

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

**2009 Report to Legislative Council**

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# The Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Justice System

## Committee Charge

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House Bill 09-1021 reauthorized the establishment of a legislative oversight committee and an advisory task force to continue the examination of persons with mental illness in the justice system.

The committee is responsible for appointing a task force that represents all areas of the state and is diverse in ethnicity, culture, and gender. The task force is directed to continue examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems, including an examination of liability, safety, and cost as they relate to these issues.

The authorizing legislation directs the task force, between July 1, 2009, and July 1, 2014, to consider, at a minimum, the following issues:

- the diagnosis, treatment, and housing of persons with mental illness or co-occurring disorders who are convicted of crimes or incarcerated, or who plead guilty, nolo contendere, or not guilty by reason of insanity, or who are found to be incompetent to stand trial;
- the diagnosis, treatment, and housing of juveniles with mental illness or co-occurring disorders who are adjudicated, detained, or committed for offenses that would constitute crimes if committed by adults, or who plead guilty, nolo contendere, or not guilty by reason of insanity, or who are found to be incompetent to stand trial;
- the ongoing treatment, housing, and supervision, especially with regard to medication, of adults and juveniles who are involved in the criminal and juvenile justice systems and who are incarcerated or housed within the community, and the availability of public benefits for these persons; and
- the safety of the staff who treat or supervise persons with mental illness and the use of force against persons with mental illness.

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

The task force is required to submit a written report of its findings and recommendations to the legislative oversight committee annually by October 1. The oversight committee is required to submit an annual report to the General Assembly by January 15 of each year regarding recommended legislation resulting from the work of the task force.

## Committee Activities

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### History

The advisory task force and legislative oversight committee first met in the summer of 1999. In 2000, the task force and oversight committee were reauthorized, and the reestablished task force met on a monthly basis through June 2003. The General Assembly considered legislation to continue the study of the mentally ill in the justice system beyond the 2003 repeal date, but the bill failed. In FY 2003-04, the task force continued its meetings and discussions at the request of the oversight committee. The task force and oversight committee were reauthorized and reestablished in 2004 through the passage of Senate Bill 04-037 and again in 2009 with the passage of House Bill 09-1021. The committee is set to repeal on July 1, 2015.

### Advisory Task Force

The task force met monthly in 2009 and heard presentations about a number of issues including:

- restoration to competency;
- suspension of Medicaid benefits for persons confined pursuant to a court order;
- Department of Corrections (DOC) re-entry programs;;
- specialty courts; and
- family advocacy programs for mental health juvenile justice populations

**Restoration to competency.** A criminal defendant may be declared incompetent to proceed at trial if he or she, as a result of a mental or developmental disability, does not have sufficient present ability to consult with his or her attorney with a reasonable degree of rational understanding in order to assist the defense. Also incompetent to proceed are defendants who, as a result of a mental or developmental disability, do not have a rational and factual understanding of the criminal proceedings. The task force discussed the process of restoring a defendant to competency to proceed at trial. The plea of not guilty by reason of insanity was also briefly discussed.

**Suspension of Medicaid benefits.** For the 2008 legislative session, the task force recommended Senate Bill 08-006, which specified that persons who are eligible for Medicaid just prior to their confinement in a jail, juvenile commitment facility, DOC facility, or Department of Human Services facility must have their Medicaid benefits suspended, rather than terminated, during the period of their confinement. Implementation of the bill has been delayed due to necessary computer system changes at the Department of Health Care Policy and Financing (HCPF). The task force heard about barriers to implementation of the law as a result of the federal Centers for Medicare and Medicaid Services rules regarding benefits eligibility.

**Re-entry programs.** The re-entry of offenders into the community at the completion of a sentence or upon parole can be very stressful for the offender and can cause anxiety for members of the public. Prison is a highly structured environment. Needs such as housing, food, health care, substance abuse or mental health treatment, and education are met by the DOC. Many individuals transitioning from prison are returning to a dangerous environment that does not foster positive behavior. Others have no housing, employment, or support system. The task force discussed a number of philosophies with regard to re-entry and talked about the Colorado DOC re-entry program.

**Specialty courts.** Specialty courts, also known as problem solving courts, are historically created to address a specific problem. Some examples of specialty courts include:

- adult drug courts;
- juvenile drug courts;
- mental health courts;
- re-entry courts;
- tribal wellness courts;
- truancy courts;
- veterans courts;
- domestic violence courts; and
- family/dependency and neglect courts.

Colorado currently has 58 specialty courts. Most are located along the Front Range, although there are some located in other areas as well. Specialty courts are able to focus on an issue and target services to those individuals who need them. The task force focused on the point in a case when a specialty court becomes involved and the differences between a revocation model and a diversion model with regard to the mentally ill offender population.

In a revocation model, individuals will generally go through a regular trial and be sentenced to probation. If they are not successful on probation and are facing a sentence to the DOC, a specialty court will offer a last chance to remain at liberty in the community under the close supervision of the specialty court. In a diversion model, candidates who are assessed as having a particular need in the pre-trial phase will be diverted from the traditional court trial directly into the supervision of the specialty court without giving them a chance to fail.

**Family advocacy.** In 2007, the General Assembly enacted House Bill 07-1057, which established the Family Advocacy Demonstration Program. The focus of the program is on youth with mental illness or co-occurring disorders who are currently involved in, or at risk of becoming involved in the juvenile justice system. The task force recommended the bill with the goal of providing youth and their families access to necessary services and supports and to assist them in navigating through a complex system. Three separate demonstration programs were created; one urban, one suburban, and one rural. All three programs began operating in 2008 and are set to conclude in 2011. State General Fund dollars were used to fund the programs and extensive evaluations are required. The task force heard an update on the three programs and learned about an area of the law that could be amended to better serve the juvenile population.

As such, the task force recommends Bill A, which addresses the fact that current law does not specifically allow a family member, such as a parent or primary care giver, to act as a family advocate. The bill also creates a new title, family systems navigator, for individuals who are not family members, but are qualified to provide services and supports under the demonstration programs.

## **Legislative Oversight Committee**

The legislative oversight committee met in 2009 to monitor and examine the work, findings, and recommendations of the task force. Specifically, the committee:

- made appointments to fill vacancies on the task force; and
- considered legislation recommended by the task force.

## **Committee Recommendations**

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As a result of the discussion and deliberation of the task force, the oversight committee recommends one bill for consideration in the 2010 legislative session.

**Bill A — Family System Navigators.** This bill makes a change to an existing demonstration program for system of care family advocates. In the program, services may be provided by family advocates. The bill amends the definition of a family advocate and defines another class of individuals, family system navigators, who may provide the same services as family advocates.