Recidivism Subcommittee
Chairs: Erin Crites & Melanie Kesner

Legislative Concept One:

Reducing the barrier of criminal justice involvement on physical and behavioral healthcare by limiting the access to information related to this involvement for medical and behavioral health care providers and ensuring patients are aware of these limitations prior to receiving care.

Problem: Criminal justice status should not be a barrier to physical or behavioral health care.

Solutions/Concepts:

a) *Limiting access to criminal justice information at the point of care:* Legislation that ensures criminal history or warrant status cannot be inquired about or checked from within medical or behavioral health treatment facilities when individuals show up to receive care unless required by law. Ideally, health and behavioral healthcare facilities will only ask about information relating to criminal justice involvement while conducting assessments related to care and treatment planning, and the use of this information for any other purpose will be restricted.

b) *Limiting arrest powers inside of medical and behavioral health treatment facilities:* Unless the need for care is immediately related to a criminal act (of a certain level to be determined) or a criminal act occurs inside the facility necessitating law enforcement intervention, arrests on warrants may not be made in medical and behavioral health care facilities without client/patient's consent, unless the person is deemed an imminent public safety risk.

c) *Education and outreach to inform patients of access to and use of criminal justice information in medical and behavioral healthcare:* Create an outreach/education campaign, including signage and in release forms that clearly outlines the facilities' policies on inquiring about criminal justice status, checking for warrants, knowledge of an individual's warrant status, and the presence of law enforcement officers. If individuals at the door of a hospital or behavioral health treatment center and upon completing required forms to receive care are notified of these policies they can make an informed decision about where they receive care. Ideally, the health and behavioral healthcare facilities will not ask about criminal justice status (except where required by law) and knowing this will put patients at ease.

Data or evidence: A perception exists that individuals with active warrants who enter an emergency department risk being arrested. Professionals who work with individuals experiencing homelessness in Denver in particular report that this perception decreases an individual's willingness to seek needed care and puts further strain on the individual's health and the healthcare system when later it is required to treat a higher acuity problem. Individuals who suffer from substance use disorders (SUDs) have reported that they are hesitant to go to court to clear known warrants because they are afraid of being arrested and taken to jail while

facing the potential of detoxification from substances and therefore, going through the process of withdrawal in a jail rather than a more appropriate care and treatment setting. There is a general understanding that this is largely a problem local to one particular metropolitan jurisdiction and is not a practice actively supported or endorsed by hospitals. Of note, the major hospital in Denver only involves law enforcement (LE) if a crime occurs on the hospital campus or if they are otherwise legally required to do so under mandatory reporting laws. The hospital does recognize that there is a large police presence on the campus, but they do not get involved unless a patient is already in custody. Staff are generally hesitant to involve LE. Additional concerns are reported when individuals with open criminal cases or active warrants seek residential treatment for SUDs. Programs may not admit individuals with open cases due to the need to transport individuals to hearings or concerns over LE arresting the individual at the treatment facility should their location become known. Generally, behavioral health treatment providers do not provide client information to law enforcement due to 42 CFR Part 2 privacy rules. Further investigation into arrests on hospital or behavioral healthcare facility property would be needed to confirm anecdotal reports that hospitals and treatment facilities do not generally check for warrants, share this information when known with law enforcement, or facilitate the arrests of patients once stable.

Legislative Concept Two:

Reducing the barrier of criminal justice involvement on physical and behavioral healthcare by creating a presumption of attendance at court hearings remotely while hospitalized or engaged in residential or intensive outpatient treatment.

Problem: One barrier to entry into residential treatment can be the need to attend criminal court proceedings during treatment. It is a disruption to treatment when an individual must be absent for a few hours to a day in order to attend court in-person. A burden is also placed on treatment center staff when an individual must be transported, especially when involving long distances, to attend court. Anecdotal evidence suggests that some treatment centers are hesitant to take individuals with active criminal cases for these reasons.

Solution/Concept: Similar to the HB23-1186 regarding remote appearances for eviction hearings, there should be a mechanism to allow individuals hospitalized or engaged in residential or intensive outpatient treatment to appear remotely for criminal case proceedings. This should not be dependent upon local court practices but a matter of state-wide policy.

Data or evidence: Information reported in HB23-1186 suggested that individuals are more likely to appear and experience fewer logistic burdens when remote appearances are allowed. This would be true for individuals hospitalized or involved in residential or intensive outpatient treatment who either cannot leave their current placement or who rely on other professionals to ensure their appearance at court. Further evidence on the impact of this policy may be gained by asking residential treatment facilities if removing the requirement to attend court in person would increase the likelihood they would admit individuals with active criminal cases. This may also reduce failures to appear in court which would improve court operations and

increase the expediency of criminal case processes while the individual is still receiving the care they need.

Legislative Concept Three:

In order to better appropriate state funds towards treatment and services that effectively address the needs of individuals with behavioral health disorders in the criminal justice system it is necessary to know the capacity, cost, and effectiveness of the available community-based behavioral health care services and the need for these services by justice-involved individuals.

Problem: Individuals who are dually involved in the criminal justice and behavioral health treatment systems have treatment and service needs that go unmet and create an increased likelihood of re-involvement. Recent legislation (i.e. HB23-1153) created a feasibility study to identify the pathways to accessing (including costs of) behavioral health services for individuals with serious mental illness (SMI). While this study will provide insight into the needs of a subset of the population of individuals who may end up in the justice system, it does not account for the needs of individuals actively moving through criminal court proceedings or serving a sentence in the community who do not meet the definition of SMI defined in the bill.

Solution/Concept: The Division of Criminal Justice within the Department of Public Safety shall contract with an independent third party to conduct a statewide analysis to determine the availability, accessibility, and effectiveness of services addressing behavioral health and ancillary needs of individuals involved in the criminal and juvenile justice systems. The Division in coordination with Behavioral Health Administration, Department of Local Affairs, Department of Health Care Policy and Finance, Judicial Department, CDHS Office and Civil and Forensic Mental Health (OCFMH), Colorado Department of Labor and Employment (CDLE) and other state agencies shall determine the qualifications for the independent third party and the process for interested parties to apply. At minimum the Division shall consider and determine the following on a statewide basis when developing the criteria for the analysis:

a) The number of justice-involved individuals with behavioral health disorders
b) The current capacity for behavioral health care services including:
    i) inpatient
    ii) residential
    iii) partial hospitalization
    iv) intensive outpatient
    v) out-patient
    vi) detoxification
c) For the capacity of the services above:
    i) What levels of interventions exist within each category (e.g. for residential treatment services capacity for holds, crisis interventions, etc.), if any
    ii) Capacity of these services to serve justice-involved individuals
d) Average wait-list for above services
e) Average length of stay in treatment and successful discharge rates

f) Average readmission data for above services
g)
h) Gaps between the number of justice-involved individuals with behavioral health disorders and the capacity for treatment
i) Cost of services under current treatment protocols
j) Barriers due to payment sources in accessing treatment
k) Methodologies that illustrates potential cost savings and cost avoidance associated with diversion, treatment, and community-based services
l) Detailed information about approaches currently being used in Colorado to connect individuals experiencing a behavioral health conditions who are also involved in the criminal justice system to the treatment and services needed to address
m) Detailed information about approaches other states are taking to remedy the issues and concerns identified by exploring items listed above

Data or evidence: Nearly 3,000 individuals active on probation supervision on June 30, 2022 could be considered to need behavioral health treatment intervention. These individuals are often in need of ancillary services to provide stabilization and improve supervision outcomes, such as housing, education, and employment assistance. DOC reports a 98-99% referral for behavioral health services post-release (including enrolling individuals in benefits and/or paying for services) maintaining continued engagement and follow up with services is challenging. Understanding the capacity of the system to support the behavioral health treatment needs of justice-involved persons in the community would help identify potential barriers to access and engagement for individuals serving their sentences in the community or reentering he community upon release. Ensuring continuity of care and the continuation of needed services in the community would serve to reduce recidivism for this subset of the justice-involved population.