

2018

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 Legislative Council Staff
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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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December 2018

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December 2018

To Members of the Seventy-second 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, Colorado Revised Statutes. The purpose of this committee is to oversee an advisory task force that studies and makes recommendations concerning the treatment of persons with mental health disorders who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on October 15, 2018, the Legislative Council reviewed the report of this committee. A motion to forward this report for consideration in the 2019 session was approved.

Sincerely,

/s/ Representative Crisanta Duran
Chair

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This report is also available online at:

<https://leg.colorado.gov/committees/treatment-persons-mental-health-disorders-criminal-justice-system/2018-regular-session>

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Oversight 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

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

- housing for a person with mental illness after his or her release from the criminal or 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. The task force did not submit a report in 2018.

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 seven pieces of legislation to the legislative oversight committee during the 2018 interim. The oversight committee drafted and approved four of the recommended pieces of legislation. 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**

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
	<u>vacant</u>	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	Chief Daric Harvey	Canon City Police Department (active service representative)
	Sergeant Attila Denes	Douglas County Sheriff's Office (representative with experience dealing with juveniles in the juvenile justice system)
Department of Human Services (5)	Camille Harding	Office of Behavioral Health
	Ashley Tunstall, co-chair	Division of Youth Services
	Melinda Cox	Division of Child Welfare
	John Musso	Colorado Mental Health Institute at Pueblo
	Gianna Luszko, M.D.	Behavioral Health Planning and Advisory Council
County Department of Social Services (1)	Susan Walton	Park County Department of Human Services
Department of Education (1)	Michael Ramirez	Teaching and Learning Unit
State Attorney General's Office (1)	Michael Angel	Assistant 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)	Hassan Latif	Second Chance Center, Inc.
	Lisa Thompson	Colorado Coalition for the Homeless
Community Mental Health Centers in Colorado (1)	Ravid Moses Gur, chair	Colorado Behavioral Healthcare Council
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)	Benjamin Harris	Accountable Care Collaborative
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)	Jennifer Longtin	
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
	<u>vacant</u>	
	Tobin Wright	16th Judicial District

Committee Activities

The committee held five meetings during the 2018 interim. Briefings and presentations were made by the advisory task force, the Department of Human Services, the National Conference for State Legislatures, the State Court Administrator's Office, and members of the public on a wide range of subjects, including:

- advisory task force activities;
- competency restoration services provided in jails and community settings;
- national trends in juvenile justice mental health reform; and
- Colorado mental health courts.

The following sections discuss the committee's activities during the 2018 interim.

MHDCJS Advisory Task Force Updates

The oversight committee received updates on recent activities of the task force, which met monthly throughout 2018. Task force subcommittees focused on housing, data and information sharing, prevention, and competency, as those topics relate to persons with mental health disorders who are involved in the criminal and juvenile justice systems. The task force continued to study changes to the juvenile sex offender registry.

Members of the advisory task force who also serve on the Behavioral Health Transformation Council provided periodic updates about the council's activities. The task force received outside presentations from the Governor's Office and the Office of Behavioral Health (OBH) in the Department of Human Services (DHS). Task force discussion included the effectiveness of involuntary mental health holds, and the availability of services for individuals released from a mental health hold. The data subcommittee discussed overlapping information systems in different health and criminal justice agencies and presented to the oversight committee regarding an event to identify and coordinate duplicative information systems. Finally, the task force elected new leadership and created a new working group on task force governance and a new subcommittee on youth and juvenile issues.

Task force annual retreat. At their annual retreat in May, the task force heard presentations on the co-responder law enforcement model, facilities that are designated to provide mental health services, the Department of Health Care Policy and Financing's Accountable Care Collaborative Phase II, and the Sex Offender Management Board. The task force also discussed the status of the subcommittees and additional topics to focus on going forward, including examining the recommendations of the Governor's Report on Steps to Health and Justice and researching strategies to decriminalize substance use disorders.

Juvenile Sex Offenders

Beginning in 2016, the task force has researched issues involved with placing juveniles on a public sex offender registry list. Specifically, the task force looked at the effects of disallowing public access to the juvenile sex offender registry, mechanisms for removing juveniles from the registry, and judicial discretion in requiring registration. Representatives from the Sex Offender Management Board discussed the board's multiple recommendations regarding the juvenile sex offender registry. The task force discussed the negative impacts of juveniles' inclusion on the registry, including social and familial isolation, depression, and increased likelihood of victimization. The oversight committee discussed the juvenile sex offender registry and its relation to mental health and the charge of the advisory task force. Victim's advocates expressed concerns to the committee regarding removing juveniles from a sex offender registry.

Adult Competency Restoration

Both the oversight committee and the task force held discussions on competency restoration services for adults. Competency restoration services are ordered for defendants who are charged with a crime and have been deemed incompetent to proceed to trial. Competency restoration services can be provided in an inpatient setting at the Colorado Mental Health Institution at Pueblo, the Colorado Mental Health Institution at Fort Logan, and through the Arapahoe County jail, or in an outpatient setting through behavioral health providers contracting with DHS. Discussion covered the current shortage of competency restoration beds and providers, and the length of time that individuals take to complete restoration, and the length of time that individuals may be detained for competency restoration.

The oversight committee heard an update from DHS regarding the jail-based competency restoration program in the Arapahoe County jail, known as Restoring Individuals Safely and Effectively (RISE). DHS described plans to increase capacity for the RISE program. DHS also presented to the committee on efforts to increase the number of competency restoration providers in the community through an urgent request for applications. The task force discussed Senate Bill 18-252, which failed during the 2018 session. The bill would have made numerous changes to statute related to the process of determination of competency to proceed in a criminal case. Specifically, the task force researched different timeframes for releasing defendants who do not receive timely competency restoration services, or who are not likely to successfully complete competency restoration. The task force made recommendations to limit the competency restoration timelines according to the severity of the crime a defendant is charged with.

The committee elected not to draft the advisory task force's recommendation for legislation regarding competency restoration timelines.

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Summary of Recommendations

As a result of its discussions, the oversight committee recommended Bills A, B, C, and D concerning the juvenile sex offender registry to the Legislative Council for consideration in the 2019 session.

Bill A would have limited access to juvenile records on the sex offender registry to law enforcement, probation and parole personnel, the Division of Child Welfare in DHS, and victims of an offense. The bill would have prohibited juvenile records from being released as a part of a criminal history record check or being posted on websites maintained by the Colorado Bureau of Investigation (CBI) or local law enforcement agencies. Bill A was not approved by Legislative Council at its meeting on October 15, 2018.

Bill B would have required DHS to petition the court to discontinue an eligible juvenile's registration on the Colorado sex offender registry at least 63 days before the juvenile is scheduled to be released from parole after successfully completing his or her juvenile program. Bill B was not approved by Legislative Council at its meeting on October 15, 2018.

Bill C would have eliminated the mandatory lifetime registration requirement for persons with two or more adjudications of unlawful sexual behavior, if they have no adult convictions. Bill C was not approved by Legislative Council at its meeting on October 15, 2018.

Bill D would have removed the requirement of sex offender registration for juveniles who relocate to Colorado if the juvenile's duty to register in another state has been terminated by court order or if a trial court has determined that the juvenile is not required to register in that state. Bill D was not approved by Legislative Council at its meeting on October 15, 2018.

The committee also requested that two additional bills be drafted that were ultimately not approved by the committee. The first would have changed the threshold for the court to consider a hearing on a petition by a juvenile for release from the sex offender registry. The second would have created an option for the court to exempt a juvenile from registration on the sex offender registry.

At its meeting on October 15, 2018, the Legislative Council did not approve any of the recommended bills for introduction.

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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

June 27, 2018

- ◆ Update on 2018 MHDCJS legislation
- ◆ Update on SB 18-263: Pilot Program for Court Approval Medications in Jails
- ◆ Overview of advisory task force activities
- ◆ Status update from task Force subcommittees
- ◆ Committee discussion: collaboration between oversight committee and task force
- ◆ Interim bill request process and deadlines
- ◆ Future topics of discussion and oversight committee meeting dates

July 17, 2018

- ◆ National trends in juvenile justice mental health reform
- ◆ Colorado jail-based restoration services
- ◆ Update on Colorado mental health courts and SB 18-249
- ◆ Committee discussion: task force focus and involvement

August 16, 2018

- ◆ Update on advisory task force and subcommittee activities
- ◆ Task force policy recommendations
- ◆ Committee discussion: bill draft requests

September 27, 2018

- ◆ Update on restoration to competency in community settings
- ◆ Update from advisory task force
- ◆ Committee discussion: voting on bill draft requests

October 1, 2018

- ◆ Committee discussion and voting on bill draft requests

Advisory Task Force

January 18, 2018

- ◆ Discussion on OBH community competency and jail-based competency
- ◆ Discussion of potential strategic planning/LEAN for task force
- ◆ Discussion of juvenile curriculum for restoration
- ◆ Competency and housing subcommittee updates
- ◆ Legislative updates
- ◆ Membership updates

February 15, 2018

- ◆ Membership updates
- ◆ Competency, prevention, and housing subcommittee updates

March 15, 2018

- ◆ Membership updates
- ◆ Involuntary commitment presentation
- ◆ Subcommittee updates

April 19, 2018

- ◆ Legislative updates and bill review and discussion
- ◆ Subcommittee updates

- ◆ Behavioral Health Transformation Council updates
- ◆ Retreat agenda and planning goals
- ◆ Membership updates

June 21, 2018

- ◆ Review topics and discussion for legislative oversight committee meeting
- ◆ Subcommittee updates
- ◆ Behavioral Health Transformation Council updates
- ◆ Membership updates

July 19, 2018

- ◆ Review legislative oversight committee meetings
- ◆ Topics and discussion for white paper
- ◆ Subcommittee updates
- ◆ Membership updates

August 16, 2018

- ◆ Nominations and voting for chair and co-chair
- ◆ Review legislative oversight committee meetings
- ◆ Review/update topics for white paper
- ◆ Subcommittee updates
- ◆ Membership updates

September 20, 2018

- ◆ Voting for chair and co-chair
- ◆ Review legislative oversight committee meetings
- ◆ Subcommittee updates
- ◆ Membership updates

October 18, 2018

- ◆ MHDCJS bills and legislative oversight committee meetings
- ◆ Governance of task force
- ◆ Subcommittee updates

November 15, 2018

- ◆ Presentation requests and desired presentations
- ◆ December meeting logistics
- ◆ Membership update and discussion
- ◆ Follow-up on Senator's suggestions
- ◆ Governance workgroup report out
- ◆ Subcommittee updates