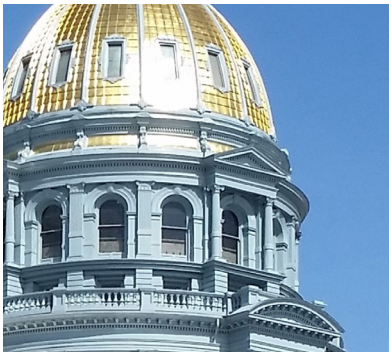
2022

Report to the Colorado General Assembly

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



Prepared by Legislative Council Staff
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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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Representative Adrienne Benavidez, Vice-Chair

Senator Rhonda Fields
Senator Cleave Simpson
Representative Judy Amabile
Representative Rod Pelton

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December 2022

COLORADO GENERAL ASSEMBLY

LEGISLATIVE COUNCIL

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December 2022

To Members of the Seventy-third General Assembly:

Submitted herewith is the final report of the Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. This committee was created pursuant to Article 1.9 of Title 18, Colorado Revised Statutes. The purpose of this committee is to oversee an advisory task force that studies and makes recommendations concerning the treatment of persons with mental health disorders who are involved in the criminal and juvenile justice systems in Colorado.

At its meeting on October 14, 2022 the Legislative Council reviewed the report of this committee. A motion to forward this report and the bills therein for consideration in the 2023 session was approved.

Sincerely,

/s/ Representative Alec Garnett
Chair

Table of Contents

This report is also available online at:

https://leg.colorado.gov/committees/treatment-persons-behavioral-health-disorders-criminal-and-juvenile-justice-systems/2022

Legislative Oversight Committee and Advisory Task Force

Article 1.9 of Title 18, C.R.S. created a legislative oversight committee and an advisory task force concerning the treatment of persons with behavioral health disorders in the criminal and juvenile justice systems.

History

The advisory task force and Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Illness in the Criminal and Juvenile Justice Systems (BHDCJS) has existed in some form or other for over two decades. The following timeline chronicles its history.

- **1999**: First organized as a study group
- **2000:** Authorized legislative oversight committee, with the advisory task force meeting on a monthly basis through June 2003 (House Bill 00-1033)
- **2003:** Reauthorization failed but advisory task force continued to meet informally (House Bill 03-1030)
- **2004:** Reauthorized legislative oversight committee and advisory task force (Senate Bill 03-037)
- **2009:** Reauthorized legislative oversight committee and advisory task force (House Bill 09-1021)
- **2010:** Interim activities suspended, advisory task force continued to meet informally (Senate Bill 10-213)
- **2014:** Reestablished and reauthorized legislative oversight committee and advisory task force (Senate Bill 14-021)
- **2020:** Reauthorized legislative oversight committee and advisory task force (Senate Bill 20-042)
- **2021:** Interim activities suspended, advisory task force continued to meet informally
- **2022:** Reauthorized legislative oversight committee and advisory task force, including changes in membership and scope of study (Senate Bill 22-021)

Oversight Committee General Charge

The legislative oversight committee (committee) is responsible for the oversight of the advisory task force and recommending legislative changes. The advisory task force is directed to examine the identification, diagnosis, and treatment of persons with behavioral health disorders who are involved in the criminal and juvenile justice systems, including the examination of liability, safety, and cost as they relate to these issues. The legislative oversight committee is required to submit an annual report to the General Assembly by January 15 of each year regarding the recommended legislation resulting from the work of the advisory task force.

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.

Advisory Task Force Charge

Senate Bill 22-021 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.

Task Force Membership

Table 1 lists the members of the advisory task force and the agencies they represent. The advisory task force consists of 31 members.

Table 1
BHDCJS Advisory Task Force

State or Private Agency	Representative(s) and Affiliation(s)	
Department of Public Safety (1)	**VACANT**	Division of Criminal Justice
Department of Corrections (1)	Heather Salazar	Division of Parole
Local Law Enforcement (2) - one an active service police officer and the other from a sheriff's department	Michael Zeller	Greeley Police Department
	VACANT	Sheriff's Department
Department of Human Services (4)	Ashley Tunstall	Division of Youth Services
	Ryan Templeton	Behavioral Health Administration
	Jagruti Shah	Colorado Mental Health Institute at Pueblo
	Trevor Williams	Child Welfare
County Department of Social Services (2)	Susan Walton	Park County Department of Human Services
	Lindsay Maisch	Pitkin County Department of Human Services
Department of Education (1)	Michael Ramirez	Teaching and Learning Unit
State Attorney General's Office (1)	**VACANT**	Assistant Attorney General
District Attorneys (1)	Amanda Duhon	8th Judicial District - District Attorney's Office
Public Defenders (1)	Karen Knickerbocker	Office of the Colorado State Public Defender
Criminal Defense Bar (2), one with juvenile experience	**VACANT**	
	Gina Shimeall	Criminal Defense Bar
Practicing Mental Health Professionals (2), one with juvenile experience	**VACANT**	
	David Iverson MD	Colorado Coalition for the Homeless - Chair
Community Mental Health Centers in Colorado (1)	Cali Thole	Summit Stone Health Partners
Person with Knowledge of Public Benefits and Public Housing in Colorado (1)	Kristin Toombs	Colorado Department of Local Affairs, Division of Housing
Department of Health Care Policy & Financing (1)	Jeffrey Eggert & Cristen Bates (temporary)	HCPF
Practicing Forensic Professional (1)	Libby Stuyt	Forensic Professional
Members of the Public (3)	Bethe Feltman	Member with a mental illness who has been involved in the Colorado criminal justice system
	Janice Greenwood	Parent of a child who has a mental illness and who has been involved in the Colorado criminal justice system
	Melanie Kesner	Member with an adult family member who has a mental illness and who has been involved in the Colorado criminal justice system
Office of the Child's Representative (1)	Katie Hecker	Youth Justice Attorney
Non-Profit organization that works on statewide Legislation and organizing Coloradoans to promote Behavioral, mental and physical health needs (1)	Stuart Jenkins	Healthier Colorado
Office of the Alternate Defense Counsel (1)	Kevin Bishop	Social Worker Coordinator
Colorado Department of Labor and Employment (1)	**VACANT**	
Judicial Branch (2)	Jonathon Shamis	Lake County Judge
	Michele Staley	Juvenile Programs Coordinator, Probation Services

Updated: December 22, 2022

Legislative Oversight 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.

Legislative Recommendations from the Task Force and Oversight Committee Members

The legislative oversight committee received updates on recent activities of the advisory task force, which met monthly throughout the year. The advisory task force and its subcommittees focused on housing, data and information sharing, mental health holds, and juveniles, as those topics relate to persons with mental health disorders who are involved in the criminal and juvenile justice systems.

The different subcommittees of the advisory task force worked on a variety of projects throughout the year, which focused on enhancing diversion programs, mitigating the school-to-prison pipeline, working with the Office of Behavioral Health, developing a High-Potency THC White Paper, and presenting recommendations to Governor Polis' Behavioral Health Task Force. The advisory task force presented regular updates on these, and other projects, to the committee. Additionally, the advisory task force prioritized legislative outreach efforts, and clarified advisory task force membership expectations. Further, the advisory task force elected leadership positions and updated its membership as necessary.

In addition to input from the task force, the legislative oversight committee considered legislation recommended by stakeholders and committee members. As a result, the legislative oversight committee drafted and approved four pieces of legislation. The recommended legislation and other topics of discussion are outlined is discussed in more detail below.

Juvenile Restoration 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.

Committee Recommendation. 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.

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.

Committee Recommendation: In response to these concerns, Bill B authorizes annual payments from the state General Fund to continue the 911 Resource Center.

Housing

The housing subcommittee explored ways to expand upon House Bill 22-1283, which requires the Colorado Department of Human Services to create an in-home and residential respite care program, provide operational support for psychiatric residential treatment facilities, creates additional substance use treatment beds, continues the crisis service program and builds a neuro-psych facility.

Committee recommendations. The subcommittee specifically recommended that these programs be expanded to include families with adult children that have serious and persistent mental illness. The legislative oversight committee, discussed, but did not recommend legislation on this topic.

Mental Health Holds

Mental Health Holds. The mental health hold subcommittee presented on the utilization of mental health holds across the country. They ultimately found that individuals found to be incompetent to proceed did not always have a viable path to competency and release. The task force recommended reworking the contracts between the state and mental health centers to include required services for each person found to be incompetent to proceed. They also continued their previous work of looking at ways to improve diversion programs for individuals deemed incompetent to proceed.

Committee recommendation. Upon further discussion, the legislative oversight committee advised the task force to pursue this topic through rule changes instead of legislation.

High Potency Marijuana

The marijuana subcommittee presented information on the elevated presence of substance use disorders for the criminal justice population in comparison to the general population, with high potency marijuana having particularly dangerous impacts. The subcommittee recommended restrictions on the use of medical marijuana for offenders and a limit on an offender's access to medical marijuana if they did not previously possess a "red card." The legislative oversight committee

discussed whether or not this would violate the mandate that marijuana be legalized in a similar way to alcohol.

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.

Committee Recommendation. As a result of its discussions, the committee recommends Bill D, which restricts the use of clinical restraints in correctional facilities.

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. People living with serious mental illness, such as schizophrenia and bipolar disorder may already struggle with adhering to their medication schedule and the majority of psychiatrists surveyed reported formulary restrictions as the most frequent roadblock to optimal treatment. Overall applying formulary restrictions to antipsychotics is associated with higher total medical expenditures for patients with serious mental illness. The committee and task force discussed ways to address Medicaid formulary restrictions as roadblocks for individuals with severe mental illness.

Committee Recommendation. Bill C prohibits the use of these formulary restrictions to increase access to medications for individuals with serious mental illnesses.

Hepatitis C and Juveniles

In 2018, the Colorado Department of Corrections finalized a settlement with the America Civil Liberties Union (ACLU) to spend $41 million over two years to treat prisoners with hepatitis C. Since then, the department has removed the requirement that inmates undergo drug or alcohol treatment as a precondition of treatment for hepatitis C and that treatment will not be refused as a result of any disciplinary violation. Members of the committee further discussed how physical illnesses can have a negative effect on an individual's mental health and how this effect can be compounded by incarceration.

Committee Recommendation. As a result of these discussions, the committee considered ways to further address hepatitis C infections within the Division of Youth Services facilities, including Bill 4 which would have required the DHS to identify and immediately treat youth in Division of Youth Services facilities who are diagnosed with hepatitis C. However, based on current practices in the DHS aligning with the intent of the bill, the bill was withdrawn and not recommended for introduction.

Summary of Recommendations

As a result of the committee's activities, the committee recommended four bills to the Legislative Council for consideration in the 2023 session. At its meeting on October 14, 2022 the Legislative Council approved four recommended bills for introduction. The approved bills are described below.

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 prohibits a correctional facility from using a clinical or chemical restraint on an inmate with limited exceptions. Additionally, the measure requires 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.

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/committees/treatment-persons-behavioral-health-disorders-criminal-and-juvenile-justice-systems/2022

Meeting Date and Topics Discussed

Legislative Oversight Committee

June 26, 2022

- Committee overview and update on 2022 legislation
- Overview of advisory task force activities
- Status update on task force subcommittees
- Task force appointments
- Future topics of discussion and oversight committee meeting dates

October 11, 2022

- Update on advisory task force and subcommittee activities and policy recommendations
- Bill draft request discussion
- Task force appointments

October 17, 2022

- Task force appointments
- Bill draft request discussion

September 29, 2022

- Consideration and referral of bill draft requests to Legislative Council

Advisory Task Force

January 20, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

February 17, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

March 17, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

April 21, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

May 19, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

June 16, 2022
- Legislative oversight committee updates
- Subcommittee updates, study areas, and action items

October 20, 2022
- Introductions & membership updates'
- Legislative oversight committee updates
- Subcommittee updates and study areas

November 17, 2022
- Membership and administrative updates
- Subcommittee updates
- Discuss 2023 goals and study areas

December 15, 2022
- Membership updates
- Subcommittee updates
- Legislative oversight committee update and 2023 areas of study

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILL A

LLS NO. 23-0153.02 Jane Ritter x4342 **HOUSE BILL**

HOUSE SPONSORSHIP

Benavidez and Amabile,

SENATE SPONSORSHIP

Rodriguez, Simpson

House Committees **Senate Committees**

A BILL FOR AN ACT

CONCERNING ISSUES RELATED TO JUVENILE COMPETENCY TO PROCEED.

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 Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill addresses issues related to a determination of juvenile competency to proceed (competency) and restoration of competency (restoration). The bill allows:

- The district attorney, defense attorney, guardian ad litem,

department of human services, a competency evaluator, a restoration treatment provider, and the court, without written consent of the juvenile or further order of the court, to access competency evaluations and restoration evaluations, including all second evaluations; information and documents related to competency evaluations; the competency evaluator, for the purpose of discussing the competency evaluation; and the providers of court-ordered restoration services for the purpose of discussing such services;

- Parties to exchange names, addresses, reports, and statements of physicians or psychologists who examined or treated the juvenile for competency;
- The court or any party to raise, at any time, the issue of a need for a restoration evaluation of the juvenile's competency; and
- A juvenile to be examined by a competency evaluator of the juvenile's own choice and to request a second evaluation in response to a court-ordered competency evaluation or a court-ordered restoration evaluation.

If the court determines that the juvenile is incompetent to proceed and unlikely to be restored to competency in the reasonably foreseeable future, a time frame is set forth for the dismissal of charges based on the severity and type of charge.

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

SECTION 1. In Colorado Revised Statutes, 19-2.5-102, **repeal** (8), (25), and (44) as follows:

19-2.5-102. Definitions. In addition to the terms defined in section 19-1-103, as used in this article 2.5, unless the context otherwise requires:

(8) ~~"Competent to proceed" means that a juvenile has sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist in the defense and that the juvenile has a rational as well as a factual understanding of the proceedings.~~

(25) ~~"Incompetent to proceed" means that, based on an intellectual or developmental disability, mental health disorder, or lack of mental capacity, a juvenile does not have sufficient present ability to consult with the juvenile's attorney with a reasonable degree of rational understanding in order to assist in the defense or that the juvenile does not have a rational as well as a factual understanding of the proceedings taking place.~~

(44) ~~"Restoration to competency hearing" means a hearing to determine whether a juvenile who has previously been determined to be incompetent to proceed has achieved or is restored to competency.~~

SECTION 2. In Colorado Revised Statutes, **add** 19-2.5-701.5 as follows:

19-2.5-701.5. Definitions. AS USED IN THIS PART 7, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMPETENCY EVALUATION" MEANS AN EVALUATION CONDUCTED BY A COMPETENCY EVALUATOR THAT MEETS THE REQUIREMENTS DESCRIBED IN SECTION 19-2.5-703 (4). "COMPETENCY EVALUATION" INCLUDES BOTH COURT-ORDERED EVALUATIONS PERFORMED BY THE DEPARTMENT AND SECOND EVALUATIONS.

(2) "COMPETENCY EVALUATOR" MEANS AN INDIVIDUAL WITH THE QUALIFICATIONS DESCRIBED IN SECTION 19-2.5-703 (4)(b).

(3) "COMPETENCY HEARING" MEANS AN INITIAL HEARING TO DETERMINE WHETHER A JUVENILE IS COMPETENT TO PROCEED.

(4) "COMPETENT TO PROCEED" MEANS THAT A JUVENILE HAS THE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE JUVENILE'S ATTORNEY, WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING, TO ASSIST THE ATTORNEY IN THE JUVENILE'S DEFENSE, AND THAT THE

JUVENILE HAS A RATIONAL AS WELL AS FACTUAL UNDERSTANDING OF THE PROCEEDINGS.

(5) "INCOMPETENT TO PROCEED" MEANS THAT, BASED ON AN INTELLECTUAL OR DEVELOPMENTAL DISABILITY, MENTAL HEALTH DISORDER, OR LACK OF MENTAL CAPACITY, A JUVENILE DOES NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE JUVENILE'S ATTORNEY WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST THE ATTORNEY IN THE JUVENILE'S DEFENSE OR THAT THE JUVENILE DOES NOT HAVE A RATIONAL AS WELL AS A FACTUAL UNDERSTANDING OF THE PROCEEDINGS.

(6) "RESTORATION EVALUATION" MEANS AN EVALUATION CONDUCTED BY A COMPETENCY EVALUATOR TO DETERMINE IF THE JUVENILE HAS BECOME COMPETENT TO PROCEED OR WILL BE ABLE TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE. "RESTORATION EVALUATION" INCLUDES BOTH COURT-ORDERED EVALUATIONS BY THE DEPARTMENT AND SECOND EVALUATIONS.

(7) "RESTORATION PROGRESS REVIEW HEARING" MEANS A HEARING IN WHICH THE JUVENILE'S PROGRESS IN RESTORATION TO COMPETENCY EDUCATION AND OTHER APPLICABLE SERVICES IS REVIEWED, BASED ON RESTORATION EDUCATION, TREATMENT RECORDS, AND ANY PRIOR COMPETENCY EVALUATION REPORTS.

(8) "RESTORATION TO COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER A JUVENILE WHO HAS PREVIOUSLY BEEN DETERMINED TO BE INCOMPETENT TO PROCEED IS NOW COMPETENT TO PROCEED.

(9) "SECOND EVALUATION" MEANS AN EVALUATION IN RESPONSE TO A COURT-ORDERED COMPETENCY EVALUATION OR COURT-ORDERED

RESTORATION EVALUATION REQUESTED BY THE JUVENILE THAT IS PERFORMED BY A COMPETENCY EVALUATOR AND THAT IS NOT PERFORMED BY, UNDER THE DIRECTION OF, OR PAID FOR BY THE DEPARTMENT.

SECTION 3. In Colorado Revised Statutes, 19-2.5-702, **amend** (2) as follows:

19-2.5-702. Incompetent to proceed - effect - how and when raised. (2) A juvenile must not be tried or sentenced if the juvenile is incompetent to proceed, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, at that stage of the proceedings. Juveniles, like adults, are presumed competent to proceed, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, until such time as they are found incompetent to proceed through a decision by the court. A determination of competency must include an evaluation of intellectual and developmental disabilities, mental health disorders, and mental capacity. Age alone is not determinative of incompetence without a finding that the juvenile actually lacks the relevant capacities for competence.

SECTION 4. In Colorado Revised Statutes, 19-2.5-703, **amend** (4)(c) as follows:

19-2.5-703. Determination of incompetency to proceed. (4) (c) The competency evaluation must, at a minimum, include an opinion regarding whether the juvenile is incompetent to proceed as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation must include a recommendation as to whether there is a likelihood that the juvenile may achieve or be restored to competency IN THE REASONABLY FORESEEABLE FUTURE and identify appropriate services to restore the juvenile to competency.

SECTION 5. In Colorado Revised Statutes, **add** 19-2.5-703.5 as follows:

19-2.5-703.5. Waiver of privilege - exchange of information - admissibility of statements. (1) WHEN THE COURT DETERMINES THAT A JUVENILE IS INCOMPETENT TO PROCEED, ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE BY THE JUVENILE OR THE JUVENILE'S PARENT OR LEGAL GUARDIAN IS DEEMED WAIVED WITHIN THE CASE TO ALLOW THE COURT AND PARTIES TO DETERMINE ISSUES RELATED TO THE JUVENILE'S COMPETENCY, RESTORATION, AND ANY MANAGEMENT PLAN DEVELOPED BY THE COURT PURSUANT TO SECTION 19-2.5-704 (3). THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATORS, ANY RESTORATION TREATMENT PROVIDERS, AND THE COURT ARE GRANTED ACCESS, WITHOUT WRITTEN CONSENT OF THE JUVENILE OR FURTHER ORDER OF THE COURT, TO:

(a) COMPETENCY EVALUATIONS AND RESTORATION EVALUATIONS, INCLUDING ALL SECOND EVALUATIONS;

(b) INFORMATION AND DOCUMENTS RELATED TO COMPETENCY EVALUATIONS THAT ARE CREATED, OBTAINED, REVIEWED, OR RELIED ON BY A COMPETENCY EVALUATOR PERFORMING A COURT-ORDERED COMPETENCY EVALUATION;

(c) INFORMATION AND DOCUMENTS RELATING TO COMPETENCY RESTORATION THAT ARE CREATED, OBTAINED, REVIEWED, OR RELIED ON BY A COMPETENCY PROVIDER PERFORMING COURT-ORDERED RESTORATION SERVICES;

(d) THE COMPETENCY EVALUATOR, FOR THE PURPOSE OF DISCUSSING THE COMPETENCY EVALUATION; AND

(e) THE PROVIDERS OF COURT-ORDERED RESTORATION SERVICES

FOR THE PURPOSE OF DISCUSSING SUCH SERVICES.

(2) UPON A REQUEST BY EITHER PARTY OR THE COURT FOR INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE COMPETENCY EVALUATOR OR RESTORATION SERVICES PROVIDER SHALL PROVIDE THE INFORMATION TO THE PARTY OR COURT FOR USE IN PREPARING FOR A COMPETENCY HEARING, RESTORATION PROGRESS REVIEW HEARING, RESTORATION TO COMPETENCY HEARING, OR HEARING REGARDING A MANAGEMENT PLAN PURSUANT TO SECTION 19-2.5-704 (3) AND FOR USE IN ANY SUCH HEARING.

(3) A COMPETENCY EVALUATOR OR RESTORATION SERVICES PROVIDER ASSIGNED PURSUANT TO A COURT ORDER ISSUED PURSUANT TO THIS ARTICLE 2.5 SHALL PROVIDE PROCEDURAL INFORMATION TO THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATORS, ANY RESTORATION TREATMENT PROVIDERS, AND THE COURT CONCERNING:

(a) THE JUVENILE'S LOCATION;

(b) THE JUVENILE'S HOSPITAL OR FACILITY ADMISSION STATUS;

(c) THE STATUS OF EVALUATION PROCEDURES;

(d) THE STATUS OF RESTORATION SERVICES PROCEDURES; AND

(e) ANY OTHER PROCEDURAL INFORMATION RELEVANT TO THE JUVENILE'S COMPETENCY, RESTORATION, OR MANAGEMENT PLAN.

(4) NOTHING IN THIS SECTION LIMITS THE COURT'S ABILITY TO ORDER, IN ADDITION TO THE INFORMATION SET FORTH IN SUBSECTIONS (1) AND (3) OF THIS SECTION, ADDITIONAL INFORMATION BE PROVIDED TO THE DISTRICT ATTORNEY, DEFENSE ATTORNEY, THE GUARDIAN AD LITEM, THE DEPARTMENT, ANY COMPETENCY EVALUATOR, ANY RESTORATION TREATMENT PROVIDER, AND THE COURT, UNLESS IT IS OTHERWISE

PROTECTED FROM DISCLOSURE BY OTHER LAW. NOTHING IN THIS SECTION LIMITS THE INFORMATION THAT IS AVAILABLE WITH THE WRITTEN CONSENT OF THE JUVENILE.

(5) THE COURT SHALL ORDER THE PARTIES TO EXCHANGE THE NAMES, ADDRESSES, REPORTS, AND STATEMENTS OF EACH PHYSICIAN OR PSYCHOLOGIST WHO EXAMINED OR TREATED THE JUVENILE FOR COMPETENCY.

(6) EVIDENCE OBTAINED DURING A COMPETENCY EVALUATION OR DURING COMPETENCY RESTORATION SERVICES THAT IS RELATED TO THE JUVENILE'S COMPETENCY OR INCOMPETENCY IS ONLY ADMISSIBLE TO DETERMINE THE JUVENILE'S COMPETENCY, INCOMPETENCY, OR TO DETERMINE ORDERS RELATED TO RESTORATION, RESTORATION SERVICES, OR A MANAGEMENT PLAN AND IS NOT ADMISSIBLE ON THE ISSUES RAISED BY A PLEA OF NOT GUILTY.

SECTION 6. In Colorado Revised Statutes, 19-2.5-704, **amend** (2)(a) and (3)(a); and **add** (2)(c) and (2.5) as follows:

19-2.5-704. Procedure after determination of competency or incompetency. (2) (a) If the court finally determines pursuant to section 19-2.5-703 that the juvenile is incompetent to proceed but may be restored to competency IN THE REASONABLY FORESEEABLE FUTURE, the court shall stay the proceedings and order that the juvenile receive services designed to restore the juvenile to competency, based upon recommendations in the competency evaluation, unless the court makes specific findings that the recommended services in the competency evaluation are not justified. The court shall order that the restoration services ordered are provided in the least-restrictive environment, taking into account the public safety and the best interests of the juvenile, and

that the provision of the services and the juvenile's participation in those services occur in a timely manner. The court shall ~~review the provision of and the juvenile's participation in the services and the juvenile's progress toward competency~~ HOLD A RESTORATION PROGRESS REVIEW HEARING at least every ninety-one days until competency is restored, unless the juvenile is in custody, in which event the court shall ~~review the case~~ HOLD A RESTORATION PROGRESS REVIEW HEARING every thirty-five days to ensure the prompt provision of services in the least-restrictive environment. The court shall not maintain jurisdiction longer than the maximum possible sentence for the ~~original~~ MOST SERIOUS offense, unless the court makes specific findings of good cause to retain jurisdiction. However, the juvenile court's jurisdiction shall not extend beyond the juvenile's twenty-first birthday.

(c) THE COURT OR A PARTY MAY RAISE, AT ANY TIME, THE NEED FOR A RESTORATION EVALUATION OF A JUVENILE'S COMPETENCY. IF RAISED, THE COURT SHALL ORDER A RESTORATION EVALUATION ONLY WHEN THERE IS CREDIBLE INFORMATION THAT THE JUVENILE'S CIRCUMSTANCES HAVE CHANGED, THE COURT CANNOT FAIRLY DETERMINE WHETHER THE JUVENILE HAS BEEN RESTORED TO COMPETENCY OR WILL BE ABLE TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, AND THE CAUSE FOR A RESTORATION EVALUATION OUTWEIGHS THE NEGATIVE IMPACT OF A RESTORATION EVALUATION UPON THE JUVENILE AND ANY DELAY THAT WILL BE CAUSED BY A RESTORATION EVALUATION. THE COURT MAY HOLD A HEARING TO DETERMINE IF A RESTORATION EVALUATION MUST BE ORDERED. IF THE COURT ORDERS A RESTORATION EVALUATION, SUCH EVALUATION MUST MEET THE REQUIREMENTS OF SECTION 19-2.5-703 (4).

(2.5) (a) IF THE COURT FINDS A JUVENILE IS INCOMPETENT TO PROCEED AND THE JUVENILE HAS BEEN INCOMPETENT TO PROCEED FOR A PERIOD OF TIME THAT EXCEEDS THE TIME LIMITS SET FORTH IN THIS SUBSECTION (2.5), THE COURT SHALL ENTER A FINDING THAT THE JUVENILE IS UNRESTORABLE TO COMPETENCY AND SHALL DETERMINE WHETHER A MANAGEMENT PLAN FOR THE JUVENILE IS NECESSARY PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION. THE TIME LIMITS ARE AS FOLLOWS:

(I) IF THE HIGHEST CHARGE WOULD BE A MISDEMEANOR, A MISDEMEANOR DRUG OFFENSE, A PETTY OFFENSE, OR A TRAFFIC OFFENSE, AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF SIX MONTHS, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY;

(II) IF THE HIGHEST CHARGE WOULD BE A CLASS 4, 5, OR 6 FELONY, OR A LEVEL 3 OR 4 DRUG FELONY, AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF ONE YEAR, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY;

(III) IF THE HIGHEST CHARGE WOULD BE A CLASS 2 OR 3 FELONY OR A LEVEL 1 OR 2 DRUG FELONY, EXCEPT A CLASS 1, 2, OR 3 FELONY CRIME OF VIOLENCE, AND THE JUVENILE IS NOT RESTORED TO COMPETENCY AFTER A PERIOD OF TWO YEARS, THE COURT SHALL FIND THE JUVENILE UNRESTORABLE TO COMPETENCY; OR

(IV) IF THE HIGHEST CHARGE WOULD BE A CLASS 1 FELONY OR A CLASS 1, 2, OR 3 FELONY CRIME OF VIOLENCE, OR NOTWITHSTANDING OTHER PROVISIONS OF THIS SUBSECTION (2.5), IF THE JUVENILE IS CHARGED AS AN AGGRAVATED JUVENILE OFFENDER PURSUANT TO SECTION 19-2.5-1125 (4) OR 19-2.5-1127, AND THE JUVENILE IS NOT RESTORED TO

COMPETENCY AFTER A PERIOD OF FIVE YEARS, THE COURT SHALL PRESUME THAT THE JUVENILE IS UNRESTORABLE TO COMPETENCY; EXCEPT THAT THE PROSECUTION MAY REBUT THIS PRESUMPTION WITH A SHOWING BY A PREPONDERANCE OF THE EVIDENCE THAT THE JUVENILE IS LIKELY TO BE RESTORED TO COMPETENCY PRIOR TO THE JUVENILE'S TWENTY-FIRST BIRTHDAY.

(b) NOTHING IN THIS SUBSECTION (2.5) PRECLUDES A COURT FROM DETERMINING A JUVENILE IS UNLIKELY TO BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE AND ENTERING AN ORDER THAT THE JUVENILE IS UNRESTORABLE TO COMPETENCY PURSUANT TO SUBSECTION (3)(a) OF THIS SECTION THROUGH A COMPETENCY HEARING OR RESTORATION TO COMPETENCY HEARING CONDUCTED AT ANY TIME PRIOR TO THE EXPIRATION OF THE TIME LIMITS SET FORTH IN SUBSECTION (2.5)(a) OF THIS SECTION, BASED UPON THE AVAILABLE EVIDENCE.

(3) (a) If the court finally determines pursuant to section 19-2.5-703 OR 19-2.5-703.5 that the juvenile is incompetent to proceed and cannot be restored to competency IN THE REASONABLY FORESEEABLE FUTURE, the court shall ENTER AN ORDER FINDING THE JUVENILE UNRESTORABLE TO COMPETENCY AND SHALL determine whether a management plan for the juvenile is necessary, taking into account the public safety and the best interests of the juvenile. If the court determines a management plan is necessary, the court shall develop the management plan after ordering that the juvenile be placed in the least-restrictive environment, taking into account the public safety and best interests of the juvenile. If the court determines a management plan is unnecessary, the court may continue any treatment or plan already in place for the juvenile. The management plan must, at a minimum, address treatment

for the juvenile, identify the party or parties responsible for the juvenile, and specify appropriate behavior management tools, if they are not otherwise part of the juvenile's treatment.

SECTION 7. In Colorado Revised Statutes, 19-2.5-705, **amend** (1) as follows:

19-2.5-705. Restoration to competency hearing. (1) The court may order a restoration to competency hearing, as defined in ~~section 19-2.5-102~~ SECTION 19-2.5-701.5, at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a restoration of competency hearing if a competency evaluator with the qualifications described in section 19-2.5-703 (4)(b) files a report certifying that the juvenile is competent to proceed.

SECTION 8. In Colorado Revised Statutes, **add** 19-2.5-707 as follows:

19-2.5-707. Evaluation at the request of the juvenile. IF A JUVENILE WISHES TO BE EXAMINED BY A COMPETENCY EVALUATOR OF THE JUVENILE'S OWN CHOICE IN CONNECTION WITH A PROCEEDING PURSUANT TO THIS ARTICLE 2.5, THE COURT, UPON TIMELY MOTION, SHALL ORDER THAT THE COMPETENCY EVALUATION OCCUR. A JUVENILE HAS THE RIGHT TO REQUEST A SECOND EVALUATION IN RESPONSE TO A COURT-ORDERED COMPETENCY EVALUATION OR A COURT-ORDERED RESTORATION EVALUATION WITHIN SEVEN DAYS AFTER THE RECEIPT OF AN EVALUATION. WHEN REQUESTED, THE COURT SHALL ALLOW TIME FOR THE SECOND EVALUATION TO BE COMPLETED PRIOR TO ANY COMPETENCY HEARING OR RESTORATION HEARING.

SECTION 9. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the

ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILL B

LLS NO. 23-0159.01 Jason Gelender x4330 **SENATE BILL**

SENATE SPONSORSHIP

Fields, Rodriguez

HOUSE SPONSORSHIP

Amabile,

Senate Committees **House Committees**

A BILL FOR AN ACT

CONCERNING ONGOING FUNDING FOR THE COLORADO 911 RESOURCE CENTER.

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 Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. To provide ongoing funding for the Colorado 911 resource center, the state treasurer is required to issue a warrant, paid from the general fund, in the amount of $250,000 to the Colorado 911 resource center on July 1, 2023, and on each July 1 thereafter.

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

SECTION 1. In Colorado Revised Statutes, 29-11-100.2, **add** (3) as follows:

29-11-100.2. Legislative declaration. (3) THE GENERAL ASSEMBLY FURTHER FINDS AND DECLARES THAT:

(a) THE PUBLIC UTILITIES COMMISSION CREATED THE COLORADO 911 RESOURCE CENTER IN 2006 AS AN INDEPENDENT NONPROFIT ENTITY TO PROVIDE CENTRALIZED GUIDANCE AND ASSISTANCE TO LOCAL 911 EMERGENCY CALL SERVICE AUTHORITIES AND PUBLIC SAFETY ANSWERING POINTS THROUGHOUT THE STATE;

(b) THE COLORADO 911 RESOURCE CENTER SUPPORTS LOCAL 911 AUTHORITIES AND PROFESSIONALS IN KEEPING THE PUBLIC AND PUBLIC SAFETY RESPONDERS OF COLORADO SAFE BY CREATING A STATEWIDE INFORMATION DATABASE AND CLEARINGHOUSE WHERE 911 PROFESSIONALS CAN LEARN ABOUT CURRENT ISSUES AND ABOUT HOW DIFFERENT LOCAL 911 AUTHORITIES AND PUBLIC SAFETY ANSWERING POINTS PROVIDE 911 SERVICES AND WHERE 911 PROFESSIONALS CAN ALSO ACCESS SAMPLE POLICIES AND ORGANIZATIONAL DOCUMENTS;

(c) THE COLORADO 911 RESOURCE CENTER HAS BEEN FUNDED SINCE ITS INCEPTION FROM THE PROCEEDS OF A 2004 SETTLEMENT AGREEMENT APPROVED BY THE PUBLIC UTILITIES COMMISSION THAT REQUIRED A TELECOMMUNICATIONS COMPANY TO PROVIDE TWO MILLION DOLLARS FOR THE CREATION AND OPERATION OF A NONPROFIT ORGANIZATION TO ASSIST LOCAL PUBLIC SAFETY ANSWERING POINTS, BUT THAT FUNDING IS RUNNING OUT AND WILL NOT BE AVAILABLE AFTER STATE FISCAL YEAR 2022-23; AND

(d) THE COLORADO 911 RESOURCE CENTER PROVIDES A CRITICAL PUBLIC SERVICE THAT BENEFITS ALL COLORADANS, AND IT IS NECESSARY, APPROPRIATE, IN THE BEST INTEREST OF ALL COLORADANS, AND IN FURTHERANCE OF A PUBLIC PURPOSE TO PROVIDE ONGOING, ADEQUATE, AND SUSTAINABLE STATE FUNDING TO THE COLORADO 911 RESOURCE CENTER.

SECTION 2. In Colorado Revised Statutes, **add** 29-11-108 as follows:

29-11-108. Colorado 911 resource center - ongoing funding - definition. (1) ON JULY 1, 2023, AND ON EACH JULY 1 THEREAFTER, THE STATE TREASURER SHALL ISSUE A WARRANT, PAID FROM THE GENERAL FUND, IN THE AMOUNT OF TWO HUNDRED FIFTY THOUSAND DOLLARS TO THE COLORADO 911 RESOURCE CENTER.

(2) AS USED IN THIS SECTION, "COLORADO 911 RESOURCE CENTER" MEANS THE COLORADO 911 RESOURCE CENTER CREATED BY THE COMMISSION OR ITS SUCCESSOR ENTITY.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILL C

LLS NO. 23-0160.01 Chelsea Princell x4335 **SENATE BILL**

SENATE SPONSORSHIP

Rodriguez and Fields,

HOUSE SPONSORSHIP

Amabile and Benavidez,

Senate Committees **House Committees**

A BILL FOR AN ACT

CONCERNING PRIOR AUTHORIZATION EXEMPTION FOR MEDICAID COVERAGE OF MEDICATIONS TREATING SERIOUS MENTAL ILLNESS.

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 Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill prohibits the department of health care policy and financing from imposing prior authorization, step therapy, and fail first requirements for medicaid coverage of a prescription drug,

as indicated on federally approved labels, to treat serious mental health disorders.

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

SECTION 1. Legislative declaration. (1) The general assembly finds, determines, and declares that:

(a) It is estimated that nearly a quarter million Coloradans are living with serious mental health disorders like schizophrenia or bipolar disorder, yet less than half of the adult population in the state of Colorado receives appropriate care;

(b) It is well documented that access to appropriate treatment, including medication, leads to better outcomes for individuals living with serious mental health disorders;

(c) Individuals living with schizophrenia subject to formulary restrictions are more likely to be hospitalized, with twenty-three percent higher inpatient costs. Similar effects are observed for patients with bipolar disorder. Prior authorization requirements for atypical antipsychotics are associated with a twenty-two percent increase in the likelihood of imprisonment.

(d) Policies that restrict access to medications, including prior authorization, step therapy protocol, and fail first requirements may diminish access to necessary medications and ultimately result in significant human, economic, and social costs.

(2) Therefore, the general assembly declares that access to medications for the treatment of serious mental health disorders is available without access restrictions for Coloradans receiving care through the medical assistance program.

SECTION 2. In Colorado Revised Statutes, **add** 25.5-5-514 as

follows:

25.5-5-514. Prior authorization exemption for medications treating serious mental health disorders - definitions. (1) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "FAIL FIRST" MEANS A METHOD OF DRUG PLAN FORMULARY CONTROL IN WHICH A PATIENT MUST TRY A LESS EXPENSIVE DRUG BEFORE BEING PRESCRIBED A MORE EXPENSIVE DRUG USED TO TREAT THE SAME IMPAIRMENT.

(b) "PRESCRIPTION DRUG" HAS THE SAME MEANING AS SET FORTH IN SECTION 12-280-103.

(c) "PRIOR AUTHORIZATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 10-16-112.5.

(d) "SERIOUS MENTAL HEALTH DISORDER" MEANS A DIAGNOSIS OF SCHIZOPHRENIA, SCHIZO-AFFECTIVE DISORDER, BIPOLAR DISORDER, OR MAJOR DEPRESSIVE DISORDER.

(e) "STEP THERAPY" HAS THE SAME MEANING AS SET FORTH IN SECTION 10-16-145.

(2) THE STATE DEPARTMENT SHALL NOT IMPOSE ANY PRIOR AUTHORIZATION, FAIL FIRST, OR STEP THERAPY REQUIREMENTS FOR ANY PRESCRIPTION DRUG, AS INDICATED ON FEDERALLY APPROVED LABELS, TO TREAT SERIOUS MENTAL HEALTH DISORDERS.

(3) THIS SECTION APPLIES TO DRUGS BEING PROVIDED UNDER CONTRACT BETWEEN THE STATE DEPARTMENT AND A HEALTH MAINTENANCE ORGANIZATION.

(4) THIS SECTION DOES NOT PROHIBIT THE STATE DEPARTMENT FROM CONTRACTING WITH A MANAGED CARE ORGANIZATION FOR PHARMACEUTICAL SERVICES OFFERED UNDER THE MEDICAL ASSISTANCE

PROGRAM ADMINISTERED PURSUANT TO THIS TITLE 25.5 IF THE CONTRACT COMPLIES WITH THIS SECTION.

(5) NOTHING IN THIS SECTION PROHIBITS OR DISCOURAGES THE USE OF GENERIC DRUGS.

SECTION 3. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILL D

LLS NO. 23-0162.03 Jacob Baus x2173 **HOUSE BILL**

HOUSE SPONSORSHIP

Amabile and Benavidez,

SENATE SPONSORSHIP

Fields and Rodriguez,

House Committees **Senate Committees**

A BILL FOR AN ACT

CONCERNING MEASURES TO REGULATE THE USE OF RESTRICTIVE PRACTICES ON INDIVIDUALS IN CORRECTIONAL FACILITIES.

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 Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill prohibits the use of a clinical restraint on an individual, unless:

- The use is to prevent the individual from committing imminent and serious harm to the individual's self or

another person, based on immediately present evidence and circumstances;

- All less restrictive interventions have been exhausted; and
- The clinical restraint is ordered by a licensed mental health provider.

The bill requires facilities that utilize clinical restraints to implement procedures to ensure frequent and consistent monitoring for the individual subjected to the clinical restraint and uniform documentation procedures concerning the use of the clinical restraint.

The bill limits the amount of time an individual may be subjected to a clinical restraint per each restraint episode and within a calendar year.

The bill prohibits the use of an involuntary medication on an individual, unless:

- The individual is determined to be dangerous to the individual's self or another person and the treatment is in the individual's medical interest;
- All less restrictive alternative interventions have been exhausted; and
- The involuntary medication is administered after exhaustion of procedural requirements that ensure a hearing, opportunity for review, and right to counsel.

The bill requires the department of corrections (department) to submit an annual report to the judiciary committees of the senate and house of representatives with data concerning the use of clinical restraints and involuntary medication in the preceding calendar year.

The bill requires the department to include specific data concerning the placement of individuals in settings with heightened restrictions in its annual administrative segregation report.

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

SECTION 1. In Colorado Revised Statutes, **add** 17-1-167 as follows:

17-1-167. Use of restraints for state inmates - criteria - documentation - intake assessment - rules - report - definitions. (1) (a) SUBJECT TO THE PROVISIONS OF THIS SECTION, A FACILITY SHALL NOT USE A CLINICAL RESTRAINT ON AN INDIVIDUAL, UNLESS:

(I) THE USE IS TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER

PERSON, BASED ON IMMEDIATELY PRESENT EVIDENCE AND CIRCUMSTANCES;

(II) THE FACILITY HAS EXHAUSTED ALL LESS RESTRICTIVE ALTERNATIVE INTERVENTIONS; AND

(III) THE RESTRAINT IS ORDERED BY A LICENSED MENTAL HEALTH PROVIDER.

(b) A FACILITY SHALL NOT USE A CLINICAL RESTRAINT ON AN INDIVIDUAL FOR LONGER THAN IS NECESSARY TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON.

(c) A LICENSED MENTAL HEALTH PROVIDER, MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, QUALIFIED HEALTH-CARE PROVIDER, OR ANY PERSON EMPLOYED BY THE FACILITY SHALL TERMINATE THE ORDER WHEN THE BEHAVIORS NECESSITATING THE CLINICAL RESTRAINT ARE NO LONGER EVIDENT AND THE CRITERIA OUTLINED BY THE CLINICAL RESTRAINT ORDER ARE SATISFIED OR, IF THE TIME LIMITATIONS PURSUANT TO SUBSECTION (2)(c) OR (3)(f) OF THIS SECTION ARE REACHED, WHICHEVER OCCURS FIRST.

(2) (a) A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON MAY USE A CLINICAL AMBULATORY RESTRAINT ON AN INDIVIDUAL; EXCEPT THAT THE RESTRAINT MUST NOT BE CONSTRUCTED OF METAL OR HARD PLASTIC OR HAVE A BELLY CHAIN OR PADLOCK.

(b) (I) A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL NOT USE A CLINICAL AMBULATORY RESTRAINT ON AN INDIVIDUAL FOR MORE THAN:

(A) TWELVE HOURS PER EPISODE; AND

(B) TWO HUNDRED FORTY HOURS TOTAL ACROSS ALL EPISODES IN ONE YEAR.

(II) THE CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL NOT RESTART THE TIME CALCULATION TO START A NEW EPISODE IF THE INDIVIDUAL IS TEMPORARILY RELEASED FROM A CLINICAL AMBULATORY RESTRAINT NOT FOR THE PURPOSE OF TERMINATING THE CLINICAL AMBULATORY RESTRAINT ORDER. THE TIME AN INDIVIDUAL IS TEMPORARILY RELEASED FROM A CLINICAL AMBULATORY RESTRAINT NOT FOR A PURPOSE OF TERMINATING THE CLINICAL AMBULATORY RESTRAINT ORDER SUSPENDS THE CALCULATION OF TIME PURSUANT TO SUBSECTION (2)(c)(I) OF THIS SECTION.

(c) (I) AN INITIAL CLINICAL AMBULATORY RESTRAINT ORDER MUST NOT EXCEED TWO HOURS. A LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL ASSESS THE INDIVIDUAL SUBJECTED TO THE RESTRAINT TO DETERMINE WHETHER TO TERMINATE OR CONTINUE THE ORDER AT LEAST ONCE EVERY HOUR.

(II) IF THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, CONTINUES THE INITIAL CLINICAL AMBULATORY RESTRAINT ORDER, THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL ASSESS THE INDIVIDUAL SUBJECT TO THE RESTRAINT TO DETERMINE WHETHER TO TERMINATE OR CONTINUE THE ORDER AT LEAST ONCE EVERY HOUR.

(III) AT EACH ASSESSMENT PURSUANT TO SUBSECTIONS (2)(c)(I) AND (2)(c)(II) OF THIS SECTION, THE LICENSED MENTAL HEALTH

PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL:

(A) MAKE A NEW DETERMINATION WHETHER THE ORDER TO CONTINUE RESTRAINT IS NECESSARY TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON, BASED ON THE IMMEDIATELY PRESENT EVIDENCE AND CIRCUMSTANCES;

(B) DETERMINE WHETHER A LESS RESTRICTIVE ALTERNATIVE INTERVENTION IS MORE APPROPRIATE THAN THE USE OF A CLINICAL AMBULATORY RESTRAINT; AND

(C) MODIFY THE ORDER TO REFLECT SPECIFIC BEHAVIORAL CRITERIA THE INDIVIDUAL MUST EXHIBIT IN ORDER FOR THE RESTRAINT TO BE REMOVED, AS APPROPRIATE.

(IV) AN ASSESSMENT PURSUANT TO SUBSECTIONS (2)(c)(I) OR (2)(c)(II) OF THIS SECTION MAY BE PERFORMED USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY.

(3) (a) A CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL NOT USE A CLINICAL FOUR-POINT RESTRAINT ON AN INDIVIDUAL; EXCEPT THAT A QUALIFIED FACILITY MAY USE A CLINICAL FOUR-POINT RESTRAINT ON AN INDIVIDUAL.

(b) A QUALIFIED FACILITY SHALL NOT USE A CLINICAL FOUR-POINT RESTRAINT CONSTRUCTED OF METAL OR HARD PLASTIC, OR HAS A BELLY CHAIN OR PADLOCK. A QUALIFIED FACILITY SHALL USE A CLINICAL FOUR-POINT RESTRAINT ON A BED WITH A MATTRESS.

(c) A QUALIFIED FACILITY SHALL NOT USE A HELMET OR DIAPER ON AN INDIVIDUAL SUBJECTED TO A CLINICAL FOUR-POINT RESTRAINT.

(d) A QUALIFIED FACILITY SHALL NOT RESTRAIN AN INDIVIDUAL

SUBJECT TO A CLINICAL FOUR-POINT RESTRAINT IN A PRONE POSITION. A QUALIFIED FACILITY SHALL CONSIDER THE INDIVIDUAL'S PREEXISTING MEDICAL CONDITIONS OR PHYSICAL DISABILITIES OR LIMITATIONS THAT MAY INCREASE THE RISK OF INJURY TO THE INDIVIDUAL DURING A CLINICAL RESTRAINT EPISODE AND RESTRAIN THE INDIVIDUAL IN A MANNER THAT MINIMIZES THE INDIVIDUAL'S DISCOMFORT AND RISK OF INJURY OR COMPLICATION. THE QUALIFIED FACILITY SHALL NOTIFY THE INDIVIDUAL SUBJECTED TO THE CLINICAL FOUR-POINT RESTRAINT THAT THE INDIVIDUAL MAY REQUEST REPOSITIONING AT ANY TIME TO MINIMIZE DISCOMFORT; EXCEPT THAT PRONE POSITIONING MUST NEVER BE PERMITTED.

(e) AT LEAST EVERY TWO HOURS, A QUALIFIED FACILITY SHALL RELEASE AN INDIVIDUAL SUBJECTED TO A CLINICAL FOUR-POINT RESTRAINT TO PROVIDE NOT LESS THAN TEN MINUTES FOR THE PERSON TO MOVE FREELY.

(f) (I) A QUALIFIED FACILITY SHALL NOT USE A CLINICAL FOUR-POINT RESTRAINT ON AN INDIVIDUAL FOR MORE THAN:

(A) FOUR HOURS PER EPISODE; AND

(B) TWO HUNDRED FORTY HOURS IN ONE YEAR.

(II) THE QUALIFIED FACILITY SHALL NOT RESTART THE TIME CALCULATION TO START A NEW EPISODE IF THE INDIVIDUAL IS TEMPORARILY RELEASED FROM A CLINICAL FOUR-POINT RESTRAINT NOT FOR THE PURPOSE OF TERMINATING THE CLINICAL FOUR-POINT RESTRAINT ORDER. THE TIME AN INDIVIDUAL IS TEMPORARILY RELEASED FROM A CLINICAL RESTRAINT FOR THE PURPOSE OF TERMINATING THE CLINICAL FOUR-POINT RESTRAINT ORDER SUSPENDS THE CALCULATION OF TIME PURSUANT TO SUBSECTION (3)(f)(I) OF THIS SECTION.

(g) (I) AN INITIAL ORDER FOR CLINICAL FOUR-POINT RESTRAINT MUST NOT EXCEED THIRTY MINUTES. A LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL ASSESS THE INDIVIDUAL SUBJECT TO THE CLINICAL FOUR-POINT RESTRAINT TO DETERMINE WHETHER TO TERMINATE OR CONTINUE THE ORDER AT LEAST ONCE DURING THE INITIAL THIRTY-MINUTE PERIOD.

(II) IF THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, CONTINUES THE INITIAL ORDER, A LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL ASSESS THE INDIVIDUAL SUBJECT TO THE CLINICAL FOUR-POINT RESTRAINT TO DETERMINE WHETHER TO TERMINATE OR CONTINUE THE ORDER AT LEAST ONCE EVERY HOUR.

(III) AT EACH ASSESSMENT PURSUANT TO SUBSECTIONS (3)(g)(I) AND (3)(g)(II) OF THIS SECTION, THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL:

(A) MAKE A NEW DETERMINATION WHETHER THE ORDER TO CONTINUE RESTRAINT IS NECESSARY TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON, BASED ON THE IMMEDIATELY PRESENT EVIDENCE AND CIRCUMSTANCES;

(B) DETERMINE WHETHER A LESS RESTRICTIVE ALTERNATIVE INTERVENTION IS MORE APPROPRIATE THAN THE USE OF A CLINICAL FOUR-POINT RESTRAINT; AND

(C) MODIFY THE ORDER TO REFLECT SPECIFIC BEHAVIORAL CRITERIA THE INDIVIDUAL MUST EXHIBIT IN ORDER FOR THE RESTRAINT TO BE REMOVED, AS APPROPRIATE.

(IV) AN ASSESSMENT PURSUANT TO SUBSECTIONS (3)(g)(I) OR (3)(g)(II) OF THIS SECTION MAY BE PERFORMED USING AUDIO-VIDEO COMMUNICATION TECHNOLOGY.

(4) AT LEAST EVERY FIFTEEN MINUTES, A QUALIFIED HEALTH-CARE PROVIDER SHALL EXAMINE THE INDIVIDUAL SUBJECTED TO A CLINICAL RESTRAINT, AT A MINIMUM:

(a) TO ENSURE THE INDIVIDUAL'S CIRCULATION IS UNRESTRICTED, BREATHING IS NOT COMPROMISED, AND OTHER PHYSICAL NEEDS ARE SATISFIED;

(b) TO ENSURE THE INDIVIDUAL IS PROPERLY POSITIONED IN THE RESTRAINT;

(c) TO OFFER THE INDIVIDUAL FLUIDS AND TOILET ACCESS, AND TO PROVIDE FLUIDS AND TOILET ACCESS IF REQUESTED BY THE INDIVIDUAL;

(d) TO MONITOR THE EFFECT OF MEDICATION ON THE INDIVIDUAL, IF APPLICABLE; AND

(e) TO MONITOR WHETHER THE INDIVIDUAL IS EXHIBITING BEHAVIORS REQUIRING THE CONTINUATION OR TERMINATION OF THE CLINICAL RESTRAINT ORDER.

(5) AT ALL TIMES AN INDIVIDUAL IS SUBJECTED TO A CLINICAL RESTRAINT, THE INDIVIDUAL MUST BE ABLE TO COMMUNICATE TO ANY EMPLOYEE, QUALIFIED HEALTH-CARE PROVIDER, LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO IS RESPONSIBLE FOR MONITORING THE INDIVIDUAL DURING THE CLINICAL

RESTRAINT EPISODE.

(6) (a) A FACILITY SHALL ENSURE THAT THE USE OF RESTRAINT IS DOCUMENTED AND MAINTAINED IN THE RECORD OF THE INDIVIDUAL WHO WAS RESTRAINED. AT A MINIMUM, THE FACILITY SHALL DOCUMENT:

(I) THE ORDER FOR CLINICAL RESTRAINT, THE DATE AND TIME OF THE ORDER, AND THE SIGNATURE OF THE LICENSED MENTAL HEALTH PROVIDER WHO ISSUED THE CLINICAL RESTRAINT ORDER. IF THE ORDER IS AUTHORIZED BY TELEPHONE, THE ORDER MUST BE TRANSCRIBED AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH AUTHORITY TO ACCEPT ORDERS, AND THE ORDERING LICENSED MENTAL HEALTH PROVIDER SHALL SIGN THE ORDER AS SOON AS PRACTICABLE.

(II) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF THE CLINICAL RESTRAINT, INCLUDING THE LESS INTRUSIVE INTERVENTIONS THAT WERE EMPLOYED AND FAILED, AND EVIDENCE OF THE IMMEDIATE CIRCUMSTANCES JUSTIFYING THE BELIEF THAT THE USE OF RESTRAINT WAS TO PREVENT THE INDIVIDUAL FROM COMMITTING IMMINENT AND SERIOUS HARM TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON;

(III) THE SPECIFIC BEHAVIORAL CRITERIA THE INDIVIDUAL MUST EXHIBIT IN ORDER FOR THE CLINICAL RESTRAINT EPISODE TO BE TERMINATED;

(IV) ANY MODIFICATIONS TO THE ORDER, AND THE TIME AND DATE, AND SIGNATURE OF THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO MODIFIES THE ORDER;

(V) THE DATE AND TIME OF AN ASSESSMENT PERFORMED PURSUANT TO SUBSECTIONS (2)(d) AND (3)(f) OF THIS SECTION, AND THE SIGNATURE OF THE QUALIFIED HEALTH-CARE PROFESSIONAL WHO

PERFORMED THE ASSESSMENT, AND FINDINGS JUSTIFYING THE TERMINATION OR CONTINUATION OF THE ORDER MADE PURSUANT TO THE ASSESSMENT;

(VI) THE DATE AND TIME OF AN ORDER MODIFICATION, THE DATE AND TIME OF THE MODIFICATION, AND THE SIGNATURE OF THE LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, WHO ISSUED THE CLINICAL RESTRAINT ORDER. IF THE ORDER IS MODIFIED BY TELEPHONE, THE MODIFICATION MUST BE TRANSCRIBED AND SIGNED AT THE TIME OF ISSUANCE BY A PERSON WITH AUTHORITY TO ACCEPT MODIFICATION, AND THE ORDERING LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL SIGN THE ORDER AS SOON AS PRACTICABLE.

(VII) THE DATE AND TIME OF EXAMINATIONS PURSUANT TO SUBSECTION (4) OF THIS SECTION, THE SIGNATURE OF THE QUALIFIED HEALTH-CARE PROVIDER WHO PERFORMED THE EXAMINATION, AND ANY RELEVANT OBSERVATIONS FROM THE EXAMINATION; AND

(VIII) THE DATE AND TIME OF THE TERMINATION OF THE ORDER, THE SIGNATURE OF THE PERSON WHO TERMINATED THE ORDER, THE OBSERVATIONS, AND EVIDENCE THAT THE INDIVIDUAL EXHIBITED BEHAVIOR JUSTIFYING THE TERMINATION OF THE ORDER.

(b) THE FACILITY SHALL ENSURE THE DOCUMENTATION AND RETENTION REQUIRED PURSUANT TO THIS SECTION IS CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF THE INDIVIDUAL'S INFORMATION AND SHALL ENSURE AN INDIVIDUAL MAY ACCESS THE INFORMATION OR DEMAND RELEASE OF

THE INFORMATION TO A THIRD PARTY.

(7) (a) A CORRECTIONAL FACILITY, PRIVATE CONTRACT PRISON, OR QUALIFIED FACILITY THAT IS AUTHORIZED TO USE A CLINICAL RESTRAINT PURSUANT TO THIS SECTION SHALL ENSURE THAT A QUALIFIED HEALTH-CARE PROVIDER, LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, PERFORMS A BEHAVIOR MANAGEMENT ASSESSMENT ON EVERY INDIVIDUAL'S INTAKE TO THE FACILITY, FOR THE PURPOSE OF EXAMINING WHETHER THE INDIVIDUAL IS LIKELY TO EXHIBIT BEHAVIORS THAT MAY RESULT IN THE USE OF CLINICAL RESTRAINT. THE QUALIFIED HEALTH-CARE PROVIDER, LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL DOCUMENT AND MAINTAIN FINDINGS FROM THE ASSESSMENT IN THE INDIVIDUAL'S MEDICAL RECORD. THE FACILITY SHALL NOT USE THE FINDINGS OF THE BEHAVIOR MANAGEMENT ASSESSMENT AS STANDING ORDERS FOR USING A CLINICAL RESTRAINT ON THE INDIVIDUAL.

(b) IF A BEHAVIORAL MANAGEMENT ASSESSMENT CONCLUDES THAT THE INDIVIDUAL IS AT INCREASED RISK FOR BEHAVIORS THAT MAY RESULT IN THE USE OF A CLINICAL RESTRAINT, A LICENSED MENTAL HEALTH PROVIDER, OR MENTAL HEALTH CLINICIAN AS DEFINED BY DEPARTMENT RULE OR DESIGNATED BY THE DEPARTMENT, SHALL DEVELOP AND IMPLEMENT, WITH INPUT FROM THE INDIVIDUAL, A BEHAVIORAL MANAGEMENT PLAN FOR THE PURPOSE OF UTILIZING INDIVIDUAL-SPECIFIC AND LESS RESTRICTIVE INTERVENTIONS TO PREVENT OR REDUCE USE OF CLINICAL RESTRAINTS.

(8) (a) SUBJECT TO THE PROVISIONS OF THIS SECTION, A

CORRECTIONAL FACILITY OR PRIVATE CONTRACT PRISON SHALL NOT USE AN INVOLUNTARY MEDICATION ON AN INDIVIDUAL, UNLESS:

(I) THE INDIVIDUAL IS DETERMINED TO BE DANGEROUS TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON, AND THE TREATMENT IS IN THE INDIVIDUAL'S MEDICAL INTEREST;

(II) THE FACILITY HAS EXHAUSTED ALL LESS RESTRICTIVE ALTERNATIVE INTERVENTIONS; AND

(III) THE INVOLUNTARY MEDICATION IS ADMINISTERED AFTER EXHAUSTION OF PROCEDURAL REQUIREMENTS ESTABLISHED PURSUANT TO THIS SECTION.

(b) NOTWITHSTANDING SECTION 17-1-111, THE DEPARTMENT SHALL PROMULGATE RULES ESTABLISHING A PROCESS FOR DETERMINING WHETHER TO USE, AND HOW TO USE, AN INVOLUNTARY MEDICATION ON AN INDIVIDUAL. THE PROCESS MUST BE CONSISTENT WITH SECTIONS 24-4-105 AND 24-4-106.

(c) THE CORRECTIONAL FACILITY OR PRIVATE CONTRACT FACILITY SHALL CONVENE AN INVOLUNTARY MEDICATION COMMITTEE, COMPRISED OF FOUR MEMBERS, TO SERVE AS THE AGENCY PRESIDING AT THE HEARING. THE FOUR MEMBERS ARE A LICENSED PSYCHIATRIST, A LICENSED PSYCHOLOGIST, A LICENSED MENTAL HEALTH PROVIDER, AND THE SUPERINTENDENT OF THE FACILITY OR THE SUPERINTENDENT'S DESIGNEE. THE USE OF AN INVOLUNTARY MEDICATION ON AN INDIVIDUAL IS PROHIBITED, UNLESS A MAJORITY OF ALL COMMITTEE MEMBERS APPROVE THE USE.

(d) THE CORRECTIONAL FACILITY OR PRIVATE CONTRACT FACILITY SHALL ASCERTAIN WHETHER THE INDIVIDUAL HAS RETAINED COUNSEL, AND, IF THE INDIVIDUAL HAS NOT, SHALL REFER THE INDIVIDUAL TO AN

OFFICE OF STATE PUBLIC DEFENDER LIAISON TO THE DEPARTMENT TO REPRESENT THE PERSON WITHOUT COST TO THE INDIVIDUAL WITHIN THREE DAYS AFTER THE NOTICE OF HEARING PROVIDED TO THE INDIVIDUAL UNLESS THE INDIVIDUAL WAIVES COUNSEL. AN INDIVIDUAL'S WAIVER OF COUNSEL MUST BE KNOWING, INTELLIGENT, AND VOLUNTARY.

(e) AN ORDER FOR AN INVOLUNTARY MEDICATION MUST NOT:

(I) BE FOR LONGER THAN NINETY DAYS FROM THE DATE OF THE ORDER; AND

(II) PERMIT THE USE OF MORE THAN FIVE DIFFERENT MEDICATIONS DURING THE NINETY DAY PERIOD. THIS DOES NOT LIMIT THE AMOUNT OF DOSES OF THE MEDICATIONS TO BE ADMINISTERED, AS MEDICALLY APPROPRIATE.

(f) A FACILITY SHALL ENSURE THAT THE USE OF INVOLUNTARY MEDICATION IS DOCUMENTED AND MAINTAINED IN THE RECORD OF THE INDIVIDUAL. AT A MINIMUM, THE FACILITY SHALL DOCUMENT:

(I) THE ORDER FOR INVOLUNTARY MEDICATION;

(II) THE DATE AND TIME OF THE ORDER; AND

(III) A CLEAR EXPLANATION OF THE CLINICAL BASIS FOR USE OF THE INVOLUNTARY MEDICATION, INCLUDING THE LESS INTRUSIVE INTERVENTIONS THAT WERE EMPLOYED AND FAILED AND EVIDENCE OF THE IMMEDIATE CIRCUMSTANCES JUSTIFYING THE BELIEF THAT THE INDIVIDUAL IS DETERMINED TO BE DANGEROUS TO THE INDIVIDUAL'S SELF OR ANOTHER PERSON AND THAT THE TREATMENT IS IN THE INDIVIDUAL'S MEDICAL INTEREST.

(g) THE FACILITY SHALL ENSURE THE DOCUMENTATION AND MAINTENANCE REQUIRED PURSUANT TO THIS SECTION IS CONDUCTED PURSUANT TO ALL APPLICABLE STATE AND FEDERAL LAWS REGARDING THE

CONFIDENTIALITY OF THE INFORMATION.

(9) (a) ON OR BEFORE MARCH 1, 2024, AND ON OR BEFORE MARCH 1 EACH YEAR THEREAFTER, THE EXECUTIVE DIRECTOR OF THE DEPARTMENT SHALL SUBMIT A REPORT TO THE JUDICIARY COMMITTEES OF THE SENATE AND HOUSE AND REPRESENTATIVES, OR ANY SUCCESSOR COMMITTEES, CONCERNING THE USE OF CLINICAL RESTRAINTS AND INVOLUNTARY MEDICATION IN THE PRECEDING CALENDAR YEAR. AT A MINIMUM, THE REPORT MUST INCLUDE:

(I) THE TOTAL NUMBER OF CLINICAL AMBULATORY RESTRAINT EPISODES AND CLINICAL FOUR-POINT RESTRAINT EPISODES;

(II) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION ORDERS ISSUED;

(III) THE AVERAGE AMOUNT OF TIME OF CLINICAL AMBULATORY RESTRAINT EPISODES AND CLINICAL FOUR-POINT RESTRAINT EPISODES;

(IV) THE AVERAGE DURATION OF INVOLUNTARY MEDICATION ORDERS ISSUED;

(V) THE LONGEST CLINICAL AMBULATORY RESTRAINT EPISODE AND THE LONGEST CLINICAL FOUR-POINT RESTRAINT EPISODE;

(VI) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT EXCEEDED TWO HOURS, AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT EXCEEDED TWO HOURS;

(VII) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A

BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY;

(VIII) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION ORDERS THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY;

(IX) THE PERCENTAGE OF TOTAL CLINICAL AMBULATORY RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE WITHIN THE YEAR AND THE PERCENTAGE OF TOTAL CLINICAL FOUR-POINT RESTRAINT EPISODES THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO THE RESTRAINT FOR A SECOND OR SUBSEQUENT EPISODE WITHIN THE YEAR;

(X) THE PERCENTAGE OF TOTAL INVOLUNTARY MEDICATION ORDERS THAT INVOLVED AN INDIVIDUAL WHO WAS SUBJECTED TO A SECOND OR SUBSEQUENT ORDER WITHIN THE YEAR; AND

(XI) THE TOTAL NUMBER OF INVOLUNTARY MEDICATION THAT EXCEEDED NINETY DAYS IN VIOLATION OF SUBSECTION (8)(b)(III) OF THIS SECTION.

(b) NOTWITHSTANDING THE REQUIREMENT IN SECTION 24-1-136 (11)(a)(I), THE REQUIREMENT TO SUBMIT THE REPORT REQUIRED IN THIS SUBSECTION (9) CONTINUES INDEFINITELY.

(c) THE DEPARTMENT SHALL ENSURE THE REPORT REQUIRED IN THIS SUBSECTION (9) DOES NOT DISCLOSE ANY INFORMATION IN VIOLATION

OF APPLICABLE STATE AND FEDERAL LAWS REGARDING THE CONFIDENTIALITY OF INDIVIDUALS' INFORMATION.

(10) AS USED IN THIS SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(a) "CLINICAL AMBULATORY RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT, BUT STILL PERMITS THE ABILITY OF THE INDIVIDUAL TO WALK AND MOVE WHILE SUBJECTED TO THE DEVICE.

(b) "CLINICAL FOUR-POINT RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT BY SECURING THE INDIVIDUAL'S ARMS AND LEGS.

(c) "CLINICAL RESTRAINT" MEANS A DEVICE USED TO INVOLUNTARILY LIMIT AN INDIVIDUAL'S FREEDOM OF MOVEMENT. "CLINICAL RESTRAINT" INCLUDES CLINICAL AMBULATORY RESTRAINT AND CLINICAL FOUR-POINT RESTRAINT.

(d) "CORRECTIONAL FACILITY" HAS THE SAME MEANING AS SET FORTH IN SECTION 17-1-102 (1.7).

(e) "DEPARTMENT" MEANS THE DEPARTMENT OF CORRECTIONS, CREATED AND EXISTING PURSUANT TO SECTION 24-1-128.5.

(f) "FACILITY" MEANS A CORRECTIONAL FACILITY AND A PRIVATE CONTRACT PRISON.

(g) "INVOLUNTARY MEDICATION" MEANS GIVING AN INDIVIDUAL MEDICATION INVOLUNTARILY FOR THE PURPOSE OF RESTRAINING THAT INDIVIDUAL; EXCEPT THAT "INVOLUNTARY MEDICATION" DOES NOT INCLUDE THE INVOLUNTARY ADMINISTRATION OF MEDICATION OR ADMINISTRATION OF MEDICATION FOR VOLUNTARY LIFE-SAVING MEDICAL PROCEDURES.

(h) "LICENSED MENTAL HEALTH PROVIDER" HAS THE SAME MEANING AS DEFINED AT SECTION 27-60-108 (2)(a).

(i) "PRIVATE CONTRACT PRISON" HAS THE SAME MEANING AS SET FORTH IN SECTION 17-1-102 (7.3).

(j) "PRONE POSITION" MEANS A FACE-DOWN POSITION.

(k) "QUALIFIED FACILITY" MEANS:

(I) A CORRECTIONAL FACILITY INFIRMARY;

(II) THE SAN CARLOS CORRECTIONAL FACILITY; AND

(III) THE DENVER WOMEN'S CORRECTIONAL FACILITY.

(l) "QUALIFIED HEALTH-CARE PROVIDER" MEANS A LICENSED PHYSICIAN, A LICENSED ADVANCED PRACTICE REGISTERED NURSE, OR LICENSED REGISTERED NURSE.

SECTION 2. In Colorado Revised Statutes, 17-1-113.9, **amend** (1) as follows:

17-1-113.9. Use of administrative segregation for state inmates - reporting. (1) Notwithstanding section 24-1-136 (11)(a)(I), on or before January 1, 2012, and each January 1 thereafter, the executive director shall provide a written report to the judiciary committees of the senate and house of representatives, or any successor committees, concerning the status of administrative segregation; reclassification efforts for ~~offenders~~ INDIVIDUALS DIAGNOSED with ~~mental~~ BEHAVIORAL health disorders or intellectual and developmental disabilities, including duration of stay, reason for placement, and number and percentage discharged; and any internal reform efforts since July 1, 2011. THE REPORT MUST INCLUDE DATA CONCERNING THE PLACEMENT OF INDIVIDUALS IN ALL SETTINGS WITH HEIGHTENED RESTRICTIONS, INCLUDING THE TOTAL NUMBER OF PLACEMENTS IN EACH SETTING, THE

TOTAL NUMBER OF PLACEMENTS IN EACH SETTING INVOLVING AN INDIVIDUAL DIAGNOSED WITH A BEHAVIORAL HEALTH DISORDER OR INTELLECTUAL OR DEVELOPMENTAL DISABILITY, THE AVERAGE DURATION OF STAY OF AN INDIVIDUAL IN EACH SETTING, THE REASONS FOR PLACEMENT IN EACH SETTING, AND THE TOTAL NUMBER OF INDIVIDUALS DISCHARGED FROM EACH SETTING.

SECTION 3. In Colorado Revised Statutes, 21-1-104, **amend** (6) as follows:

21-1-104. Duties of public defender - report. (6) The office of state public defender shall provide one or more public defender liaisons to the department of corrections and the state board of parole to assist inmates or inmate liaisons with legal matters related to detainers, bonds, holds, warrants, competency, special needs parole applications, INVOLUNTARY MEDICATION PROCEEDINGS PURSUANT TO SECTION 17-1-167 (8), and commutation applications. The office of state public defender, in consultation with the state board of parole and the department of corrections, shall develop any necessary policies and procedures for implementation of this subsection (6).

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.