

**Please Support SB19-223 (Reps. Weissman & Landgraf)**  
Concerning Actions Related to Competency to Proceed

### The Problem

- Systematic backlog of evaluations and restorations of defendants in Colorado criminal justice system whose competency to proceed is in question.
- Colorado cannot “build” its way out of this backlog simply by bringing more in-patient beds online—systematic approach needed to solve a systematic problem
- Constitutional problems arise when we detain legally incompetent individuals too long

### The Solution

- Reforms to competency evaluation, restoration, and handling of criminal proceedings against incompetent defendants
- Year long stakeholder process
- SB 223 history:
  - Senate Judiciary 4-0
  - Senate Appropriations 10-0
  - Senate 3<sup>rd</sup> Reading 35-0

### Legal Summary

- *No defendant shall be tried while mentally incompetent to stand trial.* ABA Criminal Justice Standards 7.4.1(a)
- *The test for determining mental competence to stand trial should be whether the defendant has sufficient present ability to consult with defendant's lawyer with a reasonable degree of rational understanding and otherwise to assist in the defense, and whether the defendant has a rational as well as factual understanding of the proceedings.* ABA Criminal Justice Standards 7.4.1(a)
- *“An incompetent pretrial detainee cannot, after a competency hearing, be held indefinitely without either criminal process or civil commitment; due process requires, at a minimum, some rational relation between the nature and duration of commitment and its purpose.”* Youngberg v. Romeo, 457 U.S. 307, n. 27 (1982) citing Jackson v. Indiana, 406 U.S. 715, 738 (1972)

### Section by Section Summary of Bill

1. Definitions – n.b. tier 1 vs. tier 2– higher (harm to self/others) vs. lower priority
2. How competency question is raised – conforming amendment
3. Determination of competency – shorter timeframes – role of court liaisons
4. **Competency evaluations and timeframes**
  - a. Timelines and process for in-custody evaluations
  - b. Bond-setting related to outpatient evaluations
  - c. Parameters for court ordering in-patient evaluation
  - d. Reports on in-patient evaluations

5. **Post-evaluation procedure & options**
  - a. Civil commitment
  - b. Outpatient restoration
  - c. Community-based intermediate services
  - d. In-patient restoration procedures
6. Restoration – 2<sup>nd</sup> evaluation or hearing – shorter timeline
7. Procedure after hearing on restoration – conforming amendment
8. **Termination of proceedings**
  - a. Maximum time period on confinement for restoration
  - b. Reviews of cases to assess likelihood of restoration to competency w/ assessment reports provided prior to hearing
  - c. Option to terminate criminal proceedings
  - d. Option for civil commitment proceedings
  - e. Dismissal of charges under certain conditions
    - i. M/DM/Petty (exc. VRA) – 6 months & not competent to proceed
    - ii. Lower F – 12 months & not competent to proceed
    - iii. Other F - 24 months & not competent to proceed – hearing upon objection
9. **Competency evaluation monitoring system** – tracking of competency issues
10. Placement guidelines – creation of advisory committee
11. Forensic evaluator training
12. Outpatient restoration – timing of OBH responsibilities
13. Criminal proceedings – timing of – conforming amendment
14. Reporting of data on training of judicial officers
15. Funding for CDAC for training concerning competency issues
16. Duties of OSPD – training in competency determinations
17. Duties of OADC – training in competency determinations
18. Definitions – conforming amendment
19. Definitions – conforming amendment
20. Outpatient restoration – role of county jail
21. Appropriations
22. Appropriations
23. Appropriations
24. Appropriations
25. Effective date – July 1, 2019