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# 0596 The Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems

Colorado Legislative Council

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**Report to the**
**Colorado General Assembly**

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

***Prepared by***

***The Colorado Legislative Council***
***Research Publication No. 596***
***December 2009***

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


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Representative Judy Solano
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# COLORADO GENERAL ASSEMBLY



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December 2009

To Members of the Sixty-seventh General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems. This committee was created pursuant to Senate Bill 04-037 and is authorized through July 1, 2015. The purpose of the committee is to oversee an advisory task force that is studying and making recommendations on the treatment of persons with mental illness who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on November 10, 2009, the Legislative Council reviewed the report of this commission. A motion to forward this report and the bills therein for consideration in the 2010 session was approved.

Respectfully submitted,

/s/ Brandon Shaffer
Chair

# Executive Summary

## Committee Charge

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.

## 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 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 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 caregiver, 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

As a result of committee deliberation, the committee recommends the following bill for consideration during the 2010 legislative session.

***Bill A — Changes to the Demonstration Programs for System of Care Family Advocates.*** 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.

## Committee Charge

Senate Bill 04-037 authorized the establishment of a six-member Legislative Oversight Committee and a 29-member Advisory Task Force to continue the examination of persons with mental illness in the criminal and juvenile justice systems. The task force was expanded in 2008 to 30 members. House Bill 09-1021 reauthorized the oversight committee and the task force through July 1, 2015. The members and the agencies they represent are listed below in Table 1.

**Table 1**
**Advisory Task Force Appointees**

| State or Private Agency | Representative(s) |
|---|---|
| Department of Public Safety (1) | Jeanne Smith<br>Division of Criminal Justice |
| Department of Corrections (2) | Joan Shoemaker<br>Clinical Services<br>Jeaneene Miller<br>Division of Parole |
| Local law enforcement (2) | Vacant<br>Paul Siska<br>County Sheriffs of Colorado |
| Department of Human Services (6) | Charles Smith<br>Division of Mental Health<br>Caren Leaf<br>Division of Youth Corrections<br>Janet Wood<br>Division of Alcohol & Drug Abuse<br>Michele Manchester<br>Colorado Mental Health Institute at Pueblo<br>Jeanne Rohner<br>Colorado Mental Health Advisory Council<br>Vacant |
| County departments of social services (1) | Susan Walton<br>Jefferson County |
| Department of Education (1) | Michael Ramirez |
| State Attorney General's Office (1) | Thomas Raynes<br>Deputy Attorney General |
| District Attorneys (1) | Bruce Langer<br>Boulder District Attorney's Office |
| Criminal Defense Bar (2) | Kathleen McGuire<br>Colorado Public Defender<br>Gina Shimeall<br>Arapahoe-Douglas Mental Health Network |
| Practicing mental health professionals (2) | Julie Krow<br>Treatment Services<br>Diane Reichmuth<br>Private Practice |
| Community mental health centers in Colorado (1) | Harriet Hall<br>Jefferson Center for Mental Health |
| Person with knowledge of public benefits and public housing in Colorado (1) | Michelle Lapidow<br>Colorado Coalition for the Homeless |

**Table 1**
**Advisory Task Force Appointees (cont.)**

| State or Private Agency | Representative(s) |
|---|---|
| Colorado Department of Health Care Policy & Financing (1) | Sandeep Wadhwa, M.D., MBA<br>Medical & CHP+ Program Administration Office |
| Practicing forensic professional (1) | Gregory Kellermeyer, M.D.<br>Denver Health Medical Center |
| Members of the public (3) | Vacant<br>Deirdre Parker<br>Vacant |
| Judicial Department (4) | Eric Philp<br>Probation Services<br>Magistrate Rebecca Koppes-Conway<br>19th Judicial District<br>Susan Colling<br>Probation Services<br>Judge Martin Gonzales<br>Alamosa Combined Courts |

## The Advisory Task Force

The Advisory Task Force is statutorily charged with examining the identification, diagnosis, and treatment of persons with mental illness who are involved in the state criminal and juvenile justice systems. Between July 1, 2009, and July 1, 2014, the task force is required to study 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 authorizing legislation requires the task force to meet at least six times per year. To fulfill its charge, the task force is required to communicate with and obtain input from groups throughout the state affected by issues under consideration. The task force is not precluded from considering additional issues, or from considering or making recommendations on any of the issues listed above at any time during the existence of the task force.

The task force must communicate its findings on the issues listed above and make recommendations to the Legislative Oversight Committee on or before August 1 of each year. In addition, the task force must submit a written report to the committee by October 1 of each year.

The report must identify the following:

- issues to be studied in upcoming task force meetings and their respective prioritization;
- findings and recommendations about issues previously considered by the task force; and
- legislative proposals.

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 Legislative Oversight Committee**

The Legislative Oversight Committee was created to oversee the work of the Advisory Task Force. The six-member committee reviews the task force's findings and may recommend legislative proposals. In calendar years 2005 through 2014, the committee is required to meet at least three times annually.

## Committee Activities

The Advisory Task Force and Legislative Oversight Committee first met in the summer of 1999. A summary of the work accomplished by these groups from 1999 through 2008 is provided in the annual reports of the committee, which are located on the Legislative Council web site in the committee archive section.

***2008 interim.*** The major focus for the oversight committee and the task force in 2008 was treatment and services for co-occurring disorders and housing for mentally ill offenders in the community. The committee also devoted time to coordinating efforts with other state-level groups engaged in the study of mentally ill individuals who are involved with the justice system.

***2009 interim.*** The task force met monthly in 2009 to hear presentations on a diverse group of topics and to have extensive discussions about issues facing mentally ill offenders. Specifically, the task force heard presentations about the following issues:

- restoration to competency after a defendant has been declared incompetent to proceed at trial;
- suspension of Medicaid benefits for persons confined pursuant to a court order;
- programs for the re-entry of Department of Corrections (DOC) inmates who are transitioning back into the community;
- specialty courts; and
- family advocacy programs for juveniles in the justice system who have mental health needs.

A summary of the information presented to and discussed by the task force, as well as the proposed legislation recommended by the oversight committee, follow.

## Restoration to Competency

The task force was given a detailed overview of the process of declaring a defendant incompetent and restoring defendants to competency. When a criminal defendant is arraigned, he or she is asked for a plea. If the defendant pleads guilty to all of the crimes with which he or she is charged, there is no trial. The defendant may also choose to plead not guilty or not guilty by reason of insanity and proceed with a trial to examine the evidence and try to convince a jury that he or she is not guilty. However, another option exists. Colorado law states that no one may be tried, sentenced, or executed if he or she is incompetent to proceed at any stage of criminal proceedings. A defendant is considered incompetent to proceed if he or she suffers from a mental disease or defect which renders him or her incapable of understanding the nature and course of the proceedings or of participating or assisting in his or her defense. If a defendant is unable to cooperate with defense counsel due to a mental disease or defect, he or she is incompetent to proceed.

The issue of an adult defendant's competency may be raised by the judge, prosecution, or defense in any criminal case. The chief officer of an institution where a defendant is awaiting execution may also raise the issue of competency. The competency of a juvenile defendant may be raised by the court, the defense, the prosecution, a probation officer, the juvenile's parent or legal guardian, or the guardian ad litem appointed to the juvenile. The court may appoint counsel and a guardian ad litem for any juvenile who is not represented by counsel in order to assure the best interests of the juvenile. The court makes a preliminary finding regarding competency after the issue is raised. A competency evaluation may be ordered, but is not required if the judge feels that he or she has enough information available.

Competency examinations and evaluations must be conducted by a licensed psychiatrist or a licensed psychologist who is trained in forensic competency assessments. A psychiatrist or psychologist in forensic training who is practicing under the supervision of a licensed forensic psychiatrist or psychologist may also conduct a competency examination. Adults who are found incompetent are committed to the custody of the Department of Human Services or other appropriate treatment facility until they can be restored to competency or criminal proceedings are otherwise terminated.

The court is required to review all cases of defendants who are committed or confined as incompetent to proceed at least every six months. The review must take into account the probability that the defendant will eventually be restored to competency and the justification for continued commitment and confinement. No defendant who is committed may be confined for a period longer than the maximum term of incarceration that can be imposed for the offense for which he or she was originally charged.

A written evaluation of a juvenile who is found to be incompetent must include an opinion as to whether the juvenile may be restored to competency at some later date. In those cases, the court must delay the juvenile delinquency proceedings and order the juvenile to receive services designed to restore him or her to competency. A juvenile must receive restoration services in the least restrictive environment possible that takes into account issues of public safety and the best interests of the juvenile. The court is required to review the progress toward competency of juveniles at least every 90 days until competency is restored.

In a case where the evaluation suggests that the competency of a juvenile cannot be restored, the court will develop a management plan for the juvenile when it is appropriate to do so. In lieu of a management plan, treatment already in place may be continued. The management plan

must address treatment, identify who is responsible for the juvenile, and specify appropriate behavior management tools.

Whether or not the juvenile is likely to be restored to competency, the court cannot, without showing good cause, maintain custody over a juvenile for longer than the maximum possible sentence for the original charge. In any event, the juvenile court cannot maintain jurisdiction over any juvenile past his or her 21st birthday.

A restoration hearing may be requested at any time by the judge, the prosecution, or the defense. For adult defendants, if the head of the facility where a defendant is confined or a physician treating the defendant files a report stating that the defendant is mentally competent to stand trial, the judge must order a restoration hearing. With juveniles, any mental health professional treating the juvenile may file a report certifying that the juvenile is mentally competent to proceed and the judge must order a restoration hearing.

In situations where it is determined that a defendant or juvenile remains incompetent to proceed, the judge may order any number of treatment options, including commitment, necessary to facilitate restoration to competency. A period of commitment for an individual who is adjudged incompetent may not exceed the maximum term of confinement allowable for the offense or offenses for which the defendant or juvenile is charged.

In the event that competency is restored, judicial proceedings proceed from the point at which they were suspended. The defendant or juvenile is credited with any time he or she spent in confinement, either pending a determination of competency or receiving treatment, during the sentencing phase.

## Suspension of Medicaid Benefits

Senate Bill 08-006 required that individuals who are eligible for Medicaid before they are incarcerated or otherwise confined pursuant to a court order must have their Medicaid benefits suspended, rather than terminated, during the period of their confinement. In Colorado, Medicaid is administered by the Colorado Department of Health Care Policy and Financing (HCPF), in conjunction with the federal Centers for Medicare and Medicaid Services (CMS). The implementation of SB 08-006 requires changes to the Colorado Benefits Management System (CBMS), Colorado's eligibility determination system for Medicaid and other public programs. The system is in the process of being transferred to a new vendor and that transition is expected to take a significant amount of time, due to the complexity of the system.

Some problems regarding eligibility have also arisen. The official position of CMS is that eligibility for inmates may be suspended as they move from Medicaid into the prison system. However, such inmates can no longer be considered part of their pre-incarceration household and eligibility must be redetermined for each individual as a single household. Very few single individuals are Medicaid-eligible unless they are disabled and receive Supplemental Security Income. There is a concern that upon re-evaluation, many individuals on Medicaid prior to incarceration would no longer be eligible because they are no longer considered a member of a household with children.

Implementation of the bill has been delayed while HCPF tries to find a way around the requirements to redetermine Medicaid eligibility. HCPF is engaged in an ongoing dialogue with

CMS, which has requested information from other states with similar laws. Pennsylvania, for example, attempted to implement a suspension policy, but was ultimately unsuccessful. As of December 1, 2009, HCPF had not resolved the problems with CMS and no policy was in place to suspend benefits, although meetings with stakeholders were ongoing.

## Department of Corrections Re-entry Programs

Traditionally, the legal system has focused on incarcerating people convicted of crimes, but not focused as many resources on helping offenders after they are released from custody. Rehabilitation programs were generally conducted only inside prison facilities. An offender was released after he or she was considered to be rehabilitated, much like hospitalization for mental health or substance abuse problems. However, a change occurred in the 1970s in hospitals and mental health facilities. Healthcare professionals began to see the need focus on re-entry and not simply abandoning a patient at discharge. Prison systems nationwide began to adopt a similar theory around 2000. Scholarly literature on the subject indicates a need to help individuals transition back into communities for financial reasons and treatment and rehabilitation continuity.

Re-entry involves the use of programs targeted at promoting the effective reintegration of offenders back to communities upon release from prison and jail. Re-entry programming, which often involves a comprehensive case management approach, is intended to assist offenders in acquiring the life skills needed to succeed in the community and become law-abiding citizens. A variety of programs are used to assist offenders in the re-entry process, including prerelease programs, drug rehabilitation and vocational training, and work programs.

The recidivism of released prisoners poses serious challenges to communities and the criminal justice system. To address these challenges, in 2001 the National Institute of Corrections, an agency within the United States Department of Justice, implemented the Transition from Prison to the Community (TPC) Program. Eight states (Georgia, Indiana, Michigan, Montana, New York, North Dakota, Oregon, and Rhode Island) participated in a pilot test of the TPC model. The model is built on the idea that the work of transition and re-entry does not belong solely to corrections agencies, but overlaps with the interests and mandates of many public agencies and community organizations, as well as victims, offenders, and their families. Six other states (Iowa, Kentucky, Minnesota, Tennessee, Texas, and Wyoming) were selected in 2009 to receive technical assistance to implement the TPC model.

In 2003, the United States Departments of Justice, Labor, Housing and Urban Development, and Health and Human Services established the Serious and Violent Offender Reentry Initiative (SVORI), a program that provided over $100 million to 69 grantees to develop programming, training, and reentry strategies at the community level. The SVORI programs are intended to reduce recidivism, as well as to improve employment, housing, and health outcomes of participating released prisoners. The SVORI programs are unusual in that most re-entry grant funding is reserved for non-violent offenders and specifically excludes violent offenders.

The Colorado DOC was awarded a grant in 2007 from the Justice, Equality, Human Dignity, and Tolerance Foundation. The grant of approximately $320,000 was used to contract with the Center for Effective Public Policy to provide technical training for correctional staff covering an array of re-entry, evidence-based research, and case management topics. The focus of the program is on reducing recidivism by adequately preparing offenders for life outside of prison. The DOC has formed a number of collaborative relationships with homeless shelters, landlords willing to rent to offenders, the Colorado Department of Labor and Employment, and a number of faith-

and community-based organizations that provide housing, vocational training, and employment opportunities.

Pre-release specialists in the DOC work closely with case managers and mental health treatment providers to help mentally ill offenders establish a parole plan that is tailored to their special needs. Many offenders try to hide a mental illness or stop taking psychotropic medications because the offenders feel it will make them more parole-eligible. Training has been provided to pre-release specialists and parole officers to keep these individuals from slipping through the cracks and ending up on the street with no mental health services or supports.

Peer support is an important component of successful community reintegration. Offenders who leave prison through re-entry programs make friends and develop peer support relationships with groups of other offenders. However, once offenders move one step beyond a re-entry program, they are prohibited from associating with other felons. Such rules are in place to ensure that offenders are not carrying inappropriate or unhealthy relationships developed inside prison out into the community. Parole officers and others who monitor offender treatment look at individual situations and determine whether exceptions should be made to the no contact among offenders rule. Any programs that advocate post-release peer support must receive special authorization from the executive director of the DOC.

## 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 of which were established using existing funding and resources. As a result, the existing specialty courts work mostly independently of each other. In the last year, efforts have been made to coordinate efforts and develop consistency across all specialty courts in the state. Most are located along the Front Range, although there are some located in other areas as well. The breakdown of Colorado specialty courts is as follows:

- 20 adult drug courts;
- 1 adult mental health docket that is a subset of the Denver District Drug Court;
- 10 juvenile drug courts;
- 1 juvenile mental health court in Jefferson County;
- 12 family/dependency and neglect courts;
- 5 DUI courts (several other jurisdictions are in the process of implementing DUI courts);
- 4 truancy courts; and

- 5 other courts that implement some problem-solving components of specialty courts, but do not fit into a specific category.

Specialty courts are able to focus on an issue and target services to those individuals who need them. When adult drug courts were first created, most did not allow participants with a mental illness diagnosis. However, the recognition of the number of individuals with co-occurring disorders (e.g., substance abuse and mental illness) has grown significantly in recent years. As a result, specialty courts are now allowing those individuals with a dual diagnosis to participate with the idea that treating the whole individual leads to more successful outcomes. The Denver adult drug court has approximately 900 participants, with 100 of those on the mental health docket. While additional individuals may have a mental health diagnosis, those 100 individuals are the severe and persistently mentally ill and need additional services, attention, and structure. These individuals are seen more often and may remain in the system for a longer period of time.

Two main philosophies exist with regard to specialty courts. 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.

Colorado Supreme Court Chief Justice Mary Mullarkey established the Colorado Problem Solving Court Advisory Committee in April 2008. The committee consists of 19 members of the Judicial Department from across the state, with Judge Roxanne Bailin, chief judge of the 20th Judicial District, serving as the chair. The committee is charged with:

- addressing the concern that not all drug courts conform to key standards established by the Drug Court Program Office of the Office of Justice Programs of the United States Department of Justice;
- developing a staffing model;
- assisting in the development of a strategic plan that will lead to the sustainability of problem solving courts in terms of judicial, community, and financial support;
- developing a funding model;
- assisting in the design and implementation of an automated management and evaluation system;
- developing an assessment tool for evaluating the effectiveness of problem solving courts in improving outcomes for court clients, the Judicial Branch, and the justice system as a whole; and
- providing guidance and support for problem solving courts through identification of best practices, identification of training and education needs, and the formulation of a problem solving court professional organization.

## 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 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 programs and sites selected are:

- The Family Agency Collaboration (FAC) in Denver;
- The Federation of Families for Children's Mental Health in Jefferson County; and
- Pikes Peak Mental Health Center in Teller County.

The bill required the Division of Mental Health (DMH) in the Department of Human Services and the Division of Criminal Justice (DCJ) in the Department of Public Safety to implement and monitor the demonstration programs. The two divisions were charged with gathering information on program participants who were both admitted to and completed participation in the individual family advocacy programs between January 1, 2008, and March 31, 2010.

***Committee recommendation.*** 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 caregiver, 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.

## Summary of Recommendations

As a result of committee deliberation, the committee recommends the following bill for consideration during the 2010 legislative session.

### Bill A — Changes to the Demonstration Programs for System of Care Family Advocates

Bill A 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.

## 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 (303-866-4900). 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:

***http://www.colorado.gov/lcs/MICJS***

### Meeting Date and Topics Discussed

#### *Legislative Oversight Committee*

October 26, 2009

- Approval of candidates to fill two task force vacancies
- Discussion of legislative proposal brought forth by the task force
- Recommendation to send the proposal to the Legislative Council for consideration

#### *Task Force*

January 15, 2009

- Update on legislative proposals recommended by the task force during the 2008 interim
- Discussion of possible presentations for 2009
- Presentation of subcommittee reports

February 19, 2009

- Review of legislative progress
- Presentation about restoration to competency
- Update on the implementation of Senate Bill 08-006, concerning suspension of Medicaid benefits for persons confined pursuant to a court order
- Discussion of topics for presentations in 2009
- Subcommittee updates

March 19, 2009

- Update on pending legislation
- Presentation about programs related to the implementation of Senate Bill 07-097, an initiative focused on providing community-based mental health services for juvenile and adult offenders
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice
- Subcommittee updates

April 16, 2009

- Update on pending legislation
- Presentation regarding re-entry programs in the Department of Corrections
- Discussion of family advocacy programs for mental health juvenile justice populations
- Subcommittee updates

May 21, 2009

- Discussion about the status of 2009 legislation and ideas for 2010 legislation
- Presentation on specialty courts in Colorado
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Subcommittee updates
- Discussion of possible allocation of federal stimulus dollars

June 18, 2009

- Discussion of potential recommendations for the 2010 legislative session
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Subcommittee updates

July 16, 2009

- Discussion of potential recommendations for the 2010 legislative session
- MacArthur grant update
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Discussion regarding the implementation of Senate Bill 08-006, concerning suspension of Medicaid benefits for persons confined pursuant to a court order
- Subcommittee updates

August 20, 2009

- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Discussion regarding the implementation of Senate Bill 08-006, concerning suspension of Medicaid benefits for persons confined pursuant to a court order
- State budget discussion
- Subcommittee updates
- Further discussion of legislative proposals for the 2010 session

September 17, 2009

- Presentation on the Department of Corrections' psychotropic medicines program
- Discussion of Department of Corrections' early release planning related to persons with mental illness
- Subcommittee updates
- Further discussion of legislative proposals for the 2010 session
- Update on the impact of state budget cuts on persons with mental illness who are involved in the justice system

October 15, 2009

- Follow-up discussion about Department of Corrections' early release planning related to persons with mental illness
- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Further discussion of legislative proposals for the 2010 session
- Subcommittee updates

November 19, 2009

- Update on the work of the Colorado Commission on Criminal and Juvenile Justice Behavioral Health Group
- Further discussion of legislative proposals for the 2010 session
- Update regarding the October 26, 2009, meeting of the oversight committee
- Discussion of topics for future presentations to the task force
- Subcommittee updates

Second Regular Session
Sixty-seventh General Assembly
STATE OF COLORADO

# BILL A

LLS NO. 10-0203.01 Michael Dohr **SENATE BILL**

**SENATE SPONSORSHIP**

**Tochtrop,** Boyd

**HOUSE SPONSORSHIP**

**Solano,** Labuda

**Senate Committees** **House Committees**

## A BILL FOR AN ACT

**CONCERNING CHANGES TO THE DEMONSTRATION PROGRAMS FOR SYSTEM OF CARE FAMILY ADVOCATES.**

### Bill Summary

*(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)*

**Legislative Oversight Committee for the Continuing Examination of the Treatment of Persons with Mental Illness Who Are Involved in the Criminal and Juvenile Justice Systems.** Under the current demonstration programs for system of care family advocates, the services are provided by family advocates. The bill will allow family system navigators to provide the same services through the demonstration programs. The bill makes necessary conforming amendments.

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

**SECTION 1.** 26-22-101 (1) (b), (1) (c), (1) (e), (1) (f), and (2), Colorado Revised Statutes, are amended to read:

**26-22-101. Legislative declaration.** (1) The general assembly hereby finds and declares that:

(b) Preliminary research demonstrates that family advocates AND FAMILY SYSTEMS NAVIGATORS increase family and youth satisfaction, improve family participation, and improve services to help youth and families succeed and achieve positive outcomes. One preliminary study in Colorado found that the wide array of useful characteristics and valued roles performed by family advocates AND FAMILY SYSTEMS NAVIGATORS, regardless of where they are located institutionally, provided evidence for continuing and expanding the use of family advocates AND FAMILY SYSTEMS NAVIGATORS in systems of care.

(c) Input from families, youth, and state and local community agency representatives in Colorado demonstrates that family advocates AND FAMILY SYSTEMS NAVIGATORS help families get the services and support they need and want, help families to better navigate complex state and local systems, improve family and youth outcomes, and help disengaged families and youth to become engaged families and youth;

(e) A family advocate OR A FAMILY SYSTEMS NAVIGATOR helps state and local agencies and systems adopt more strengths-based-targeted programs, policies, and services to better meet the needs of families and their youth with mental illness or co-occurring disorders and improve outcomes for all, including families, youth, and the agencies they utilize;

(f) There is a need to demonstrate the success of family advocates

AND FAMILY SYSTEMS NAVIGATORS in helping agencies and systems in Colorado to better meet the needs of families and youth and help state and local agencies strengthen programs.

(2) It is therefore in the state's best interest to establish demonstration programs for system of care family advocates AND FAMILY SYSTEMS NAVIGATORS for mental health juvenile justice populations who navigate across mental health, physical health, substance abuse, developmental disabilities, juvenile justice, education, child welfare, and other state and local systems to ensure sustained and thoughtful family participation in the planning processes of the care for their children and youth.

**SECTION 2.** 26-22-102 (2), (4), (5), (6), and (8), Colorado Revised Statutes, are amended, and the said 26-22-102 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

**26-22-102. Definitions.** As used in this article, unless the context otherwise requires:

(2) "Demonstration programs" means programs that are intended to exemplify and demonstrate evidence of the successful use of family advocates AND FAMILY SYSTEMS NAVIGATORS in assisting families and youth with mental illness or co-occurring disorders.

(4) "Division of ~~mental~~ BEHAVIORAL health" means the unit within the department of human services that is responsible for mental health services.

(5) "Family advocacy coalition" means a coalition of family advocates, FAMILY SYSTEMS NAVIGATORS, or family advocacy organizations working to help families and youth with mental health problems, substance abuse, developmental disabilities, and other co-occurring disorders to improve services and outcomes for youth and

families and to work with and enhance state and local systems.

(6) "Family advocate" means ~~an individual who has been trained to assist families in accessing and receiving services and support. Family advocates are usually individuals who have raised or cared for children and youth with mental health or co-occurring disorders and have worked with multiple agencies and providers, including mental health, physical health, substance abuse, juvenile justice, developmental disabilities, and other state and local systems of care~~ A PARENT OR PRIMARY CARE GIVER WHO:

(a) HAS BEEN TRAINED IN A SYSTEM OF CARE APPROACH TO ASSIST FAMILIES IN ACCESSING AND RECEIVING SERVICES AND SUPPORTS;

(b) HAS RAISED OR CARED FOR A CHILD OR ADOLESCENT WITH A MENTAL HEALTH OR CO-OCCURRING DISORDER; AND

(c) HAS WORKED WITH MULTIPLE AGENCIES AND PROVIDERS, SUCH AS MENTAL HEALTH, PHYSICAL HEALTH, SUBSTANCE ABUSE, JUVENILE JUSTICE, DEVELOPMENTAL DISABILITIES, EDUCATION, AND OTHER STATE AND LOCAL SERVICE SYSTEMS.

(6.5) "FAMILY SYSTEMS NAVIGATOR" MEANS AN INDIVIDUAL WHO:

(a) HAS BEEN TRAINED IN A SYSTEM OF CARE APPROACH TO ASSIST FAMILIES IN ACCESSING AND RECEIVING SERVICES AND SUPPORTS;

(b) HAS THE SKILLS, EXPERIENCE, AND KNOWLEDGE TO WORK WITH CHILDREN AND YOUTH WITH MENTAL HEALTH OR CO-OCCURRING DISORDERS; AND

(c) HAS WORKED WITH MULTIPLE AGENCIES AND PROVIDERS, INCLUDING MENTAL HEALTH, PHYSICAL HEALTH, SUBSTANCE ABUSE, JUVENILE JUSTICE, DEVELOPMENTAL DISABILITIES, EDUCATION, AND OTHER STATE AND LOCAL SERVICE SYSTEMS.

(8) "Partnership" means a relationship between a family advocacy

organization and another entity whereby the family advocacy organization works directly with another entity for oversight and management of the family advocate OR FAMILY SYSTEMS NAVIGATOR and family advocacy demonstration program, and the family advocacy organization employs, supervises, mentors, and provides training to the family advocate OR FAMILY SYSTEMS NAVIGATOR.

**SECTION 3.** 26-22-103, Colorado Revised Statutes, is amended to read:

**26-22-103. Demonstration programs established.** There are hereby established demonstration programs for system of care family advocates AND FAMILY SYSTEMS NAVIGATORS for mental health juvenile justice populations that shall be implemented and monitored by the division of ~~mental~~ BEHAVIORAL health, with input, cooperation, and support from the division of criminal justice, the task force, and family advocacy coalitions.

**SECTION 4.** The introductory portion to 26-22-104 (1), 26-22-104 (1) (b), the introductory portions to 26-22-104 (2), (3) (c), and (3) (d), 26-22-104 (3) (d) (IV) and (3) (d) (V), the introductory portion to 26-22-104 (4), and 26-22-104 (4) (a) and (4) (c), Colorado Revised Statutes, are amended to read:

**26-22-104. Program scope.** (1) On or before September 1, 2007, the division of ~~mental~~ BEHAVIORAL health, after consultation with family advocacy coalitions, the task force, and the division of criminal justice, shall develop a request for proposals to design demonstration programs for family advocacy programs that:

(b) Provide navigation, crisis response, integrated planning, TRANSITION SERVICES, and diversion from the juvenile justice system for youth with mental illness or co-occurring disorders.

(2) The division of ~~mental~~ BEHAVIORAL health shall accept responses to the request for proposals from a partnership between a family advocacy organization and any of the following entities or individuals that operate or are developing a family advocacy program:

(3) The responses to the request for proposals shall include, but need not be limited to, the following information:

(c) A plan for family advocates OR FAMILY SYSTEMS NAVIGATORS that includes:

(d) A plan for family advocate OR FAMILY SYSTEMS NAVIGATOR program services for targeted youth and their families, including:

(IV) Cooperative training programs for family advocates OR FAMILY SYSTEMS NAVIGATORS and for staff, where applicable, of mental health, physical health, substance abuse, developmental disabilities, education, child welfare, juvenile justice, and other state and local systems related to the role and partnership between the family advocates OR FAMILY SYSTEMS NAVIGATORS and the systems that affect youth and their family;

(V) Integrated crisis response services and crisis AND TRANSITION planning;

(4) On or before November 15, 2007, the division of ~~mental~~ BEHAVIORAL health, after consultation with family advocacy coalitions, the task force, and the division of criminal justice, shall select three demonstration programs to deliver juvenile justice family advocacy services. The division of ~~mental~~ BEHAVIORAL health shall base the selection on:

(a) The program's demonstration of collaborative partnerships that integrate family advocates OR FAMILY SYSTEMS NAVIGATORS into the systems of care;

(c) Any other criteria set by the division of ~~mental~~ BEHAVIORAL health.

**SECTION 5.** 26-22-105 (1), (3) (c), and (5), Colorado Revised Statutes, are amended to read:

**26-22-105. Evaluation and reporting.** (1) On or before January 1, 2008, the division of ~~mental~~ BEHAVIORAL health shall prepare an initial descriptive report of the selected demonstration programs and provide the report to the legislative oversight committee, the task force, the family advocacy coalition, and the demonstration programs selected pursuant to section 26-22-104 (4).

(3) Each selected demonstration program shall regularly forward the following data to the division of criminal justice:

(c) Family and youth satisfaction and assessment of family advocates OR FAMILY SYSTEMS NAVIGATORS;

(5) On or before June 1, 2010, the division of criminal justice shall complete a comprehensive evaluation of the selected demonstration programs based on the data provided pursuant to subsection (3) of this section. Prior to preparing the evaluation, the division of criminal justice shall develop with the selected demonstration programs the comparison groups for the evaluation. The evaluation shall include analysis of the comparison groups. The division of criminal justice shall submit a final report, including an executive summary and recommendations, to the task force, the demonstration programs, and family advocacy coalitions for review. The division of criminal justice, the division of ~~mental~~ BEHAVIORAL health, family advocacy coalitions, and the task force shall review the evaluation findings and jointly develop recommendations to be made to the legislative oversight committee.

**SECTION 6. Safety clause.** The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.