

**Legislative Oversight Committee Concerning the
Treatment of Persons with Behavioral Health Disorders in the
Criminal and Juvenile Justice Systems**

Members of the Committee

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Committee Charge

Senate Bill 22-021 extended the repeal date of 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 until July 1, 2027. It also broadened the name and scope of the oversight committee and task force from concerning the treatment of "persons with mental health disorders" to "persons with behavioral health disorders." In addition to overseeing the advisory task force and recommending legislative changes, the committee is directed to develop and propose areas of study.

Senate Bill 22-021 also adjusted the task force membership and added term limits for members. The 31-member advisory task force examines the identification, diagnosis, and treatment of persons with behavioral health issues who are involved in the criminal and juvenile justice systems. This includes reviewing liability, safety, and costs as they relate to these issues, and researching topics for members of the oversight committee upon request. The task force must also consider, at a minimum, the following issues:

- early identification and intervention strategies for individuals who are at a higher risk of system involvement;
- promotion of resilience and health for persons who are involved or at-risk of becoming involved in the criminal or juvenile justice system;
- intersection of behavioral health disorders and the criminal and juvenile justice system, with a specific focus on diversion;
- safe and effective prevention and intervention strategies to promote good health outcomes upon release and during recovery.

The advisory task force may work with other task forces, committees, or organizations that are pursuing policy initiatives similar to those listed above. Further, collaborative relationships are encouraged with these other groups for joint policy-making opportunities.

The task force and oversight committee are both required to submit annual reports of their findings and recommendations. The task force submits one to the oversight committee by October 1 of each year. The oversight committee submits its report to the General Assembly by January 15 with recommended legislation.

Committee Activities

In 2022, the legislative oversight committee met four times to monitor and examine the work, findings, and recommendations of the advisory task force and its subcommittees. The committee also considered legislation recommended by the task force, stakeholders, and legislative oversight committee members.

Advisory task force activities. The oversight committee received updates on recent activities of the task force, which met remotely on a monthly basis throughout 2022. The task force and its subcommittees focused on housing, mental health holds, juvenile restoration services and competency to stand trial, and high potency marijuana, as those topics relate to persons with mental health disorders who are involved in the criminal and juvenile justice systems.

Juvenile restoration services and competency. The youth subcommittee presented research indicating that juveniles found incompetent to stand trial disproportionately have special education service and mental health treatment needs, as well as demonstrated histories of trauma. Additionally, data on restoration services provided by the Office of Behavioral Health indicate a greater length of stay for juveniles receiving restoration services, particularly for those needing reassessments. In an effort to improve juvenile competency restoration services, the committee recommends Bill A to clarify when juvenile competency-related information is authorized to be exchanged between organizations and creates uniformity for reassessments.

Restraints. Disability Law Colorado presented its findings on the use of inmate restraints, such as handcuffs or leg irons, in the Colorado Department of Corrections. They found that restraints are often used for extended periods of time, without clinical justification, in response to self-harming behavior. The advocacy group also raised concerns about the lack of criteria or guidance for removing restraints. The oversight committee considered these points and recommends Bill D, which restricts the use of clinical restraints in correctional facilities.

911 Resource Center. Task force representatives presented a bill draft request on behalf of the Colorado 911 Resource Center. The 911 Resource Center is an independent nonprofit entity created by the Public Utilities Commission (PUC) to provide resources and centralized assistance to local 911 emergency call services throughout the state. Testimony indicated that 911 calls increasingly involve a person experiencing a behavioral health crisis and training about how to handle these calls has become more critical. Committee members learned that the resource center is losing its funding source and discussed ways to continue its operation. Bill B authorizes annual payments from the state General Fund to continue the 911 Resource Center.

Medicaid preauthorization exemption. Medicaid formulary restrictions, including prior authorization and step therapy protocol requirements, are designed to control health plan costs, but in some cases may reduce access to necessary medications for patients. Bill C prohibits the use of these formulary restrictions to increase access to medications for individuals with serious mental illnesses.

Committee Recommendations

As a result of committee discussion and deliberation, the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems recommends the following four bills for consideration in the 2022 legislative session.

Bill A – Juvenile Competency to Proceed. This bill makes several changes to juvenile competency hearings including creating waivers of privilege when a juvenile is determined incompetent to proceed; allowing the court or party to raise the need for a restoration evaluation; establishing time limits on how long a juvenile can be held as incompetent; and allowing a juvenile to choose their own evaluator.

Bill B – Ongoing Funding for 911 Resource Center. This bill requires annual funding of \$250,000 for the Colorado 911 Resource center paid via a warrant issued by the State Treasurer from the General Fund, beginning July 1, 2023.

Bill C – Medicaid Preauthorization Exemption. This bill prohibits the Department of Health Care Policy and Financing (HCPF) from requiring prior authorization, fail first, or step therapy requirements for any prescription drug indicated to treat a serious mental health disorder. The bill applies to drugs provided under a contract between HCPF and a health maintenance organization.

Bill D – Use of Restrictive Practices in Prisons. This bill makes several changes to the use of clinical restraints at correctional facilities in the state including:

- prohibiting a correctional facility from using a clinical restraint on an inmate with limited exceptions;
- requiring correctional facilities to have a qualified health-care provider, licensed psychiatrist, or licensed psychologist perform a behavior management assessment on every inmate upon intake to evaluate whether the inmate is an increased risk for behaviors that may result in the use of a clinical restraint; and
- prohibiting a correctional facility from using a chemical restraint on an inmate with limited exceptions.