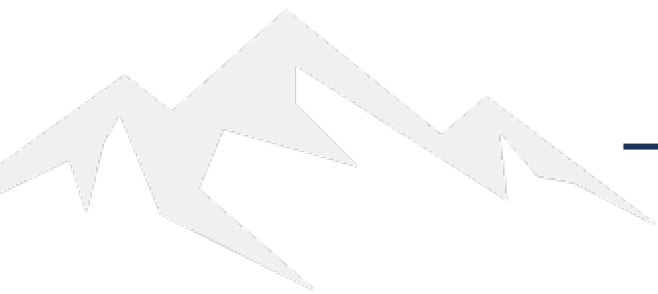




Mandatory Dismissal, Predictable Harm: How Colorado's Mental Incompetency Law Forces Courts to Release Dangerous Offenders

December 2025



About the Authors



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Kristi is the Executive Vice President at the Advance Colorado Institute. She is also a member of the State Board of Education, representing Congressional District 4. Kristi is the former Chairwoman of the Colorado Republican Party – the first woman to be elected in 40 years and the youngest Chair in Colorado Republican history. Kristi is a constitutional attorney, focusing on First Amendment and Equal Protection issues and is admitted to the U.S. Supreme Court where she has submitted briefs in a number of landmark decisions, including *Loper v. Raimondo* (the case that overturned the Chevron Doctrine). She is a guest host for the Dan Caplis Show on 630 KHOW. Kristi lives with her family in Douglas County where she and her husband homeschool their children with a classical Christian education.



Michael Tsogt

Michael Tsogt is a Policy Analyst at the Advance Colorado Institute. His areas of policy and research include education, budget/fiscal matters, and public safety. He has testified on a range of bills at the State Capitol, including a bill proposing education savings accounts for special needs and foster care kids in Colorado. During undergrad, Michael was elected as the Academic Senator for student government, covered sports and entertainment for the student newspaper, and participated in several political fellowships and opportunities, including at the Center for the Study of Government and the Individual, the American Enterprise Institute, and the Intercollegiate Studies Institute. Michael graduated from the University of Colorado with a degree in political science. He and his wife live in Colorado Springs with their son.



Executive Summary

House Bill 24-1034 was sold as a way to help people who are mentally incompetent and to bolster the state's fiscal responsibility; in reality, it created a "Get Out of Jail Free" card for violent criminals found permanently mentally incompetent to stand trial.

The bill requires charges to be dismissed, even where a single evaluator determines the accused is "mentally incompetent and unable to be restored to competency." This has resulted in high-profile, repeat criminals being released on the streets in Colorado because it is illegal for them to stand trial or be convicted. HB 24-1034 has resulted in a failure of justice for victims and their families and a perpetual danger to communities where violent offenders are set free without consequences.

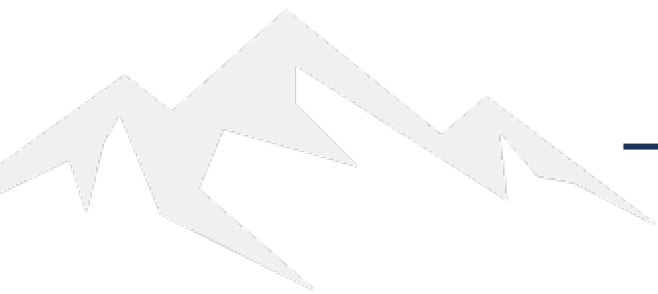
House Bill 24-1034: A Rundown

House Bill 24-1034 requires the dismissal of all criminal charges when a defendant is found to be permanently mentally incompetent and unable to be restored, regardless of whether the defendant confessed to the charges or has a history of violent and repeat offenses. (1)

Sponsors explained the bill "aim[ed] to streamline complicated processes in the competency system to increase efficiency and effectiveness and reduce waitlists..." (2)

Representative Judy Amabile and Senator Rhonda Fields said they passed this law to "ensure more people are getting the behavioral health care support they need to stay out of the criminal justice system and live more whole lives" and streamline the state's competency system, which was "overwhelmed and overcomplicated." (2)

While the goals may sound reasonable, the bill was not. Hidden away in Colorado Revised Statutes 16-8.5-116(1)(a) was the requirement to dismiss charges with no simultaneous change in the civil commitment statutes that would have kept violent offenders off the streets and in a proper type of facility. (3)



HB 24-1034 set up the false argument that there were only two options: jail the permanently mentally incompetent for an indefinite period of time or dismiss all charges. Passage of the bill meant that violent criminals must now be released back to the streets with absolute freedom to offend again.

This “solution” failed to calculate the expense to public safety and justice for victims and their families. And, it entirely ignored vital changes to the civil commitment system.

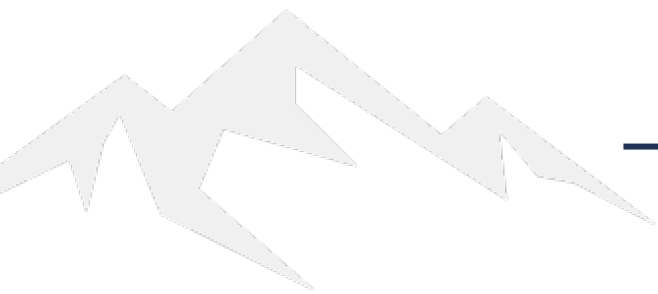
According to a recent report by the Common Sense Institute, the context surrounding this bill’s passage includes an eight-year federal lawsuit. “In March 2019, the Colorado Department of Human Services (CDHS) resolved an eight-year federal lawsuit regarding excessive wait times for court-ordered competency services. The settlement, filed as a consent decree, required CDHS to expand community-based services, speed up inpatient admissions, and provide treatment for people in jail awaiting competency services.” (4)

The CSI report found that, “As of June 2025, there are 368 Colorado inmates on the wait list to receive court-mandated competency restoration.” (4)

The settlement requires that Colorado pay up to \$12 million in fines per year if the state fails to meet the new service deadlines, which “required CDHS to expand community-based services, speed up inpatient admissions, and provide treatment for people in jail awaiting competency services.” (4)

Total Fines Received \$ 63,670,486 As of 10/15/25	Total Funds Allocated \$ 57,787,149 As of 10/15/25	Total Funds Spent by Programs \$ 45,992,158 As of 09/30/25
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According to the Colorado Competency Solutions’ website, which tracks how much Colorado has had to pay in fines for not meeting the agreement outlined in the federal order, Colorado has paid over \$63,670,486 in fines since 2019. (5)



These fines have been distributed to 50 organizations and offices, including: Ananeo Housing, Aspen Haven Foundation, Boulder County Sheriff's Office, City of Greeley Homeless Solutions, Solange Assisted Living, University of Denver's Denver FIRST, and more. The Colorado Fines Committee determines through an application process which programs to fund across the state. (5)

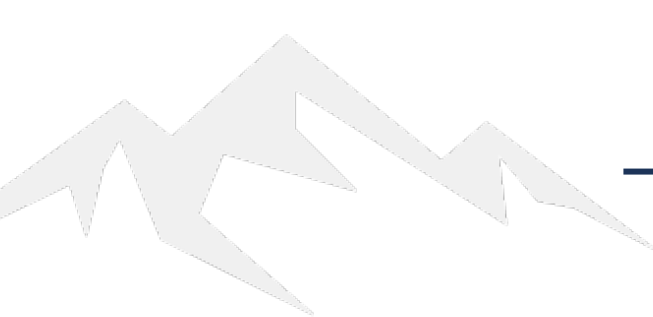
CSI's report clarified how HB 24-1034 missed the mark, finding that:

"Rather than pay to add inpatient beds to state hospitals, legislators opted for laws that incentivize releasing defendants for outpatient or community based competency restoration services. This decision burdens the general public with the risk of harboring dangerous criminals. Colorado will continue to see mentally ill defendants released with minimal to no supervision, and potentially tragic results, until it reforms competency laws and provides adequate funding for in-patient restoration services." (4)

This is particularly true because HB 24-1034 failed to make any exceptions for violent and repeat offenders, preferring to release them to the streets instead of finding a way to commit them civilly if a criminal trial were not possible. HB 24-1034's provisions were so lax that some of the most dangerous criminals – as illustrated in the following stories – cannot be committed to a state hospital, a restoration service, or other facility unless they agree to the commitment. Without agreement, judges and district attorneys must set them free, back into the communities where they have already attacked innocent victims and are likely to do so again.

Joel Lang

Joel Lang confessed to killing Kristy Kerst with his car at a Monument parking lot in November 2024. Because Lang was found permanently mentally incompetent, under House Bill 24-1034, his charges had to be dropped. Despite his commission of a homicide, there was no room for judicial discretion for civil confinement or another option that would keep a dangerous man off the streets. Instead, even after his confession, Lang's charges were dropped, and he was released back into the public. (6)



According to KOAA, prosecutors found that “Lang hit Kerst with his van after a minor fender bender and dragged her hundreds of feet.” (7) Kerst’s daughter said she “ran alongside the van as long as I could until I had to let go, and I fell.” (8)

Lang’s case illustrates a highly problematic aspect of HB 24-1034’s new requirements: a defendant may be able to understand enough to game the system and avoid charges and jail time entirely.



When a doctor asked Lang, “What does being incompetent mean?” Lang responded by saying, “this problem all goes away,” demonstrating that Lang knew his charges would be dropped and that he would be released if he was found permanently mentally incompetent. (8)

These facts also call into question the lax evaluation process where a single evaluator can tell the court that a defendant is “permanently mentally incompetent without the ability to be restored.”

Jeremy Loew, a criminal defense attorney in Colorado Springs, told KRDO that “the legal requirement to dismiss all charges in a case like Lang’s takes all power away from the judge to pass judgment. This is why Lang cannot be forced to stay in a mental health hospital, despite being ruled incompetent.” (8)

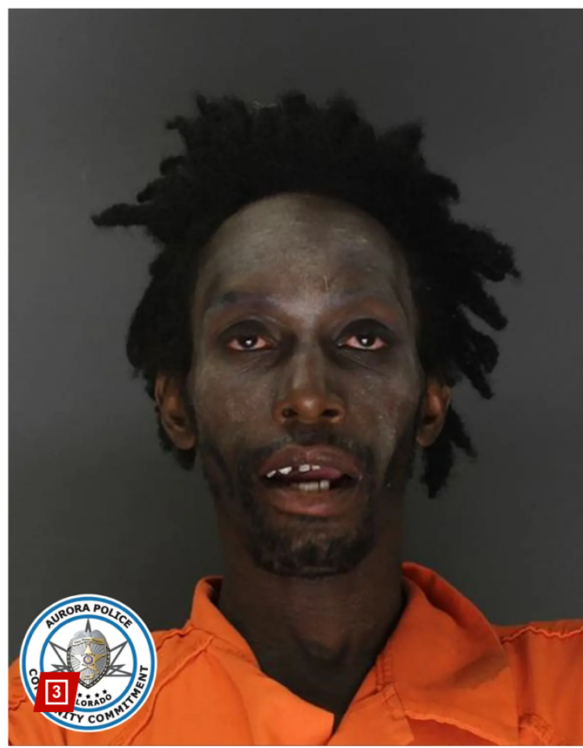
According to Loew, the decision whether Lang will be able to keep his driver’s license is “up to the DMV.” (8)

Solomon Galligan

Solomon Galligan, who now goes by Carmen (as he currently asserts he is a woman), attempted to kidnap an 11-year-old boy at an Aurora elementary school during recess. (9)

Galligan was officially found mentally incompetent without the ability to be restored, and all charges against him were dropped because of HB 24-1034. (9)

Denver7 reported that Galligan had undergone “at least twenty-three competency evaluations over the past eighteen years,” and that “in every criminal case... competency has been an issue.” (10)

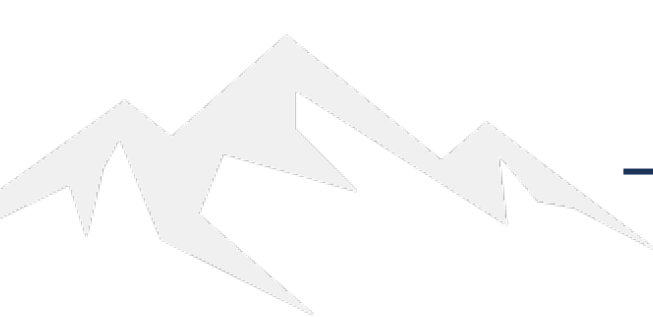


Mugshot of Solomon Galligan
Aurora police department

While Galligan’s string of crimes have continued for nearly two decades, KRDO reported that it was the fourth time since 2018 alone that charges against Galligan were dropped due to incompetence. (8) Several of the charges against him have involved violent or sexual crimes against women and children.

Sarah Galligan, Solomon Galligan’s adoptive sister, told CBS News, “What does it have to take for you guys to understand that he cannot be on his own,” and “Get [Solomon] into a mental institution, be able to take his meds and to be watched over.” Galligan’s family has reportedly fought to keep Solomon “in a state hospital or in mental health care long term,” believing situations like this could have been avoided. (11) Yet, despite the long criminal record and family input, HB 24-1034 required Galligan’s release yet again.

18th Judicial District Attorney Amy Padden commented on Solomon Galligan’s case, saying, “If someone is in that mental state, they should not be released, in my view, under any circumstance.” (12)



Padden also told CBS that, “We are ethically obligated to follow state law. We’re continuing to review the case to see if there’s a basis for objection, but if there is no basis for objection, we won’t have any choice. The case will be dismissed by the court.” (12)

The Evaluation Process Lacks Accountability

Once the issue of competency is raised in a Colorado criminal case, the court has to stop proceedings and order a forensic competency evaluation. Colorado’s Office of Behavioral Health outlines the process of this evaluation, which was untouched by HB 24-1034. (13)

After the information obtained through the evaluation process is summarized, the evaluator issues an opinion to the court of either competent to proceed or incompetent to proceed. (13)

In Colorado, **only one evaluator** is required to provide this forensic evaluation of competency and provide an opinion to the court. (13)

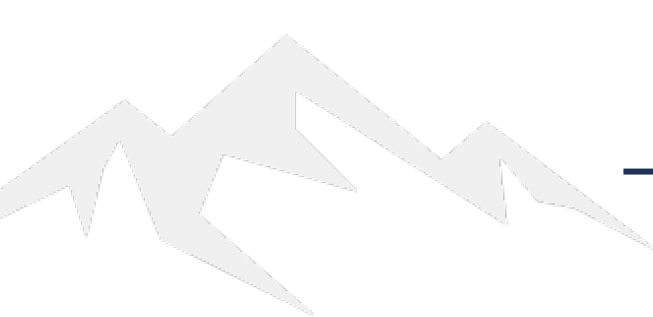
Colorado Statute (C.R.S. § 16-8.5-101):

Defines a “competency evaluator” as a licensed physician who is a psychiatrist or a licensed psychologist, each of whom is trained in forensic competency assessments. The statute also allows for a psychiatrist or psychologist in forensic training and practicing under the supervision of a psychiatrist or psychologist with expertise in forensic psychiatry or forensic psychology.

C.R.S. § 16-8.5-101: Defines “competent to proceed” as meaning that the defendant does not have a mental disability or developmental disability that prevents the defendant from having sufficient present ability to consult with the defendant’s lawyer with a reasonable degree of rational understanding to assist in the defense or prevents the defendant from having a rational and factual understanding of the criminal proceedings.

Colorado’s legal definition of “competent to proceed,” unchanged by HB 24-1034, follows the U.S. Supreme Court’s Dusky v. United States standard: “whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding -- and whether he has a rational as well as factual understanding of the proceedings against him.” (14)

23rd Judicial District Attorney George Brauchler addressed the lack of accountability in the evaluation process, saying that:



"It should not be easy for the government to declare you incompetent... But you combine that obstacle course with the ease in which you can get out of the criminal justice system on a finding of incompetence, and listen, I have my own concerns about the mental health professionals making these findings. I don't think enough of them get challenged in court. I think there's an inclination to want to cut these guys loose..." (15)

District attorneys are often not allowed to question the evaluator on the witness stand, and many of the current cases covered by Colorado media have no documentation of a second evaluator being asked to confirm the initial diagnosis, even in violent and repeat cases.

Current cases in Colorado, discussed in this report, demonstrate that the evaluation process is releasing people who are "competent" enough to have a driver's license, obtain a weapon, purchase drugs, post on social media, and participate in a variety of common societal activities, yet are deemed by evaluators to lack the understanding of how a trial works or what the charges against them mean.

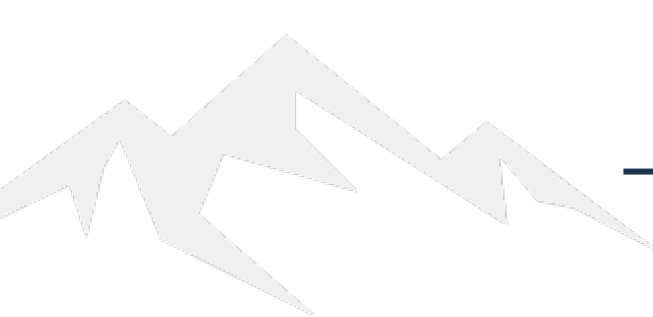
Guillermo Ramirez

Guillermo Ramirez was allegedly speeding at 115 mph, drunk, and high on drugs when he ran a red light and crashed into another car, killing two and injuring two others. Ramirez was 18 years old at the time. (16)

Competency Evaluation

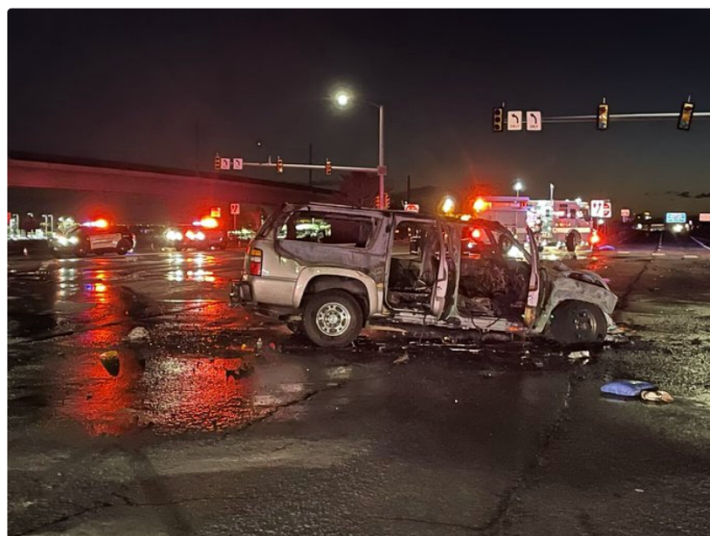
Once the issue of competency is raised, the court orders a forensic evaluation to be completed, and legal proceedings are suspended until this legal question is answered. In Colorado, a competency evaluation can be court-ordered to be completed in an inpatient hospital, jail or community setting. These evaluations are conducted by the Colorado Department of Human Services. A forensic evaluation of competency will include the following:

- **Review of discovery information on the case**, specifics on the legal charges and competency question, and collateral records.
- **"Notification of Purpose,"** or informing the defendant that the interview is not confidential. Information provided during the assessment can be included in the report that will be submitted to the court, prosecution, and defense for their legal case.
- **A brief history**, including family history, education, employment, significant current relationships, mental and medical health, substance use history, and psychiatric hospitalization history.
- **Mental status examination** and competency-specific assessment questions to assess an individual's factual knowledge about the legal proceedings, ability to make informed and reasoned decisions pertaining to their specific legal charges, and ability to work with their attorney to assist in their defense.
- **A diagnosis and prognosis** of mental health or developmental disorders
- **Barriers to competency to proceed**, when applicable, such as specific symptoms of mental health diagnosis.



Dr. Trang Walker, who was with the Office of Civil and Forensic Mental Health, ultimately found Ramirez incompetent to proceed and not restorable, citing his traumatic brain injury and the effects of his attention deficit hyperactivity disorder (ADHD). (16)

Denver⁷ reported that, “Walker found Ramirez had an ‘odd manner of speaking,’ ‘difficulty finding his words,’ was ‘fidgety,’ and ‘seemed to have issues with issues.’ He also had no interest in discussing specifics in his case.” (16) Notably, individuals with traumatic brain injuries are currently excluded from Colorado’s civil commitment system – a gaping hole that is allowing offenders to pass through, committing crimes without consequence. (17)



Colorado State Patrol

Just a year and a half after the crash, Ramirez was caught fighting in public, and body camera footage from his interactions with the police told a different story. Prosecutors pointed out how the body camera footage, unlike Dr. Walker’s findings, revealed that he was able to communicate effectively in this “high-stress situation.” (16)

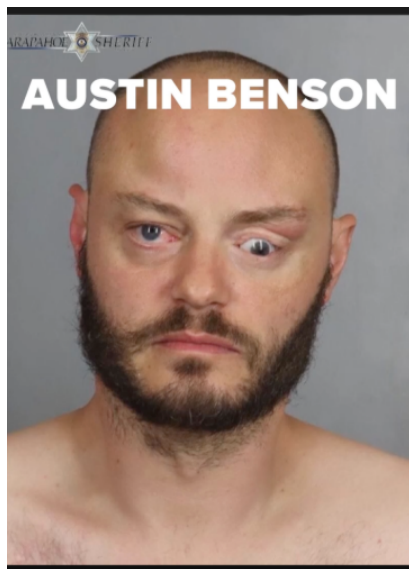
This led prosecutors to ask whether Ramirez could fake his behavior, knowing that his charges could be dismissed. In response to this question, Dr. Walker said that while “she imagines someone could do this... she did acknowledge that there is no mechanism to test for this, specifically.” Reports indicate Ramirez did not receive a second evaluation from a different evaluator. (16)

Ramirez has already had one case in Denver dismissed because he was found mentally incompetent without the ability to be restored. (16)

Austin Benson

On July 2, 2018, Austin Benson carjacked someone in El Paso County and shot at other vehicles when he drove into Douglas County. After a shootout with a retired police officer, he was arrested and charged with attempted murder. On December 5, 2019, in a separate incident, he was arrested for assault, harassment, and bond violations. (18)

On October 26, 2023, after five years, the charges against Benson from 2018 and 2019 were dismissed because he was found incompetent to stand trial. (18)

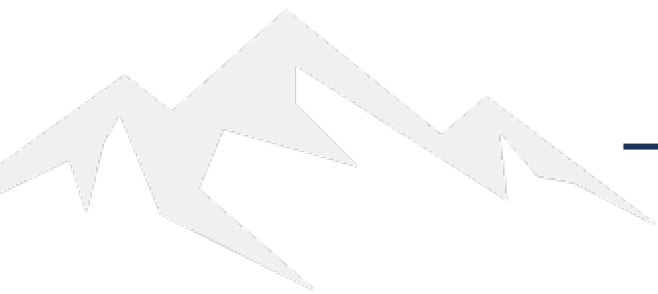


Then 18th Judicial District Attorney John Kellner told CPR News that, "The law requires that a judge dismiss a case – it's not optional – if a defendant is found incompetent and not restorable within the reasonably foreseeable future. After that, there's little to no safety net to deal with potentially dangerous mentally ill people." (18)

Medical and evaluation reports for Benson's 2018 and 2019 charges, which took place between March 2020 and August 2023, were contradictory. The initial report by Dr. Emily Stebner with the Colorado Department of Human Services found Benson competent to proceed for his 2018 charges. In an addendum to a different report that found Benson incompetent to proceed, one nurse reported that "the Defendant presented with logical, linear, and goal-directed thinking." (18)

All other reports and evaluations in that same time period found him incompetent to stand trial and non-restorable, citing a "traumatic brain injury," "frequent seizures," and "too medically compromised and impaired." (18)

In 2024, just eight months after he was released back into the public, Benson randomly fired bullets at strangers in Aurora, leaving one victim with "life-threatening injuries." (18)



As of October 8, 2025, 9News reported that a deal is being made between Benson's attorneys and prosecutors to place Benson in a secure mental health facility. According to 9News, "Absent the agreement... state law would require the judge to dismiss the charges and free Benson." (19) The bill number for that state law would be HB 24-1034.

Coloradans cannot afford to outsource public safety to lawyers who may be willing to make deals or to a single mental health evaluator who may find a dangerous criminal mentally incompetent without the ability to be restored.

The Alternative: Judicial Discretion & Civil Commitment

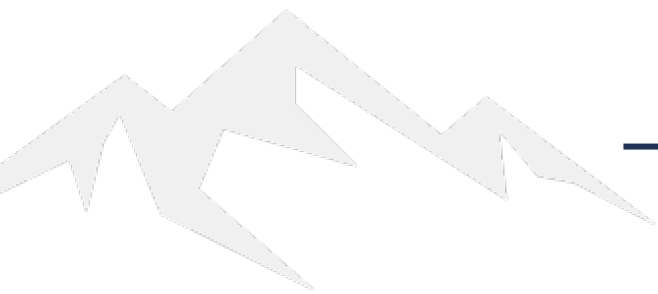
Colorado is missing a clear, defined path to civil commitment for a number of violent and repeat offenders. Despite Colorado allowing significant judicial discretion in its criminal justice system, specifically evidenced by its presumptive sentencing structures for most felonies and personal recognizance bond laws, the state requires judges to dismiss all charges where a defendant is found mentally incompetent without the ability to be restored. State statute does not provide a way to send the defendant to civil commitment facilities (absent the defendant's own agreement), even where he is a known danger to the public.

Debisa Ephraim

Debisa Ephraim was charged with attempted murder, beating another man even after he was unconscious. The attack was caught on camera, and the video was released to the public. (17)

Ephraim's charges were dismissed, and he was released back into the public. The news of his release went viral, with Elon Musk commenting on the case and Governor Jared Polis responding to Musk. Governor Polis argued that Ephraim's case should be handled under Title 27, the current civil commitment statute. (17)





Weld County District Attorney Michael Rourke called the Governor's statement "completely inaccurate," explaining that the statute requires "a very specific definition of 'mental health disorder,' and this defendant didn't meet that definition." (17) Many district attorneys have been frustrated with the loopholes in Colorado civil commitment laws that allow similar defendants to be released with no possibility of treatment, restoration, or confinement.

State Senator Judy Amabile (D), a sponsor of House Bill 24-1034, commented on this case, saying that "the state must revisit who qualifies for civil commitment, as some individuals -- such as those with intellectual or developmental disabilities, Alzheimer's or traumatic brain injuries -- are currently excluded." (17) Amabile admitted that, "What we've failed to do is set up an alternative path for people in that situation." (17)

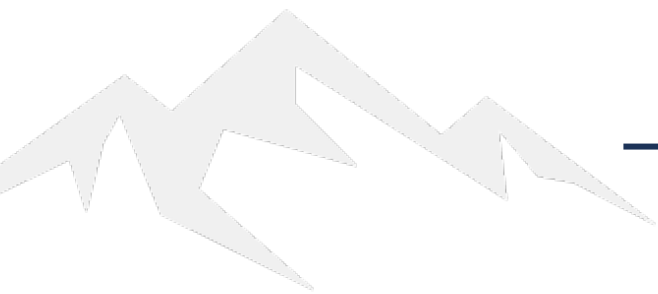
Within a month of his release, Ephraim was arrested and charged with trespassing and unlawful possession of a weapon. He had brought a gun to the University of Northern Colorado. He is held on a \$1 million bail, and he will begin the competency evaluation process again, as it is repeated with every crime committed. (20)

Ross McPherson

In May 2022, Ross McPherson, who was 28, walked into a doctor's office in Lakewood and stabbed Dr. Scott Green in the stomach. Dr. Green survived, and McPherson was arrested and charged. (21)

In July 2024, McPherson was found "incompetent to proceed without restorability." Dr. Green told Denver7 that McPherson will likely try again, saying, "If he's out, I believe for reasons that I don't understand that he's obsessed with me and I think that it is likely that he would come back and try to finish what he did before." (21)





Thanks to HB 24-1034, McPherson will be out on the streets and not in a civil commitment facility, where Dr. Green and the rest of the community would be protected from future violent attacks.

Ross Woessner

Ross Woessner, who was 20 at the time, was arrested for multiple armed robberies that began in July 2024. According to the police, Woessner “would show the store clerk he had a weapon, such as a handgun or knife, and then would jump over the counter to steal vapes, cigarettes and beer before fleeing.” (22)

A court in Arapahoe County found Woessner permanently mentally incompetent. District Attorney Amy Padden told Fox 31: “The statute is currently mandatory that if someone is found incompetent and not likely to be restored that the court shall dismiss the case and it doesn’t matter how serious the case is.” (23)



Despite the repeat and violent nature of this case and others like it, judges cannot exercise judicial discretion to order treatment or civil commitment under the current incompetency law.

Clear Paths to Civil Commitment in Other States

Other states, even those that have a similar requirement for the dismissal of charges, still allow for judicial or district attorney discretion to pursue placing defendants in civil commitment facilities.

These states have a defined process for putting offenders found “permanently mentally incompetent without the ability to restore” into civil confinement where they are a continuing danger to the public.



Maine

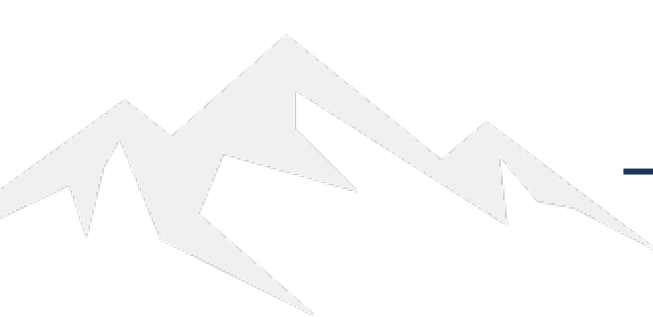
“Finding of nonrestorability. If the court determines that the defendant is not competent to stand trial and there does not exist a substantial probability that the defendant can be competent in the foreseeable future, the court shall dismiss all charges against the defendant and, unless the defendant is subject to an undischarged term of imprisonment, **the court may notify the appropriate authorities who may institute civil commitment proceedings for the individual.**” (24)

Missouri

“When a court finds a client to be incompetent, he/she is committed to DMH and remains there until competence is restored or there is an opinion and judicial finding that there is no substantial probability that competence can be restored in the reasonably foreseeable future. An incompetent person can only be held in DMH pursuant to criminal charges for a “reasonable period” of time, after which the criminal charges must be dismissed and if the client is to remain in DMH involuntarily, **the State must seek civil commitment and guardianship.** Missouri’s statute requires that Guardianship and or civil commitment proceedings be filed before the court dismisses the criminal charges and the dismissal is without prejudice.” (25)

Alaska

“If, at the expiration of the second 90-day period, the court determines that the defendant continues to be incompetent to stand trial, the charges against the defendant shall be dismissed without prejudice, and **continued commitment of the defendant shall be governed by the provisions relating to civil commitments under AS 47.30.700 - 47.30.915 unless the defendant is charged with a crime involving force against a person and the court finds that the defendant presents a substantial danger of physical injury to other persons and that there is a substantial probability that the defendant will regain competency within a reasonable period of time, in which case the court may extend the period of commitment for an additional six months. If the defendant remains incompetent at the**



expiration of the additional six-month period, the charges shall be dismissed without prejudice, and continued commitment proceedings shall be governed by the provisions relating to civil commitment under AS 47.30.700 - 47.30.915.” (26)

Utah

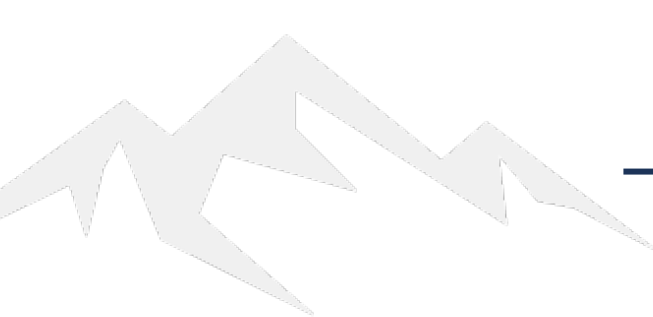
“If the court determines that the defendant is incompetent to proceed without a substantial probability that the defendant may become competent in the foreseeable future, the court shall order the defendant released from commitment to the department, ***unless the prosecutor or another individual informs the court that civil commitment proceedings pursuant to Title 26B, Chapter 5, Health Care - Substance Use and Mental Health, or Title 26B, Chapter 6, Part 4, Division of Services for People with Disabilities, will be initiated.***” (27)

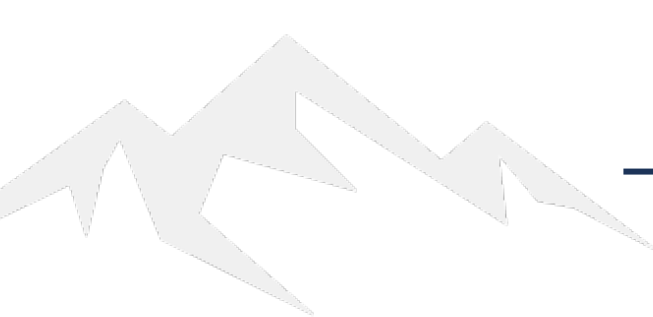
Conclusion: Solutions for Colorado

Former Arapahoe County District Attorney John Kellner wrote in an op-ed for The Gazette:

“Due to the state’s desire to resolve the competency case backlog and get out from underneath the consent decree, the legislature passed and Gov. Jared Polis signed House Bill 24-1034, titled ‘Adult Competency to Stand Trial.’ The law made reckless changes to our failing competency system, including requiring the mandatory dismissal of charges if a defendant is deemed incompetent and not restorable, like Galligan. This change in law took away any semblance of discretion for the judge, prosecutor and even defense counsel, to address the unique situation of each defendant. The dismissal is automatic even if the victim’s family and the district attorney object.” (28)

Along with John Kellner, a number of elected officials, attorneys, and law enforcement officers have suggested credible solutions to fixing the current incompetency problem. These solutions include:

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- **Increase the Standards for Evaluators and the Evaluation Process** by:
1) requiring the Behavioral Health Administration to establish higher standards for competency evaluators; 2) making a publicly available list of the required experience skill, and credibility for evaluators; 3) providing a clear path for a District Attorney to request a second evaluation; 4) requiring the evaluator to testify on the stand about the evaluation and be questioned by the prosecution and defense about their findings.
 - **Reverse the Mandatory Dismissal of Charges** in HB 24-1034.
 - **Restore the Criminal Confinement Time Limits That Were Decreased** in HB 24-1034.
 - **Allow a Hearing on Public Danger.** When a defendant is found to be permanently mentally incompetent without the possibility of restoration, the court should hold a hearing to determine whether the defendant is a continuing danger to the public. Victims and family members of the defendant should be allowed to testify, along with expert witnesses as/if needed.
 - **Certify the Defendant for Short-Term Treatment.** If the court finds that the permanently incompetent defendant is a continuing danger to the public, the defendant should be certified for treatment, according to the civil commitment statute, C.R.S. 27-65-108.5.
 - **Suspend the Statute of Limitations.** For dangerous defendants, the statute of limitations should be suspended during short-term treatment so that charges can be re-filed at a later date if competency is restored.
 - **Re-prioritize Inpatient Civil Beds.** The State needs to create additional civil commitment beds, but while this process is taking place, defendants certified for short-term treatment who are continuing dangers to the public and incompetent should be prioritized for bed usage.

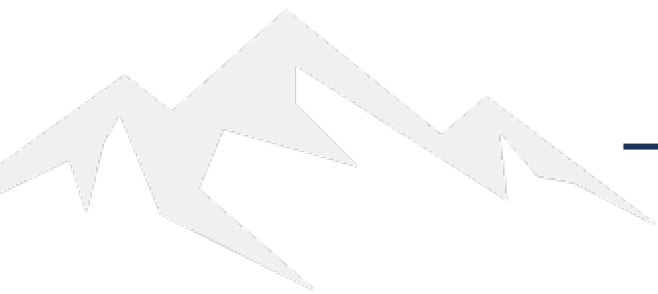
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- **Amend the Definition of “Gravely Disabled.”** In C.R.S. 27-65-102, “gravely disabled” should include persons who are found incompetent to proceed for charges involving death, serious bodily injury, or a serious threat to the well-being of another person. This matches other states’ effective laws.
 - **Add to the Emergency Mental Health Hold Requirements.** C.R.S. 27-65-106 should be amended to add that an emergency mental health hold can be invoked for a permanently incompetent defendant when a district attorney alleges that the defendant presents a danger to himself or others and, unless committed, will continue to represent an extreme risk to the safety of other persons for the foreseeable future.

The bottom line is that Colorado has a responsibility to fix the disaster that HB 24-1034 has created and take action to keep dangerous offenders out of the community.

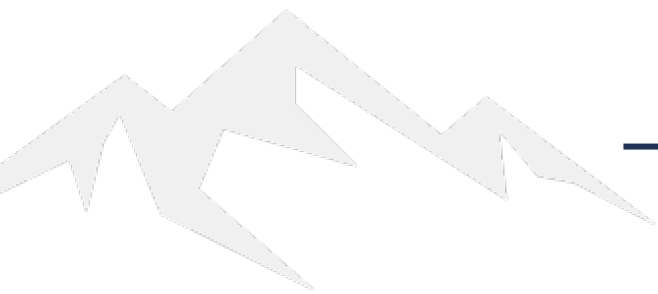


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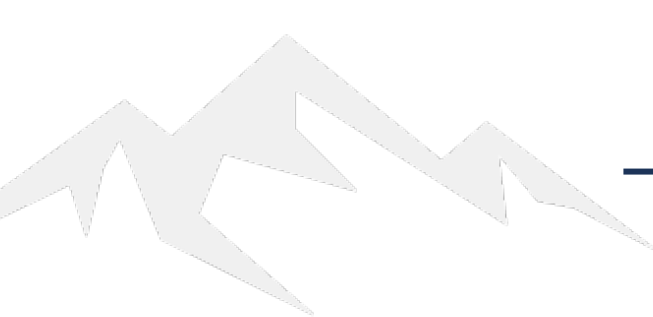
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