

Members of the Judiciary Committee,

Thank you for the opportunity to comment on HB 24-1034. Due to some staffing changes and movement among DA Subject Matter Experts (SMEs), CDAC is not able to testify in person today. However, **we are currently in a MONITOR position on the bill**, and are committed to continuing to work with you collaboratively on the bill to ensure the competency and restoration services process is as equitable and efficient as possible, for all parties concerned. In that regard, we are providing limited initial comments from DDAs who have significant experience in the competency arena, with more input to come from CDAC and other district attorneys after today's hearing.

Observations

Section 5: (Page 6/7) This section discusses the access to record information from prior matters concerning competency. IF the Court is going to indeed provide prior information concerning competency and restoration, it should be provided to both parties, not just the defense. We ask that this be amended to ensure both prosecution and defense are getting the records.

The addition of L.002, page 1, Lines 14 through page 2, lines 2: Records should be available to "THE PARTIES" instead of just the defense attorney.

Section 6: page 12, lines 6-9. These lines are redundant to page 10, lines 13-15.

Section 11:

Page 20, lines 25-27; page 21, lines 20-22; and page 22, lines 11-13. We understand there is a language change striking IDD, TBI, and brain disease, and possibly per concerns previously raised by CDAC. However, we hold judgement on the terms "neurocognitive or neurodevelopmental impairment" as noted in Amendment L.002 and may come back to you with additional comments on these terms. Are they defined? If so, where?

page 21. District Attorneys have a concern with page 21, lines 13 through page 22, line 2, in that this puts a lot of authority in the hands of one evaluator. A presumption and prima facie evidence based solely on one evaluator is problematic.

Pg 24, beginning with line 11 where the statute defines "volitional lack of cooperation or unwillingness to participate," it is a concern that this does not include acts that result from the bona fide medical or mental health disorder. That is almost always why a defendant is not engaging in treatment.

Section 15:

Page 32, 16-8.5-116.5. We wish to consider this section further, in view of previous comments from CDAC

Page 36, lines 20-21. The exclusion of VRA offense is problematic. We need to consider the ramification of this impact on victims and will come back with additional comments.

Page 37, lines 21-through 26: The striking of these timeframes, and the inclusion of new basis for dismissal (as proposed in L.001 (page 5, lines 12 through 20) requires additional consideration by DAs. We are highlighting this an issue and will consider further.

Page 40, lines 3 through 12 is concerning, as this section was not discussed during the interim committee discussions. This section will require further consideration, but at this time, DAs have a significant concern with this language.

Amendment L.001 – page 3, lines 1 (amending page 28 of the bill, lines 18. Striking “Must” to “MAY”. This does not have much clarity as to under what conditions and criteria the decision is made. This should require additional consideration.

Amendment L.002 – See Comment above re: Section 11.

Additional other comments:

Definition of "reasonably foreseeable future." This is coming out completely, with no alternative, correct? CDAC would support this strike.

Inconsistent burdens of proof throughout the statute. Some are “clear and convincing”; some are “preponderance of the evidence”. We believe current law indicates all the burdens are preponderance of the evidence. To the best of our CDAC Reps. recollection, knowledge and memory, this was never a topic the committee discussed switching.

The statute uses the word "traffic offense." Does this mean anything in Title 42 or does it mean a traffic misdemeanor or traffic infraction? The statute may need additional clarify as to which offenses under Title 42 are subject to the bill provisions.

Other comments may be forthcoming as the bill progresses through additional committees, and we appreciate your willingness to continue to receive feedback from the State’s District Attorneys.