

An Act

SENATE BILL 17-012

BY SENATOR(S) Martinez Humenik;
also REPRESENTATIVE(S) Lee, Singer, Buckner, Exum, Herod, Jackson,
Melton, Michaelson Jenet, Mitsch Bush, Salazar, Young, Duran.

CONCERNING COMPETENCY RESTORATION SERVICES FOR DEFENDANTS
DEEMED INCOMPETENT TO PROCEED, AND, IN CONNECTION
THEREWITH, MAKING AN APPROPRIATION.

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

SECTION 1. In Colorado Revised Statutes, 16-8.5-111, amend
(2)(a) as follows:

**16-8.5-111. Procedure after determination of competency or
incompetency.** (2) If the final determination made pursuant to section
16-8.5-103 is that the defendant is incompetent to proceed, the court has
the following options:

(a) IF THE DEFENDANT IS ON BOND OR SUMMONS, THE COURT SHALL
CONSIDER WHETHER RESTORATION TO COMPETENCY SHOULD OCCUR ON AN
OUTPATIENT AND OUT-OF-CUSTODY BASIS. If the defendant is in custody,
the court may release the defendant on bond upon compliance with the
standards and procedures for such release prescribed by statute and by the

*Capital letters indicate new material added to existing statutes; dashes through words indicate
deletions from existing statutes and such material not part of act.*

Colorado rules of criminal procedure. As a condition of bond, the court may require the defendant to obtain any treatment or habilitation services that are available to the defendant, such as inpatient or outpatient treatment at a community mental health center or in any other appropriate treatment setting, as determined by the court. Nothing in this section authorizes the court to order community mental health centers or other providers to provide treatment for persons not otherwise eligible for these services. At any hearing to determine eligibility for release on bond, the court shall consider any effect the defendant's incompetency may have on the court's ability to ensure the defendant's presence for hearing or trial. There shall be IS a presumption that the incompetency of the defendant DEFENDANT'S INCOMPETENCY will inhibit the DEFENDANT'S ability of the defendant to ensure his or her presence for trial. PURSUANT TO SECTION 27-60-105, THE OFFICE OF BEHAVIORAL HEALTH IS THE ENTITY RESPONSIBLE FOR THE OVERSIGHT OF RESTORATION EDUCATION AND COORDINATION OF SERVICES NECESSARY TO COMPETENCY RESTORATION.

SECTION 2. In Colorado Revised Statutes, 19-2-1303, amend (2) as follows:

19-2-1303. Procedure after determination of competency or incompetency. (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 justified. The court shall order that the restoration services ordered are provided in the least restrictive environment, taking into account the public safety and the best interests of the juvenile, AND THAT THE PROVISION OF THE SERVICES AND THE JUVENILE'S PARTICIPATION IN THOSE SERVICES OCCURS IN A TIMELY MANNER. The court shall review the PROVISION OF AND THE JUVENILE'S PARTICIPATION IN THE SERVICES AND THE juvenile's progress toward competency at least every ninety days until competency is restored, UNLESS THE JUVENILE IS IN CUSTODY, IN WHICH EVENT THE COURT SHALL REVIEW THE CASE EVERY THIRTY DAYS TO ENSURE THE PROMPT PROVISION OF SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT. 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 SHALL NOT extend beyond the juvenile's twenty-first birthday. PURSUANT TO SECTION 27-60-105, THE OFFICE OF BEHAVIORAL HEALTH IS THE ENTITY RESPONSIBLE FOR THE OVERSIGHT OF RESTORATION EDUCATION AND COORDINATION OF SERVICES NECESSARY TO COMPETENCY RESTORATION.

SECTION 3. In Colorado Revised Statutes, add 27-60-105 as follows:

27-60-105. Outpatient restoration to competency services - legislative declaration - responsible entity - duties - report. (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(a) COLORADO'S STATUTORY SCHEME DOES NOT DESIGNATE AN ENTITY RESPONSIBLE FOR COMPETENCY RESTORATION SERVICES, NOR DOES IT PROVIDE A SUFFICIENT FRAMEWORK FOR THE PROVISION OF OUTPATIENT RESTORATION SERVICES TO ADULTS OR JUVENILES. AS A RESULT, THERE HAVE BEEN DEFICITS AND INCONSISTENCIES IN THE ADMINISTRATION OF THE EDUCATIONAL COMPONENT OF OUTPATIENT COMPETENCY RESTORATION SERVICES AND THE COORDINATION AND INTEGRATION OF THAT COMPONENT WITH EXISTING SERVICES AND SUPPORTS TO ADDRESS THE UNDERLYING CAUSES OF INCOMPETENCY.

(b) THE LACK OF A DESIGNATED RESPONSIBLE ENTITY FOR COMPETENCY RESTORATION SERVICES IN COLORADO HAS CAUSED INCONSISTENCY IN COMPETENCY RESTORATION SERVICES THROUGHOUT THE STATE AND DELAYS IN PROCEEDINGS THAT IMPACT THE DUE PROCESS RIGHTS OF JUVENILES AND ADULTS INVOLVED IN THE JUVENILE AND CRIMINAL JUSTICE SYSTEMS, AS WELL AS THE INTERESTS OF VICTIMS;

(c) COMPETENCY RESTORATION SERVICES MUST BE LOCALIZED AND ACCESSIBLE AND TAKE INTO ACCOUNT THE PUBLIC SAFETY, WHILE STILL ALLOWING FOR STATE-LEVEL STANDARDS AND OVERSIGHT;

(d) COMPETENCY RESTORATION SERVICES FOR JUVENILES MUST BE PROVIDED IN THE LEAST RESTRICTIVE ENVIRONMENT, WHILE TAKING INTO ACCOUNT THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE; AND

(e) MANY SERVICES ESSENTIAL TO THE RESTORATION OF

COMPETENCY CAN BE PROVIDED THROUGH EXISTING PROGRAMS USING EXISTING FUNDING. HOWEVER, THE CURRENT SYSTEM LACKS FUNDING AND RESPONSIBILITY FOR THE EDUCATIONAL COMPONENT OF COMPETENCY RESTORATION SERVICES AND CASE MANAGEMENT TO ACCESS AND LEVERAGE AVAILABLE SERVICES AND SUPPORTS WHICH, COMBINED, WILL HELP ENSURE AN INTEGRATED APPROACH TO COMPETENCY RESTORATION FOR JUVENILES AND ADULTS.

(2) THE OFFICE OF BEHAVIORAL HEALTH, REFERRED TO IN THIS SECTION AS THE "OFFICE", SHALL SERVE AS A CENTRAL ORGANIZING STRUCTURE AND RESPONSIBLE ENTITY FOR THE PROVISION OF COMPETENCY RESTORATION EDUCATION SERVICES AND COORDINATION OF COMPETENCY RESTORATION SERVICES ORDERED BY THE COURT PURSUANT TO SECTION 19-2-1303 (2) OR 16-8.5-111 (2)(a).

(3) ON OR BEFORE DECEMBER 1, 2017, THE OFFICE SHALL DEVELOP STANDARDIZED JUVENILE AND ADULT CURRICULA FOR THE EDUCATIONAL COMPONENT OF COMPETENCY RESTORATION SERVICES. THE CURRICULA MUST HAVE A CONTENT AND DELIVERY MECHANISM THAT ALLOWS IT TO BE TAILORED TO MEET INDIVIDUAL NEEDS, INCLUDING THOSE OF PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(4) BEGINNING JULY 1, 2018, THE OFFICE SHALL HAVE THE FOLLOWING DUTIES AND RESPONSIBILITIES, SUBJECT TO AVAILABLE APPROPRIATIONS:

(a) TO OVERSEE PROVIDERS OF THE EDUCATION COMPONENT OF COMPETENCY RESTORATION SERVICES, INCLUDING:

(I) ESTABLISHING AND ENFORCING QUALIFICATIONS OF COMPETENCY RESTORATION EDUCATORS, INCLUDING MINIMUM AND ONGOING TRAINING REQUIREMENTS;

(II) EVALUATING MODELS FOR THE DELIVERY OF COMPETENCY RESTORATION EDUCATION IN A MANNER THAT MAXIMIZES AND EXPANDS ON AVAILABLE RESOURCES WHILE MINIMIZING COSTS TO THE STATE; AND

(III) MAINTAINING AN ADEQUATE POOL OF COMPETENCY RESTORATION PROVIDERS, AS DEFINED BY:

(A) QUALIFICATIONS AND TRAINING;

(B) GEOGRAPHICAL ACCESSIBILITY, IN LIGHT OF THE GOAL OF ENSURING COMMUNITY-BASED RESTORATION IN THE LEAST RESTRICTIVE ENVIRONMENT THROUGHOUT THE STATE; AND

(C) ABILITY TO PROVIDE CULTURALLY COMPETENT AND DEVELOPMENTALLY APPROPRIATE COMPETENCY RESTORATION EDUCATION TAILORED TO AN INDIVIDUAL'S UNIQUE NEEDS;

(b) TO DEVELOP MODELS FOR PROVIDING COMPETENCY RESTORATION SERVICES THAT INTEGRATE COMPETENCY RESTORATION EDUCATION WITH OTHER CASE MANAGEMENT AND TREATMENT, ENSURE CONTINUATION OF ONGOING TREATMENT AND SERVICES AS APPROPRIATE, AVOID DUPLICATION OF SERVICES, AND ACHIEVE EFFICIENCIES BY COORDINATING WITH EXISTING COMMUNITY RESOURCES AND PROGRAMS;

(c) TO PRESERVE THE INTEGRITY OF THE COMPETENCY EVALUATION PROCESS BY ENSURING THAT COMPETENCY RESTORATION EDUCATORS OPERATE INDEPENDENTLY FROM COMPETENCY EVALUATORS AT THE CASE LEVEL;

(d) TO ENGAGE WITH KEY STAKEHOLDERS IN THE JUVENILE AND ADULT JUSTICE SYSTEMS TO DEVELOP BEST PRACTICES IN THE DELIVERY OF COMPETENCY RESTORATION SERVICES; AND

(e) TO MAKE RECOMMENDATIONS FOR LEGISLATION.

(5) ON OR BEFORE JANUARY 1, 2019, AND EVERY JANUARY 1 THEREAFTER, THE OFFICE SHALL SUBMIT AN ANNUAL WRITTEN REPORT TO THE GENERAL ASSEMBLY SUMMARIZING THE OFFICE'S PROVISION OF COMPETENCY RESTORATION EDUCATION AND ITS EFFORTS TOWARD THE COORDINATION OF COMPETENCY RESTORATION EDUCATION WITH OTHER EXISTING SERVICES. THE REPORT MUST INCLUDE:

(a) DATA ON THE NUMBER OF INDIVIDUALS ORDERED TO COMPETENCY RESTORATION SERVICES, THE AVERAGE TIME FRAME FOR BEGINNING AND ENDING SUCH SERVICES, THE TYPES OF SETTINGS IN WHICH COMPETENCY RESTORATION SERVICES ARE PROVIDED, AND THE OUTCOMES OF SUCH SERVICES;

(b) A DESCRIPTION OF THE OFFICE'S ENGAGEMENT WITH COMMUNITY PARTNERS TO COORDINATE COMPETENCY RESTORATION SERVICES IN AN EFFECTIVE AND EFFICIENT MANNER;

(c) IDENTIFICATION OF BEST AND PROMISING PRACTICES FOR EDUCATION AND COORDINATION OF COMPETENCY RESTORATION SERVICES;

(d) A DESCRIPTION OF OPPORTUNITIES TO MAXIMIZE AND INCREASE AVAILABLE RESOURCES AND FUNDING; AND

(e) A DESCRIPTION OF GAPS IN AND CONFLICTS WITH EXISTING FUNDING, SERVICES, AND PROGRAMMING ESSENTIAL TO THE EFFECTIVE RESTORATION OF COMPETENCY FOR JUVENILES AND ADULTS.

SECTION 4. Appropriation. For the 2017-18 state fiscal year, \$18,000 is appropriated to the department of human services. This appropriation is from the marijuana tax cash fund created in section 39-28.8-501 (1), C.R.S. To implement this act, the department may use this appropriation for operating expenses related to community behavioral health administration.

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.



Kevin J. Grantham
PRESIDENT OF
THE SENATE



Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES



Effie Ameen
SECRETARY OF
THE SENATE



Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO

STATE OF COLORADO

OFFICE OF THE GOVERNOR

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June 6, 2017



John W. Hickenlooper
Governor

The Honorable Colorado Senate
General Assembly
State Capitol
200 E. Colfax Ave.
Denver, CO 80203

Dear Members of the Colorado Senate:

Today, we filed with the Secretary of State Senate Bill 17-012, "Concerning Competency Restoration Services for Defendants Deemed Incompetent to Proceed" (SB 17-012). As I am neither signing nor vetoing SB 17-012, the bill will become law at 12:01 A.M. on June 10, 2017.

Although we agree that SB 17-012 sets good policy for the State of Colorado, for the same reasons elaborated in my letter delivered to the Senate today on Senate Bill 17-019, we have concerns that the bill's full and true impact on the state budget was not fully transparent.

We remain grateful for the House sponsor's efforts to alleviate several of these concerns when these issues were raised. However, we expect that future legislation not contain "work-around" language to the the annual appropriations process - whether by delays of implementation dates several years out, use of unnecessarily optional or permissive bill language, or other tactics that may veil a bill's true cost to the taxpayers.

For these reasons, I allowed Senate Bill 17-012 to become law without my signature.

Sincerely,

John W. Hickenlooper
Governor