

First Regular Session  
Seventy-first General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 17-0149.01 Jane Ritter x4342

SENATE BILL 17-012

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SENATE SPONSORSHIP

Martinez Humenik,

HOUSE SPONSORSHIP

Lee, Singer

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Senate Committees

Judiciary

House Committees

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A BILL FOR AN ACT

101 CONCERNING COMPETENCY RESTORATION SERVICES FOR DEFENDANTS

102 DEEMED INCOMPETENT TO PROCEED.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)*

**Legislative Oversight Committee Concerning the Treatment of Persons with Mental Illness in the Criminal and Juvenile Justice Systems.** The bill addresses various issues relating to the restoration of competency for juveniles and adults in the juvenile and criminal justice systems, including:

! Requiring the court to consider whether restoration to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.

Capital letters indicate new material to be added to existing statute.

Dashes through the words indicate deletions from existing statute.

- competency services should occur on an outpatient basis if the defendant is on bond or summons;
- ! Requiring that, in addition to providing competency restoration services in the least restrictive environment, the provision of such services and a juvenile's participation in those services occur and are reviewed by the court in a timely manner;
- ! Establishing the unit within the department of human services that administers behavioral health programs and services, including those relating to mental health and substance abuse, also known as the office of behavioral health (office), as the entity responsible for the oversight of restoration education and the coordination services necessary to competency restoration; and
- ! Setting forth the duties of the office related to competency restoration services and education.

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

2           **SECTION 1.** In Colorado Revised Statutes, 16-8.5-111, **amend**  
 3 (2)(a) as follows:

4           **16-8.5-111. Procedure after determination of competency or**  
 5 **incompetency.** (2) If the final determination made pursuant to section  
 6 16-8.5-103 is that the defendant is incompetent to proceed, the court has  
 7 the following options:

8           (a) IF THE DEFENDANT IS ON BOND OR SUMMONS, THE COURT  
 9 SHALL CONSIDER WHETHER RESTORATION TO COMPETENCY SHOULD  
 10 OCCUR ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS. If the defendant  
 11 is in custody, the court may release the defendant on bond upon  
 12 compliance with the standards and procedures for such release prescribed  
 13 by statute and by the Colorado rules of criminal procedure. As a condition  
 14 of bond, the court may require the defendant to obtain any treatment or  
 15 habilitation services that are available to the defendant, such as inpatient  
 16 or outpatient treatment at a community mental health center or in any

1 other appropriate treatment setting, as determined by the court. Nothing  
2 in this section authorizes the court to order community mental health  
3 centers or other providers to provide treatment for persons not otherwise  
4 eligible for these services. At any hearing to determine eligibility for  
5 release on bond, the court shall consider any effect the defendant's  
6 incompetency may have on the court's ability to ensure the defendant's  
7 presence for hearing or trial. There ~~shall be~~ IS a presumption that the  
8 ~~incompetency of the defendant~~ DEFENDANT'S INCOMPETENCY will inhibit  
9 the DEFENDANT'S ability ~~of the defendant~~ to ensure his or her presence for  
10 trial. PURSUANT TO SECTION 27-60-104, THE UNIT IN THE DEPARTMENT  
11 THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES,  
12 INCLUDING THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE,  
13 ALSO KNOWN AS THE OFFICE OF BEHAVIORAL HEALTH, IS THE ENTITY  
14 RESPONSIBLE FOR THE OVERSIGHT OF RESTORATION EDUCATION AND  
15 COORDINATION OF SERVICES NECESSARY TO COMPETENCY RESTORATION.

16 **SECTION 2.** In Colorado Revised Statutes, 19-2-1303, **amend**  
17 (2) as follows:

18 **19-2-1303. Procedure after determination of competency or**  
19 **incompetency.** (2) If the court finally determines pursuant to section  
20 19-2-1302 that the juvenile is incompetent to proceed, but may be  
21 restored to competency, the court shall stay the proceedings and order that  
22 the juvenile receive services designed to restore the juvenile to  
23 competency, based upon recommendations in the competency evaluation  
24 unless the court makes specific findings that the recommended services  
25 in the competency evaluation are not justified. The court shall order that  
26 the restoration services ordered are provided in the least restrictive  
27 environment, taking into account the public safety and the best interests

1 of the juvenile, AND THAT THE PROVISION OF THE SERVICES AND THE  
2 JUVENILE'S PARTICIPATION IN THOSE SERVICES OCCURS IN A TIMELY  
3 MANNER. The court shall review the PROVISION OF AND THE JUVENILE'S  
4 PARTICIPATION IN THE SERVICES AND THE juvenile's progress toward  
5 competency at least every ninety days until competency is restored,  
6 UNLESS THE JUVENILE IS IN CUSTODY, IN WHICH EVENT THE COURT SHALL  
7 REVIEW THE CASE EVERY THIRTY DAYS TO ENSURE THE PROMPT PROVISION  
8 OF SERVICES IN THE LEAST RESTRICTIVE ENVIRONMENT. The court shall  
9 not maintain jurisdiction longer than the maximum possible sentence for  
10 the original offense, unless the court makes specific findings of good  
11 cause to retain jurisdiction. However, ~~in no case shall~~ the juvenile court's  
12 jurisdiction SHALL NOT extend beyond the juvenile's twenty-first birthday.  
13 PURSUANT TO SECTION 27-60-104, THE UNIT IN THE DEPARTMENT OF  
14 HUMAN SERVICES THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS  
15 AND SERVICES, INCLUDING THOSE RELATED TO MENTAL HEALTH AND  
16 SUBSTANCE ABUSE, ALSO KNOWN AS THE OFFICE OF BEHAVIORAL HEALTH,  
17 IS THE ENTITY RESPONSIBLE FOR THE OVERSIGHT OF RESTORATION  
18 EDUCATION AND COORDINATION OF SERVICES NECESSARY TO  
19 COMPETENCY RESTORATION.

20 **SECTION 3.** In Colorado Revised Statutes, **add** 27-60-104 as  
21 follows:

22 **27-60-104. Outpatient restoration to competency services -**  
23 **legislative declaration - responsible entity - duties - report.** (1) THE  
24 GENERAL ASSEMBLY FINDS AND DECLARES THAT:

25 (a) COLORADO'S STATUTORY SCHEME DOES NOT DESIGNATE AN  
26 ENTITY RESPONSIBLE FOR COMPETENCY RESTORATION SERVICES, NOR  
27 DOES IT PROVIDE A SUFFICIENT FRAMEWORK FOR THE PROVISION OF

1 OUTPATIENT RESTORATION SERVICES TO ADULTS OR JUVENILES. AS A  
2 RESULT, THERE HAVE BEEN DEFICITS AND INCONSISTENCIES IN THE  
3 ADMINISTRATION OF THE EDUCATIONAL COMPONENT OF OUTPATIENT  
4 COMPETENCY RESTORATION SERVICES AND THE COORDINATION AND  
5 INTEGRATION OF THAT COMPONENT WITH EXISTING SERVICES AND  
6 SUPPORTS TO ADDRESS THE UNDERLYING CAUSES OF INCOMPETENCY.

7 (b) THE LACK OF A DESIGNATED RESPONSIBLE ENTITY FOR  
8 COMPETENCY RESTORATION SERVICES IN COLORADO HAS CAUSED  
9 INCONSISTENCY IN COMPETENCY RESTORATION SERVICES THROUGHOUT  
10 THE STATE AND DELAYS IN PROCEEDINGS THAT IMPACT THE DUE PROCESS  
11 RIGHTS OF JUVENILES AND ADULTS INVOLVED IN THE JUVENILE AND  
12 CRIMINAL JUSTICE SYSTEMS, AS WELL AS THE INTERESTS OF VICTIMS;

13 (c) COMPETENCY RESTORATION SERVICES MUST BE LOCALIZED  
14 AND ACCESSIBLE AND TAKE INTO ACCOUNT THE PUBLIC SAFETY, WHILE  
15 STILL ALLOWING FOR STATE-LEVEL STANDARDS AND OVERSIGHT;

16 (d) COMPETENCY RESTORATION SERVICES FOR JUVENILES MUST BE  
17 PROVIDED IN THE LEAST RESTRICTIVE ENVIRONMENT, WHILE TAKING INTO  
18 ACCOUNT THE PUBLIC SAFETY AND THE BEST INTERESTS OF THE JUVENILE;  
19 AND

20 (e) MANY SERVICES ESSENTIAL TO THE RESTORATION OF  
21 COMPETENCY CAN BE PROVIDED THROUGH EXISTING PROGRAMS USING  
22 EXISTING FUNDING. HOWEVER, THE CURRENT SYSTEM LACKS FUNDING  
23 AND RESPONSIBILITY FOR THE EDUCATIONAL COMPONENT OF COMPETENCY  
24 RESTORATION SERVICES AND CASE MANAGEMENT TO ACCESS AND  
25 LEVERAGE AVAILABLE SERVICES AND SUPPORTS WHICH, COMBINED, WILL  
26 HELP ENSURE AN INTEGRATED APPROACH TO COMPETENCY RESTORATION  
27 FOR JUVENILES AND ADULTS.

1           (2) THE UNIT IN THE DEPARTMENT OF HUMAN SERVICES THAT  
2 ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING  
3 THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, ALSO  
4 KNOWN AS THE OFFICE OF BEHAVIORAL HEALTH AND REFERRED TO IN THIS  
5 SECTION AS THE "OFFICE", SHALL SERVE AS A CENTRAL ORGANIZING  
6 STRUCTURE AND RESPONSIBLE ENTITY FOR THE PROVISION OF  
7 COMPETENCY RESTORATION EDUCATION SERVICES AND COORDINATION OF  
8 COMPETENCY RESTORATION SERVICES ORDERED BY THE COURT PURSUANT  
9 TO SECTION 19-2-1303 (2) OR 16-8.5-111 (2)(a).

10           (3) THE OFFICE HAS THE FOLLOWING DUTIES AND  
11 RESPONSIBILITIES:

12           (a) TO OVERSEE PROVIDERS OF THE EDUCATION COMPONENT OF  
13 COMPETENCY RESTORATION SERVICES, INCLUDING:

14           (I) ESTABLISHING AND ENFORCING QUALIFICATIONS OF  
15 COMPETENCY RESTORATION EDUCATORS, INCLUDING MINIMUM AND  
16 ONGOING TRAINING REQUIREMENTS;

17           (II) EVALUATING MODELS FOR THE DELIVERY OF COMPETENCY  
18 RESTORATION EDUCATION IN A MANNER THAT MAXIMIZES AND EXPANDS  
19 ON AVAILABLE RESOURCES WHILE MINIMIZING COSTS TO THE STATE; AND

20           (III) MAINTAINING AN ADEQUATE POOL OF COMPETENCY  
21 RESTORATION PROVIDERS, AS DEFINED BY:

22           (A) QUALIFICATIONS AND TRAINING;

23           (B) GEOGRAPHICAL ACCESSIBILITY, IN LIGHT OF THE GOAL OF  
24 ENSURING COMMUNITY-BASED RESTORATION IN THE LEAST RESTRICTIVE  
25 ENVIRONMENT THROUGHOUT THE STATE; AND

26           (C) ABILITY TO PROVIDE CULTURALLY COMPETENT AND  
27 DEVELOPMENTALLY APPROPRIATE COMPETENCY RESTORATION EDUCATION

1 TAILORED TO AN INDIVIDUAL'S UNIQUE NEEDS;

2 (b) TO DEVELOP MODELS FOR PROVIDING COMPETENCY  
3 RESTORATION SERVICES THAT INTEGRATE COMPETENCY RESTORATION  
4 EDUCATION WITH OTHER CASE MANAGEMENT AND TREATMENT, ENSURE  
5 CONTINUATION OF ONGOING TREATMENT AND SERVICES AS APPROPRIATE,  
6 AVOID DUPLICATION OF SERVICES, AND ACHIEVE EFFICIENCIES BY  
7 COORDINATING WITH EXISTING COMMUNITY RESOURCES AND PROGRAMS;

8 (c) TO PRESERVE THE INTEGRITY OF THE COMPETENCY  
9 EVALUATION PROCESS BY ENSURING THAT COMPETENCY RESTORATION  
10 EDUCATORS OPERATE INDEPENDENTLY FROM COMPETENCY EVALUATORS  
11 AT THE CASE LEVEL;

12 (d) TO DEVELOP STANDARDIZED JUVENILE AND ADULT CURRICULA  
13 FOR THE EDUCATIONAL COMPONENT OF COMPETENCY RESTORATION  
14 SERVICES THAT CAN BE TAILORED IN A CONTENT AND DELIVERY  
15 MECHANISM TO MEET INDIVIDUAL NEEDS;

16 (e) TO ENGAGE WITH KEY STAKEHOLDERS IN THE JUVENILE AND  
17 ADULT JUSTICE SYSTEMS TO DEVELOP BEST PRACTICES IN THE DELIVERY  
18 OF COMPETENCY RESTORATION SERVICES; AND

19 (f) TO MAKE RECOMMENDATIONS FOR LEGISLATION.

20 (4) ON OR BEFORE JANUARY 1, 2019, AND EVERY JANUARY 1  
21 THEREAFTER, THE OFFICE SHALL SUBMIT AN ANNUAL WRITTEN REPORT TO  
22 THE GENERAL ASSEMBLY SUMMARIZING THE OFFICE'S PROVISION OF  
23 COMPETENCY RESTORATION EDUCATION AND ITS EFFORTS TOWARD THE  
24 COORDINATION OF COMPETENCY RESTORATION EDUCATION WITH OTHER  
25 EXISTING SERVICES. THE REPORT MUST INCLUDE:

26 (a) DATA ON THE NUMBER OF INDIVIDUALS ORDERED TO  
27 COMPETENCY RESTORATION SERVICES, THE AVERAGE TIME FRAME FOR

1 BEGINNING AND ENDING SUCH SERVICES, THE TYPES OF SETTINGS IN WHICH  
2 COMPETENCY RESTORATION SERVICES ARE PROVIDED, AND THE OUTCOMES  
3 OF SUCH SERVICES;

4 (b) A DESCRIPTION OF THE OFFICE'S ENGAGEMENT WITH  
5 COMMUNITY PARTNERS TO COORDINATE COMPETENCY RESTORATION  
6 SERVICES IN AN EFFECTIVE AND EFFICIENT MANNER;

7 (c) IDENTIFICATION OF BEST AND PROMISING PRACTICES FOR  
8 EDUCATION AND COORDINATION OF COMPETENCY RESTORATION SERVICES;

9 (d) A DESCRIPTION OF OPPORTUNITIES TO MAXIMIZE AND INCREASE  
10 AVAILABLE RESOURCES AND FUNDING; AND

11 (e) A DESCRIPTION OF GAPS IN AND CONFLICTS WITH EXISTING  
12 FUNDING, SERVICES, AND PROGRAMMING ESSENTIAL TO THE EFFECTIVE  
13 RESTORATION OF COMPETENCY FOR JUVENILES AND ADULTS.

14 **SECTION 4. Act subject to petition - effective date.** This act  
15 takes effect at 12:01 a.m. on the day following the expiration of the  
16 ninety-day period after final adjournment of the general assembly (August  
17 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a  
18 referendum petition is filed pursuant to section 1 (3) of article V of the  
19 state constitution against this act or an item, section, or part of this act  
20 within such period, then the act, item, section, or part will not take effect  
21 unless approved by the people at the general election to be held in  
22 November 2018 and, in such case, will take effect on the date of the  
23 official declaration of the vote thereon by the governor.