

**PERSONS WITH MENTAL ILLNESS
AND ASSAULT ON PROFESSIONALS**

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

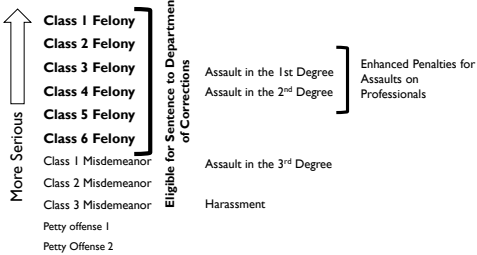
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SAME ACT, DIFFERENT PENALTY

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CRIMINAL OFFENSES IN COLORADO



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TYPES OF FELONY ASSAULT			
Offense	Classification and Penalty	Cases filed in 2018	In which ITP was raised
Causing bodily injury to a professional, with the intent of preventing them from performing a lawful duty; C.R.S. §18-3-203(1)(c)	Assault in 2 nd degree, class 4 felony, 4-12 years DOC, probation eligible	4124	485 (11.8%)
"applying violent physical force" on a professional, while "confined or in custody" C.R.S. §18-3-203(1)(f)	Assault in 2 nd degree, class 4 felony, 2-6 years DOC, mandatory DOC sentence, must be served consecutively to any other sentence	1601	313 (19.6%)
"with intent to infect, injure, harm, harass, annoy, threaten, or alarm," causing a professional, while you are incarcerated, to come into contact with bodily fluid (i.e. spitting); C.R.S. §18-3-203(1)(f.5)	Assault in 2 nd degree, class 4 felony, 2-6 years DOC	725	199 (27.4%)
[spitting on] first responders; C.R.S. §18-3-203(1)(h)	Assault in 2 nd degree, class 4 felony, 2-6 years DOC(f)	376	64 (17%)

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SAME ACT, DIFFERENT PENALTY: EX. HITTING WITH HAND, CAUSING PAIN	
<p>VICTIM IS A "PROFESSIONAL"</p> <ul style="list-style-type: none"> • Can be charged as Assault in the 2nd Degree, a class 4 felony • Penalty is typically 2-6 years DOC 	<p>VICTIM IS ANYONE ELSE</p> <ul style="list-style-type: none"> • Could be charged as Assault in the 3rd degree, a class 1 misdemeanor, or even as Harassment, a class 3 misdemeanor • Penalty is 6-24 months in county jail, no mandatory jail time
DEFINITIONS	
Serious bodily injury (typically required for felony assault):	"...involves a substantial risk of death, a substantial risk of serious permanent disfigurement, a substantial risk of protracted loss or impairment of the function of any part or organ of the body , or breaks, fractures, or burns of the second or third degree."
Bodily injury (Assault in 3 rd Degree):	"physical pain, illness, or any impairment of physical or mental condition"

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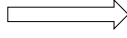
HOW DO THESE LAWS IMPACT PEOPLE WITH MI?
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DISPROPORTIONATELY FILED AGAINST PEOPLE WHO ARE INCOMPETENT TO PROCEED

- Filings for felony assault against people found incompetent to proceed increased 25-fold between 2013-2018
- 9 in 2013
- 229 in 2018
- At a stakeholder meeting in 2020, multiple public defender systems reported seeing increased filings
- These charges represent 45% of the charges for ITP

1%
Of people who had these felony assault charges filed were ITP in 2013



14-22%
Of people who had these felony assault charges filed were ITP in 2018
Versus roughly 5% of the general population who have MI

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In summary, people with mental illness represent a substantial portion of people charged with assaulting a "professional"

- This is often based on assaults that are alleged to have happened while the person was incarcerated (DYS detention, county jail, DOC, etc.)
- Where they may not have been receiving constitutionally adequate mental health treatment, and
- May have been subjected to high rates of placement in "restrictive housing" (including in "mental health units), and
- Where they may have been subjected to uses of force, to include, physical and mechanical restraints, strikes, pressure point control tactics, OC ("pepper") spray, tasers, and even less than lethal shotgun rounds (may include blinding flashes of light, immobilizing loud noise, or "rubber slugs")

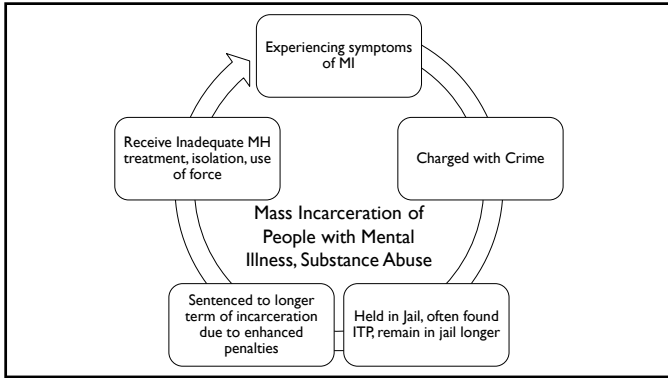
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Then, as a result of the felony charge:

- People with mental illness may have their periods of incarceration extended (in DOC), due to penalties for felonies, meaning,
- They may continue receiving constitutionally adequate mental health treatment, and
- May continue to be subjected to high rates of placement in "restrictive housing" (including in "mental health units), and
- Where they may have been subjected to uses of force, OR
- Held for extended periods of time in "4-point restraints"

AND– they are more likely to continue picking up new felony charges, perpetuating the cycle

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<p>TREATMENT OF PEOPLE WITH MI IN DOC-RECENT FINDINGS</p>	<ul style="list-style-type: none"> • Even in residential treatment programs (RTP), people may receive as little as 1 hour per week of group treatment (max 4 hours), and 1 session of individual therapy every 2 weeks • Inadequate screening for MI at admission results in inaccurate coding of psych needs • Staff do not have adequate training in working with people with MI, IDD, trauma, etc. • Staff at SCCF taunt MI participants in the RTP, call them names • Lack of consideration of role of MI in some disciplinary proceedings, classification decisions • Which in turn results in high rates of placement in highly restrictive settings (close custody, restrictive housing, "Special Management," etc.) • Where people report spending 22-24 hours per day in their cells <ul style="list-style-type: none"> • Often alone • With very little property • And where they have even less access to MH treatment
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<p>BUT, DOES IT WORK?</p>	<p>NO! Studies show that these enhanced sentences do NOT make professionals or settings in which they work safer</p> <p>Enhanced penalties do not deter these assaults, especially among people with MI because they simply are not thinking about the consequences of their actions but are instead responding from a place of fear, trauma, delusion, psychosis, etc.</p>
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EFFICACY OF ENHANCED PENALTIES

HB14-1214 required the CCJJ to do a report on:

"THE EFFICACY OF IMPLEMENTING ENHANCED SENTENCING FOR FIRST-DEGREE ASSAULT, SECOND-DEGREE ASSAULT, AND FIRST-DEGREE MURDER OF AN EMERGENCY MEDICAL SERVICE PROVIDER, AS DEFINED IN SECTION 25-35-103 (8), C.R.S., TO DETERMINE WHETHER:

- (a) COLORADO'S SENTENCING LAWS, INCLUDING ARTICLE 1.3 OF TITLE 18, C.R.S., PROVIDE EQUITY AND PARITY OF SENTENCING WITH RESPECT TO ENHANCED SENTENCING BASED ON THE VICTIM'S OCCUPATION; AND
- (b) THERE IS EVIDENCE-BASED SUPPORT FOR ENHANCED SENTENCING BASED ON THE VICTIM'S OCCUPATION."

"In summary, the CCJJ submits to the General Assembly three responses to the inquiries posed in HB 14-1214:

- 1) Enhanced sentences for certain classes of victims or occupations are not specifically addressed in the literature as evidence-based practices but may serve other purposes of sentencing;
- 2) Enhanced sentences and mandatory sentences are policy and legislative expressions that may reflect public perceptions about frequency or severity of offenses; and
- 3) More in-depth study is necessary to define and determine equity and parity of sentencing based on victim occupation."

https://cdpsdocs.state.co.us/ccjj/Resources/Report/2015-02_CCJJFirstRespondersRptHB14-1214.pdf

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EFFICACY OF ENHANCED PENALTIES

Other states have seen similar results:

- Alabama code 13A-6-21 effective since 2006 makes assault on a healthcare worker a Class C 2nd degree felony. The number of assaults on health care workers increased from 8.3 to 35.1 per 10k from 2006-2017.
- Delaware code 11,612 and 11,613 effective since 2010 makes assault on a medical technician a Class D 1st degree felony. The number of assaults on health care workers increased from 15.6 to 21.8 per 10k from 2010-2017.

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OTHER CONCERNS

Reliance on enhanced penalties as deterrent limits investment in more effective tools to prevent, de-escalate

Plea offers and consideration of MI in plea bargaining varies widely across the state due to prosecutorial discretion

These charges are often filed as a defensive measure when people reports abuse or excessive use of force

Families report that they do not call for help with mental health crises because they don't want to risk their loved one being charged with a felony, and not all areas have co-responder programs; not always available 24/7

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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> BURDEN ON COMPETENCY SYSTEM </div>	<p>Percentage and number that were ITP in 2018</p> <p>Existing waitlist (over 300 people awaiting inpatient restoration)</p> <p>Costs of treating in state hospital</p> <p>Costs of fines and fees (up to \$10 million per year)</p> <p>Competency less likely to be raised for lower charges</p>
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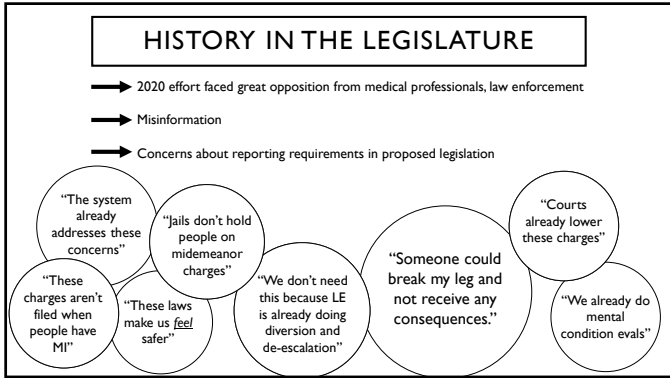
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;"> NGRI- NOT THE SOLUTION </div>	<p>"One day to life" "Like the Hotel California- you can check in, but you can't check out"</p> <p>Patients often remain hospitalized, at a cost of \$400-\$2000/day long after symptoms and violent or aggressive behavior have ceased Huge barriers to discharge, even when treatment has been "completed," when no longer meet criteria of being both mentally ill and dangerous as required by law</p> <p>Significant deprivations of rights and of supports and protective factors Often held in CMHIP longer than maximum prison term person was facing</p>
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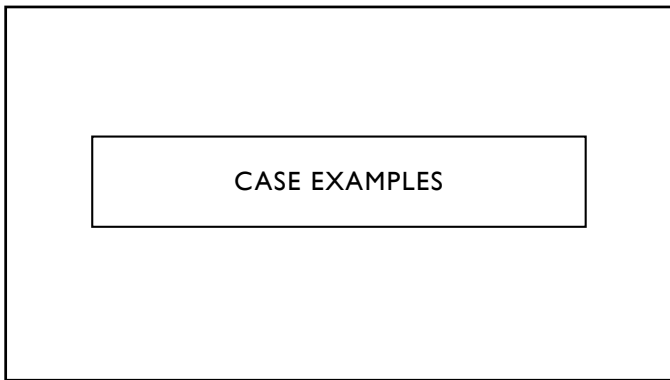
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NGRI- CASE EXAMPLES	
<p style="text-align: center;">EX. 1</p> <ul style="list-style-type: none"> • Male, was in county jail, experienced acute MI • Spit on officer • Adjudicated NGRI for Assault in 2nd Degree • Has been in CMHIP for more than 8 years (maximum prison sentence was 5 years), no violent behavior at CMHIP, stabilized on a single medication for years • Has been subjected to multiple regressions for minor behaviors, which have extended his length of stay • Minimal contact/relationship with father and son (now in early 20s) 	<p style="text-align: center;">EX. 2</p> <ul style="list-style-type: none"> • Female • Was in county jail, pregnant, withdrawing from drugs • Was 37 weeks pregnant, officer was kneeling on her • She spit on the officer • Has been in CMHIP for roughly 4 years • Housed on a unit with patients that are more acute, difficulty accommodating basic privileges like groceries, internet access for online college courses (due to COVID) • Has experienced bias in treatment based on race and other reasons that have stalled her progress • Has not been able to leave campus and use privileges, have contact with family (including 3 children)

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<p>IN DYS</p>	<ul style="list-style-type: none"> • Youth with extensive trauma history, abuse • Initial charge is for assaulting staff at a shelter when mom wouldn't pick up at age 12 • Eventually committed to DYS at age 14 • While in DYS, was subjected to countless physical restraints, including use of pressure point control tactics and knee strikes • Trauma response usually led to "fighting back" • Led to a series of felony assault charges for assaulting staff at DYS facilities • Which led to more and longer commitments to DYS • Ongoing deficiencies in MH treatment, "inability to treat trauma" in secure environment • Eventually charged with felony assault at age 18 for throwing a chair at staff • Charged as an adult • Facing 5 years in DOC, pled guilty to felony menacing, a class 5 felony; sentenced to 3 years DOC
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<div style="border: 1px solid black; padding: 5px; width: fit-content; margin: 0 auto;">IN COUNTY JAILS</div>	<ul style="list-style-type: none"> • In general, there is a lack of consistency and oversight regarding conditions, MH treatment offered, etc. • Heavy reliance on isolation ("restrictive housing") for people with MI, including and particularly on "mental health units." • Inconsistent use of medication, differing formularies • Deputies often use force, often without exhausting less intensive interventions and de-escalation strategies; may include: <ul style="list-style-type: none"> ○ Physical restraints ○ Mechanical restraints, restraint chairs, spit masks ○ OC spray ○ Tasers ○ Less than lethal shotguns
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COUNTY JAILS- EXAMPLES OF USE OF FORCE	
<ul style="list-style-type: none"> • Person with MI, spent much time in "ad seg" over period of months in jail • Was wearing jail clothes that were one size too big (could conceal contraband) • Refused verbal directives to change into smaller clothes • "Special Operations Group" called in • Staff rule out use of OC spray, taser for various strategic reasons • Officers deployed 2 "distraction rounds" (blinding strobe light), no effect • Officers then deployed a single round rubber slug, hit subject in the leg • Left a 1-1.5 inch hole in the leg, took months to heal and left lasting and disabling injury 	<ul style="list-style-type: none"> • Person with MI, spent much time in "ad seg" over period of months in jail • Regularly displayed symptoms of acute MI, but received little to no treatment • Over a period of several months, force was used on him for acts ranging from self-harming to smearing feces • Force included OC spray, handcuffs, up to 7 hours in a restraint chair, threats of use of shotgun, etc. • I reviewed incident reports for each. Nox once do staff indicate that they called for MH staff, and the only "de-escalation" technique mentioned is giving verbal directives
<p>**All that is required for someone in this situation to be charged with felony assault is that the person make physical contact with an officer, and that the contact produces pain</p>	

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RECENT EXAMPLE OF SOMEONE WITH MI CHARGED WITH FELONY ASSAULT IN JAIL
<ul style="list-style-type: none"> • Male with history of psychosis, held in a county jail on misdemeanor charges (meaning he could not have been sentenced to prison) • According to family, has experienced ongoing psychosis for 6-8 months in jail, history of incompetence • Believed guard were not human, were possibly demons • A guard got close to his face, and the man believed the guard was going to eat him • So, he punched the guard • The guard reportedly punched him back • He now has multiple counts of Assault in the 2nd degree pending and faces 2-6 years for one count and 4-12 for another, one of which carries mandatory prison time (neither involves infliction of serious bodily injury)

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CASE IN
DOC

- Male, extensive history of institutionalization, child welfare involvement, suffers severe delusions, etc.
- Believes he is a reincarnated dead singer
- Believes he has multiple hearts, that he is Jesus, and that he is a government operative
- Currently serving 17 years in DOC, would be parole eligible in 1 year
- Based on incidents that occurred while in mental health placements within DOC, he has been charged with 3 counts of Assault in the 2nd degree in 2 different cases
- Faces years if not decades of additional incarceration in a system that is entirely ill-equipped to house and treat him
- Will almost certainly be found incompetent and be ordered to inpatient restoration

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ASSAULT IN COLORADO

<p style="font-size: small;">Assault in the 1st Degree (C.R.S. §18-3-202)*</p> <ul style="list-style-type: none"> Typically a Class 3 Felony Sentence may be 10-32 years in DOC 	<p style="font-size: small;">Assault in the 2nd Degree (C.R.S. §18-3-203)*</p> <ul style="list-style-type: none"> Typically a Class 4 Felony Sentence may be 2-6 years in DOC 	<p style="font-size: small;">Assault in the 3rd Degree (C.R.S. §18-3-204)</p> <ul style="list-style-type: none"> Typically a Class 1 Misdemeanor Up to 2 years in county jail 	<p style="font-size: small;">Harassment (C.R.S. §18-9-111)</p> <ul style="list-style-type: none"> Class 3 Misdemeanor Up to 6 months in county jail
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*these offenses typically require use of a deadly weapon or serious bodily injury, UNLESS the victim is a "professional"

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SAME ACT, DIFFERENT PENALTY:
EX. 2- SPITTING ON SOMEONE

Victim is a peace officer	Person is incarcerated	Peace officer is "on duty"	Victim is not a peace officer
Assault in the 3 rd Degree	Assault in the 2 nd Degree	Assault in the 2 nd Degree	Assault in the 3 rd Degree
Class 1 Misdo.	Class 4 Felony	Class 4 Felony	Class 1 Misdo.
6-24 mos. County jail	2-6 years DOC	2-6 years DOC	6-24 mos. County jail

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