

BHDCJS Task Force

2023 Legislative Recommendations

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Legislative Recommendations

Bill 1

Create a presumption of remote court appearance when an individual is in in-patient, partial hospitalization, and intensive outpatient behavioral healthcare treatment.

Issue Summary: Criminal justice involvement can serve as a barrier to in-patient, partial hospitalization, and intensive outpatient behavioral healthcare treatment due to the presumption of attendance in-person at criminal court proceedings.

Proposed Solution: Create a presumption of remote appearance when an individual is in in-patient, partial hospitalization, and intensive outpatient behavioral healthcare treatment and a mechanism by which the defendant can access this presumptive remote appearance. Judicial will create a form that will be accepted by all judges in the state that documents the need for remote hearings due to treatment attendance and is accessible to the public for use by defendants with or without legal representation.

Policy Change: Unless otherwise prohibited by state law, there are clear public safety concerns, or belief that due process will be hindered, courts shall accept the standardized form created by the Judicial Department requesting remote participation for the purposes of treatment attendance completed by or in consultation with defense counsel as “good cause” for remote participation pursuant to Section VI and adheres to the restrictions of C.R.C.P. 43, C.R.C.P. 343, and Crim. P. 43.

Bill 2

Expand withdrawal management services and funding within the behavioral health crisis response system, remove jail as an alternative option for SUD commitments when no crime has been committed, and add affirmative language prohibiting use of jails for SUD commitments when no crime has been committed.

Issue Summary: There are not enough withdrawal management services and programs in Colorado to provide the necessary support to individuals needing to safely detox from substances. Currently, jails are being used for SUD commitments, a purpose they were not designed for.

Proposed Solution: Add and fund withdrawal management services and programs to the Behavioral Health Crisis System and remove jails as an option for SUD commitments when no crime has been committed.

Policy change: Addition of withdrawal management services to the Behavioral Health Crisis System through a statutory modification to 27-60-103, which would allow for a unified approach to behavioral health crises where individuals are able receive treatment for all behavioral health related crises under one roof. Walk-in Centers will continue to serve as a point of entry, where an assessment of a person's behavioral health needs can be conducted and coordination of care and services can be arranged in collaboration with the Behavioral Health Crisis System. In

doing so, persons in need of SUD commitment will have access to the appropriate and necessary services, rather than being sent to jail.

Bill 3

Provide additional funding and technical assistance for judicial districts to create competency dockets.

Issue Summary: Many judicial districts lack the resources it takes to start a competency docket. Most dockets are already large and it would require resources to divert clients; this may prevent some courts from truly investing in the efficacy of the project for fear of another big docket without added resources. Larimer County has become the leader in competency dockets. Between January and March 2023, 11 felony cases were closed or dismissed, and 11 misdemeanor cases were closed or dismissed. This has had a significant impact on clients being diverted to appropriate services or becoming bond eligible.

Proposed Solution: Competency dockets serve individuals for whom competency has been raised in a criminal case. The dockets streamline all competency cases in a jurisdiction into one courtroom, which supports consistency with the court personnel and attorneys. These courts have demonstrated that it is far more effective to bring together resources in one place and connect individuals to specific treatment and resources, including housing, treatment and community support. The term “competency court” is a specially designed court calendar or docket with the purpose of reducing barriers for clients involved in the competency process. The team-based approach increases the number of clients who are able to participate in outpatient evaluation and restoration, decreases time in custody, and streamlines evaluations. Providing additional funding and technical assistance for judicial districts to create competency dockets will help expand this service across the state.

Policy Change: The Task Force is collaborating with the Judicial Department to identify specific mechanisms for the expansion of competency dockets.

Bill 4

Provide ongoing funding and accountability for the Colorado 911 Resource Center

Issue Summary: The Colorado 911 Resource Center provides a critical public service to all Coloradans. Funded since its inception in 2006 from the proceeds of a 2004 settlement agreement approved by the Public Utilities Commission (PUC) that required a telecommunications company to provide \$2 million for the creation and operation of a nonprofit organization to assist local public safety answering points (PSAPs). This funding is no longer available following the 2022-23 fiscal year.

Proposed Solution: Create a funding mechanism to allocate \$250,000 per year to the Colorado 911 Resource Center to continue providing services to PSAPs across the state. The Colorado 911 Resource Center shall provide a quarterly report to the PUC outlining the use of the funds. The PUC shall include this accounting in its annual report to the Legislature as required by 40-2-131.

Policy Change: Amend Colorado Revised Statutes, 29-11-100.2 as detailed in bill draft.

Bill 5

Create a youth mobile crisis response and stabilization program to provide crisis response and stabilization services to kids experiencing a behavioral health crisis.

Issue Summary: Mobile Response and Stabilization Services (MRSS) is a specific kind of mobile crisis service and stabilization response for children and youth with behavioral health conditions. It is an upstream intervention for children and youth to prevent unnecessary and costly hospitalization or out-of-home placement. This proposal builds on the existing Mobile Crisis Response (MCR) benefit to include Crisis Resolution Team (CRT) services in order to standardize the program and begin expanding it statewide, create robust data collection and evaluation processes to ensure high-quality care, and fill a critical gap in the continuum of care in Colorado's behavioral health system for kids.

Proposed Solution: Create a new requirement for the Behavioral Health Administration (BHA) to operate CRT pilot programs to provide mobile crisis response for youth and their families.

Policy Change: Formalize the provision of Mobile Response and Stabilization Services (MRSS) for children and youth ages 0-21 by codifying the Behavioral Health Administration's (BHA) [Crisis Resolution Team \(CRT\) Pilot Program](#) in statute, making the program available in Colorado, and strengthening the existing requirements for [mobile crisis response](#) (MCR) units to support children, youth, and families.

Bill 6

Prohibit hospitals and urgent care providers from checking a patient's warrant status without their consent.

Issue Summary: Individuals are not seeking primary, urgent, or emergency medical care for fear of being arrested on a warrant should one exist.

Proposed Solution: An individual's warrant status cannot be inquired about or checked from within medical facilities when individuals show up to receive care nor should hospital staff proactively contact law enforcement to facilitate an arrest should they become aware of an active warrant.

Policy change: Hospital, hospital staff, or those on hospital grounds are prohibited from inquiring about or seeking to obtain information about whether a patient has an active criminal justice warrant without written consent from the patient. Further a hospital or its staff are prohibited from initiating contact with law enforcement should they become aware of an active warrant. Should a patient believe their rights in this area were violated, they can file a complaint through HCPF who will investigate the complaint. Should the individual be found to have violated the patient's rights they may be subject to a fine.

Bill 7

Conduct a statewide analysis to determine the availability, accessibility, and effectiveness of services addressing behavioral health and ancillary needs of adults and juveniles in the justice systems.

Issue Summary: Individuals who are dually involved in the criminal justice and behavioral health treatment systems have treatment and service needs that go unmet and create an increased likelihood of re-involvement. Understanding the capacity of the system to support the behavioral health treatment needs of justice-involved persons in the community would help identify potential barriers to access and engagement for individuals serving their sentences in the community or reentering the community upon release. The results will be used to increase availability of and ensure equitable access to effective behavioral health and ancillary services to increase success and reduce criminal justice re-involvement.

Proposed Solution: The Division of Criminal Justice (Division) within the Department of Public Safety (CDPS) in consultation with Judicial Department, Colorado Department of Human Services (CDHS), Behavioral Health Administration (BHA), Department of Local Affairs (DOLA), Department of Health Care Policy and Finance (HCPF), Office and Civil and Forensic Mental Health (OCFMH), Colorado Department of Labor and Employment (CDLE) and other state agencies shall contract with an independent third party to conduct a statewide analysis to determine the availability, accessibility, and effectiveness of services addressing behavioral health and ancillary needs of individuals involved in the criminal and juvenile justice systems.

Policy Change: Add to duties of the Division of Criminal Justice listed in 24-33.5-503 and appropriate funds to contract and manage this study. The Division in consultation with the selected contract researcher when appropriate will provide an interim report on the study's progress by March 1, 2025 and a final report by December 31, 2025 to the General Assembly.

Bill 8

Consideration of developmental issues, mental and/or behavioral health issues, and/or lack of mental capacity in juvenile diversion.

Issue Summary: Young people who struggle with behaviors compounded by developmental issues, mental or behavioral health issues, and/or a lack of mental capacity too often become mired in the juvenile justice system. Unfortunately, consideration of a young person's mental or behavioral health status is not currently required for juvenile diversion as it is for adult diversion, under C.R.S. 18-1.3-101(3).

Proposed Solution: If a juvenile is struggling with behaviors compounded by developmental issues, mental or behavioral health issues, and/or a lack of mental capacity, the District Attorney's office or their designee must take that condition into consideration for diversion eligibility.

Policy Change: (1) add to the stated intent of diversion, under C.R.S. 19-2.5-402(1)(c)(I), to divert juveniles who struggle as the result of developmental issues, mental or behavioral health issues, and/or a lack of mental capacity from the court system; and, (2) add to the requirements for receiving Department of Criminal Justice funding, under 19-2.5-402(4), that District attorneys' offices or the office's designees shall consider whether a juvenile has a developmental issue, a mental or behavioral health issue, and/or a lack of mental capacity when considering whether to accept the juvenile into diversion. The screening entity need not identify a formal diagnosis.

Bill 9

Requiring a prescription to use FDA-approved THC when in court ordered treatment while on probation if medical marijuana is recommended by the treating health care provider.

Issue Summary: Individuals on probation in court ordered treatment are using the red card to obtain high THC products and are high while in treatment, negatively effecting their ability to successfully complete the requirements of probation. When people on probation are getting high on anything, that is a problem because the substance tends to alter their judgment and behavior.

Proposed Solution: When a person on probation is court ordered to treatment and they have a serious medical condition for which they are requesting medical marijuana, they shall have a primary health care provider who diagnoses the condition, prescribes treatment, and follows them to determine effectiveness of the treatment. If that provider believes they would benefit from THC, then they would write a prescription for FDA-approved medication that is THC. Releases of Information will allow the health care provider to communicate with the treatment provider and the probation officer as to whether there has been a prescription written for FDA-approved THC medication. These medications are intended to help the medical condition and are not used to get high.

Policy Change: People in court-ordered treatment, on probation, who obtain a red card/medical marijuana card shall not use this for dispensary medical marijuana, home grown marijuana, or black-market marijuana while they are in court-ordered treatment. They would be allowed an option for the use of FDA-approved forms of pure THC such as dronabinol (Marinol), if the prescribing health care provider believed they would benefit from it. Probation officers should be able to monitor sobriety on all those in treatment and there should be facilitated communication among probation officers, treatment providers, and health care providers regarding use of this medication. The restriction of use of the red card is short-term and only while the probationer is in the court-ordered treatment. This would eliminate the need for the participation of physicians who “recommend” medical marijuana but have no other contact or treating relationship with the patient, while that person is in court-ordered treatment.

Additional Legislative Concepts Discussed

Idea 1

Reform Adult Competency to Stand Trial Proceedings

- Expand the waiver of privilege for the courts and attorneys to know whether a defendant's competency has been raised in another jurisdiction and facilitate access to information and documents related to the defendant's evaluation.
- Establish a process to identify, assess, and divert individuals with a moderate to severe intellectual or developmental disability, acquired or traumatic brain injury, or dementia from being ordered restored to competency.
- Create a definition of "foreseeable future" regarding the potential for a defendant to be restored to competency within a period of time that is based on empirical data and takes into account the level of offense and other individual factors.
- Add a balancing test to competency proceedings requiring the court to find a compelling community interest in resolving the criminal matter, or otherwise the court could dismiss the case or initiate existing civil commitment proceedings.

Idea 2

Develop Structured Community Collaborative Models to Support High-Risk Adults

- Create a pilot program to establish local multi-agency collaboratives to support high-risk and high systems-use adults.

Idea 3

Expansion of Support Team Assisted Response (STAR) Programs

- Support the expansion of alternate crisis response programs within community-based organizations.

Idea 4

Address Gaps in Care for Justice-Involved Women and Pregnant/Postpartum Individuals

- Increase financial support and foster connections to childcare and other supportive services for females regarding housing options who come out of incarceration and have custody of their children.
- Utilize female specific assessments in order to better individualize transitions from incarceration to community.
- Facilitate opportunities for county human services staff to work inside female corrections facilities to do pre-screening, enrollment and post release linkage to supportive services based on family needs and eligibility.
- Build capacity and expand access to sober living homes that allow for children or other housing arrangements that are family friendly, and bolster programs that support family reunification pre-release and parenting resources post-release.