



## Final Report to the General Assembly

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

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# Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems

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December 2024





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To Members of the Seventy-fourth General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee for the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice System. The committee was created pursuant to Article 98 of Title 37, Colorado Revised Statutes. The purpose of this committee is to oversee an advisory task force that studies and makes recommendations concerning persons with behavioral health disorders who are justice-involved.

At its meeting on October 15, 2024, the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2025 session was approved.

Sincerely,

/s/ Representative Julie McCluskie  
Chair



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**This report is also available online at:**

***<https://leg.colorado.gov/committees/treatment-persons-behavioral-health-disorders-criminal-and-juvenile-justice-systems/2024>***





## Committee and Task Force Charge and History

The Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems (committee) and an advisory task force (task force) have been in existence for over two and a half decades (Article 1.9 of Title 18, C.R.S.). The committee and task force has consistently been reauthorized about every five to seven years since its inception, most recently by [Senate Bill 22-021](#) until 2027.

### Committee Charge

The committee is responsible for the oversight of the advisory task force, as well as recommending legislative changes. The committee also develops and proposes areas of study for the task force. Additional requirements include submitting an annual report to the General Assembly each year highlighting legislation from the work of the committee and advisory task force. This report serves as this annual report.

### Task Force Charge

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 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.

## Committee and Task Force Activities

The Legislative Oversight Committee met three 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 members and other stakeholders, heard a presentation from the Behavioral Health Administration (BHA), appointed task force members, and received bill draft request status updates from the Office of Legislative Legal Services.

The following sections discuss committee and task force activities during the 2024 interim.

### Advisory Task Force and Subcommittee Activities

In January 2024, a scope of study letter was finalized to direct the task force's research on behavioral health policies, as requested by the committee. In addition to policy areas, the letter clarified task force procedural and voting requirements, and expanded stakeholder opportunities to more effectively engage task force members.

The task force met almost every month in 2024 and worked out a timeline, as guided by the scope of study letter, to complete position statements, collect stakeholder input, and initiate bill draft concepts. Task force subcommittees provided regular updates about juveniles, systems of care, crisis response, not guilty by reason of insanity (NGRI), and competency, as those topics related to persons with behavioral health disorders who are involved in the criminal justice system. Additionally, the task force heard presentations from the Colorado Department of Health Care Policy and Financing (HCPF) about justice involved individuals and Medicaid.

### Justice-Involved Youth

The youth subcommittee of the task force examined a number of areas affecting juveniles, including the Youthful Offender System (YOS) in the Colorado Department of Corrections (CDOC), the juvenile competency process, presentence confinement, and deflection and diversion.

**Youthful Offender System.** The YOS program is designed for violent offenders aged 14 to 18 at the time of their offense and under 19 at sentencing. It focuses on rehabilitation, with inmates housed separately from the general adult population. The youth subcommittee reviewed YOS policies and proposed several changes to improve and update practices, including case management, rehabilitative treatment plans, evaluations, data collection, and adding language on gender equity and disabilities to the legislative declaration.

**Juvenile competency proceedings.** The task force introduced several changes to the process for determining juvenile competency and fitness to stand trial. One identified change focused on competency evaluations for juveniles charged as adults. These evaluations are typically conducted in the court where the juvenile is tried, including adult court. Task force members argued that the adult system fails to consider a juvenile's developmental stage and unique characteristics. As an alternative, they recommended following juvenile justice system procedures for youth prosecuted as adults, with cases subject to concurrent jurisdiction between adult and juvenile courts.

Additionally, the task force recommended that courts dismiss delinquency petition and charges for juveniles found incompetent to proceed on a class 2 misdemeanor, petty offense, drug misdemeanor, or traffic offense. Members noted concerns about due process in such cases.

**Presentence confinement.** Presentence confinement for juveniles refers to the time a minor spends in detention or custody while awaiting sentencing, and this time is typically credited toward their final term of confinement. However, juveniles may also be confined before adjudication, and subcommittee members recommended that this pre-adjudication time be credited as well.

**Deflection and Community Investment Grant Program.** Having a juvenile record may impact a young person's future opportunities, including employment, education, and housing. Subcommittee members weighed the benefits of directing more funds toward deflection programs in an effort to keep kids out of the system. Specifically, they recommended a three-year grant program to implement trauma-informed health and development deflection programs for youth.

**Committee recommendation.** As a result of its discussions, the committee recommends Bill A, which makes several changes to the YOS and juvenile competency hearings in the courts. It also allows juveniles to receive presentence confinement credits and creates the Deflection and Community Investment Grant Program in the Department of Public Safety.

## **Behavioral Health Crisis Response**

Task force members presented bill draft ideas to improve crisis response and continuum of care services.

**Stakeholder group.** Knowing about available crisis response services may help individuals access timely, professional support during mental health emergencies, potentially de-escalating situations and preventing harm. The task force found that no centralized catalog of these crisis response resources exist and recommended creating one through a stakeholder group. Once completed, the catalog will be made publicly available.

**New reporting requirements.** Task force members reviewed agency reporting requirements and suggested new requirements to collect more pertinent information about behavioral health services, reimbursement gaps, funding offsets, health data interoperability, and licensed behavioral health facility capabilities.

**Medicaid reimbursement.** In the FY 2024-25 Long Bill, the General Assembly approved a budget request from HCPF to reimburse stays at institutes of mental health disease for up to 30 days. To offset these costs, the department is currently negotiating to receive federal funds for a waiver that allows state to experiment and evaluate new approaches to Medicaid. In the meantime, however, the committee agreed to propose legislation to codify the budget request in state law, allowing reimbursement for up to 60 days of mental health care and treatment services per Medicaid member, as long as the average length of stay does not exceed 30 days per year.

**Emergency mental health holds.** The task force identified issues with the treatment and procedures surrounding emergency mental health holds, or a 72-hour involuntary detainment

for assessment and treatment. Concerns were specifically raised about individuals being released without proper stabilization or access to further care. In an effort to coordinate care upon discharge from a mental health hold, the following changes were suggested, including:

- requiring evaluations to include an assessment to determine if further care at a designated mental health care facility is necessary (assessment is optional under existing law);
- requiring a facility to only discharge a person if they no longer meet the criteria for the hold; and
- requiring the BHA to include the reason for discharging each person placed on an emergency mental health hold in its annual report.

**Committee recommendation.** The committee recommends Bill B to form a stakeholder group to catalog available behavioral health crisis resources, create new reporting requirements for departments and behavioral health facilities, update coverage of medical health care through Medicaid, and improve emergency mental health hold practices.

### **Not Guilty by Reason of Insanity**

The NGRI evaluations typically take weeks or months to complete, as they involve a detailed examination of the defendant's mental state at the time of the crime. This process often includes multiple interviews, review of medical records, and consultations with other professionals. The time involved can vary based on the complexity of the case and jurisdiction.

The task force acknowledged the need for thorough evaluations, but expressed concerns that many appear to take an indefinite amount of time, particularly without clear parameters. They suggested that the court, the Colorado Department of Human Services (CDHS), and other legal parties collaborate to determine when evaluations should be extended and specify the number of days for such extensions.

The task force also emphasized the importance of allowing defendants to appear unshackled and in regular clothing, rather than prison or jail attire, during recorded evaluation interviews to avoid the appearance of unfair prejudice. They also presented research to the committee showing that narcoanalytics (“truth serums”) and polygraph tests are ineffective and recommended banning their use in interviews.

**Committee recommendation.** In response to these concerns, the committee recommends Bill C, which includes several updates to the procedure for NGRI cases. These updates cover determining the length of evaluations, guidelines for conducting interviews during evaluations, and other technical revisions to the statute.

## Complementary Behavioral Health Services in Jails Grant

Committee members reviewed recommendations from the task force about expanding treatment options for individuals with behavioral health disorders, especially for those who are in jail. The task force proposed incentivizing the use of alternative and complementary therapies, such as Acudetox, a low-cost, low-risk acupuncture technique shown to improve substance use disorder treatment outcomes. Additionally, they recommended establishing a grant program to fund and study the effectiveness of such programs, providing evidence to support their broader implementation.

**Committee recommendation.** As a result of its discussions, Bill D requires the BHA to fund jail-based services that support the primary treatment of individuals with behavioral health disorders. Jails are to use this funding to train staff and provide these complementary services to inmates at no cost.

## Competency in Criminal Justice System Services and Bail

The task force examined bond setting for those undergoing competency evaluations in jail, in addition to behavioral health treatment for those whose charges are dropped.

**Bond setting and release.** Task force members expressed concerns that legal decisions, such as a defendant's right to bail, are often delayed during the competency evaluation process. They also noted a lack of explanation for why some of these same defendants are denied release through a personal recognizance bond.

In response, the task force called for state law to clarify that a defendant's right to bail should not be interrupted due to a competency evaluation. They also recommended strengthening communication between the courts and the CDHS when a defendant undergoing a competency evaluation is denied release through a personal recognizance bond.

**Dropped charges and continuity of care.** The task force addressed the continuation of behavioral health services for individuals whose criminal charges are dropped. They pointed to research that shows abruptly stopping treatment can lead to significant issues, such as symptom relapse, increased risk of criminal behavior, and a higher likelihood of harm to oneself or others due to untreated mental health conditions.

Task force members suggested continuing inpatient services for an additional 90 days after charges are dropped to ensure continuity and stabilization. They also recommended that CDHS partner with organizations to provide permanent supportive housing for this population, as well as improve data collection and information sharing between agencies.

**Committee recommendation.** As a result of its discussions, the committee recommends Bill E, which clarifies what courts must consider when setting bail for defendants declared incompetent to proceed, and allows defendants to receive inpatient services from the CDHS for additional time after charges are dropped.



## Summary of Recommendations

The committee recommended five bills to the Legislative Council for consideration in the 2025 session. At its meeting on October 15, 2024, the Legislative Council approved the five recommended bills for introduction. The approved bills are described below.

### ***Bill A — Deflection Supports Justice-Involved Youth***

The bill introduces changes to the YOS, addressing housing based on gender identity and disabilities, rehabilitative treatment and evaluations, and data collection. It allows earned time credits for time served before sentencing, and creates a grant program to fund trauma-induced health and development deflection programs for youth. The bill also clarifies the competency process when a juvenile is prosecuted as an adult and permits courts to order the juvenile's professional team to consult with other parties regarding a case management plan.

### ***Bill B — Behavioral Health Crisis Response Recommendations***

Bill B creates several new measures related to behavioral health crisis response, including:

- creating a stakeholder group to identify existing behavioral health resources and programs;
- adding new reporting requirements for departments and behavioral health facilities;
- updating coverage of medical health care through Medicaid; and,
- changing emergency mental health hold practices about evaluations, discharges, and reporting requirements.

### ***Bill C — Not Guilty by Reason of Insanity Defense***

The bill updates procedures for NGRI cases. Courts, in consultation with the CDHS and other parties, must determine if an extended sanity examination requires an overnight stay. Additionally, defendants are prohibited from wearing prison or jail clothing during interviews, and narcoanalytics and polygraph examinations are not permitted in these interviews.

### ***Bill D — Complementary Behavioral Health Services in Jails Grant***

This bill creates a grant program in the BHA to train jail staff in administering services that complement an inmate's primary course of treatment for a behavioral health disorder. The BHA is charged with administering and awarding the grant, including reporting requirements and developing the related rules and criteria.

### ***Bill E — Competency in Criminal Justice System Services and Bail***

The bill clarifies what courts must consider when setting bail for defendants declared incompetent to proceed and allows the defendant to receive inpatient services from CDHS for additional time after charges are dropped. Courts must also ensure a defendant's right to bail is not interrupted due to a competency evaluation. Additionally, the bill allows CDHS to enter agreements with organizations to provide permanent supportive housing for persons whose charges are dismissed or who completed the BRIDGES Wraparound Service Program.





## Resource Materials

Meeting summaries are prepared for each meeting of the committee and contain all handouts provided to the committee. The summaries of meetings and attachments are available at the Division of Archives, 1313 Sherman Street, Denver (303-866-2055). The listing below contains the dates of committee meetings and the topics discussed at those meetings. Meeting summaries are also available on our website at:

<https://leg.colorado.gov/content/committees>

## Meetings and Topics Discussed

July 22, 2024

- Overview of advisory task force and subcommittee activities
- Task force appointments
- Committee discussion: legislation for the 2025 session

August 14, 2024

- Behavioral Health Administration presentation
- Committee discussion: bill draft request updates
- Public testimony

October 1, 2024

- Public testimony
- Consideration of and final action on draft committee legislation and associated amendments