

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

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**

Judiciary  
Appropriations

**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.*

HOUSE  
3rd Reading Amended  
May 10, 2017

HOUSE  
2nd Reading Unamended  
May 9, 2017

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.

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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, SUBJECT TO AVAILABLE  
10 APPROPRIATIONS:

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

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

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

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

21 (A) QUALIFICATIONS AND TRAINING;

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

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

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

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

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

15 (e) TO MAKE RECOMMENDATIONS FOR LEGISLATION.

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

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

27 (b) A DESCRIPTION OF THE OFFICE'S ENGAGEMENT WITH

1 COMMUNITY PARTNERS TO COORDINATE COMPETENCY RESTORATION  
2 SERVICES IN AN EFFECTIVE AND EFFICIENT MANNER;

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

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

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

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

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