

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

BILLPAPER

INTRODUCED

LLS NO. 24-0275.01 Shelby Ross x4510

HOUSE BILL 24-1034

HOUSE SPONSORSHIP

Amabile and Bradfield, English

SENATE SPONSORSHIP

Fields, Rodriguez

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ADULT COMPETENCY TO STAND TRIAL.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill reforms and clarifies the criminal competency to proceed process. The bill provides necessary parties with access to information related to the defendant's claim of incompetency to proceed. The bill requires the department of human services to search prior competency evaluations in its possession when the court orders a competency evaluation or the court finds the defendant incompetent to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

proceed and provide any evaluations to the court. The bill adds to the information that is included in a competency report. The bill delineates a court's options when it finds that a defendant is incompetent to proceed. The bill directs when competency services may be provided on an outpatient basis. The bill sets forth the circumstances when a court has to dismiss the defendant's case based on the highest level of charge against the defendant and how long the defendant has been waiting for restoration services.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-101, **add**
3 (16.5) as follows:

4 **16-8.5-101. Definitions.** As used in this article 8.5, unless the
5 context otherwise requires:

6 (16.5) "REASONABLY FORESEEABLE FUTURE" MEANS AN
7 EVALUATOR'S CONSIDERATION OF THE DIAGNOSIS OR PROGNOSIS OF THE
8 DEFENDANT AND WHETHER THERE IS A TIME FRAME IN WHICH, IF THERE IS
9 NOT IMPROVEMENT, THAT THE DIAGNOSIS OR PROGNOSIS IS UNLIKELY TO
10 CHANGE.

11 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**
12 (1), (2)(a), (2)(b), (2)(d), and (3) as follows:

13 **16-8.5-102. Competency to proceed - how and when raised.**

14 (1) While a defendant is incompetent to proceed, the defendant ~~shall~~
15 MUST not be tried or sentenced, nor shall the court consider or decide
16 pretrial matters that are not susceptible of fair determination without the
17 personal participation of the defendant. However, a determination that a
18 defendant is incompetent to proceed ~~shall~~ DOES not preclude the
19 furtherance of the proceedings by the court to consider and decide
20 matters, including a preliminary hearing and motions, that are susceptible
21 of fair determination prior to trial and without the personal participation

1 of the defendant. Those proceedings may be later reopened if, in the
2 discretion of the court, substantial new evidence is discovered after and
3 as a result of the DEFENDANT'S restoration to competency. ~~of the~~
4 ~~defendant.~~

5 (2) The question of a defendant's competency to proceed must be
6 raised in only one of the following manners:

7 (a) If the judge has reason to believe that the defendant is
8 incompetent to proceed, ~~it is the judge's duty to~~ THE JUDGE SHALL suspend
9 the proceeding and determine the competency or incompetency of the
10 defendant pursuant to section 16-8.5-103;

11 (b) If either the defense or the prosecution has reason to believe
12 that the defendant is incompetent to proceed, either party may file a
13 motion in advance of the commencement of the particular proceeding. A
14 motion to determine competency shall be in writing and contain a
15 certificate of counsel stating that the motion is based on a good faith
16 doubt that the defendant is competent to proceed. The motion ~~shall~~ MUST
17 set forth the specific facts that have formed the basis for the motion. The
18 COURT MUST SEAL THE motion. ~~shall be sealed by the court.~~ If the motion
19 is made by the prosecution, the prosecution shall provide to the defense
20 a copy of the motion. If the motion is made by the defense, the defense
21 shall provide to the prosecution notice of the filing of the motion at the
22 time of filing, and if the defense requests a hearing, the defense shall
23 provide the motion to the prosecution at the time the hearing is requested.
24 The motion may be filed after the commencement of the proceeding if,
25 for good cause shown, the DEFENDANT'S mental disability or
26 developmental disability ~~of the defendant~~ was not known or apparent
27 before the commencement of the proceeding.

1 (d) By the state board of parole when a board member has a
2 substantial and good-faith reason to believe that the offender is
3 incompetent to proceed as defined in section 16-8.5-101 (12), at a parole
4 hearing conducted pursuant to section 17-22.5-403.5 PUBLIC DEFENDER
5 LIAISON, AS DESCRIBED IN SECTION 21-1-104 (6), OR AN ATTORNEY
6 REPRESENTING THE OFFENDER IN A PAROLE PROCEEDING.

7 (3) Notwithstanding any provision of this ~~article~~ ARTICLE 8.5 to
8 the contrary, the question of whether a convicted person is mentally
9 incompetent to be executed ~~shall~~ MUST be raised and determined as
10 ~~provided in~~ PURSUANT TO part 14 of article 1.3 of title 18. ~~C.R.S.~~

11 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**
12 (8) as follows:

13 **16-8.5-103. Determination of competency to proceed.** (8) If the
14 question of the defendant's incompetency to proceed is raised after a jury
15 is impaneled to try the issues raised by a plea of not guilty and the court
16 determines that the defendant is incompetent to proceed or orders a
17 court-ordered competency evaluation, the court may declare a mistrial.
18 Declaration of a mistrial under these circumstances does not constitute
19 jeopardy, nor does it prohibit the trial or sentencing of the defendant for
20 the same offense after ~~he or she~~ THE DEFENDANT has been found restored
21 to competency.

22 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-104, **amend**
23 (1) introductory portion, (3), (4), and (6); and **add** (4.5) as follows:

24 **16-8.5-104. Waiver of privilege.** (1) When a defendant raises the
25 issue of competency to proceed, or when the court determines that the
26 defendant is incompetent to proceed, ~~and orders that the defendant~~
27 ~~undergo restoration treatment~~ any claim by the defendant to

1 confidentiality or privilege is deemed waived ~~and~~ IN THE CASE IN WHICH
2 COMPETENCY IS RAISED AND FOR RECORDS OR INFORMATION FROM ANY
3 PRIOR CRIMINAL CASE IN WHICH THE DEFENDANT RAISED THE ISSUE OF
4 COMPETENCY OR IN WHICH THE COURT DETERMINED THAT THE
5 DEFENDANT WAS INCOMPETENT TO PROCEED. The district attorney, the
6 defense attorney, and the court are granted access, without written
7 consent of the defendant or further order of the court, to:

8 (3) An evaluator or a facility providing competency evaluation or
9 restoration treatment services pursuant to a court order issued pursuant to
10 ~~this article is authorized to provide, and~~ ARTICLE 8.5 shall provide
11 procedural information to the court, district attorney, or defense counsel,
12 concerning the defendant's location, the defendant's hospital or facility
13 admission status, the status of evaluation procedures, and other
14 procedural information relevant to the case.

15 (4) Nothing in this section limits the court's ability to order that
16 information in addition to ~~that set forth~~ THE INFORMATION DESCRIBED in
17 subsections (1) and (3) of this section be provided to the evaluator, or to
18 either party to the case, nor does it limit the information that is available
19 after the written consent of the defendant.

20 (4.5) THE COURT MAY, UPON THE REQUEST OF EITHER PARTY,
21 ISSUE AN ORDER TO ASSIST A PARTY IN ACCESSING, RECEIVING COPIES OF,
22 OR DISCUSSING WITH AN EVALUATOR OR TREATMENT PROVIDER
23 INFORMATION OR RECORDS WHICH THE PARTY HAS THE RIGHT TO ACCESS
24 PURSUANT TO THE DEFENDANT'S WAIVER OF PRIVILEGE. IF A PARTY
25 REQUESTS SUCH AN ORDER, THE COURT SHALL ALLOW THE OPPOSING
26 PARTY TO MAKE ANY LEGAL OBJECTION, INCLUDING WHETHER THE
27 REQUESTED INFORMATION IS WITHIN THE SCOPE OF THE DEFENDANT'S

1 WAIVER OF PRIVILEGE, AND CONSIDER ANY REQUESTS FOR PROTECTIVE
2 ORDERS PRIOR TO ISSUING THE COURT ORDER. THIS SECTION DOES NOT
3 LIMIT THE COURT'S ABILITY TO ORDER INFORMATION BE PROVIDED TO A
4 PARTY WITH THE WRITTEN CONSENT OF THE DEFENDANT.

5 (6) Statements made by the defendant in the course of any
6 evaluation ~~shall~~ MUST be protected ~~as provided~~ IN ACCORDANCE WITH
7 section 16-8.5-108.

8 **SECTION 5.** In Colorado Revised Statutes, **add** 16-8.5-104.5 as
9 follows:

10 **16-8.5-104.5. Availability of records.** (1) WHENEVER THE
11 COURT ORDERS A COMPETENCY EVALUATION OF THE DEFENDANT
12 PURSUANT TO SECTION 16-8.5-103 OR THE COURT FINDS THE DEFENDANT
13 INCOMPETENT TO PROCEED PURSUANT TO SECTION 16-8.5-111, THE COURT
14 SHALL ORDER THE DEPARTMENT TO CONDUCT A SEARCH FOR ANY PRIOR
15 COMPETENCY EVALUATIONS OF THE DEFENDANT IN THE DEPARTMENT'S
16 POSSESSION FROM ANY OTHER CRIMINAL CASE. WITHIN SEVENTY-TWO
17 HOURS OF RECEIVING THE COURT'S ORDER, THE DEPARTMENT SHALL FILE
18 THE DEFENDANT'S PRIOR COMPETENCY EVALUATIONS WITH THE COURT
19 AND THE COURT SHALL MAKE THE PRIOR EVALUATIONS AVAILABLE TO
20 EACH PARTY PURSUANT TO SECTION 16-8.5-104 (1).

21 (2) WITHIN SEVENTY-TWO HOURS OF RECEIVING A DEFENDANT'S
22 REQUEST FOR RECORDS, THE SHERIFF OR TREATMENT PROVIDER SHALL
23 PROVIDE THE DEFENDANT COPIES OF ANY RECORDS THAT RELATE TO THE
24 DEFENDANT'S COMPETENCY, INCLUDING ANY RECORDS WITHIN THE SCOPE
25 OF THE DEFENDANT'S WRITTEN CONSENT, IF THE DEFENDANT:

26 (a) PROVIDES A WRITTEN CONSENT FOR RECORDS PURSUANT TO
27 SECTION 16-8.5-104;

1 (b) RAISED THE ISSUE OF COMPETENCY PURSUANT TO SECTION
2 16-8.5-103; OR

3 (c) IS FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION
4 16-8.5-111.

5 (3) WITHIN SEVENTY-TWO HOURS OF RECEIVING THE
6 DEPARTMENT'S REQUEST FOR RECORDS, THE SHERIFF OR TREATMENT
7 PROVIDER SHALL PROVIDE THE DEPARTMENT COPIES OF ANY RECORDS
8 WITHIN THE SCOPE OF THE DEFENDANT'S WRITTEN CONSENT OR WAIVER OF
9 PRIVILEGE PURSUANT TO SECTION 16-8.5-104 THAT RELATE TO THE
10 DEFENDANT'S COMPETENCY. THE DEPARTMENT'S REQUEST MUST BE:

11 (a) IN WRITING AND STATE THAT THE DEPARTMENT MUST ACCESS
12 THE RECORDS IN ORDER TO COMPLY WITH A COURT ORDER FOR A
13 COMPETENCY EVALUATION PURSUANT TO SECTION 16-8.5-103 AND THAT
14 THE DEPARTMENT IS ENTITLED TO RECEIVE THE RECORDS PURSUANT TO
15 THE DEFENDANT'S WAIVER OF PRIVILEGE PURSUANT TO SECTION
16 16-8.5-104; OR

17 (b) ACCOMPANIED BY THE DEFENDANT'S WRITTEN CONSENT FOR
18 RECORDS PURSUANT TO SECTION 16-8.5-104.

19 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-105, **amend**
20 (1)(a)(I), (1)(b.7), (5) introductory portion, (5)(c), (5)(d), (5)(e), and
21 (5)(f); **amend as they will become effective July 1, 2024**, (4) and
22 (5)(h)(II); and **add** (1)(b.6) and (5)(c.5) as follows:

23 **16-8.5-105. Evaluations, locations, time frames, and report.**

24 (1) (a) (I) The court shall order that the competency evaluation be
25 conducted on an outpatient basis or, if the defendant is unable to post the
26 monetary condition of bond or is ineligible to be released on bond, at the
27 place where the defendant is in-custody, except as provided in subsection

1 (1)(b) of this section. If the department conducts the evaluation on an
2 in-custody basis, the department shall begin the evaluation as soon as
3 practicable after the department's receipt of a court order directing the
4 evaluation. ~~After July 1, 2020,~~ If the evaluation is conducted on an
5 in-custody basis, the department shall complete the evaluation no later
6 than twenty-one days after receipt of the order and the collateral
7 materials. ~~On and after July 1, 2020,~~ If the evaluation is conducted on an
8 out-of-custody basis, the department shall complete the evaluation within
9 forty-two days after receipt of the order and collateral materials, unless
10 the court extends the time upon a showing of good cause.

11 (b.6) IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT
12 IS INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION
13 SERVICES ARE NOT CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL
14 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES
15 AVAILABLE TO THE DEFENDANT.

16 (b.7) ~~On and after July 1, 2020,~~ When the court orders an inpatient
17 evaluation, the defendant must be offered admission to the hospital or
18 other inpatient program within fourteen days after receipt of the court
19 order and collateral materials. The court shall review the case in
20 twenty-one days to determine if transportation to the hospital or program
21 has been completed or if further orders are necessary.

22 (4) A written report of the evaluation must be prepared in
23 triplicate and delivered to the clerk of the court that ordered it. The clerk
24 shall provide a copy of the report both to the prosecuting attorney and the
25 DEFENDANT'S counsel. ~~for the defendant.~~ The department may utilize the
26 e-filing system to deliver the report to the court and serve it upon the
27 parties. Without reducing any other timelines set forth in this article 8.5,

1 the competency evaluator shall provide the written report to the court
2 within fourteen days after finishing meeting or attempting to meet with
3 the ~~respondent~~ DEFENDANT to evaluate the ~~respondent's~~ DEFENDANT'S
4 competency.

5 (5) ~~On and after July 1, 2020,~~ The competency evaluation and
6 report must include, but need not be limited to:

7 (c) ~~A diagnosis and prognosis of the defendant's mental disability~~
8 ~~or developmental disability~~ A DESCRIPTION OF MEDICATIONS RECENTLY
9 PRESCRIBED TO THE DEFENDANT AND WHETHER THE DEFENDANT HAS
10 TAKEN THE MEDICATIONS AS PRESCRIBED, WHETHER THE MEDICATIONS
11 WERE TAKEN VOLUNTARILY OR ADMINISTERED THROUGH A FORCED
12 MEDICATION ORDER, AND WHAT EFFECT THE MEDICATIONS HAVE ON THE
13 DEFENDANT;

14 (c.5) A DESCRIPTION OF ANY PRIOR CASES KNOWN TO THE
15 DEPARTMENT IN WHICH THE DEFENDANT RAISED THE ISSUE OF
16 COMPETENCY OR THE DEFENDANT WAS FOUND INCOMPETENT TO PROCEED,
17 INCLUDING THE JURISDICTION OF THE CASE AND THE CASE NUMBER, AND:

18 (I) THE NUMBER OF PRIOR CASES IN WHICH THE DEFENDANT HAS
19 BEEN FOUND INCOMPETENT TO PROCEED;

20 (II) IF THE COURT FOUND THE DEFENDANT RESTORED TO
21 COMPETENCY AND IF RESTORATION TREATMENT WAS PROVIDED TO THE
22 DEFENDANT;

23 (III) ANY PRIOR OPINION FROM A FORENSIC EVALUATOR
24 CONTRACTED OR EMPLOYED BY THE DEPARTMENT THAT THE DEFENDANT
25 COULD NOT BE RESTORED TO COMPETENCY WITHIN THE REASONABLY
26 FORESEEABLE FUTURE; AND

27 (IV) A DESCRIPTION OF ALL COMPETENCY EVALUATIONS OR

1 RESTORATION SERVICES THAT WERE PREVIOUSLY PROVIDED TO THE
2 DEFENDANT;

3 (d) An opinion as to whether the defendant CURRENTLY suffers
4 from a mental disability or developmental disability. IF THE OPINION OF
5 THE COMPETENCY EVALUATOR IS THAT THE DEFENDANT SUFFERS FROM A
6 MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THEN THE REPORT
7 MUST INCLUDE AN OPINION AS TO THE DIAGNOSIS AND THE PROGNOSIS OF
8 THE DEFENDANT'S MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY.

9 (e) An opinion as to whether the defendant is competent to
10 proceed OR INCOMPETENT TO PROCEED. If the opinion of the competency
11 evaluator is that the defendant is incompetent to proceed, then THE
12 REPORT MUST INCLUDE:

13 (I) ~~(A) If possible,~~ An opinion as to whether there is a substantial
14 probability that the defendant, with restoration services, will attain
15 competency within the reasonably foreseeable future; AND

16 ~~(B) When, pursuant to the requirements of subsection (5)(f) of this~~
17 ~~section, the evaluator is aware that any court within the previous five~~
18 ~~years has found the defendant is incompetent to proceed and there is a~~
19 ~~substantial probability that with restoration services the defendant will not~~
20 ~~attain competency within the reasonably foreseeable future, the evaluator~~
21 ~~shall provide an opinion regarding the probability of restoration pursuant~~
22 ~~to this subsection (5)(e)(I) and, when the opinion is that there is a~~
23 ~~substantial probability of attaining competency within the reasonably~~
24 ~~foreseeable future, the evaluator shall state why the defendant's~~
25 ~~circumstances are different from the prior court's finding;~~

26 ~~(C) When the defendant is diagnosed with a moderate to severe~~
27 ~~intellectual or developmental disability, acquired or traumatic brain~~

1 injury, or dementia, which either alone or together with a co-occurring
2 mental illness affects the defendant's ability to gain or maintain
3 competency, the evaluator shall provide an opinion as to whether there is
4 a substantial probability that the defendant with restoration services will
5 attain competency within the reasonably foreseeable future. When the
6 opinion is that there is a substantial probability of attaining competency,
7 the evaluator shall specifically state whether the evaluator believes there
8 are unique or different services outside the standard competency
9 restoration curriculum developed by the department that the defendant
10 may need in order to be restored to competency within the reasonably
11 foreseeable future.

12 (D) When the defendant has been found incompetent to proceed
13 pursuant to section 16-8.5-103 three or more times over the previous three
14 years in the current case or any other case, even if the defendant is later
15 restored, the evaluator shall specifically identify those instances of
16 findings of incompetency as a part of the review required pursuant to
17 subsection (5)(f) of this section. The evaluator shall provide an opinion
18 as to whether there is a substantial probability that the defendant with
19 restoration services will attain competency within the reasonably
20 foreseeable future and maintain competency throughout the case.

21 (II) A recommendation AN OPINION as to whether inpatient
22 restoration services are clinically appropriate to restore the defendant to
23 competency. If inpatient restoration services are not clinically appropriate,
24 the department must detail the outpatient and out-of-custody restoration
25 services available to the defendant. For evaluation reports filed on or after
26 January 1, 2021, the recommendations must be based upon the restoration
27 placement guideline developed pursuant to section 16-8.5-121, prior to

1 its repeal.

2 (f) ~~If available within the records of the department, a description~~
3 ~~of all competency evaluations or restoration services that were previously~~
4 ~~provided to the defendant, including a list of recent voluntary or~~
5 ~~involuntary medications administered or administered through a forced~~
6 ~~medication order;~~ AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL
7 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
8 ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE,
9 AND:

10 (I) IF ANY COURT WITHIN THE PREVIOUS FIVE YEARS FOUND THE
11 DEFENDANT INCOMPETENT TO PROCEED AND THAT THE DEFENDANT
12 WOULD NOT ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE
13 FUTURE, AN OPINION AS TO WHY THE DEFENDANT'S CURRENT
14 CIRCUMSTANCES ARE DIFFERENT FROM THE PRIOR COURT'S FINDINGS; AND

15 (II) IF THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO
16 PROCEED AFTER BEING FOUND COMPETENT TO PROCEED THREE OR MORE
17 TIMES WITHIN THE PREVIOUS FIVE YEARS, AN OPINION AS TO WHETHER,
18 EVEN IF RESTORED, THE DEFENDANT WILL MAINTAIN COMPETENCY
19 THROUGHOUT THE CURRENT CASE.

20 (h) The competency evaluator's opinion and the information and
21 factors considered in making determinations as to whether the defendant:

22 (II) Meets the criteria for a certification for short-term treatment
23 pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets
24 such criteria, whether the evaluator believes the defendant could be
25 treated on an outpatient basis pursuant to section 27-65-111. In assessing
26 whether the defendant with a pending criminal charge is a danger to self
27 or others or is gravely disabled, if the person is incarcerated, the

1 competency evaluator or professional person, as defined in section
2 27-65-102, and the court shall not rely on the fact that the defendant is
3 incarcerated or is an inpatient in a medical facility to establish that the
4 defendant is not a danger to self or others or is not gravely disabled. If it
5 is the evaluator's opinion that the defendant meets criteria for certification
6 for short-term treatment pursuant to section 27-65-108.5 or 27-65-109,
7 the evaluator is not required to request a petition for certification for
8 short-term treatment of the defendant in a court with jurisdiction pursuant
9 to ~~section 16-8.5-111(2)(a)~~ SECTION 16-8.5-111 (3).

10 **SECTION 7.** In Colorado Revised Statutes, **amend** 16-8.5-107
11 as follows:

12 **16-8.5-107. Counsel and evaluators for indigent defendants.**

13 In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE
14 8.5, the court shall appoint A competency ~~evaluators or attorneys~~
15 EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S
16 expense upon motion of the defendant with proof that ~~he or she~~ THE
17 DEFENDANT is indigent and without ~~funds~~ MONEY to employ A
18 competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which
19 ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this ~~article~~
20 ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a
21 second evaluation is requested by an indigent defendant. ~~it shall be paid~~
22 ~~for by the court.~~

23 **SECTION 8.** In Colorado Revised Statutes, 16-8.5-108, **amend**
24 (1)(c) and (2) as follows:

25 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on ~~his or~~
26 ~~her~~ THE DEFENDANT'S own behalf upon the trial of the issues raised by the
27 plea of not guilty or, for offenses that occurred before July 1, 1995, a plea

1 of not guilty by reason of impaired mental condition, or at a sentencing
2 hearing held pursuant to section 18-1.3-1201 for an offense charged prior
3 to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged
4 prior to July 1, 2020, or pursuant to section 18-1.4-102, ~~the provisions of~~
5 this section ~~shall~~ DOES not bar any evidence used to impeach or rebut the
6 defendant's testimony.

7 (2) In any hearing concerning competency to proceed or
8 restoration to competency, competency evaluators and other experts may
9 testify as to ~~their~~ THE conclusions reached from their examination of
10 hospital records, laboratory reports, X rays, electroencephalograms, and
11 psychological test results if the material that ~~they~~ THE EVALUATORS OR
12 EXPERTS examined in reaching their conclusions is produced at the time
13 of the hearing. Nothing in this section prevents the parties from obtaining
14 the information authorized by section 16-8.5-104 prior to the hearing.

15 **SECTION 9.** In Colorado Revised Statutes, 16-8.5-109, **amend**
16 (1), (2)(b), and (3) as follows:

17 **16-8.5-109. Advisement on matters to be determined.**

18 (1) When a determination is to be made as to a defendant's competency
19 to proceed, the court shall explain to the defendant the nature and
20 consequences of the proceeding and the rights of the defendant under this
21 section. The defendant, if ~~he or she~~ THE DEFENDANT wishes to contest the
22 question, may request a competency hearing that THE COURT shall ~~then be~~
23 ~~granted~~ GRANT as a matter of right.

24 (2) At a competency hearing, the defendant and the prosecuting
25 attorney are entitled:

26 (b) To examine any reports of the COMPETENCY evaluation or
27 other matter to be considered by the court as bearing upon the

1 determination;

2 (3) The court may examine or cross-examine any witness called
3 by the defendant or prosecuting attorney at a competency hearing and
4 may summon and examine witnesses on ~~its~~ THE COURT'S own motion.

5 **SECTION 10.** In Colorado Revised Statutes, **amend** 16-8.5-110
6 as follows:

7 **16-8.5-110. Testimony of lay witnesses.** In any hearing at which
8 the competency of the defendant is an issue, witnesses not specially
9 trained in psychiatry or psychology and not testifying as expert witnesses
10 may testify as to ~~their~~ THE WITNESS'S observation of the defendant's
11 actions and conduct and as to conversations that ~~they have~~ THE WITNESS
12 had with the defendant bearing upon the defendant's mental condition.
13 Any such witnesses, as part of ~~their~~ THE WITNESS'S testimony, ~~shall~~ MUST
14 be permitted to give ~~their~~ opinions or conclusions concerning the
15 competency of the defendant.

16 **SECTION 11.** In Colorado Revised Statutes, **repeal and reenact,**
17 **with amendments,** 16-8.5-111 as follows:

18 **16-8.5-111. Procedure after determination of competency or**
19 **incompetency. (1) Competent to proceed.** IF THE FINAL
20 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
21 DEFENDANT IS COMPETENT TO PROCEED, THE JUDGE SHALL ORDER THAT
22 THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL WAS DECLARED,
23 SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

24 **(2) Restoration services ordered.** IF THE FINAL DETERMINATION
25 MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
26 INCOMPETENT TO PROCEED AND THE COURT FINDS THERE IS SUBSTANTIAL
27 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL

1 ATTAIN COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, THE
2 COURT HAS THE FOLLOWING REQUIREMENTS AND OPTIONS:

3 (a) IF THE DEFENDANT IS OUT OF CUSTODY OR WILL BE RELEASED
4 SOON, THE COURT SHALL ORDER THE RESTORATION SERVICES TAKE PLACE
5 ON AN OUTPATIENT BASIS UNLESS THE RECOMMENDATION FROM THE
6 DEPARTMENT IS THAT INPATIENT RESTORATION SERVICES ARE CLINICALLY
7 APPROPRIATE AND:

8 (I) THE COURT SHALL ORDER THAT THE DEFENDANT PARTICIPATE
9 IN RESTORATION SERVICES AS A CONDITION OF ANY BOND;

10 (II) THE COURT MAY ORDER THAT THE DEFENDANT COOPERATE
11 WITH PRETRIAL SERVICES, IF AVAILABLE, AND THE COURT MAY ORDER
12 PRETRIAL SERVICES TO WORK WITH THE DEFENDANT, THE DEPARTMENT,
13 AND THE RESTORATION SERVICES PROVIDER UNDER CONTRACT WITH THE
14 DEPARTMENT TO ASSIST IN SECURING APPROPRIATE SUPPORT AND CARE
15 MANAGEMENT SERVICES FOR THE DEFENDANT, WHICH MAY INCLUDE
16 HOUSING RESOURCES; AND

17 (III) THE COURT SHALL CONDUCT A NONAPPEARANCE REVIEW
18 FOURTEEN DAYS AFTER THE DEFENDANT'S RELEASE FROM CUSTODY TO
19 ENSURE THE DEFENDANT HAS BEEN RELEASED. IF THE DEFENDANT IS NOT
20 RELEASED BY THE DATE OF THE NONAPPEARANCE REVIEW, THE COURT
21 SHALL SET A HEARING TO DETERMINE WHETHER THE DEFENDANT WILL BE
22 RELEASED OR TO ENTER AN ORDER PURSUANT TO SUBSECTION (2)(c) OF
23 THIS SECTION.

24 (b) IF THE COURT DETERMINES THE DEFENDANT IS INCOMPETENT
25 TO PROCEED AND IS IN CUSTODY ON A MISDEMEANOR, PETTY OFFENSE, OR
26 TRAFFIC OFFENSE, THE COURT SHALL SET A HEARING ON BOND WITHIN
27 SEVEN DAYS AFTER THE COURT'S FINAL DETERMINATION THAT THE

1 DEFENDANT IS INCOMPETENT TO PROCEED. AT THE BOND HEARING, THERE
2 IS A PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL
3 RECOGNIZANCE BOND AND ENTER AN ORDER FOR RESTORATION SERVICES
4 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION. IN ORDER TO DENY THE
5 DEFENDANT A PERSONAL RECOGNIZANCE BOND AND ENTER AN ORDER TO
6 COMMIT THE DEFENDANT FOR INPATIENT RESTORATION SERVICES
7 PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION, THE COURT SHALL
8 MAKE FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO
9 OVERCOME THE PRESUMPTION OF RELEASE BY CLEAR AND CONVINCING
10 EVIDENCE. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE
11 COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FINDINGS THE
12 COURT MADE TO DENY THE PERSONAL RECOGNIZANCE BOND.

13 (c) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR
14 RELEASE FROM CUSTODY OR NOT ABLE TO POST THE MONETARY
15 CONDITION OF BOND, OR THE COURT APPROVES A RECOMMENDATION FROM
16 THE DEPARTMENT THAT INPATIENT RESTORATION SERVICES ARE
17 CLINICALLY APPROPRIATE, THE COURT SHALL COMMIT THE DEFENDANT TO
18 THE CUSTODY OF THE DEPARTMENT AND ORDER INPATIENT RESTORATION
19 SERVICES.

20 (3) **Certification for short-term treatment.** (a) (I) IF THE FINAL
21 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
22 DEFENDANT IS INCOMPETENT TO PROCEED, REGARDLESS OF WHETHER THE
23 COURT FINDS THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
24 DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY
25 WITHIN THE REASONABLY FORESEEABLE FUTURE, THE DISTRICT
26 ATTORNEY; A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102;
27 A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE

1 DEPARTMENT; OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
2 FORENSIC MENTAL HEALTH MAY REQUEST TO INITIATE A PETITION FOR
3 CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A
4 COURT WITH JURISDICTION.

5 (II) THE COURT SHALL HEAR AND CONSIDER ANY OBJECTIONS
6 FROM THE DEFENDANT PRIOR TO ORDERING THE REQUESTING PARTY TO
7 INITIATE A PETITION FOR CERTIFICATION FOR SHORT-TERM TREATMENT
8 PURSUANT TO SUBSECTION (3)(a)(I) OF THIS SECTION.

9 (III) THE COURT MAY ORDER INITIATION OF CERTIFICATION FOR
10 SHORT-TERM TREATMENT ONLY:

11 (A) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT
12 THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION FOR
13 SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR
14 27-65-109; AND

15 (B) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY
16 OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE, OR WITH THE
17 AGREEMENT OF THE PROSECUTING ATTORNEY, REGARDLESS OF THE
18 SEVERITY OF THE CHARGE.

19 (b) IF THE COURT REQUIRES THE REQUESTING PARTY TO INITIATE
20 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SUBSECTION
21 (3)(a) OF THIS SECTION:

22 (I) THE PROSECUTING ATTORNEY AND THE DEPARTMENT SHALL
23 TRANSMIT ANY NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS,
24 COMPETENCY EVALUATIONS, MATERIALS USED IN THE COMPETENCY
25 PROCESS, AND RESTORATION RECORDS, TO THE REQUESTING PARTY AND
26 SHALL COOPERATE WITH THE REQUESTING PARTY IN FILING A PETITION FOR
27 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION

1 27-65-108.5 OR 27-65-109;

2 (II) THE REQUESTING PARTY SHALL FILE A NOTICE IN THE CRIMINAL
3 CASE WHEN THE PETITION FOR CERTIFICATION FOR SHORT-TERM
4 TREATMENT IS FILED PURSUANT TO SECTION 27-65-108.5 OR 27-65-109;

5 (III) THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
6 DEPARTMENT SHALL, DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE
7 COORDINATION SERVICES PURSUANT TO SECTION 27-65-108 AFTER THE
8 CERTIFICATION FOR SHORT-TERM TREATMENT IS FILED PURSUANT TO
9 SECTION 27-65-108.5 OR 27-65-109; AND

10 (IV) THE COURT MAY, UPON THE COURT'S OWN MOTION, FORGO AN
11 ORDER FOR RESTORATION SERVICES AND DISMISS THE CHARGES AGAINST
12 THE DEFENDANT WITHOUT PREJUDICE WHEN THE CERTIFICATION FOR
13 SHORT-TERM TREATMENT IS INITIATED IF THE HIGHEST CHARGED OFFENSE
14 IS A PETTY OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE; OR

15 (V) THE COURT MAY, WITH THE AGREEMENT OF THE PROSECUTING
16 ATTORNEY AND DEFENDANT, STAY THE RESTORATION ORDER TO ALLOW
17 CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR
18 AND TO ALLOW THE DISTRICT ATTORNEY TO CONSIDER WHETHER
19 DISMISSAL OF THE CASE IS APPROPRIATE. IN DETERMINING WHETHER
20 DISMISSAL IS APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE
21 DEFENDANT, THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND
22 THE PROSECUTING ATTORNEY IN THE CRIMINAL MATTER HAVE ACCESS TO
23 LIMITED INFORMATION ABOUT ANY CIVIL PROCEEDINGS AGAINST THE
24 DEFENDANT PURSUANT TO SECTIONS 27-65-108.5, 27-65-109, 27-65-110,
25 AND 27-65-111. ANY INFORMATION OBTAINED MUST BE KEPT
26 CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW.
27 THE COURT SHALL NOT EXTEND THE DEFENDANT'S CRIMINAL CASE PAST

1 THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116.5. THE LIMITED
2 INFORMATION THAT THE DEFENDANT, DEFENDANT'S ATTORNEY, AND
3 PROSECUTING ATTORNEY MAY ACCESS INCLUDES:

4 (A) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;

5 (B) WHETHER THE DEFENDANT IS SUBJECT TO CERTIFICATION FOR
6 SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE DEFENDANT
7 IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;

8 (C) THE DATE AND TIME OF THE PROCEEDINGS, EVEN IF THE
9 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING
10 ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND

11 (D) THE FINAL DISPOSITION OF THE PROCEEDING.

12 (4) **Restoration hearing.** (a) IF THE FINAL DETERMINATION MADE
13 PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
14 INCOMPETENT TO PROCEED AND THE EVALUATOR OPINES AT ANY TIME
15 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
16 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
17 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING
18 WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5). IF THE
19 COURT RECEIVES THE EVALUATOR'S OPINION PRIOR TO ENTERING A
20 RESTORATION ORDER, THE COURT SHALL SET THE HEARING IN LIEU OF
21 ORDERING RESTORATION TREATMENT.

22 (b) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION
23 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND
24 THE EVALUATOR OPINES AT ANY TIME THAT THE DEFENDANT'S DIAGNOSIS
25 LIKELY INCLUDES A MODERATE TO SEVERE INTELLECTUAL OR
26 DEVELOPMENTAL DISABILITY, A MODERATE TO SEVERE ACQUIRED OR
27 TRAUMATIC BRAIN INJURY, OR A NONREVERSIBLE DEGENERATIVE BRAIN

1 DISEASE, ANY OF WHICH EITHER ALONE OR TOGETHER WITH A
2 CO-OCCURRING MENTAL ILLNESS SUBSTANTIALLY AFFECTS THE
3 DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, THE COURT
4 SHALL SET A HEARING WITHIN THE TIME FRAME SET FORTH IN SECTION
5 16-8.5-113 (5) ON THE ISSUE OF WHETHER THERE IS A SUBSTANTIAL
6 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
7 IN THE REASONABLY FORESEEABLE FUTURE. IF THE COURT RECEIVES THE
8 EVALUATOR'S OPINION PRIOR TO ENTERING A RESTORATION ORDER, THE
9 COURT SHALL SET A HEARING IN LIEU OF ORDERING RESTORATION
10 TREATMENT.

11 (c) AT ANY HEARING CONDUCTED PURSUANT TO SUBSECTION
12 (4)(a) OR (4)(b) OF THIS SECTION:

13 (I) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED
14 EXPERT OPINING THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND
15 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
16 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
17 REASONABLY FORESEEABLE FUTURE IS PRIMA FACIE EVIDENCE THAT
18 CREATES A PRESUMPTION OF FACT. AN ADMITTED REPORT OR TESTIMONY
19 FROM A QUALIFIED EXPERT WHO OPINES THAT THE DEFENDANT'S
20 DIAGNOSIS LIKELY INCLUDES A MODERATE TO SEVERE INTELLECTUAL OR
21 DEVELOPMENTAL DISABILITY, A MODERATE TO SEVERE ACQUIRED OR
22 TRAUMATIC BRAIN INJURY, OR NONREVERSIBLE DEGENERATIVE BRAIN
23 DISEASE, ANY OF WHICH EITHER ALONE OR TOGETHER WITH A
24 CO-OCCURRING MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO
25 GAIN OR MAINTAIN COMPETENCY, IS PRIMA FACIE EVIDENCE OF AND
26 CREATES A PRESUMPTION THAT THE DEFENDANT IS INCOMPETENT TO
27 PROCEED AND THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE

1 DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY
2 WITHIN THE REASONABLY FORESEEABLE FUTURE.

3 (II) IF THE COURT HAS NOT YET ORDERED RESTORATION SERVICES
4 AND RESTORATION SERVICES HAVE NOT BEEN PROVIDED, A PARTY
5 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY A
6 PREPONDERANCE OF THE EVIDENCE THAT THERE IS A VIABLE RESTORATION
7 TREATMENT THAT WILL RESTORE THE DEFENDANT TO COMPETENCY AND
8 A SUBSTANTIAL PROBABILITY THAT RESTORATION EFFORTS WILL BE
9 SUCCESSFUL WITHIN THE REASONABLY FORESEEABLE FUTURE;

10 (III) IF THE DEFENDANT'S DIAGNOSIS INCLUDES A MODERATE TO
11 SEVERE INTELLECTUAL OR DEVELOPMENTAL DISABILITY, A MODERATE TO
12 SEVERE ACQUIRED OR TRAUMATIC BRAIN INJURY, OR NONREVERSIBLE
13 DEGENERATIVE BRAIN DISEASE, WHETHER OR NOT CO-OCCURRING WITH A
14 MENTAL ILLNESS THAT SUBSTANTIALLY AFFECTS THE DEFENDANT'S
15 ABILITY TO GAIN OR MAINTAIN COMPETENCY, THE PARTY ATTEMPTING TO
16 OVERCOME THE PRESUMPTION MUST SHOW BY CLEAR AND CONVINCING
17 EVIDENCE THAT THERE IS A VIABLE RESTORATION TREATMENT THAT IS
18 SUBSTANTIALLY LIKELY TO RESTORE THE DEFENDANT TO COMPETENCY IN
19 THE REASONABLY FORESEEABLE FUTURE; AND

20 (IV) IF THE COURT HAS ORDERED RESTORATION SERVICES AND THE
21 COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED
22 AND THE DEFENDANT WAS NOT RESTORED TO COMPETENCY, A PARTY
23 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY CLEAR
24 AND CONVINCING EVIDENCE THAT THE DEFENDANT, WITH CONTINUED
25 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
26 FORESEEABLE FUTURE AND THAT THE DEFENDANT CAN MAINTAIN
27 COMPETENCY THROUGH THE ADJUDICATION OF THE CASE.

1 (d) AT THE CONCLUSION OF ANY HEARING SET PURSUANT TO
2 SUBSECTION (4)(a) OR (4)(b) OF THIS SECTION:

3 (I) IF THE COURT DOES NOT FIND THAT THE PARTY ASSERTING THAT
4 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
5 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
6 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
7 SHALL DISMISS THE CASE PURSUANT TO SECTION 16-8.5-116.5 (1)(a);
8 EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF APPROPRIATE, AS
9 PROVIDED IN SECTION 16-8.5-116.5 (8); AND

10 (II) IF THE COURT FINDS THAT THE PARTY ASSERTING THAT THERE
11 IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
12 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
13 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
14 SHALL ORDER APPROPRIATE RESTORATION SERVICES AND SET A REVIEW.

15 (5) **Dismissal of charges.** TO ENSURE COMPLIANCE WITH
16 RELEVANT CONSTITUTIONAL PRINCIPLES, IF THE COURT AT ANY POINT
17 DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
18 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
19 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL, UPON MOTION OF
20 THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON ITS OWN MOTION,
21 DISMISS THE CRIMINAL PROCEEDINGS PURSUANT TO SECTION 16-8.5-116.5
22 (1)(a). SUBJECT TO THE PROVISIONS AND PRESUMPTIONS OF THIS SECTION
23 THAT MAY APPLY, A COURT SHALL NOT CONTINUE CRIMINAL PROCEEDINGS
24 AGAINST AN INCOMPETENT DEFENDANT, EXCEPT TO STAY A DISMISSAL
25 PURSUANT TO SECTION 16-8.5-116.5 (8), UNLESS, AFTER PROPER
26 EVALUATION, THE COURT FINDS IT MORE LIKELY THAN NOT THAT THE
27 DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY

1 FORESEEABLE FUTURE.

2 **(6) Defendant's volitional lack of cooperation or unwillingness**
3 **to participate - definition.** (a) NOTHING IN THIS ARTICLE 8.5 PROHIBITS
4 THE COURT FROM FINDING THAT THE DEFENDANT IS NOT RESTORABLE TO
5 COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE BASED ON THE
6 DEFENDANT'S VOLITIONAL LACK OF COOPERATION OR UNWILLINGNESS TO
7 PARTICIPATE IN RESTORATION SERVICES AND TREATMENT IF THE
8 DEFENDANT COULD BE RESTORED TO COMPETENCY IN THE REASONABLY
9 FORESEEABLE FUTURE IF THE DEFENDANT COOPERATED AND PARTICIPATED
10 IN THE RESTORATION SERVICES AND TREATMENT.

11 (b) FOR THE PURPOSES OF THIS SUBSECTION (6), "VOLITIONAL LACK
12 OF COOPERATION OR UNWILLINGNESS TO PARTICIPATE" INCLUDES THE
13 DEFENDANT NOT ATTENDING RESTORATION SERVICES OR THE
14 DEFENDANT'S REFUSAL TO TAKE PRESCRIBED MEDICATIONS, ESPECIALLY
15 WHEN THE DEFENDANT INTENDS TO AVOID OR DELAY THE COURT CASE
16 FROM PROCEEDING. "VOLITIONAL LACK OF COOPERATION OR
17 UNWILLINGNESS TO PARTICIPATE" DOES NOT INCLUDE ACTS THAT RESULT
18 FROM THE BONA FIDE MEDICAL OR MENTAL HEALTH DISORDER FOR WHICH
19 THE DEFENDANT IS INCOMPETENT OR A DEFENDANT'S ATTEMPT TO RAISE
20 A BONA FIDE, GOOD FAITH CONCERN ABOUT MEDICATION SIDE EFFECTS
21 AND RISKS.

22 **(7) Outpatient restoration services.** IF THE DEFENDANT IS OUT
23 OF CUSTODY AND THE COURT HAS ORDERED RESTORATION SERVICES
24 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION:

25 (a) PURSUANT TO SECTION 27-60-105, THE DEPARTMENT IS THE
26 ENTITY RESPONSIBLE FOR THE COORDINATION OF ALL COMPETENCY
27 RESTORATION SERVICES, INCLUDING THE OVERSIGHT OF RESTORATION

1 EDUCATION;

2 (b) THE RESTORATION SERVICES PROVIDER UNDER CONTRACT WITH
3 THE DEPARTMENT SHALL NOTIFY THE COURT, THE DEPARTMENT, AND ANY
4 OTHER DESIGNATED AGENCY WITHIN TWENTY-ONE DAYS AFTER THE
5 COURT'S ORDER IF RESTORATION SERVICES HAVE NOT STARTED AND
6 INCLUDE A DESCRIPTION OF THE EFFORTS THAT HAVE BEEN MADE TO
7 ENGAGE THE DEFENDANT IN SERVICES; AND

8 (c) IF THE DEPARTMENT DETERMINES THAT THE DEPARTMENT IS
9 UNABLE, WITHIN A REASONABLE TIME, TO PROVIDE RESTORATION
10 SERVICES ON AN OUTPATIENT BASIS, THE DEPARTMENT SHALL NOTIFY THE
11 COURT WITHIN FOURTEEN DAYS AFTER THE DEPARTMENT'S
12 DETERMINATION, AT WHICH POINT THE COURT SHALL REVIEW THE CASE
13 AND DETERMINE WHAT INTERIM MENTAL HEALTH SERVICES THE
14 DEPARTMENT OR A COMMUNITY PROVIDER CAN PROVIDE TO THE
15 DEFENDANT. IF A COURT LIAISON IS APPOINTED, THE DEPARTMENT SHALL
16 REPORT TO THE COURT LIAISON EVERY TWENTY-EIGHT DAYS CONCERNING
17 THE AVAILABILITY OF RESTORATION SERVICES ON AN OUTPATIENT BASIS
18 TO THE DEFENDANT.

19 (8) **Inpatient restoration services.** (a) IF THE COURT COMMITS
20 THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT AND ORDERS
21 INPATIENT RESTORATION SERVICES:

22 (I) THE EXECUTIVE DIRECTOR SHALL DESIGNATE A STATE FACILITY
23 OR FACILITIES WHERE THE DEFENDANT IS HELD FOR CARE AND
24 PSYCHIATRIC TREATMENT AND RECEIVES RESTORATION SERVICES, AND
25 MAY TRANSFER THE DEFENDANT FROM ONE FACILITY TO ANOTHER IF, IN
26 THE OPINION OF THE DIRECTOR, DOING SO IS IN THE BEST INTEREST OF
27 PROPER CARE, CUSTODY, AND TREATMENT OF THE DEFENDANT OR THE

1 PROTECTION OF THE PUBLIC OR THE PERSONNEL OF THE FACILITIES IN
2 QUESTION. THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT
3 AN APPROPRIATE INPATIENT PROGRAM.

4 (II) THE DEPARTMENT SHALL ADMIT TIER 1 DEFENDANTS FOR
5 RESTORATION SERVICES WITHIN SEVEN DAYS AFTER RECEIPT OF THE
6 COURT ORDER AND COLLATERAL MATERIALS;

7 (III) THE DEPARTMENT SHALL ADMIT TIER 2 DEFENDANTS FOR
8 RESTORATION SERVICES WITHIN TWENTY-EIGHT DAYS AFTER RECEIPT OF
9 THE COURT ORDER AND COLLATERAL MATERIALS AND SHALL ADVISE THE
10 COURT AND THE COURT LIAISON, IF APPLICABLE, EVERY TWENTY-EIGHT
11 DAYS AFTER THE INITIAL TWENTY-EIGHT-DAY PERIOD REGARDING THE
12 AVAILABILITY OF AN INPATIENT BED AND WHEN ADMISSION WILL BE
13 OFFERED TO THE DEFENDANT.

14 (b) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
15 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT:

16 (I) A LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY
17 APPROPRIATE, THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE
18 COURT AND CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1
19 OF TITLE 24, MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY
20 IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET
21 RESTORED TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO
22 COMPETENCY IN A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT
23 RELEASED FROM CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO
24 PROVIDE INPATIENT SERVICES AT A LOCATION DETERMINED BY THE
25 DEPARTMENT.

26 (II) OUTPATIENT RESTORATION SERVICES WOULD BE MORE
27 CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL:

1 (A) NOTIFY THE COURT AND REQUEST THAT THE DEFENDANT BE
2 CONSIDERED FOR RELEASE ON A NONMONETARY BOND IF THE DEFENDANT
3 IS NOT CURRENTLY RELEASED ON BOND; AND

4 (B) PROVIDE TO THE COURT INFORMATION REGARDING THE
5 APPROPRIATE OUTPATIENT RESTORATION SERVICES, DEVELOPED IN
6 CONJUNCTION WITH THE COURT LIAISON, WHEN ASSIGNED, AND THE
7 REASONS WHY THE DEFENDANT COULD BE PROPERLY RESTORED TO
8 COMPETENCY ON AN OUTPATIENT BASIS.

9 (c) IF THE DEFENDANT POSTS BOND OR THE COURT ORDERS
10 OUTPATIENT RESTORATION SERVICES IN LIEU OF CONTINUED INPATIENT
11 SERVICES, OR IF THE DEPARTMENT BELIEVES THAT THE DEFENDANT IS
12 RESTORED TO COMPETENCY AND THE DEFENDANT IS TO BE RELEASED TO
13 THE COMMUNITY RATHER THAN JAIL UPON DISCHARGE, THE DEPARTMENT
14 SHALL:

15 (I) ASSIST THE DEFENDANT WITH ANY NECESSARY
16 TRANSPORTATION;

17 (II) PROVIDE THE NECESSARY CASE AND MEDICATION
18 INFORMATION FOR THE DEFENDANT TO THE COMMUNITY AGENCY THAT
19 WILL PROVIDE ONGOING SERVICES, MEDICATION SUPPORT, AND CONTINUED
20 RESTORATION SERVICES, IF APPLICABLE;

21 (III) NOTIFY THE COURT AND THE COURT LIAISON, IF APPLICABLE,
22 THAT THE DEFENDANT WAS RELEASED AND THE DEFENDANT'S COMMUNITY
23 BOND STATUS; AND

24 (IV) COORDINATE WITH THE COURT; PRETRIAL SERVICES, IF
25 APPLICABLE; AND THE COURT LIAISON, IF APPLICABLE TO ENSURE THE
26 DEFENDANT RECEIVES WRITTEN NOTICE OF THE DEFENDANT'S NEXT COURT
27 APPEARANCE AND BOND CONDITIONS.

1 (d) IF THE DEFENDANT IS DISCHARGED FROM THE DEPARTMENT'S
2 CUSTODY AFTER RECEIVING INPATIENT RESTORATION SERVICES AND THE
3 DEFENDANT IS TO BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL,
4 THE DEPARTMENT SHALL:

5 (I) NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE
6 DEFENDANT IS TO BE RETURNED;

7 (II) NOTIFY THE COURT AND THE COURT LIAISON, IF APPLICABLE,
8 THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY
9 OF THE COUNTY JAIL; AND

10 (III) WORK WITH THE SHERIFF AND ANY BEHAVIORAL HEALTH
11 PROVIDERS IN THE COUNTY JAIL TO ENSURE THAT THE COUNTY JAIL HAS
12 THE NECESSARY INFORMATION TO PREVENT ANY DECOMPENSATION BY THE
13 DEFENDANT WHILE THE DEFENDANT IS IN THE COUNTY JAIL, WHICH MUST
14 INCLUDE MEDICATION INFORMATION WHEN CLINICALLY APPROPRIATE.

15 (9) **Return to custody of county jail.** WHEN THE DEPARTMENT
16 SUBMITS A REPORT TO THE COURT THAT THE DEPARTMENT'S POSITION IS
17 THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE DEFENDANT
18 MUST BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL. THE SHERIFF
19 SHALL RETURN THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL
20 WITHIN SEVENTY-TWO HOURS AFTER RECEIPT OF THE DEPARTMENT'S
21 NOTICE.

22 **SECTION 12.** In Colorado Revised Statutes, 16-8.5-112, **amend**
23 (1), (2), and (3) as follows:

24 **16-8.5-112. Venue for collateral hearings.** (1) If a defendant
25 committed to the custody of the department for evaluation or for
26 restoration treatment meets the constitutional requirements for the
27 administration of involuntary medication, the defendant's treating

1 physician may petition the court for an order requiring that the defendant
2 accept the treatment or, alternatively, that the medication be forcibly
3 administered to the defendant. The department shall, prior to the hearing
4 on the petition, deliver a copy of the petition to the court that committed
5 the defendant to the custody of the department, the prosecuting attorney,
6 and the defendant's legal representation in the criminal case, if such
7 representation exists, and to the defendant directly if ~~he or she~~ THE
8 DEFENDANT does not have legal representation. A physician shall assess
9 and document the defendant's mental status prior to the administration of
10 medication.

11 (2) A petition for involuntary treatment ~~shall~~ MUST be heard in the
12 court of the jurisdiction where the defendant is located. The department
13 shall promptly deliver a copy of the order granting or denying the petition
14 to the court that committed the defendant to the custody of the
15 department, the prosecuting attorney, and the defendant's legal
16 representation in the criminal case, if such representation exists, and to
17 the defendant directly if ~~he or she~~ THE DEFENDANT does not have legal
18 representation.

19 (3) If the committing court elects to transfer venue for medication
20 hearings to the court of the jurisdiction ~~in which~~ WHERE the defendant is
21 located, the committing county shall reimburse the county ~~in which~~
22 WHERE the proceeding is heard for the reasonable costs incurred in
23 conducting the proceeding. Alternatively, the district attorney for the
24 committing county, or in any county or any city and county having a
25 population exceeding fifty thousand ~~persons~~ PEOPLE, the county attorney
26 for the committing county, may prosecute the proceeding as the
27 proponent of the physician's petition.

1 **SECTION 13.** In Colorado Revised Statutes, 16-8.5-113, **amend**
2 (1), (2), (5), and (6) as follows:

3 **16-8.5-113. Restoration to competency.** (1) The court may order
4 a restoration hearing at any time on its own motion, on motion of the
5 prosecuting attorney, or on motion of the defendant; EXCEPT THAT THE
6 COURT SHALL ORDER A RESTORATION HEARING WHEN REQUIRED
7 PURSUANT TO SECTION 16-8.5-111 (4)(a) OR (4)(b).

8 (2) Within fourteen days after receipt of a report from the
9 department or other court-approved provider of restoration services
10 certifying that the defendant is competent to proceed, either party may
11 request a hearing or a second evaluation. The court shall determine
12 whether to allow the second evaluation or proceed to a hearing on
13 competency. If the second evaluation is requested by the court or by an
14 indigent defendant, ~~it~~ THE EVALUATION must be paid for by the court.

15 (5) If a party makes a timely request for a hearing, the hearing
16 ~~shall~~ MUST be held within thirty-five days after the request for a hearing
17 or, if applicable, within thirty-five days after the filing of the second
18 evaluation report, unless the time is extended by the court after a finding
19 of good cause.

20 (6) At the hearing, THE PARTY ASSERTING THAT THE DEFENDANT
21 IS COMPETENT HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE
22 EVIDENCE AND the burden of submitting evidence. ~~and the burden of~~
23 ~~proof by a preponderance of the evidence shall be upon the party~~
24 ~~asserting that the defendant is competent.~~ At the hearing, the court shall
25 determine whether the defendant is restored to competency.

26 **SECTION 14.** In Colorado Revised Statutes, 16-8.5-116, **amend**
27 (2)(b) introductory portion, (2)(c) introductory portion, (2)(c)(V),

1 (2)(c)(VI), (3), and (5); **repeal** (1) and (4); and **add** (2)(c)(VII) as
2 follows:

3 **16-8.5-116. Certification - reviews - rules.** (1) ~~Subject to the~~
4 ~~time periods and legal standards set forth in this section, whichever is~~
5 ~~shortest, a defendant committed to the custody of the department or~~
6 ~~otherwise confined as a result of a determination of incompetency to~~
7 ~~proceed must not remain confined for a period in excess of the maximum~~
8 ~~term of confinement that could be imposed for only the single most~~
9 ~~serious offense with which the defendant is charged, less thirty percent~~
10 ~~for a misdemeanor offense and less fifty percent for a felony offense. At~~
11 ~~the end of such time period, the court shall dismiss the charges, and~~
12 ~~certification proceedings or provision of services, if any, are governed by~~
13 ~~article 65 or 10.5 of title 27.~~

14 (2) (b) ~~On and after July 1, 2020,~~ At least ten days before each
15 review, the individual or entity evaluating the defendant shall provide the
16 court with a report describing:

17 (c) ~~Additionally, on and after July 1, 2020,~~ At least ten days
18 before each review, the department treating team shall provide to the
19 court an additional report that summarizes:

20 (V) The opinion of the treating team on the defendant's mental
21 health functioning and ability to function on an outpatient basis for
22 restoration services; **and**

23 (VI) Whether the defendant, based on observations of the
24 defendant's behavior in the facility, presents a substantial risk to the
25 physical safety of ~~himself or herself~~ THE DEFENDANT'S SELF, of another
26 person, or of the community if released for community restoration; **AND**

27 (VII) ANY OPINIONS WHICH WOULD BE REQUIRED DURING AN

1 INITIAL EVALUATION PURSUANT TO SECTION 16-8.5-105 (5)(f).

2 (3) After the initial review pursuant to subsection (2)(a) of this
3 section, the court shall review the case of the defendant every ninety-one
4 days. ~~thereafter until four reviews have been conducted.~~ At least ten days
5 before each review, the individual or entity evaluating the defendant shall
6 provide the court with an updated report as described in subsection (2)(b)
7 of this section and the treatment staff shall provide an updated summary
8 of observations as described in subsection (2)(c) of this section.

9 (4) ~~After the fourth review, the court shall review the competency~~
10 ~~of the defendant every ninety-one days until the defendant is restored to~~
11 ~~competency or the court determines, based on available evidence, that~~
12 ~~there is not a substantial probability that the defendant will be restored to~~
13 ~~competency in the reasonably foreseeable future. If the court determines~~
14 ~~based on available evidence there is not a substantial probability that the~~
15 ~~defendant will be restored to competency in the reasonably foreseeable~~
16 ~~future, the court shall dismiss the case subject to the provisions of~~
17 ~~subsection (10) of this section.~~

18 (5) The court shall forward a copy of each report and summary
19 received pursuant to ~~subsections (2), (3), and (4)~~ SUBSECTIONS (2) AND (3)
20 of this section to the county attorney or district attorney required to
21 conduct proceedings pursuant to section 27-65-113 (6) for the county in
22 which the case is pending and, when a court liaison is appointed, to the
23 court liaison.

24 **SECTION 15.** In Colorado Revised Statutes, **add with amended**
25 **and relocated provisions** 16-8.5-116.5 as follows:

26 **16-8.5-116.5. Restoration - time limits - dismissal of charges -**
27 **exceptions - rules.** (1) [Formerly 16-8.5-116 IP(6)] Notwithstanding the

1 ~~time periods provided in subsections (7), (8), and (9) of this section and~~
2 To ensure compliance with relevant constitutional principles, for any
3 offense for which the defendant is ordered to receive competency
4 restoration services in an inpatient or outpatient setting, if the court
5 determines, based on available evidence, that there is not a substantial
6 probability that the defendant, WITH RESTORATION SERVICES, will be
7 restored to competency within the reasonably foreseeable future, the
8 court: ~~may order the defendant's release from commitment pursuant to~~
9 ~~this article 8.5 through one or more of the following means:~~

10 (a) ~~[Formerly 16-8.5-116 (6)(a)] Upon motion of the district~~
11 ~~attorney, the defendant, or on its own motion, the court may terminate~~
12 SHALL DISMISS the criminal proceedings, the commitment, or the
13 restoration services order UPON MOTION OF THE DISTRICT ATTORNEY, THE
14 DEFENDANT, OR ON ITS OWN MOTION;

15 (b) **[Formerly 16-8.5-116 (6)(b) as it will become effective July**
16 **1, 2024]** ~~If the court finds reasonable grounds to believe the defendant~~
17 ~~meets criteria for a certification for short-term treatment pursuant to~~
18 ~~section 27-65-108.5 or 27-65-109, the court May order the district~~
19 ~~attorney, or upon request from the district attorney, a professional person,~~
20 ~~as defined in section 27-65-102; a representative of the behavioral health~~
21 ~~administration in the department; or a representative of the office of civil~~
22 ~~and forensic mental health to initiate, in a court with jurisdiction, a~~
23 ~~proceeding for a certification for short-term treatment of the defendant~~
24 ~~pursuant to section 27-65-108.5 or 27-65-109 IF THE COURT FINDS~~
25 ~~REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR~~
26 ~~A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION~~
27 ~~27-65-108.5 OR 27-65-109;~~

1 (c) ~~[Formerly 16-8.5-116 (6)(c)] In the case of a defendant who~~
2 ~~has been found eligible for services pursuant to article 10.5 of title 27 due~~
3 ~~to an intellectual and developmental disability, the court~~ MAY, or a party
4 may, initiate an action to restrict the rights of the defendant pursuant to
5 article 10.5 of title 27 IN THE CASE OF A DEFENDANT WHO HAS BEEN
6 FOUND ELIGIBLE FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27
7 DUE TO AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; or

8 (d) ~~[Formerly 16-8.5-116 (6)(d)] On and after July 1, 2020, the~~
9 ~~department shall~~ SHALL REQUIRE THE DEPARTMENT TO ensure that case
10 management services and support are made available to any defendant
11 released from commitment pursuant to this article 8.5 due to the
12 substantial probability that the defendant will not be restored to
13 competency in the ~~reasonable~~ REASONABLY foreseeable future.

14 (2) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
15 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
16 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
17 CONFINEMENT PURSUANT TO SUBSECTION (8) OF THIS SECTION IF:

18 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY
19 OFFENSE OR TRAFFIC OFFENSE AND THE DEFENDANT HAS BEEN IN THE
20 DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS BEEN
21 CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING TRANSPORT
22 TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR AN
23 AGGREGATE TIME OF SEVEN DAYS; AND

24 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
25 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

26 (3) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
27 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES

1 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
2 CONFINEMENT PURSUANT TO SUBSECTION (8) OF THIS SECTION IF:

3 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 2
4 MISDEMEANOR OR ANY MISDEMEANOR DRUG OFFENSE AND THE
5 DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION
6 SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY
7 AWAITING TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED
8 RESTORATION FOR AN AGGREGATE TIME OF NINETY DAYS; AND

9 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
10 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

11 (4) [Formerly 16-8.5-116 (7)] At any A review hearing held
12 concerning the defendant's competency to proceed, the court shall dismiss
13 the charges against the defendant and release the defendant from
14 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO
15 SUBSECTION (8) of this section if:

16 (a) ~~The defendant:~~

17 ~~(I) Is charged with a misdemeanor, a misdemeanor drug offense,~~
18 ~~a petty offense, or a traffic offense;~~

19 ~~(II) Has been committed to the custody of the department or~~
20 ~~otherwise confined as a result of a determination of incompetency to~~
21 ~~proceed;~~

22 ~~(III) Has received competency restoration services while~~
23 ~~committed or otherwise confined for an aggregate time of six months; and~~

24 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 1
25 MISDEMEANOR OR IS A LEVEL 4 DRUG FELONY AND THE DEFENDANT HAS
26 BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS
27 BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING

1 TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR
2 AN AGGREGATE TIME OF SIX MONTHS; AND

3 (b) The court determines, based on available evidence, that the
4 defendant remains incompetent to proceed.

5 (5) [Formerly 16-8.5-116 (8)] At any A review hearing held
6 concerning the defendant's competency to proceed, the court shall dismiss
7 the charges against the defendant and release the defendant from
8 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO
9 SUBSECTION (8) of this section if:

10 (a) ~~The defendant:~~

11 ~~(I) Is charged with a class 5 or class 6 felony, except for those~~
12 ~~offenses enumerated in section 24-4.1-302 (1), or with a level 3 or level~~
13 ~~4 drug felony;~~

14 ~~(II) Has been committed to the custody of the department or~~
15 ~~otherwise confined as a result of a determination of incompetency to~~
16 ~~proceed; and~~

17 ~~(III) Has received competency restoration services while~~
18 ~~committed or otherwise confined for an aggregate time of one year; and~~

19 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 5 OR CLASS 6
20 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION
21 24-4.1-302 (1) OR THE OFFENSE IS A LEVEL 3 DRUG FELONY, AND THE
22 DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION
23 SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY
24 AWAITING TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED
25 RESTORATION FOR AN AGGREGATE PERIOD OF ONE YEAR; AND

26 (b) The court determines, based on available evidence, that the
27 defendant remains incompetent to proceed.

1 (6) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
2 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
3 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
4 CONFINEMENT PURSUANT TO SUBSECTION (8) OF THIS SECTION, IF:

5 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 4
6 FELONY AND THE DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY
7 FOR RESTORATION SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER
8 DETENTION FACILITY AWAITING TRANSPORT TO THE DEPARTMENT FOR
9 COURT-ORDERED RESTORATION FOR AN AGGREGATE PERIOD OF TWO
10 YEARS; AND

11 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
12 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

13 (7) **[Formerly 16-8.5-116 (9)]** SUBSECTIONS (2), (3), (4), (5), AND
14 (6) OF THIS SECTION DO NOT APPLY if the defendant is charged with ~~any~~
15 ~~other felony offense except~~ a class 1, 2, or 3 felony offense; a sex offense
16 as defined in section 18-1.3-1003 (5); a crime of violence as defined in
17 section 18-1.3-406 (2); or a level 1 or level 2 drug felony. ~~and has been~~
18 ~~committed to the custody of the department or otherwise confined as a~~
19 ~~result of a determination of incompetency to proceed the following~~
20 ~~provisions apply:~~

21 (a) ~~If the defendant has received competency restoration services~~
22 ~~while committed or otherwise confined for an aggregate time of two years~~
23 ~~and the court determines, based on available evidence, that the defendant~~
24 ~~is not restored to competency, then the court shall dismiss the charges~~
25 ~~against the defendant, subject to the provisions of subsection (10) of this~~
26 ~~section, unless any party objects to dismissal.~~

27 (b) ~~If a party objects to dismissal of charges pursuant to~~

1 subsection (9)(a) of this section, the court shall set the matter for a
2 hearing. Upon completion of the hearing, the court shall dismiss the
3 charges unless the court determines that the party objecting to the
4 dismissal establishes by clear and convincing evidence that there is a
5 compelling public interest in continuing the prosecution and there is a
6 substantial probability that the defendant will attain competency in the
7 foreseeable future. If the court declines to dismiss the charges, the court
8 shall address the appropriateness of continued confinement and may alter
9 or reduce bond if appropriate pursuant to article 4 of this title 16 or the
10 decision to commit the defendant to the department pursuant to section
11 16-8.5-111.

12 (8) [Formerly 16-8.5-116 (10) as it will become effective July 1,
13 2024] Prior to the dismissal of charges pursuant to subsection (1), (4), (6),
14 (7), (8), or (9) of this section OR SECTION 16-8.5-111 (5), unless the court
15 has already ordered a person to initiate proceedings for a certification for
16 short-term treatment, the court shall make findings whether there are
17 reasonable grounds to believe the person meets the standard for a
18 certification for short-term treatment. If the court finds there are
19 reasonable grounds, the court may stay the dismissal for thirty-five days
20 and notify any professional person, as defined in section 27-65-102, a
21 representative of the behavioral health administration in the department,
22 or a representative of the office of civil and forensic mental health who
23 has recently treated or interacted with the defendant that there are
24 reasonable grounds for short-term treatment and afford the person an
25 opportunity to pursue certification proceedings or to arrange necessary
26 services.

27 (9) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO SECTION

1 16-8.5-111 (5), WHEN THE DEFENDANT'S DIAGNOSIS INCLUDES A
2 MODERATE OR SEVERE INTELLECTUAL OR DEVELOPMENTAL DISABILITY, A
3 MODERATE OR SEVERE ACQUIRED OR TRAUMATIC BRAIN INJURY, OR
4 NON-REVERSIBLE DEGENERATIVE BRAIN DISEASE, THE COURT MAY STAY
5 THE DISMISSAL FOR THIRTY-FIVE DAYS. IF THE COURT STAYS THE
6 DISMISSAL, THE COURT SHALL NOTIFY A GOVERNMENT ENTITY OR
7 COMMUNITY-BASED ORGANIZATION THAT IS CAPABLE OF PROVIDING
8 RESOURCES TO THE DEFENDANT UPON DISMISSAL OF CHARGES.

9 (10) [Formerly 16-8.5-116 (11)] In any circumstance ~~where~~ WHEN
10 the defendant's case was dismissed or the defendant was released from
11 confinement, the court shall enter a written decision explaining why the
12 court did or did not terminate the criminal proceeding or the commitment
13 or restoration order.

14 (11) [Formerly 16-8.5-116 (12)] If charges against a defendant are
15 dismissed pursuant to this section OR SECTION 16-8.5-111 (5), such
16 charges are not eligible for sealing pursuant to section 24-72-705.

17 (12) [Formerly 16-8.5-116 (13)] The department shall promulgate
18 such rules as necessary to consistently enforce the provisions of this
19 article 8.5.

20 (13) [Formerly 16-8.5-116 (14)] ~~On and after July 1, 2020,~~ The
21 court may, at any time ~~of~~ DURING the restoration process, order the
22 department to provide the court with an appropriate release plan for the
23 reintegration of the defendant into the community with appropriate
24 services.

25 (14) [Formerly 16-8.5-116 (15)] When the defendant is charged
26 with an offense in municipal court and the defendant is found
27 incompetent to proceed, or when civil commitment proceedings are

1 initiated pursuant to article 65 of title 27, the municipal court shall
2 dismiss the case.

3 (15) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES
4 NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111,
5 THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN
6 SUBSECTIONS (2), (3), (4), (5), AND (6) OF THIS SECTION AND, BASED UPON
7 THE BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE ADMITTED
8 TO AN INPATIENT FACILITY TO BEGIN RESTORATION WITHIN THE TIME
9 LIMITS DESCRIBED IN THE APPLICABLE SUBSECTION, THE COURT MAY
10 RELEASE THE DEFENDANT OR DISMISS THE CASE IN LIEU OF THE
11 DEFENDANT REMAINING IN CUSTODY ON A WAIT LIST FOR RESTORATION
12 SERVICES.

13 (16) WHEN A DEFENDANT IS IN CUSTODY AND IS FOUND
14 INCOMPETENT TO PROCEED, AT EVERY SUBSEQUENT REVIEW OF THE
15 DEFENDANT'S CASE, THE COURT SHALL MAKE A FINDING ON THE RECORD
16 REGARDING THE EXPIRATION OF APPLICABLE TIME LIMITS SET FORTH IN
17 THIS SECTION.

18 (17) IF A DEFENDANT FILES A MOTION ALLEGING THE COURT IS
19 REQUIRED TO DISMISS THE CASE BECAUSE A TIME LIMIT IN THIS SECTION
20 HAS EXPIRED, THE DEFENDANT IS ENTITLED TO A TIMELY HEARING AND
21 RULING ON THE MOTION.

22 **SECTION 16.** In Colorado Revised Statutes, **amend** 16-8.5-117
23 as follows:

24 **16-8.5-117. Escape - return to institution.** If a defendant
25 committed to the custody of the executive director for a competency
26 evaluation or for restoration to competency escapes from the institution
27 or hospital, ~~it is the duty~~ of the chief officer of the institution or hospital

1 ~~to~~ SHALL apply to the district court for the county in which the institution
2 or hospital is located for a warrant of arrest directed to the sheriff of the
3 county, commanding ~~him or her~~ THE SHERIFF to take all necessary legal
4 action to effect the arrest of the defendant and to return the defendant
5 promptly to the institution or hospital. The fact of an escape becomes a
6 part of the official record of the defendant and ~~shall~~ MUST be certified to
7 the committing court as part of the record in any proceeding to determine
8 whether the defendant is eligible for release on bond or from custody.

9 **SECTION 17.** In Colorado Revised Statutes, **amend** 16-8.5-118
10 as follows:

11 **16-8.5-118. Temporary removal for treatment and**
12 **rehabilitation.** The chief officer of an institution ~~in which~~ WHERE a
13 defendant has been committed ~~under this article~~ PURSUANT TO THIS
14 ARTICLE 8.5 may authorize treatment and rehabilitation activities
15 involving temporary physical removal of the ~~person~~ DEFENDANT from the
16 institution ~~in which~~ WHERE the defendant has been placed ~~according to~~ IN
17 ACCORDANCE WITH the procedures and requirements of section 16-8-118.

18 **SECTION 18.** In Colorado Revised Statutes, 27-60-105, **amend**
19 (2) as follows:

20 **27-60-105. Outpatient restoration to competency services -**
21 **jail-based behavioral health services - responsible entity - duties -**
22 **report - legislative declaration.** (2) The state department serves as a
23 central organizing structure and responsible entity for the provision of
24 competency restoration education services and coordination of
25 competency restoration services ordered by the court pursuant to ~~section~~
26 ~~16-8.5-111 (2)(b) or 19-2.5-704 (2)~~ SECTION 16-8.5-111 (2) OR
27 19-2.5-704 (2), and the behavioral health administration serves as the

1 central organizing structure and responsible entity for jail-based
2 behavioral health services pursuant to section 27-60-106.

3 **SECTION 19.** In Colorado Revised Statutes, **repeal of relocated**
4 **provisions in this act,** 16-8.5-116 IP(6), (6)(a), (6)(c), (6)(d), (7), (8), (9),
5 (11), (12), (13), (14), and (15) and 16-8.5-116 (6)(b) and (10) as they will
6 become effective July 1, 2024.

7 **SECTION 20. Act subject to petition - effective date.** This act
8 takes effect at 12:01 a.m. on the day following the expiration of the
9 ninety-day period after final adjournment of the general assembly; except
10 that, if a referendum petition is filed pursuant to section 1 (3) of article V
11 of the state constitution against this act or an item, section, or part of this
12 act within such period, then the act, item, section, or part will not take
13 effect unless approved by the people at the general election to be held in
14 November 2024 and, in such case, will take effect on the date of the
15 official declaration of the vote thereon by the governor.