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COLORADO'S COMPETENCY CRISIS

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ABOUT THE AUTHORS



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ABOUT COMMON SENSE INSTITUTE

Common Sense Institute is a non-partisan research organization dedicated to the protection and promotion of Colorado's economy. CSI is at the forefront of important discussions concerning the future of free enterprise and aims to have an impact on the issues that matter most to Coloradans. CSI's mission is to examine the fiscal impacts of policies, initiatives, and proposed laws so Coloradans are educated and informed on issues impacting their lives. CSI employs rigorous research techniques and dynamic modeling to evaluate the potential impact of these measures on the economy and individual opportunity.

TEAMS & FELLOWS STATEMENT

CSI is committed to independent, in-depth research that examines the impacts of policies, initiatives, and proposed laws so that Coloradans are educated and informed on issues impacting their lives. CSI's commitment to institutional independence is rooted in the individual independence of our researchers, economists, and fellows. At the core of CSI's mission is a belief in the power of the free enterprise system. Our work explores ideas that protect and promote jobs and the economy, and the CSI team and fellows take part in this pursuit of academic freedom. Our team's work is informed by data-driven research and evidence. The views and opinions of fellows do not reflect the institutional views of CSI. CSI operates independently of any political party and does not take positions.

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INTRODUCTION

Colorado could spare itself a reputational headache and hefty fines if it were to invest in criminal incompetency restoration, but it would need to cut mental health operating costs to make the effort worthwhile.

When criminal defendants are declared incompetent, they may also be declared “restorable,” meaning they could, with counseling and mental healthcare, restore a level of mental capacity that could carry culpability. The backlog of criminal defendants waiting for mental health services has risen in the last year, as has the length of time they need to wait for an available bed. In the meantime, high-visibility cases have highlighted a pervasive problem in Colorado relating to incompetency to stand trial.

This situation has been created over the last five years. 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.

CDHS faces up to \$12 million annually in fines if it fails to meet new service deadlines.

The agreement comes after years of rising demand: since 2000, inpatient competency evaluation orders increased nearly 600%, and restoration service orders rose more than 1,200%. Disability Law Colorado reopened the lawsuit after CDHS failed to meet previous settlement deadlines.

In subsequent years, the backlog has not only ceased to disappear but grown. The state of Colorado has not paid the fine threshold each year but has in some, an outlay that has added to the state’s deficit. In the meantime, judges have less discretion regarding when to release accused criminals who are mentally incompetent back into the public to await restoration.

CDHS faces up to \$12 million annually in fines if it fails to meet new service deadlines.

KEY FINDINGS

- Since 2000, inpatient competency evaluation orders increased nearly 600%, and restoration service orders rose more than 1,200%.
- As of June 2025, there are 368 Colorado inmates on the wait list to receive court-mandated competency restoration.
- There are 673 total beds reserved for incompetency restoration treatment. They are always occupied, creating a wait list referred to as the state's "backlog."
- Over the last year, 930 inmates have been referred for restoration and have spent, or will spend, an average near 110 days each on the wait list.
- The Colorado Department of Human Services (CDHS) pays a fine between \$100 and \$500 per day for keeping an inmate ordered to undergo competency restoration waitlisted for longer than 28 days. In Fiscal Year 24, CDHS paid \$12 million, which is the cap under the consent decree.
- If the consent decree had not included a cap, the fines would have cost \$65.2 million.
- To bring wait times below 28 days, the state would need to add 209 new beds. These resources would save the state \$12 million (plus annual adjustments to the cap) per year by eliminating the fines and \$11.9 million per year by reducing the amount of time that inmates spend in public facilities while on the wait list.
- HB22-1303 budgeted \$6.2 million per year to staff and operate 16 new beds at the Colorado Mental Health Hospital in Fort Logan. At \$388,279 per bed, 209 new beds would require \$81.2 million of additional state spending per year.
- State accreditation standards require that mental institutions dedicate about 3.7 FTE of staff to each restoration bed; this requirement alone generates 74% of the total cost per unit.
- Inpatient restoration is almost seven times more expensive than incarceration, which costs just \$58,000 per inmate annually.
- In total, the state would face an annual cost of \$57.2 million to comply with the 2019 consent decree.

COLORADO COMPETENCY LAW

Colorado's laws surrounding criminal competency have changed markedly in the last decade as some broader mental health outcomes and metrics deteriorated. Colorado ranks among the worst states in the nation for mental health outcomes. In 2024, it had the second-highest prevalence of mental illness nationally, and it ranked 46th for overall mental health care and 48th for substance abuse disorders, according to previous Common Sense Institute coverage.

Like other states, Colorado law requires that a defendant must be competent to stand trial. Competency means that a defendant has the ability to consult with their attorney, understand the proceedings and assist in their own defense. If they are deemed incompetent and not restorable, under Colorado law the defendant's case is required to be dismissed.

While some individuals may be deemed incurably incompetent, others may be judged as "restorable" to competence. If judged restorable, it is up to the state to provide the treatment necessary to restore them. For decades, Colorado's system relied heavily on the Colorado Mental Health Institute at Pueblo (CMHIP), which became the central facility for inpatient competency restoration.

By the 2000s and 2010s, rising caseloads strained the system. Defendants often sat in jail for months or years waiting for a CMHIP bed. In 2011, Colorado faced a federal lawsuit regarding its failure to provide timely competency evaluations and restoration services.

The case culminated in the 2019 consent decree mentioned previously that requires Colorado to fix its backlog of competency cases. The state was ordered to reduce delays in getting defendants evaluated and treated, or else face significant financial penalties.

Since then, Colorado has paid tens of millions in fines for failing to meet the decree's requirements.

THE PUSH FOR LEGISLATIVE REFORM

The federal decree itself did not solve the problem. To reduce the backlog and bring the state into compliance, lawmakers sought solutions. In 2024, the General Assembly passed and Governor Jared Polis signed House Bill 24-1034, which represented a major turning point in Colorado's competency framework.

Key changes included:

- **Mandatory dismissal of charges** when a defendant is deemed incompetent and not restorable, removing judicial discretion even in violent cases.
- **Expanded outpatient restoration services**, shifting many defendants out of jail and into community-based programs.

These reforms raised concerns about public safety since many of the individuals who were deemed incompetent, but not restorable, had their cases dismissed even though their offenses were violent. In other cases, individuals awaiting restoration reoffended. The impact of the new law has already been seen in several high-profile cases in the public eye over the last two years:

- **Soloman Galligan (2024–2025)**: A registered sex offender who was accused of attempting to kidnap a child at Black Forest Hills Elementary in Aurora. More than 460 days after his arrest, a mental health evaluator found him incompetent and not restorable. In compliance with HB 24-1034, the local district attorney said his case must be dismissed.
- **Boulder King Soopers Mass Shooting (2021)**: The perpetrator was found incompetent and spent nearly two years in limbo before restoration proceedings could move forward.
- **Joel Lang (2024–2025)**: Accused of running over and killing Kristy Kerst in Colorado Springs. Despite his alleged admission of motive, Lang was deemed incompetent and not restorable. The judge dismissed the case. The possibility of civil commitment remains uncertain.
- **Elijah Caudill (2024)**: Released from jail under a program that is intended to provide outpatient support, Caudill later allegedly stabbed four people on Denver's 16th Street Mall, killing two.

- **Debisa Ephraim (2025):** Arrested on April 5 by Greeley Police on suspicion of attempted second-degree murder, first-degree assault, and rioting, while held at the Weld County Jail, Ephraim was separately charged with aggravated felony menacing with a weapon and first-degree burglary without forced entry. He was deemed incompetent and unrestorable, requiring dismissal of all charges and his release from jail. The Weld County Sheriff released a video criticizing the law requiring Ephraim's release and warning the public of the possible danger posed by Ephraim.

Individuals deemed incompetent but restorable also face challenges in securing their necessary treatment. Despite the consent decree, Colorado's inpatient competency restoration remains limited. Today, services are provided primarily at the Colorado Mental Health Hospital in Pueblo and the Restoring Individuals Safely and Effectively (RISE) program inside the Arapahoe County jail (94 beds, but only ~70 funded).

CSI METHODOLOGY FOR DETERMINING COST OF REDUCING WAIT TIMES

According to estimates derived from state records, the state would pay more than the annual fine if it were to build enough mental hospital bed space to reduce wait times to the consent decree's specifications.

As a result of the consent decree, CDHS is required to keep a database of the competency restoration backlog.ⁱ This dashboard provides data on the size of the waitlist and the number of restoration beds available. State memoranda report an average wait time near 110 days.ⁱⁱ The size of the backlog can fluctuate widely across the span of a year; the average backlog was about 291 over the last 12 months. Admission and discharge data, also furnished by CDHS, show 930 detainees were admitted to inpatient restoration services over that period.

CSI assumes that these numbers represent the competency system at a steady state. At a 110-day wait time, these 930 individuals spend a total of about 102,000 days in the backlog. If the wait time were to be reduced to 28 days, these individuals would only spend about 26,000 days waiting—a 76,000-day difference from the current norm.

It costs about \$156 per day to incarcerate someone in Colorado, according to averages reported by state prisons.ⁱⁱⁱ Saving 76,000 days of waiting would result in monetary savings totaling \$11.9 million.

It would take 209 new beds to reduce wait time in the backlog by 76,000 man-days per year. The fiscal note of HB22-1303 projects an annual cost of \$6.2 million to operate 16 new beds, or \$388,000 per bed.^{iv} State laws that govern staffing and operating mental facilities contribute to the high unit-cost. Hospitals are required by accreditation standards to dedicate about 3.7 FTE of staff to each restoration bed; this requirement alone generates 74% of the total cost.

To operate 209 new beds would cost \$81.2 million per year. Minus the \$11.9 million from incarceration and the \$12 million in fines, the state's total cost of reducing restoration waiting times would be \$57.2 million per year. If the annual cost of operating each new bed could be reduced from \$388,000 to \$114,000, the state would break even; reducing the cost of operating every bed, including the 673 already in place, from \$388,000 to \$323,000 would result in equivalent savings.

Importantly, these figures do not include the unknown costs of crime committed by individuals whose cases were dismissed for incompetency reasons. As detailed in previous CSI reports, crime costs, especially for violent crime, are a substantial economic drain on Colorado's economy. In 2022, for example, these costs exceeded \$27 billion in lost economic output.

RECOMMENDATIONS

The state's position should prompt a series of actions to both relieve the backlog and to restore judicial discretion for cases in which the defendant has been declared incompetent. This should include:

- Decreasing the operating cost per bed for restoration patients
- Restoring judicial discretion in competency dismissals
- Automatic inpatient admission and treatment for defendants found permanently incompetent
- Expanding state hospital capacity, including building a new Denver-area facility to leverage Anschutz Medical Campus resources

CONCLUSION

Colorado's competency laws have evolved from basic adoption of federal standards, through decades of mounting strain, into a federally monitored system shaped by fines and legislative reform. Although a consent decree aimed to incentivize the state to reduce wait times for defendants pending competency restoration, the state remains largely out of compliance. 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.

The federal consent decree has not meaningfully reduced either wait times for restoration nor the number of defendants in the state's backlog. The consent decree created unintended consequences, draining state finances while perpetuating the issue itself. The fines incurred in the wake of the perennial backlog are in fact less than the amount it would take to simply expand mental health facilities' capacity to end the backlog altogether. Essentially, the state is paying interest on its criminal incompetency problem without ever paying the principal.

Attempted solutions to the consent decree have created additional issues. HB24-1034, well-intentioned as it may be, has not managed to reduce the restoration backlog. It also has resulted in the release of several criminals who subsequently committed high-profile crimes.

Ultimately, the federal consent decree and state law have led to deteriorating public trust in Colorado's criminal justice system. As previous CSI reporting has found, lack of public safety has broad economic consequences for Colorado's economy since businesses and patrons are less likely to build, live in, and visit areas they deem unsafe. Further, state law has visibly contributed to a spate of high-profile crimes that carry their own hard economic costs.

Today, the state is caught between addressing a mental health crisis and protecting public safety. Colorado leaders should take the public's safety and economic interests to heart by expanding restoration capacity, restoring judicial discretion, and lowering operating costs for state mental health facilities.

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