

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

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

## **Committee Charge**

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Senate Bill 20-042 reauthorized the establishment 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, 2023.

The oversight committee did not meet during the 2020 interim because of the pandemic. They resumed duties in 2021, however, and provided oversight to the advisory task force and made recommendations for legislative changes.

The 32-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 also includes examining liability, safety, and costs as they relate to these issues. Additionally, the task force must consider, at a minimum, the following issues:

- housing for persons with mental illness after their release from the criminal or juvenile justice system;
- medication consistency, delivery, and availability;
- best practices for suicide prevention, within and outside of correctional facilities;
- treatment of co-occurring disorders;
- awareness of and training for enhanced staff safety, including expanding training opportunities for providers; and
- enhanced data collection related to issues affecting persons with mental illness in the criminal and juvenile justice systems.

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.

## Committee Activities

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In 2021, the legislative oversight committee met five times. The committee received updates from the Office of Behavioral Health in the Department of Human Services and the Colorado Commission on Criminal and Juvenile Justice. The committee heard presentations from a variety of field experts regarding forensic services, mental health diversion programs, assaults by persons with mental health disorders, and mental health jail standards. They also monitored and examined the work, findings, and recommendations of the advisory task force. Specifically, the committee:

- received updates on the activities of the advisory task force and its subcommittees;
- discussed reauthorization of the oversight committee and task force; and
- considered legislation recommended by the task force, stakeholders, and legislative oversight committee members.

**Advisory task force activities.** The oversight committee received updates on recent activities of the task force, which met monthly throughout 2020 and 2021. The 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 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 task force presented regular updates on these, and other projects, to the committee.

**Reauthorization.** Senate Bill 20-042, the reauthorization bill referenced earlier, only extended the repeal date for the task force and oversight committee. Other provisions originally in the bill, such as changes to task force membership and responsibilities, were amended out because of the pandemic. The oversight committee decided to reintroduce the committee structural changes that were taken out of the 2020 bill. Bill A recommends renaming the committees, extending the repeal date until 2027, changing the committee scope, and reducing the task force membership from 32 to 29.

**Not guilty by reason of insanity.** The oversight committee heard testimony about individuals who have been found not guilty by reason of insanity (NGRI). They learned that these individuals may be confined from one day to life, or anywhere in between, for a crime they may not be criminally responsible for because of mental health conditions. As alternatives to confinement, the oversight committee discussed least restrictive treatment and release options for this population, and made associated recommendations. Bill B requires the courts to evaluate a defendant found NGRI to determine if they are eligible for community placement, sets a maximum limit of confinement, and allows a court to civilly commit a defendant to the Department of Human Services.

**Diversion.** The oversight committee found that individuals with behavioral health conditions are more likely than the general population to be involved in the criminal justice system. To alleviate this over-representation, the committee heard a presentation about an adult mental health diversion pilot program in the Judicial Department, which is set to expire in 2022. The program specifically redirects individuals charged with low-level crimes from the traditional criminal justice system into community treatment programs. The committee examined the benefits of renewing and expanding this program to serve more individuals. They also discussed eligibility criteria and stabilization services. Bill C recommends expanding the scope of the adult diversion program to serve more individuals with behavioral health disorders arrested for low-level crimes, as well as addresses eligibility, screening, and diversion agreements.

**Mental health holds.** The task force subcommittee on mental health holds presented an overview of the complexities and legalities related to these 72-hour involuntary holds. The oversight committee agreed the current legal threshold excludes certain gravely disabled individuals from being committed on a mental health hold, and recommended both a substantive and technical language change to address this. Bill D recommends changing the standard for an emergency 72-hour mental health hold to include when a person appears to have a mental health disorder or be gravely disabled, *and* if a person appears to present a substantial risk of harm to self or others. It also defines “substantial risk.”

**Housing.** The task force and oversight committee acknowledged that a criminal record often makes it more difficult for individuals with a mental health disorder to find housing. The task force subcommittee on housing researched the extent of housing problems with this population and discussed infrastructure, information systems, data coordination, and supportive services. Bill E recommends creating new grant programs to build local capacity for supportive housing services. The services are specifically targeted for individuals with behavioral, mental health, or substance abuse issues who are homeless or at risk of becoming homeless. The bill also includes data collection, assessments, and training components.

## **Committee Recommendations**

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As a result of committee discussion and deliberation, the Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems recommends the following five bills for consideration in the 2022 legislative session.

**Bill A - Treatment of Behavioral Health Disorders in the Criminal and Juvenile Justice Systems.** This bill renames the oversight committee; extends the committee and task force until July 1, 2027; changes the scope of the committee and task force; and reduces the size of the task force from 32 to 29. Legislative Council Staff and the Office of Legislative Legal Services are required to supply staff assistance to the oversight committee within existing appropriations. The Legislative Council Staff is also required to provide staff assistance to the task force within existing appropriations.

**Bill B - Modifications to Not Guilty by Reason of Insanity.** This bill requires a court to order an evaluation of a defendant to determine if the defendant meets the criteria for inpatient hospitalization or is eligible for conditional release in the community. If community placement is ordered, the court must set the conditions for the release and the Department of Human Services (DHS) has the same obligations as if the defendant had been temporarily removed for treatment and rehabilitation. The bill also sets maximum limits on how long a defendant found not guilty by reason of insanity for offenses other than a class 1 or 2 felony can be confined in inpatient hospitalization. Starting on January 1, 2024, if the court finds the requirements for civil certification have been established by clear and convincing evidence, the court shall order the defendant committed to the DHS.

**Bill C – Pretrial Diversion for Persons with Behavioral Health Disorders.** This bill expands the scope of the adult diversion program to identify individuals with behavioral health disorders in order to divert them from the criminal justice system and into community treatment programs. District attorney offices that use state money for a diversion program must consider whether a defendant has a mental health or other behavioral health disorder that may make them eligible for the program, and diversion agreements may include participation in treatment programs.

**Bill D – Emergency Mental Health Treatment and Evaluation Standard.** This bill changes the standard for an emergency 72-hour mental health commitment for treatment and evaluation (mental health hold) to include when a person appears to have a mental health disorder or be gravely disabled, and if a person appears to present a substantial risk of harm to self or others. It also defines “substantial risk.”

**Bill E – Programs to Develop Housing Support Services.** This bill creates two new grant programs and expands existing duties in the Division of Housing (division) in the Department of Local Affairs (DOLA) to build local capacity to provide supportive housing services to individuals with behavioral, mental health, or substance abuse issues who are homeless or at risk of becoming homeless. The division must develop a plan to increase participation in regional homeless data systems, support accurate data reporting, and assess housing-related needs. The Department of Health Care Policy and Financing is required to collaborate with the division to identify additional providers and services that may be eligible for reimbursement under Medicaid and to request federal waivers allowing for such reimbursement. The Office of Behavioral Health in the DHS is required to consult and coordinate with DOLA to provide statewide training and implement the grant programs.