

First Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 17-0149.01 Jane Ritter x4342

SENATE BILL 17-012

SENATE SPONSORSHIP

Martinez Humenik,

HOUSE SPONSORSHIP

Lee, Singer

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

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

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 Illness in the Criminal and Juvenile Justice Systems. The bill addresses various issues relating to the restoration of competency for juveniles and adults in the juvenile and criminal justice systems, including:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
May 8, 2017

SENATE
Amended 2nd Reading
May 5, 2017

- ! Requiring the court to consider whether restoration to competency services should occur on an outpatient basis if the defendant is on bond or summons;
- ! Requiring that, in addition to providing competency restoration services in the least restrictive environment, the provision of such services and a juvenile's participation in those services occur and are reviewed by the court in a timely manner;
- ! Establishing the unit within the department of human services that administers behavioral health programs and services, including those relating to mental health and substance abuse, also known as the office of behavioral health (office), as the entity responsible for the oversight of restoration education and the coordination services necessary to competency restoration; and
- ! Setting forth the duties of the office related to competency restoration services and education.

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

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

4 **16-8.5-111. Procedure after determination of competency or**
 5 **incompetency.** (2) If the final determination made pursuant to section
 6 16-8.5-103 is that the defendant is incompetent to proceed, the court has
 7 the following options:

8 (a) IF THE DEFENDANT IS ON BOND OR SUMMONS, THE COURT
 9 SHALL CONSIDER WHETHER RESTORATION TO COMPETENCY SHOULD
 10 OCCUR ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS. If the defendant
 11 is in custody, the court may release the defendant on bond upon
 12 compliance with the standards and procedures for such release prescribed
 13 by statute and by the Colorado rules of criminal procedure. As a condition
 14 of bond, the court may require the defendant to obtain any treatment or
 15 habilitation services that are available to the defendant, such as inpatient
 16 or outpatient treatment at a community mental health center or in any

1 other appropriate treatment setting, as determined by the court. Nothing
2 in this section authorizes the court to order community mental health
3 centers or other providers to provide treatment for persons not otherwise
4 eligible for these services. At any hearing to determine eligibility for
5 release on bond, the court shall consider any effect the defendant's
6 incompetency may have on the court's ability to ensure the defendant's
7 presence for hearing or trial. There ~~shall be~~ IS a presumption that the
8 ~~incompetency of the defendant~~ DEFENDANT'S INCOMPETENCY will inhibit
9 the DEFENDANT'S ability ~~of the defendant~~ to ensure his or her presence for
10 trial. PURSUANT TO SECTION 27-60-104, THE OFFICE OF BEHAVIORAL
11 HEALTH IS THE ENTITY _____ RESPONSIBLE FOR THE OVERSIGHT OF
12 RESTORATION EDUCATION AND COORDINATION OF SERVICES NECESSARY
13 TO COMPETENCY RESTORATION.

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

16 **19-2-1303. Procedure after determination of competency or**
17 **incompetency.** (2) If the court finally determines pursuant to section
18 19-2-1302 that the juvenile is incompetent to proceed, but may be
19 restored to competency, the court shall stay the proceedings and order that
20 the juvenile receive services designed to restore the juvenile to
21 competency, based upon recommendations in the competency evaluation
22 unless the court makes specific findings that the recommended services
23 in the competency evaluation are not justified. The court shall order that
24 the restoration services ordered are provided in the least restrictive
25 environment, taking into account the public safety and the best interests
26 of the juvenile, AND THAT THE PROVISION OF THE SERVICES AND THE
27 JUVENILE'S PARTICIPATION IN THOSE SERVICES OCCURS IN A TIMELY

1 MANNER. The court shall review the PROVISION OF AND THE JUVENILE'S
2 PARTICIPATION IN THE SERVICES AND THE juvenile's progress toward
3 competency at least every ninety days until competency is restored,
4 UNLESS THE JUVENILE IS IN CUSTODY, IN WHICH EVENT THE COURT SHALL
5 REVIEW THE CASE EVERY THIRTY DAYS TO ENSURE THE PROMPT PROVISION
6 OF SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT. The court shall
7 not maintain jurisdiction longer than the maximum possible sentence for
8 the original offense, unless the court makes specific findings of good
9 cause to retain jurisdiction. However, ~~in no case shall~~ the juvenile court's
10 jurisdiction SHALL NOT extend beyond the juvenile's twenty-first birthday.
11 PURSUANT TO SECTION 27-60-104, THE OFFICE OF BEHAVIORAL HEALTH
12 IS THE ENTITY RESPONSIBLE FOR THE OVERSIGHT OF RESTORATION
13 EDUCATION AND COORDINATION OF SERVICES NECESSARY TO
14 COMPETENCY RESTORATION.

15 **SECTION 3.** In Colorado Revised Statutes, **add** 27-60-104 as
16 follows:

17 **27-60-104. Outpatient restoration to competency services -**
18 **legislative declaration - responsible entity - duties - report.** (1) THE
19 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

20 (a) COLORADO'S STATUTORY SCHEME DOES NOT DESIGNATE AN
21 ENTITY RESPONSIBLE FOR COMPETENCY RESTORATION SERVICES, NOR
22 DOES IT PROVIDE A SUFFICIENT FRAMEWORK FOR THE PROVISION OF
23 OUTPATIENT RESTORATION SERVICES TO ADULTS OR JUVENILES. AS A
24 RESULT, THERE HAVE BEEN DEFICITS AND INCONSISTENCIES IN THE
25 ADMINISTRATION OF THE EDUCATIONAL COMPONENT OF OUTPATIENT
26 COMPETENCY RESTORATION SERVICES AND THE COORDINATION AND
27 INTEGRATION OF THAT COMPONENT WITH EXISTING SERVICES AND

1 SUPPORTS TO ADDRESS THE UNDERLYING CAUSES OF INCOMPETENCY.

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

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

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

15 (e) MANY SERVICES ESSENTIAL TO THE RESTORATION OF
16 COMPETENCY CAN BE PROVIDED THROUGH EXISTING PROGRAMS USING
17 EXISTING FUNDING. HOWEVER, THE CURRENT SYSTEM LACKS FUNDING
18 AND RESPONSIBILITY FOR THE EDUCATIONAL COMPONENT OF COMPETENCY
19 RESTORATION SERVICES AND CASE MANAGEMENT TO ACCESS AND
20 LEVERAGE AVAILABLE SERVICES AND SUPPORTS WHICH, COMBINED, WILL
21 HELP ENSURE AN INTEGRATED APPROACH TO COMPETENCY RESTORATION
22 FOR JUVENILES AND ADULTS.

23 (2) THE OFFICE OF BEHAVIORAL HEALTH, REFERRED TO IN THIS
24 SECTION AS THE "OFFICE", SHALL SERVE AS A CENTRAL ORGANIZING
25 STRUCTURE AND RESPONSIBLE ENTITY FOR THE PROVISION OF
26 COMPETENCY RESTORATION EDUCATION SERVICES AND COORDINATION OF
27 COMPETENCY RESTORATION SERVICES ORDERED BY THE COURT PURSUANT

1 TO SECTION 19-2-1303 (2) OR 16-8.5-111 (2)(a).

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

8 (4) BEGINNING JULY 1, 2018, THE OFFICE SHALL HAVE THE
9 FOLLOWING DUTIES AND RESPONSIBILITIES AND SHALL INCLUDE A REQUEST
10 FOR THE FINANCING OF SUCH DUTIES AND RESPONSIBILITIES IN THE
11 DEPARTMENT OF HUMAN SERVICES'S NOVEMBER 2017 BUDGET REQUEST
12 TO THE JOINT BUDGET COMMITTEE:

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

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

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

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

23 (A) QUALIFICATIONS AND TRAINING;

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

27 (C) ABILITY TO PROVIDE CULTURALLY COMPETENT AND

1 DEVELOPMENTALLY APPROPRIATE COMPETENCY RESTORATION EDUCATION
2 TAILORED TO AN INDIVIDUAL'S UNIQUE NEEDS;

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

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

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

17 (e) TO MAKE RECOMMENDATIONS FOR LEGISLATION.

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

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

1 OF SUCH SERVICES;

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

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

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

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

12 **SECTION 4. Appropriation. (1) For the 2017-18 state fiscal**
13 **year, \$18,000 is appropriated to the department of human services. This**
14 **appropriation is from the marijuana tax cash fund created in section**
15 **39-28.8-501 (1), C.R.S. To implement this act, the department may use**
16 **this appropriation for operating expenses related to community behavioral**
17 **health administration.**

18 **SECTION 5. Act subject to petition - effective date.** This act
19 takes effect at 12:01 a.m. on the day following the expiration of the
20 ninety-day period after final adjournment of the general assembly (August
21 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
22 referendum petition is filed pursuant to section 1 (3) of article V of the
23 state constitution against this act or an item, section, or part of this act
24 within such period, then the act, item, section, or part will not take effect
25 unless approved by the people at the general election to be held in
26 November 2018 and, in such case, will take effect on the date of the
27 official declaration of the vote thereon by the governor.