the Suggested Changes:

- Promotes private development, helps with the initial costs
- Could potentially be partnered with DOLA Voucher funding
- Uses Federal tax credits while other Fed. sources are more limited

Barriers that May Need to be Addressed:

- Longer term outlook
- Have to find a project developer
- Have to compete against the usual, big time foundations for tax credits
- Needs to be sustainable development, probably in coordination with additional funding.
- Zoning laws could be a hindrance

Solution:

- Groups approach the Continuum of Care Entities, along with a project manager/developer, to pitch a pilot program. The overall idea is to promote the need for housing for individuals with mental illness reentering the community from the criminal justice system.
- This could be augmented with funding from DOLA voucher based programs for permanent supportive housing. This would aid the developer to make sure the project is viable and sustainable by ensuring a steady economic base for the building.

3) Re-purpose existing capital investment properties to provide acute and long-term treatment and residence services for people with mental illness who are justice-involved

The Current System/Proposal

- Many of the individuals with behavioral health challenges simply need short-term support; a residential community where they receive medication management and stabilization, intensive skill building, and a supportive transition back into the community. Others need long-term support in a residential community that will provide wrap-around services, including close supervision, vocational training, behavior management skill building, social skill development, medical care, and recreational opportunities.
- Presently, there are capital investment properties available throughout the State that are already set up to meet these needs.
- It is proposed that the State transition the use of these buildings to serve justice-involved people with mental illness, saving costs by utilizing pre-existing vacant properties already designed to support and serve special populations.

Limitations to Proposal:

- Funding for the purchase of and licensure for treatment provision at these existing properties would have to be explored, and would certainly require the collaboration of other State systems, such as Medicaid, Department of Developmental Disabilities, and the Department of Justice.
- Such re-purposing would require legislative support.

Advantages:

- The State properties are already existing in regional locations throughout the state, thus, providing ease of access and the ability to serve a higher volume of clients.
- Some of the capital investment properties are already designed to provide short-term and long-term residential treatment services, therefore, mitigating the amount of renovations necessary to serve the mentally ill.
- Acquisition and re-purposing of pre-existing capital investment properties for the purpose of supporting the mentally ill who are justice-

involved would reduce costs for tax payers across systems by utilizing State properties and providing treatment in lieu of incarceration.

Recommendations for Supportive Services:

1) Wrap Around Services- RFP (Request for Proposal) for unspent RDDT(Residential Dual Diagnosis Treatment) money

Advantages to the Suggested Changes:

- The creation of a specialized program for individuals with severe mental illnesses transitioning out of the criminal justice system.
- This program can utilize unspent community corrections funds to provide services to the target group, in collaboration with voucher funding from DOLA
- Programs addressing severe mental health or dual diagnosis issues, that are similar to, but not limited to, the John Eischen Re-Entry Program (JERP) in community corrections, or private non-community correction programs that will address this target population with evidence based practices and programming.

Barriers that May Need to be Addressed:

- Community Corrections may not have the authority to re-direct funds to a specialized program for those with mental illness who are transitioning from the criminal justice system.
- Local Community Corrections boards may not approve applicants that are severally mentally ill and are transitioning out of the criminal justice system.

Solutions:

- Have the Office of Community Corrections divert funding, that was previously allocated for the RDDT program and other local community correction programs, that went unspent, to our population of individuals who are severally mentally ill and are transitioning from the criminal justice system into the community.
- This program would provide service funds for this target group, which includes, but are not limited to: Medicaid enrollment service, Mental health treatment services (Psychiatric and

counseling), case management, medication monitoring, employment/vocational services, peer specialist support, and positive recreational activities

2) Legislative Change- Allow more flexibility in bed type allocation

Current System:

- Currently the department of corrections can administer programs for re-entry.
- The goal is to reduce recidivism
- There currently is not a specific program directed towards individuals with mental illnesses who are transitioning from the criminal justice system into the community, and even more specifically, direct programs for those who have high level offenses

Potential Barriers:

- Community Corrections may not have the authority to re-direct funds to a specialized program for those with mental illness who are transitioning from the criminal justice system.
- Local Community Corrections boards may not approve applicants that are severely mentally ill and are transitioning out of the criminal justice system.

Solutions to Potential Barriers:

- Amend C.R.S. § 17-33-101 to include a specific program for those who are mentally ill and leaving the criminal justice system
- This program would provide service funds for this target group, which includes, but are not limited to: Medicaid enrollment service, Mental health treatment services (Psychiatric and counseling), case management, medication monitoring, employment/vocational services, peer specialist support, and positive recreational activities.

Overall Goal/Outcomes:

- To expand the available vouchers provided by DOLA to apply to those with mental illness who are transitioning from the criminal justice system and to braid these funds with unspent RDDT funding.

Or

- To expand the available vouchers provided by DOLA to those with mental illness who are transitioning from the criminal justice system and to braid these funds with Federal tax credits that go to the Continuum of Care Entities. Along with a project manager/developer, we could create a sustainable program that gives tax credits to developers to build housing for our target group, and supported by vouchers provided by DOLA. In addition, we could also use unspent RDDT funding for supportive services in these projects.