

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 19-0940.01 Jerry Barry x4341

SENATE BILL 19-223

SENATE SPONSORSHIP

Lee and Gardner, Bridges, Court, Crowder, Garcia, Ginal, Gonzales, Moreno, Pettersen, Priola, Rodriguez, Story, Tate, Todd, Zenzinger

HOUSE SPONSORSHIP

Weissman and Landgraf,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACTIONS RELATED TO COMPETENCY TO PROCEED, AND,**
102 **IN CONNECTION THEREWITH, MAKING AND REDUCING AN**
103 **APPROPRIATION.**

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>.)

When a defendant's competency to proceed is raised, the bill:

- ! Changes the timing of various matters;
- ! Clarifies where restoration services are to be provided;
- ! Increases the role of the court liaisons;
- ! Expands the requirements for a competency evaluation

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

SENATE
3rd Reading Unamended
April 25, 2019

SENATE
Amended 2nd Reading
April 24, 2019

- report; and
- ! Clarifies when defendants are to be released following an evaluation or restoration services.

The bill requires the department of human services to:

- ! Develop an electronic system to track the status of defendants for whom competency to proceed has been raised;
- ! Convene a group of experts to create a placement guideline for use in determining where restoration services should be provided; and
- ! Partner with an institution of higher education to develop and provide training in competency evaluations.

On and after January 1, 2020, competency evaluators are required to have attended training. District attorneys, public defenders, and alternate defense counsel are also to receive training on competency to proceed.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-8.5-101
3 as follows:

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

6 (1) "COLLATERAL MATERIALS" MEANS THE RELEVANT POLICE
7 INCIDENT REPORTS AND THE CHARGING DOCUMENTS, EITHER THE
8 CRIMINAL INFORMATION OR INDICTMENT.

9 ~~(1)~~ (2) "Competency evaluation" includes both court-ordered
10 competency evaluations and second evaluations.

11 ~~(2)~~ (3) "Competency evaluator" means a licensed physician who
12 is a psychiatrist or a licensed psychologist, each of whom is trained in
13 forensic competency assessments, or a psychiatrist who is in forensic
14 training and practicing under the supervision of a psychiatrist with
15 expertise in forensic psychiatry, or a psychologist who is in forensic
16 training and is practicing under the supervision of a licensed psychologist

1 with expertise in forensic psychology.

2 ~~(3)~~ (4) "Competency hearing" means a hearing to determine
3 whether a defendant is competent to proceed.

4 ~~(4)~~ (5) "Competent to proceed" means that the defendant does not
5 have a mental disability or developmental disability that prevents the
6 defendant from having sufficient present ability to consult with the
7 defendant's lawyer with a reasonable degree of rational understanding in
8 order to assist in the defense or prevents the defendant from having a
9 rational and factual understanding of the criminal proceedings.

10 ~~(5)~~ (6) "Court-ordered competency evaluation" means a
11 court-ordered examination of a defendant either before, during, or after
12 trial, directed to developing information relevant to a determination of the
13 defendant's competency to proceed at a particular stage of the criminal
14 proceeding, that is performed by a competency evaluator and includes
15 evaluations concerning restoration to competency.

16 ~~(6)~~ (7) "Court-ordered report" means a report of an evaluation,
17 conducted by or under the direction of the department, that is the statutory
18 obligation of the department to prepare when requested to do so by the
19 court.

20 ~~(7)~~ (8) "Criminal proceedings" means trial, sentencing,
21 satisfaction of the sentence, execution, and any pretrial matter that is not
22 susceptible of fair determination without the personal participation of the
23 defendant.

24 ~~(8)~~ (9) "Department" means the department of human services.

25 ~~(9)~~ (10) "Developmental disability" means a disability that has
26 manifested before the person reaches twenty-two years of age, that
27 constitutes a substantial disability to the affected individual, and is

1 attributable to ~~mental retardation~~ AN INTELLECTUAL DISABILITY or other
2 neurological conditions when such conditions result in impairment of
3 general intellectual functioning or adaptive behavior similar to that of a
4 person with ~~mental retardation~~ AN INTELLECTUAL DISABILITY. Unless
5 otherwise specifically stated, the federal definition of "developmental
6 disability", 42 U.S.C. sec. 15001 et seq., shall not apply.

7 ~~(10)~~ (11) "Executive director" means the executive director of the
8 department of human services.

9 ~~(11)~~ (12) "Incompetent to proceed" means that, as a result of a
10 mental disability or developmental disability, the defendant does not have
11 sufficient present ability to consult with the defendant's lawyer with a
12 reasonable degree of rational understanding in order to assist in the
13 defense, or that, as a result of a mental disability or developmental
14 disability, the defendant does not have a rational and factual
15 understanding of the criminal proceedings.

16 (13) "IN-CUSTODY" MEANS IN PRISON, IN A JAIL, OR IN ANY OTHER
17 LOCKED DETENTION FACILITY THAT DOES NOT MEET THE DEFINITION OF
18 INPATIENT.

19 (14) "INPATIENT" MEANS IN THE CUSTODY OF THE DEPARTMENT,
20 EITHER IN A HOSPITAL OR IN A FULL-TIME, JAIL-BASED RESTORATION
21 PROGRAM DEVELOPED BY THE DEPARTMENT.

22 ~~(12)~~ (15) "Mental disability" means a substantial disorder of
23 thought, mood, perception, or cognitive ability that results in marked
24 functional disability, significantly interfering with adaptive behavior.
25 "Mental disability" does not include acute intoxication from alcohol or
26 other substances, or any condition manifested only by antisocial behavior,
27 or any substance abuse impairment resulting from recent use or

1 withdrawal. However, substance abuse that results in a long-term,
2 substantial disorder of thought, mood, or cognitive ability may constitute
3 a mental disability.

4 (16) "OUTPATIENT" MEANS A LOCATION OUTSIDE OF THE CUSTODY
5 OF THE DEPARTMENT. "OUTPATIENT" DOES NOT INCLUDE A JAIL, PRISON,
6 OR OTHER DETENTION FACILITY WHERE THE DEFENDANT IS IN-CUSTODY.

7 ~~(13)~~ (17) "Restoration hearing" means a hearing to determine
8 whether a defendant who has previously been determined to be
9 incompetent to proceed has become competent to proceed.

10 ~~(14)~~ (18) "Second evaluation" means an evaluation requested by
11 the court, the district attorney, or the defendant that is performed by a
12 competency evaluator and that is not performed by or under the direction
13 of, or paid for by, the department.

14 (19) "TIER 1" MEANS A DEFENDANT:

15 (a) WHO HAS BEEN ORDERED TO RECEIVE INPATIENT RESTORATIVE
16 TREATMENT;

17 (b) FOR WHOM A COMPETENCY EVALUATOR HAS DETERMINED
18 EITHER THAT THE DEFENDANT:

19 (I) APPEARS TO HAVE A MENTAL HEALTH DISORDER AND, AS A
20 RESULT OF THE MENTAL HEALTH DISORDER, APPEARS TO BE A DANGER TO
21 OTHERS OR TO HIMSELF OR HERSELF OR APPEARS TO BE GRAVELY
22 DISABLED; OR

23 (II) HAS A MENTAL HEALTH DISORDER; AND

24 (c) AS A RESULT OF THE DETERMINATION MADE PURSUANT TO
25 SUBSECTION (19)(b) OF THIS SECTION, DELAYING INPATIENT
26 HOSPITALIZATION BEYOND SEVEN DAYS WOULD CAUSE HARM TO THE
27 DEFENDANT OR OTHERS.

1 (20) "TIER 2" MEANS A DEFENDANT WHO HAS BEEN ORDERED TO
2 RECEIVE INPATIENT RESTORATIVE TREATMENT AND WHO DOES NOT MEET
3 THE CRITERIA TO BE A TIER 1 DEFENDANT.

4 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**
5 (2) introductory portion and (2)(d); and **repeal** (2)(c) as follows:

6 **16-8.5-102. Mental incompetency to proceed - how and when**
7 **raised.** (2) The question of a defendant's competency to proceed ~~shall~~
8 MUST be raised in ONLY ONE OF the following ~~manner~~ MANNERS:

9 (c) ~~By the affidavit of any chief officer of an institution having~~
10 ~~custody of a defendant awaiting execution; or~~

11 (d) By the state board of parole when a board member has a
12 substantial and good-faith reason to believe that the offender is
13 incompetent to proceed, as defined in ~~section 16-8.5-101 (11)~~ SECTION
14 16-8.5-101 (12), at a parole hearing conducted pursuant to section
15 17-22.5-403.5.

16 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**
17 (1), (3), (4), and (8) as follows:

18 **16-8.5-103. Determination of competency to proceed.**

19 (1) (a) Whenever the question of a defendant's competency to proceed is
20 raised, by either party or on the court's own motion, the court may make
21 a preliminary finding of competency or incompetency ~~TO PROCEED~~, which
22 ~~shall be~~ IS a final determination unless a party to the case objects within
23 ~~fourteen~~ SEVEN days after the court's preliminary finding.

24 (b) ON OR BEFORE THE DATE WHEN A COURT ORDERS THAT A
25 DEFENDANT BE EVALUATED FOR COMPETENCY, A COURT LIAISON FOR THE
26 DISTRICT HIRED PURSUANT TO PART 2 OF ARTICLE 11.9 OF THIS TITLE 16
27 MAY BE ASSIGNED TO THE DEFENDANT.

1 (3) Within ~~fourteen~~ SEVEN days after receipt of the court-ordered
2 report, either party may request a hearing or a second evaluation.

3 (4) If a party requests a second evaluation, any pending requests
4 for a hearing ~~shall~~ MUST be continued until the receipt of the second
5 evaluation report. The report of the expert conducting the second
6 evaluation ~~shall~~ MUST be completed and filed with the court within
7 ~~sixty-three~~ THIRTY-FIVE days after the court order allowing the second
8 evaluation, unless the time period is extended by the court for good cause.
9 If the second evaluation is requested by the court, it ~~shall~~ MUST be paid
10 for by the court.

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

19 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**
20 (1) and (5); and **add (6), (7), and (8)** as follows:

21 **16-8.5-105. Evaluations, locations, time frames, and report.**

22 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
23 conducted on an outpatient basis or, if the defendant is ~~in custody~~ UNABLE
24 TO POST THE MONETARY CONDITION OF BOND OR IS INELIGIBLE TO BE
25 RELEASED ON BOND, at the place where the defendant is ~~in custody~~. ~~The~~
26 ~~defendant shall be released on bond if otherwise eligible for bond~~
27 IN-CUSTODY, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION.

1 IF THE DEPARTMENT CONDUCTS THE EVALUATION ON AN IN-CUSTODY
2 BASIS, THE DEPARTMENT SHALL BEGIN THE EVALUATION AS SOON AS
3 PRACTICABLE AFTER THE DEPARTMENT'S RECEIPT OF A COURT ORDER
4 DIRECTING THE EVALUATION. AFTER JULY 1, 2020, IF THE EVALUATION IS
5 CONDUCTED ON AN IN-CUSTODY BASIS, THE DEPARTMENT SHALL
6 COMPLETE THE EVALUATION NO LATER THAN TWENTY-ONE DAYS AFTER
7 RECEIPT OF THE ORDER AND THE COLLATERAL MATERIALS. ON AND AFTER
8 JULY 1, 2020, IF THE EVALUATION IS CONDUCTED ON AN OUT-OF-CUSTODY
9 BASIS, THE DEPARTMENT SHALL COMPLETE THE EVALUATION WITHIN
10 FORTY-TWO DAYS AFTER RECEIPT OF THE ORDER AND COLLATERAL
11 MATERIALS, UNLESS THE COURT EXTENDS THE TIME UPON A SHOWING OF
12 GOOD CAUSE.

13 (II) AT THE TIME ANY EVALUATION IS ORDERED, THE COURT SHALL
14 ORDER THAT THE COLLATERAL MATERIALS BE TRANSMITTED TO THE
15 DEPARTMENT WITHIN TWENTY-FOUR HOURS AFTER THE ORDER BY THE
16 APPROPRIATE PARTY WITH A CERTIFICATE OF SERVICE OF THE MATERIALS
17 PROVIDED TO THE COURT AND OTHER NECESSARY PARTIES BY THE PARTY
18 ORDERED TO TRANSMIT THE COLLATERAL MATERIALS.

19 (III) THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE
20 CONDITIONS OF RELEASE AFTER CONSIDERATION OF THE PRESUMPTIONS
21 AND FACTORS ENUMERATED IN ARTICLE 4 OF THIS TITLE 16, WHICH
22 INCLUDE CONSIDERATION OF THE INFORMATION RECEIVED FROM ANY
23 PRETRIAL SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF SECTION
24 16-4-106 AND ANY INFORMATION PROVIDED BY THE COURT LIAISON HIRED
25 PURSUANT TO PART 2 OF ARTICLE 11.9 OF THIS TITLE 16. AS A CONDITION
26 OF ANY BOND, THE COURT SHALL REQUIRE THE DEFENDANT'S
27 COOPERATION WITH THE COMPETENCY EVALUATION ON AN OUTPATIENT

1 AND OUT-OF-CUSTODY BASIS. IN SETTING THE BOND, THE COURT SHALL
2 NOT CONSIDER THE NEED FOR THE DEFENDANT TO RECEIVE AN
3 EVALUATION PURSUANT TO THIS ARTICLE 8.5 AS A FACTOR IN
4 DETERMINING ANY MONETARY CONDITION OF BOND.

5 (IV) NOTHING IN THIS SUBSECTION (1)(a) LIMITS THE
6 AVAILABILITY OF A COURT-ORDERED EVALUATION FOR A PERSON WITH A
7 MENTAL HEALTH DISORDER PURSUANT TO SECTION 27-65-106 OR INVOKES
8 THE EMERGENCY PROCEDURE SET FORTH IN SECTION 27-65-105.

9 (b) Notwithstanding the provisions of ~~paragraph (a) of this~~
10 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, the court may order
11 the defendant placed in the DEPARTMENT'S custody ~~of the Colorado~~
12 ~~mental health institute at Pueblo~~ for the time necessary to conduct the
13 INPATIENT COMPETENCY evaluation if:

14 (I) ~~The court finds the defendant may be a danger to self or others~~
15 ~~as defined in section 27-65-102, C.R.S.~~ THE DEPARTMENT PROVIDES A
16 RECOMMENDATION TO THE COURT, AFTER CONSULTATION WITH THE
17 DEFENDANT AND REVIEW OF ANY CLINICAL OR COLLATERAL MATERIALS,
18 THAT CONDUCTING THE COMPETENCY EVALUATION ON AN INPATIENT
19 BASIS IS CLINICALLY APPROPRIATE;

20 (II) ~~The court finds that an inadequate competency evaluation and~~
21 ~~report has been completed or two or more conflicting competency~~
22 ~~evaluations and reports have been completed~~ THE COURT FINDS THAT AN
23 INADEQUATE COMPETENCY EVALUATION AND REPORT HAS BEEN
24 COMPLETED OR THAT TWO OR MORE CONFLICTING COMPETENCY
25 EVALUATIONS AND REPORTS HAVE BEEN COMPLETED, AND THE COURT
26 FINDS THAT AN INPATIENT EVALUATION IS NECESSARY; OR

27 (III) ~~The court finds that an observation period is necessary to~~

1 ~~determine if the defendant is competent to stand trial;~~ EXTRAORDINARY
2 CIRCUMSTANCES RELATING TO THE CASE OR THE DEFENDANT MAKE
3 CONDUCTING THE COMPETENCY EVALUATION ON AN INPATIENT BASIS
4 NECESSARY AND APPROPRIATE.

5 (IV) ~~The court receives a recommendation from the Colorado~~
6 ~~mental health institute at Pueblo court services evaluator that conducting~~
7 ~~the evaluation at the Colorado mental health institute at Pueblo is~~
8 ~~appropriate because the evaluator conducting the evaluation for the~~
9 ~~Colorado mental health institute at Pueblo determines that the defendant~~
10 ~~has been uncooperative or the defendant has clinical needs that warrant~~
11 ~~transfer to the Colorado mental health institute at Pueblo; or~~

12 (V) ~~The court receives written approval for the evaluation to be~~
13 ~~conducted at the Colorado mental health institute at Pueblo from the~~
14 ~~executive director of the department of human services, or his or her~~
15 ~~designee.~~

16 (b.3) UPON ENTRY OF A COURT ORDER PURSUANT TO SUBSECTION
17 (1)(b) OF THIS SECTION, THE DEPARTMENT HAS THE SAME AUTHORITY
18 WITH RESPECT TO CUSTODY AS PROVIDED FOR IN SECTION 16-8-105.5 (4).

19 (b.5) WHEN THE COURT ORDERS AN INPATIENT EVALUATION, THE
20 COURT SHALL ADVISE THE DEFENDANT THAT RESTORATION SERVICES MAY
21 COMMENCE IMMEDIATELY IF THE EVALUATION CONCLUDES THAT THE
22 DEFENDANT IS INCOMPETENT TO PROCEED, UNLESS EITHER PARTY OBJECTS
23 AT THE TIME OF THE ADVISEMENT, OR WITHIN SEVENTY-TWO HOURS AFTER
24 THE RECEIPT OF THE WRITTEN EVALUATION SUBMITTED TO THE COURT.
25 THE COURT SHALL RECORD ANY OBJECTION TO THE ORDER OF
26 COMMITMENT TO THE DEPARTMENT.

27 (b.7) ON AND AFTER JULY 1, 2020, WHEN THE COURT ORDERS AN

1 INPATIENT EVALUATION, THE DEFENDANT MUST BE OFFERED ADMISSION
2 TO THE HOSPITAL OR OTHER INPATIENT PROGRAM WITHIN FOURTEEN DAYS
3 AFTER RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS. THE
4 COURT SHALL REVIEW THE CASE IN TWENTY-ONE DAYS TO DETERMINE IF
5 TRANSPORTATION TO THE HOSPITAL OR PROGRAM HAS BEEN COMPLETED
6 OR IF FURTHER ORDERS ARE NECESSARY.

7 (c) ~~The court, when setting bond pursuant to section 16-4-103, if~~
8 ~~the defendant is eligible for bond, and after receiving any information~~
9 ~~pursuant to section 16-4-106, shall not consider the need for the~~
10 ~~defendant to receive an evaluation pursuant to this article.~~

11 (d) If a defendant is in THE DEPARTMENT'S custody ~~at the Colorado~~
12 ~~mental health institute at Pueblo~~ for purposes of the COMPETENCY
13 evaluation ordered pursuant to this ~~article~~ ARTICLE 8.5 and the defendant
14 has completed the COMPETENCY evaluation and ~~must be returned~~ THE
15 EVALUATOR HAS CONCLUDED THAT THE DEFENDANT IS COMPETENT TO
16 PROCEED, THE DEPARTMENT MAY RETURN THE DEFENDANT TO a county
17 jail OR TO THE COMMUNITY, AS DETERMINED BY THE DEFENDANT'S BOND
18 STATUS. IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT IS
19 INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION SERVICES
20 ARE NOT CLINICALLY APPROPRIATE, AND OUTPATIENT RESTORATION
21 SERVICES ARE AVAILABLE TO THE DEFENDANT IN THE COMMUNITY, THE
22 DEPARTMENT SHALL NOTIFY THE COURT AND THE COURT LIAISON, AND
23 THE DEPARTMENT SHALL DEVELOP A DISCHARGE PLAN AND A PLAN FOR
24 COMMUNITY-BASED RESTORATION SERVICES IN COORDINATION WITH THE
25 COMMUNITY RESTORATION SERVICES PROVIDER. THE COURT SHALL HOLD
26 A HEARING WITHIN SEVEN DAYS AFTER RECEIVING THE NOTICE, AT WHICH
27 THE DEPARTMENT SHALL PROVIDE TO THE COURT THE PLAN FOR

1 COMMUNITY-BASED RESTORATION SERVICES, AND THE COURT MAY ENTER
2 ANY APPROPRIATE ORDERS REGARDING THE CUSTODY OF THE DEFENDANT
3 AND HIS OR HER BOND STATUS. THE DEPARTMENT SHALL ADVISE THE
4 DEFENDANT OF THE DATE AND TIME OF THE COURT HEARING. IF THE
5 DEPARTMENT IS RETURNING THE DEFENDANT to a county jail, the county
6 sheriff in the jurisdiction where the defendant must return shall ~~make all~~
7 ~~reasonable efforts to~~ take custody of the defendant as soon as practicable
8 ~~once~~ WITHIN SEVENTY-TWO HOURS AFTER RECEIVING NOTIFICATION FROM
9 THE DEPARTMENT THAT the defendant's evaluation is completed. AT THE
10 TIME THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL
11 ALSO NOTIFY THE COURT AND THE COURT LIAISON THAT THE DEPARTMENT
12 IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE JAIL.

13 (e) Nothing in this section ~~shall restrict~~ RESTRICTS the right of the
14 defendant to procure ~~an~~ A COMPETENCY evaluation as provided in ~~section~~
15 ~~16-8.5-107~~ SECTION 16-8.5-106.

16 (5) ON AND AFTER JULY 1, 2020, the report of evaluation shall
17 COMPETENCY EVALUATION AND REPORT MUST include but need not be
18 limited to:

19 (a) The name of each physician, psychologist, or other expert who
20 examined the defendant; ~~and~~

21 (b) A description of the nature, content, extent, and results of the
22 COMPETENCY evaluation and any tests conducted, ~~and~~ WHICH MUST
23 INCLUDE BUT NEED NOT BE LIMITED TO THE INFORMATION REVIEWED AND
24 RELIED UPON IN CONDUCTING THE COMPETENCY EVALUATION AND
25 SPECIFIC TESTS CONDUCTED BY THE COMPETENCY EVALUATOR;

26 (c) A diagnosis and prognosis of the defendant's mental disability
27 or developmental disability; ~~and~~

1 (d) An opinion as to whether the defendant suffers from a mental
2 disability or developmental disability; and

3 (e) An opinion as to whether the defendant is competent to
4 proceed. IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
5 DEFENDANT IS INCOMPETENT TO PROCEED, THEN:

6 (I) IF POSSIBLE, AN OPINION AS TO WHETHER THERE IS A
7 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION
8 SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY
9 FORESEEABLE FUTURE; AND

10 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
11 RESTORATION SERVICES ARE CLINICALLY APPROPRIATE TO RESTORE THE
12 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
13 NOT CLINICALLY APPROPRIATE, THE DEPARTMENT MUST DETAIL THE
14 OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES AVAILABLE
15 TO THE DEFENDANT. FOR EVALUATION REPORTS FILED ON OR AFTER
16 JANUARY 1, 2021, THE RECOMMENDATIONS MUST BE BASED UPON THE
17 RESTORATION PLACEMENT GUIDELINE DEVELOPED PURSUANT TO SECTION
18 16-8.5-121, PRIOR TO ITS REPEAL.

19 (f) IF AVAILABLE WITHIN THE RECORDS OF THE DEPARTMENT, A
20 DESCRIPTION OF ALL COMPETENCY EVALUATIONS OR RESTORATION
21 SERVICES THAT WERE PREVIOUSLY PROVIDED TO THE DEFENDANT,
22 INCLUDING A LIST OF RECENT VOLUNTARY OR INVOLUNTARY MEDICATIONS
23 ADMINISTERED OR ADMINISTERED THROUGH A FORCED MEDICATION
24 ORDER; _____

25 (g) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
26 DEFENDANT MEETS THE CRITERIA FOR A TIER I OR TIER II DESIGNATION,
27 AS DEFINED IN SECTION 16-8.5-101(19) AND (20); AND

1 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
2 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
3 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
4 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
5 TITLE 27, INCLUDING THE FACTORS CONSIDERED IN MAKING EITHER
6 DETERMINATION.

7 (6) WHENEVER A COMPETENCY EVALUATION IS ORDERED UPON
8 THE REQUEST OF EITHER PARTY, THE COURT MAY NOTIFY THE COUNTY
9 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
10 PURSUANT TO SECTION 27-65-111 (6) FOR THE COUNTY IN WHICH THE
11 CHARGES ARE PENDING AND THE COURT LIAISON HIRED PURSUANT TO PART
12 2 OF ARTICLE 11.9 OF THIS TITLE 16 OF ALL COURT DATES FOR RETURN OF
13 THE REPORT ON COMPETENCY TO ENSURE THAT ALL PARTIES ARE ON
14 NOTICE OF THE EXPECTED NEED FOR COORDINATED SERVICES AND
15 PLANNING WITH CONSIDERATION OF POSSIBLE CIVIL COMMITMENT.

16 (7) EACH COURT SHALL ALLOW FOR ANY COMPETENCY
17 EVALUATION CONDUCTED PURSUANT TO THE PROVISIONS OF SECTION
18 16-8.5-105 OR 16-8.5-106 TO BE SUBMITTED TO THE COURT THROUGH
19 ELECTRONIC MEANS.

20 (8) A COMPETENCY EVALUATOR IS NOT LIABLE FOR DAMAGES IN
21 ANY CIVIL ACTION FOR FAILURE TO WARN OR PROTECT A SPECIFIC PERSON
22 OR PERSONS, INCLUDING THOSE IDENTIFIABLE BY THEIR ASSOCIATION WITH
23 A SPECIFIC LOCATION OR ENTITY, AGAINST THE VIOLENT BEHAVIOR OF A
24 DEFENDANT BEING EVALUATED BY THE COMPETENCY EVALUATOR, AND
25 ANY COMPETENCY EVALUATOR MUST NOT BE HELD CIVILLY LIABLE FOR
26 FAILURE TO PREDICT SUCH VIOLENT BEHAVIOR, EXCEPT WHERE THE
27 DEFENDANT HAS COMMUNICATED TO THE COMPETENCY EVALUATOR A

1 SERIOUS THREAT OF IMMINENT PHYSICAL VIOLENCE AGAINST A SPECIFIC
2 PERSON OR PERSONS, INCLUDING THOSE IDENTIFIABLE BY THEIR
3 ASSOCIATION WITH A SPECIFIC LOCATION OR ENTITY.

4 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-111, **amend**
5 (2); and **add** (3) as follows:

6 **16-8.5-111. Procedure after determination of competency or**
7 **incompetency.** (2) If the final determination made pursuant to section
8 16-8.5-103 is that the defendant is incompetent to proceed, the court has
9 the following options:

10 (a) IF THE DEFENDANT IS CHARGED WITH AN OFFENSE AS OUTLINED
11 IN SECTION 16-8.5-116 (7) OR (8), EXCEPT FOR AN OFFENSE ENUMERATED
12 IN SECTION 24-4.1-302 (1), AND THE COMPETENCY EVALUATION HAS
13 DETERMINED THAT THE DEFENDANT MEETS THE STANDARD FOR CIVIL
14 COMMITMENT PURSUANT TO ARTICLE 65 OF TITLE 27, THE COURT MAY
15 FORGO ANY ORDER OF RESTORATION AND IMMEDIATELY ORDER THAT
16 PROCEEDINGS BE INITIATED BY THE COUNTY ATTORNEY OR DISTRICT
17 ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS PURSUANT TO SECTION
18 27-65-111 (6) FOR THE CIVIL COMMITMENT OF THE DEFENDANT AND
19 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE
20 ONCE CIVIL COMMITMENT PROCEEDINGS HAVE BEEN INITIATED.

21 (a) (b) (I) If the defendant is on bond or summons, the court shall
22 ~~consider whether~~ ORDER THAT restoration to competency ~~should occur~~
23 TAKE PLACE on an outpatient ~~and out-of-custody~~ basis, UNLESS THE
24 DEPARTMENT RECOMMENDS INPATIENT RESTORATION SERVICES PURSUANT
25 TO SECTION 16-8.5-105 (5)(e)(II).

26 (II) If the defendant is in custody AND THE RECOMMENDATION IS
27 FOR OUT PATIENT RESTORATION SERVICES, the court ~~may~~ SHALL CONSIDER

1 THE release OF the defendant on bond ~~upon compliance with the standards~~
2 ~~and procedures for such release prescribed by statute and by~~ CONSISTENT
3 WITH ARTICLE 4 OF THIS TITLE 16 AND the Colorado rules of criminal
4 procedure. As a condition of bond, the court ~~may require the defendant~~
5 ~~to obtain any treatment or habilitation services that are available to the~~
6 ~~defendant, such as inpatient or outpatient treatment at a community~~
7 ~~mental health center or in any other appropriate treatment setting, as~~
8 ~~determined by the court. Nothing in this section authorizes the court to~~
9 ~~order community mental health centers or other providers to provide~~
10 ~~treatment for persons not otherwise eligible for these services. At any~~
11 ~~hearing to determine eligibility for release on bond, the court shall~~
12 ~~consider any effect the defendant's incompetency may have on the court's~~
13 ~~ability to ensure the defendant's presence for hearing or trial. There is a~~
14 ~~presumption that the defendant's incompetency will inhibit the defendant's~~
15 ~~ability to ensure his or her presence for trial~~ SHALL ORDER THAT THE
16 RESTORATION TAKE PLACE ON AN OUTPATIENT BASIS. Pursuant to section
17 27-60-105, the DEPARTMENT THROUGH THE office of behavioral health is
18 the entity responsible for the oversight of restoration education and
19 coordination of ~~services necessary to~~ ALL competency restoration
20 SERVICES. AS A CONDITION OF RELEASE FOR OUTPATIENT RESTORATION
21 SERVICES, THE COURT MAY REQUIRE PRETRIAL SERVICES, IF AVAILABLE,
22 TO WORK WITH THE DEPARTMENT AND THE RESTORATION SERVICES
23 PROVIDER UNDER CONTRACT WITH THE DEPARTMENT TO ASSIST IN
24 SECURING APPROPRIATE SUPPORT AND CARE MANAGEMENT SERVICES,
25 WHICH MAY INCLUDE HOUSING RESOURCES. THE INDIVIDUAL AGENCY
26 RESPONSIBLE FOR PROVIDING OUTPATIENT RESTORATION SERVICES FOR
27 THE DEFENDANT SHALL NOTIFY THE COURT OR OTHER DESIGNATED

1 AGENCY WITHIN TWENTY-ONE DAYS IF RESTORATION SERVICES HAVE NOT
2 COMMENCED.

3 ~~(b)~~ (c) If the court finds that the defendant is not eligible for
4 release from custody OR NOT ABLE TO POST THE MONETARY CONDITION OF
5 BOND, the court may commit the defendant to the custody of the
6 department, in which case the executive director has the same powers
7 with respect to commitment as the executive director has following a
8 commitment ~~under~~ PURSUANT TO section 16-8-105.5 (4). At such time as
9 the department recommends to the court that the defendant is restored to
10 competency, the defendant may be returned to custody of the county jail
11 or to previous bond status.

12 (d) IF THE COURT HAS ORDERED OUTPATIENT RESTORATION
13 SERVICES AND THE DEPARTMENT DETERMINES THAT IT IS UNABLE, WITHIN
14 A REASONABLE TIME, TO PROVIDE RESTORATION SERVICES ON AN
15 OUTPATIENT BASIS, THE DEPARTMENT SHALL NOTIFY THE COURT WITHIN
16 FOURTEEN DAYS AFTER ITS DETERMINATION, AT WHICH POINT THE COURT
17 SHALL REVIEW THE CASE AND DETERMINE WHAT INTERIM MENTAL HEALTH
18 SERVICES CAN BE PROVIDED WITHIN THE COMMUNITY BY THE
19 DEPARTMENT OR OTHER COMMUNITY PROVIDER. THE DEPARTMENT SHALL
20 REPORT TO THE COURT LIAISON EVERY TEN DAYS THEREAFTER
21 CONCERNING THE AVAILABILITY OF RESTORATION SERVICES ON AN
22 OUTPATIENT BASIS.

23 (e) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
24 THE DEPARTMENT, THE EXECUTIVE DIRECTOR HAS THE SAME POWERS WITH
25 RESPECT TO A COMMITMENT PROVIDED FOR IN SECTION 16-8-105.5 (4).

26 (f) (I) IF THE COURT HAS ORDERED INPATIENT RESTORATION
27 SERVICES, THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT

1 AN APPROPRIATE INPATIENT RESTORATION SERVICES PROGRAM. ON AND
2 AFTER JULY 1, 2019, THE DEPARTMENT SHALL OFFER TIER 1 DEFENDANTS
3 ADMISSION FOR RESTORATION SERVICES WITHIN SEVEN DAYS AFTER
4 RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS. ON AND
5 AFTER JULY 1, 2021, THE DEPARTMENT SHALL OFFER ADMISSION TO TIER
6 2 DEFENDANTS WITHIN TWENTY-EIGHT DAYS AFTER RECEIPT OF THE COURT
7 ORDER AND COLLATERAL MATERIALS. FOR TIER 2 DEFENDANTS, THE
8 DEPARTMENT SHALL ADVISE THE COURT AND THE COURT LIAISON EVERY
9 TEN DAYS AFTER THE INITIAL TWENTY-EIGHT DAY PERIOD REGARDING THE
10 AVAILABILITY OF A BED AND WHEN ADMISSION WILL BE OFFERED.

11 (II) IF THE DEFENDANT IS NOT OFFERED ADMISSION AND
12 TRANSPORTED TO THE INPATIENT RESTORATION SERVICES PROGRAM
13 WITHIN THE TIME FRAMES PROVIDED OR IN ACCORDANCE WITH OTHER
14 COURT ORDERS, THE COURT MAY:

15 (A) REVIEW THE CASE FOR CONSIDERATION OF OUTPATIENT
16 RESTORATION SERVICES AND APPROPRIATE AND NECESSARY CASE
17 MANAGEMENT SERVICES COORDINATED WITH THE DEPARTMENT; THE
18 COURT LIAISON; AND PRETRIAL SERVICES, IF AVAILABLE; OR

19 (B) MAKE ANY OTHER ORDER DETERMINED TO BE NECESSARY IN
20 ORDER TO SECURE THE NECESSARY RESTORATION SERVICES.

21 (g) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
22 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
23 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
24 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, AND
25 CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,
26 HAS THE AUTHORITY TO MOVE THE DEFENDANT TO A LESS RESTRICTIVE
27 FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS

1 NOT YET RESTORED TO COMPETENCY BUT HE OR SHE COULD BE PROPERLY
2 RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY. IF THE
3 DEFENDANT IS NOT RELEASED FROM CUSTODY, THE COURT SHALL ORDER
4 THE DEPARTMENT TO PROVIDE INPATIENT SERVICES AT A LOCATION
5 DETERMINED BY THE DEPARTMENT.

6 (h) (I) IF THE DEFENDANT IS RECEIVING INPATIENT RESTORATION
7 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT
8 COMMUNITY-BASED RESTORATION SERVICES WOULD BE MORE CLINICALLY
9 APPROPRIATE, THE DEPARTMENT SHALL:

10 (A) NOTIFY THE COURT AND REQUEST THAT THE DEFENDANT BE
11 CONSIDERED FOR RELEASE ON A NONMONETARY BOND IF THE DEFENDANT
12 IS NOT CURRENTLY RELEASED ON BOND; AND

13 (B) PROVIDE TO THE COURT INFORMATION REGARDING THE
14 APPROPRIATE OUTPATIENT RESTORATION SERVICES, DEVELOPED IN
15 CONJUNCTION WITH THE COURT LIAISON, AND THE REASONS WHY THE
16 DEFENDANT COULD BE PROPERLY RESTORED TO COMPETENCY ON AN
17 OUTPATIENT BASIS.

18 (II) THE COURT SHALL RULE ON THE REQUEST WITHIN FOURTEEN
19 DAYS AFTER RECEIPT OF THE REQUEST FROM THE DEPARTMENT.

20 (3) (a) WHEN THE DEPARTMENT SUBMITS A REPORT TO THE COURT
21 THAT IT IS THE POSITION OF THE DEPARTMENT THAT THE DEFENDANT IS
22 RESTORED TO COMPETENCY, THE DEFENDANT MAY BE RETURNED TO THE
23 CUSTODY OF THE COUNTY JAIL. IF THE RECOMMENDATION IS THAT THE
24 DEFENDANT BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, THE
25 DEPARTMENT SHALL NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE
26 DEFENDANT IS TO BE RETURNED AND THE COURT LIAISON. WITHIN
27 SEVENTY-TWO HOURS AFTER RECEIPT OF THE NOTICE, THE SHERIFF SHALL

1 RETURN THE DEFENDANT TO THE JAIL. WHEN A DEFENDANT IS
2 TRANSFERRED TO THE PHYSICAL CUSTODY OF THE SHERIFF, THE
3 DEPARTMENT SHALL WORK WITH THE SHERIFF AND ANY BEHAVIORAL
4 HEALTH PROVIDERS IN THE JAIL TO ENSURE THAT THE JAIL HAS THE
5 NECESSARY INFORMATION TO PREVENT ANY DECOMPENSATION BY THE
6 DEFENDANT WHILE THE DEFENDANT IS IN JAIL, WHICH MUST INCLUDE
7 MEDICATION INFORMATION WHEN CLINICALLY APPROPRIATE. THE REPORT
8 TO THE COURT MUST ALSO INCLUDE A STATEMENT THAT THE DEPARTMENT
9 IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL.

10 (b) IF THE DEFENDANT WAS RELEASED ON BOND PRIOR TO THE
11 INPATIENT HOSPITALIZATION, THE DEFENDANT MUST BE RELEASED
12 PURSUANT TO THE BOND WITH THE CONDITIONS IMPOSED BY THE COURT.
13 THE DEPARTMENT SHALL ASSIST THE DEFENDANT WITH ANY AND ALL
14 NECESSARY TRANSPORTATION AND PROVIDE THE NECESSARY CASE AND
15 MEDICATION INFORMATION FOR THE DEFENDANT TO THE COMMUNITY
16 AGENCY THAT WILL PROVIDE ONGOING SERVICES AND MEDICATION
17 SUPPORT. THE DEPARTMENT SHALL NOTIFY THE COURT AND THE COURT
18 LIAISON THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE
19 COMMUNITY ON BOND STATUS. THE DEPARTMENT, THE COURT LIAISON,
20 AND THE COURT, INCLUDING PRETRIAL SERVICES, SHALL COORDINATE TO
21 ENSURE THAT THE DEFENDANT IS ADVISED OF HIS OR HER NEXT COURT
22 APPEARANCE AND ALL OF THE REQUIRED TERMS AND CONDITIONS OF THE
23 RELEASE ON BOND.

24 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-113, **amend**
25 (2) and (3) as follows:

26 **16-8.5-113. Restoration to competency.** (2) Within fourteen
27 days after receipt of a report from the department or other court-approved

1 provider of restoration services certifying that the defendant is competent
2 to proceed, either party may request a hearing or a second evaluation. The
3 court shall determine whether to allow the second evaluation or proceed
4 to a hearing on competency. If the second evaluation is requested by the
5 court or by an indigent defendant, it ~~shall~~ MUST be paid for by the court.

6 (3) If a second evaluation is allowed, any pending requests for a
7 hearing ~~shall~~ MUST be continued until receipt of the second evaluation
8 report. The report of the expert conducting the second evaluation report
9 ~~shall~~ MUST be completed and filed with the court within ~~sixty-three~~
10 THIRTY-FIVE days after the court order allowing the second evaluation,
11 unless the time period is extended by the court after a finding of good
12 cause.

13 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-114, **amend**
14 (2) as follows:

15 **16-8.5-114. Procedure after hearing concerning restoration to**
16 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
17 the court determines that the defendant remains incompetent to proceed,
18 the court may continue or modify any orders entered at the time of the
19 original determination of incompetency and may commit or recommit the
20 defendant or enter any new order necessary to facilitate the defendant's
21 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS
22 OF SECTION 16-8.5-111.

23 **SECTION 8.** In Colorado Revised Statutes, **repeal and reenact,**
24 **with amendments,** 16-8.5-116 as follows:

25 **16-8.5-116. Certification - reviews - termination of**
26 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS AND LEGAL
27 STANDARDS SET FORTH IN THIS SECTION, WHICHEVER IS SHORTEST, A

1 DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
2 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
3 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
4 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
5 IMPOSED FOR ONLY THE SINGLE MOST SERIOUS OFFENSE WITH WHICH THE
6 DEFENDANT IS CHARGED, LESS FIFTY PERCENT. AT THE END OF SUCH TIME
7 PERIOD, THE COURT SHALL DISMISS THE CHARGES, AND CERTIFICATION
8 PROCEEDINGS OR PROVISION OF SERVICES, IF ANY, ARE GOVERNED BY
9 ARTICLE 65 OR 10.5 OF TITLE 27.

10 (2) (a) WITHIN NINETY-ONE DAYS AFTER THE ENTRY OF THE
11 COURT'S ORDER OF COMMITMENT, THE COURT SHALL REVIEW THE CASE OF
12 A DEFENDANT WHO HAS BEEN DETERMINED TO BE INCOMPETENT TO
13 PROCEED WITH REGARD TO THE PROBABILITY THAT THE DEFENDANT WILL
14 EVENTUALLY BE RESTORED TO COMPETENCY AND WITH REGARD TO THE
15 JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE REVIEW MAY BE
16 HELD IN CONJUNCTION WITH A RESTORATION HEARING HELD PURSUANT TO
17 SECTION 16-8.5-113. HOWEVER, IF AT THE REVIEW HEARING, THERE IS A
18 REQUEST BY THE DEFENDANT FOR A RESTORATION HEARING PURSUANT TO
19 SECTION 16-8.5-113, THE COURT SHALL SET THE RESTORATION HEARING
20 WITHIN THIRTY-FIVE DAYS AFTER THE REQUEST PURSUANT TO THE
21 PROVISIONS OF SECTION 16-8.5-113.

22 (b) ON AND AFTER JULY 1, 2020, AT LEAST TEN DAYS BEFORE EACH
23 REVIEW, THE INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL
24 PROVIDE THE COURT WITH A REPORT DESCRIBING:

- 25 (I) AN OPINION REGARDING THE DEFENDANT'S COMPETENCY;
26 (II) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
27 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE

1 REASONABLY FORESEEABLE FUTURE;

2 (III) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
3 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
4 PERIODS ESTABLISHED BY THIS SECTION;

5 (IV) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
6 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
7 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27;

8 (V) ANY AND ALL EFFORTS MADE FOR RESTORATION THROUGH
9 MEDICATION, THERAPY, EDUCATION, OR OTHER SERVICES AND THE
10 OUTCOME OF THOSE EFFORTS IN RELATION TO RESTORING THE DEFENDANT
11 TO COMPETENCY;

12 (VI) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
13 DEFENDANT WILL BE RESTORED TO COMPETENCY AND REMAIN COMPETENT
14 WITH THE USE OF MEDICATIONS OR WILL NOT REMAIN COMPETENT
15 WITHOUT THE USE OF FORCED MEDICATION;

16 (VII) IF THE DEFENDANT HAS FAILED TO COOPERATE WITH
17 TREATMENT, WHETHER THE INCOMPETENCY AND MENTAL OR
18 INTELLECTUAL AND DEVELOPMENTAL DISABILITY CONTRIBUTES TO THE
19 DEFENDANT'S REFUSAL OR INABILITY TO COOPERATE WITH RESTORATION
20 OR PREVENTS THE ABILITY OF THE DEFENDANT TO COOPERATE WITH
21 RESTORATION; AND

22 (VIII) A SUMMARY OF THE OBSERVATIONS OF THE DEFENDANT BY
23 THE TREATING STAFF AT THE FACILITY OR OTHER LOCATION WHERE
24 INPATIENT SERVICES WERE DELIVERED.

25 (c) ADDITIONALLY, ON AND AFTER JULY 1, 2020, AT LEAST TEN
26 DAYS BEFORE EACH REVIEW, THE DEPARTMENT TREATING TEAM SHALL
27 PROVIDE TO THE COURT AN ADDITIONAL REPORT THAT SUMMARIZES:

1 (I) WHAT RESTORATIVE EDUCATION HAS BEEN PROVIDED AND THE
2 FREQUENCY OF THAT EDUCATION;

3 (II) WHAT MEDICATION HAS BEEN ADMINISTERED, INCLUDING
4 VOLUNTARY OR INVOLUNTARY MEDICATIONS;

5 (III) WHAT RELEASE PLANS HAVE BEEN MADE FOR THE DEFENDANT
6 AFTER RELEASE, INCLUDING A DISCUSSION OF THE SUPPORT FROM FAMILY
7 MEMBERS;

8 (IV) WHETHER OR NOT THE DEFENDANT WOULD AGREE TO
9 VOLUNTARY ADMISSION TO THE HOSPITAL FOR CERTIFICATION PURSUANT
10 TO ARTICLE 65 OF TITLE 27;

11 (V) THE OPINION OF THE TREATING TEAM ON THE DEFENDANT'S
12 MENTAL HEALTH FUNCTIONING AND ABILITY TO FUNCTION ON AN
13 OUTPATIENT BASIS FOR RESTORATION SERVICES; AND

14 (VI) WHETHER THE DEFENDANT, BASED ON OBSERVATIONS OF THE
15 DEFENDANT'S BEHAVIOR IN THE FACILITY, PRESENTS A SUBSTANTIAL RISK
16 TO THE PHYSICAL SAFETY OF HIMSELF OR HERSELF, OF ANOTHER PERSON,
17 OR OF THE COMMUNITY IF RELEASED FOR COMMUNITY RESTORATION.

18 (3) AFTER THE INITIAL REVIEW PURSUANT TO SUBSECTION (2)(a)
19 OF THIS SECTION, THE COURT SHALL REVIEW THE CASE OF THE DEFENDANT
20 EVERY NINETY-ONE DAYS THEREAFTER UNTIL FOUR REVIEWS HAVE BEEN
21 CONDUCTED. AT LEAST TEN DAYS BEFORE EACH REVIEW, THE INDIVIDUAL
22 OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE COURT WITH
23 AN UPDATED REPORT AS DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION
24 AND THE TREATMENT STAFF SHALL PROVIDE AN UPDATED SUMMARY OF
25 OBSERVATIONS AS DESCRIBED IN SUBSECTION (2)(c) OF THIS SECTION.

26 (4) AFTER THE FOURTH REVIEW, THE COURT SHALL REVIEW THE
27 COMPETENCY OF THE DEFENDANT EVERY SIXTY-THREE DAYS UNTIL THE

1 DEFENDANT IS RESTORED TO COMPETENCY OR THE COURT DETERMINES,
2 BASED ON AVAILABLE EVIDENCE, THAT THERE IS NOT A SUBSTANTIAL
3 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
4 IN THE FORESEEABLE FUTURE AND IN THAT CASE, THE COURT SHALL
5 DISMISS THE CASE.

6 (5) THE COURT SHALL FORWARD A COPY OF EACH REPORT AND
7 SUMMARY RECEIVED PURSUANT TO SUBSECTIONS (2), (3), AND (4) OF THIS
8 SECTION TO THE COUNTY ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO
9 CONDUCT PROCEEDINGS PURSUANT TO SECTION 27-65-111 (6) FOR THE
10 COUNTY IN WHICH THE CASE IS PENDING AND TO THE COURT LIAISON.

11 (6) NOTWITHSTANDING THE TIME PERIODS PROVIDED IN
12 SUBSECTIONS (7), (8), AND (9) OF THIS SECTION AND TO ENSURE
13 COMPLIANCE WITH RELEVANT CONSTITUTIONAL PRINCIPLES, FOR ANY
14 OFFENSE FOR WHICH THE DEFENDANT REMAINS CONFINED AS A RESULT OF
15 A DETERMINATION OF INCOMPETENCY TO PROCEED IF THE COURT
16 DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THERE IS NOT A
17 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO
18 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE COURT
19 MAY ORDER THE DEFENDANT'S RELEASE FROM COMMITMENT PURSUANT TO
20 THIS ARTICLE 8.5 THROUGH ONE OR MORE OF THE FOLLOWING MEANS:

21 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
22 OR ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
23 PROCEEDINGS, THE COMMITMENT, OR THE RESTORATION SERVICES ORDER;

24 (b) THE COURT MAY, IN COORDINATION WITH THE COUNTY
25 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
26 PURSUANT TO SECTION 27-65-111 (6) FOR THE COUNTY IN WHICH THE
27 DEFENDANT IS CHARGED, ORDER THE COMMENCEMENT OF CERTIFICATION

1 PROCEEDINGS PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27
2 IF THE DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION
3 PURSUANT TO ARTICLE 65 OF TITLE 27;

4 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
5 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
6 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
7 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
8 PURSUANT TO ARTICLE 10.5 OF TITLE 27; OR

9 (d) ON AND AFTER JULY 1, 2020, THE DEPARTMENT SHALL ENSURE
10 THAT CASE MANAGEMENT SERVICES AND SUPPORT ARE MADE AVAILABLE
11 TO ANY DEFENDANT RELEASED FROM COMMITMENT PURSUANT TO THIS
12 ARTICLE 8.5 DUE TO THE SUBSTANTIAL PROBABILITY THAT THE
13 DEFENDANT WILL NOT BE RESTORED TO COMPETENCY IN THE REASONABLE
14 FORESEEABLE FUTURE.

15 (7) AT ANY REVIEW HEARING HELD CONCERNING THE
16 DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE
17 CHARGES AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
18 CONFINEMENT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
19 SECTION, IF:

20 (a) THE DEFENDANT:

21 (I) IS CHARGED WITH A MISDEMEANOR, A MISDEMEANOR DRUG
22 OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE OFFENSES
23 ENUMERATED IN SECTION 24-4.1-302 (1);

24 (II) HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT
25 OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
26 INCOMPETENCY TO PROCEED;

27 (III) HAS RECEIVED COMPETENCY RESTORATION SERVICES WHILE

1 COMMITTED OR OTHERWISE CONFINED FOR AN AGGREGATE TIME OF SIX
2 MONTHS; AND

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

5 (8) AT ANY REVIEW HEARING HELD CONCERNING THE
6 DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE
7 CHARGES AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
8 CONFINEMENT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
9 SECTION, IF:

10 (a) THE DEFENDANT:

11 (I) IS CHARGED WITH A CLASS 5 OR CLASS 6 FELONY, EXCEPT FOR
12 THOSE OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1); WITH A LEVEL
13 3 OR LEVEL 4 DRUG FELONY; OR WITH ANY MISDEMEANOR OFFENSE THAT
14 IS NOT INCLUDED IN SUBSECTION (7) OF THIS SECTION;

15 (II) HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT
16 OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
17 INCOMPETENCY TO PROCEED; AND

18 (III) HAS RECEIVED COMPETENCY RESTORATION SERVICES WHILE
19 COMMITTED OR OTHERWISE CONFINED FOR AN AGGREGATE TIME OF ONE
20 YEAR; AND

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

23 (9) IF THE DEFENDANT IS CHARGED WITH ANY OTHER FELONY
24 OFFENSE EXCEPT A CLASS 1, 2, OR 3 FELONY OFFENSE; A SEX OFFENSE AS
25 DEFINED IN SECTION 18-1.3-1003 (5); A CRIME OF VIOLENCE AS DEFINED
26 IN SECTION 18-1.3-406 (2); OR A LEVEL 1 OR LEVEL 2 DRUG FELONY, AND
27 HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR

1 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
2 INCOMPETENCY TO PROCEED, THE FOLLOWING PROVISIONS APPLY:

3 (a) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
4 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
5 AGGREGATE TIME OF TWO YEARS AND THE COURT DETERMINES, BASED ON
6 AVAILABLE EVIDENCE, THAT THE DEFENDANT IS NOT RESTORED TO
7 COMPETENCY, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST
8 THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
9 SECTION, UNLESS ANY PARTY OBJECTS TO DISMISSAL.

10 (b) IF A PARTY OBJECTS TO DISMISSAL OF CHARGES PURSUANT TO
11 SUBSECTION (9)(a) OF THIS SECTION, THE COURT SHALL SET THE MATTER
12 FOR A HEARING. UPON COMPLETION OF THE HEARING, THE COURT SHALL
13 DISMISS THE CHARGES UNLESS THE COURT DETERMINES THAT THE PARTY
14 OBJECTING TO THE DISMISSAL ESTABLISHES BY CLEAR AND CONVINCING
15 EVIDENCE THAT THERE IS A COMPELLING PUBLIC INTEREST IN CONTINUING
16 THE PROSECUTION AND THERE IS A SUBSTANTIAL PROBABILITY THAT THE
17 DEFENDANT WILL ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE. IF
18 THE COURT DECLINES TO DISMISS THE CHARGES, THE COURT SHALL
19 ADDRESS THE APPROPRIATENESS OF CONTINUED CONFINEMENT AND MAY
20 ALTER OR REDUCE BOND IF APPROPRIATE PURSUANT TO ARTICLE 4 OF THIS
21 TITLE 16 OR THE DECISION TO COMMIT THE DEFENDANT TO THE
22 DEPARTMENT PURSUANT TO SECTION 16-8.5-111.

23 (10) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO
24 SUBSECTION (1), (6), (7), (8), OR (9) OF THIS SECTION, THE COURT SHALL
25 IDENTIFY WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
26 CERTIFICATION PURSUANT TO ARTICLE 65 OF TITLE 27 OR, FOR THE
27 PROVISION OF SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27, OR

1 WHETHER THE DEFENDANT WILL AGREE TO A VOLUNTARY COMMITMENT.
2 IF THE COURT FINDS THE REQUIREMENTS FOR CERTIFICATION OR PROVISION
3 OF SERVICES ARE MET OR THE DEFENDANT DOES NOT AGREE TO A
4 VOLUNTARY COMMITMENT, THE COURT MAY STAY THE DISMISSAL FOR
5 TWENTY-ONE DAYS AND NOTIFY THE DEPARTMENT AND COUNTY
6 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
7 PURSUANT TO SECTION 27-65-111 (6) IN THE RELEVANT JURISDICTION OF
8 THE PENDING DISMISSAL SO AS TO PROVIDE THE DEPARTMENT AND THE
9 COUNTY ATTORNEY OR DISTRICT ATTORNEY WITH THE OPPORTUNITY TO
10 PURSUE CERTIFICATION PROCEEDINGS OR THE PROVISION OF NECESSARY
11 SERVICES.

12 (11) IN ANY CIRCUMSTANCE WHERE THE DEFENDANT'S CASE WAS
13 DISMISSED OR THE DEFENDANT WAS RELEASED FROM CONFINEMENT, THE
14 COURT SHALL ENTER A WRITTEN DECISION EXPLAINING WHY THE COURT
15 DID OR DID NOT TERMINATE THE CRIMINAL PROCEEDING OR THE
16 COMMITMENT OR RESTORATION ORDER.

17 (12) IF CHARGES AGAINST A DEFENDANT ARE DISMISSED PURSUANT
18 TO THIS SECTION, SUCH CHARGES ARE NOT ELIGIBLE FOR SEALING
19 PURSUANT TO SECTION 24-72-702.5.

20 (13) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
21 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE
22 8.5.

23 (14) ON AND AFTER JULY 1, 2020, THE COURT MAY, AT ANY TIME
24 OF THE RESTORATION PROCESS, ORDER THE DEPARTMENT TO PROVIDE THE
25 COURT WITH AN APPROPRIATE RELEASE PLAN FOR THE REINTEGRATION OF
26 THE DEFENDANT INTO THE COMMUNITY WITH APPROPRIATE SERVICES.

27 **SECTION 9.** In Colorado Revised Statutes, **add** 16-8.5-120 as

1 follows:

2 **16-8.5-120. Competency evaluation monitoring system - users**

3 **- rules.** (1) THE DEPARTMENT, WITH ASSISTANCE FROM THE JUDICIAL
4 DEPARTMENT, SHALL DEVELOP AN ELECTRONIC SYSTEM TO TRACK THE
5 STATUS OF DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM FOR WHOM A
6 COMPETENCY EVALUATION OR COMPETENCY RESTORATION HAS BEEN
7 ORDERED. THE SYSTEM MUST CONTAIN INFORMATION ON THE FOLLOWING:

- 8 (a) THE DATE THE COURT ORDERED THE EVALUATION;
- 9 (b) THE DATES OF AND LOCATIONS WHERE THE EVALUATION WAS
10 STARTED AND COMPLETED;
- 11 (c) THE DATE OF AND LOCATION WHERE THE DEFENDANT ENTERED
12 RESTORATION SERVICES;
- 13 (d) THE DATES AND RESULTS OF COURT REVIEWS OF COMPETENCY;
- 14 INPATIENT BED SPACE;
- 15 COMMUNITY RESTORATION CAPACITY; AND
- 16 FINANCIAL ESTIMATES OF COSTS OF EACH INPATIENT AND
17 OUTPATIENT PROGRAM TO IDENTIFY INEFFICIENCIES.

18 (2) THE DEPARTMENT SHALL ESTABLISH WHO HAS ACCESS TO
19 ENTER INFORMATION INTO THE ELECTRONIC SYSTEM AND WHO MAY HAVE
20 READ-ONLY ACCESS TO THE ELECTRONIC SYSTEM.

21 **SECTION 10.** In Colorado Revised Statutes, **add** 16-8.5-121 as
22 follows:

23 **16-8.5-121. Restoration services placement guideline -**

24 **committee - creation - repeal.** (1) BY JANUARY 1, 2020, THE
25 DEPARTMENT SHALL CREATE A COMMITTEE OF EXPERTS IN FORENSIC
26 SERVICES TO CREATE A PLACEMENT GUIDELINE TO BE USED BY ALL
27 COMPETENCY EVALUATORS WHEN DETERMINING THE CORRECT CLINICAL

1 LOCATION FOR COMPETENCY RESTORATION SERVICES TO OCCUR. THE
2 COMMITTEE CONSISTS OF THE FOLLOWING INDIVIDUALS:

3 (a) THREE STATE-LICENSED FORENSIC PSYCHOLOGISTS OR
4 PSYCHIATRISTS, ONE OF WHOM MUST BE A FORENSIC PSYCHIATRIST,
5 CURRENTLY ABLE TO PRACTICE MEDICINE IN THE STATE WHO ARE NOT
6 EMPLOYED BY THE DEPARTMENT;

7 (b) TWO STATE-LICENSED FORENSIC CLINICIANS, ONE OF WHOM
8 MUST BE A FORENSIC PSYCHIATRIST CURRENTLY ABLE TO PRACTICE
9 MEDICINE IN THE STATE AND ONE OF WHOM MUST BE A FORENSIC
10 PSYCHOLOGIST LICENSED IN THE STATE, BOTH OF WHOM MUST BE
11 EMPLOYED BY THE DEPARTMENT;

12 (c) TWO EXPERTS IN FORENSIC PSYCHIATRY REPRESENTING ONE OR
13 MORE INSTITUTIONS OF HIGHER EDUCATION;

14 (d) ONE MEMBER WHO IS CLINICALLY TRAINED REPRESENTING THE
15 DEPARTMENT;

16 (e) ONE MEMBER REPRESENTING THE JUDICIAL DEPARTMENT WHO
17 IS DIRECTLY INVOLVED IN ORDERING AND REVIEWING COMPETENCY
18 EVALUATIONS; AND

19 (f) ONE MEMBER WHO IS CLINICALLY TRAINED REPRESENTING
20 COMMUNITY MENTAL HEALTH PROVIDERS.

21 (2) THE MEMBERS OF THE COMMITTEE SHALL SERVE VOLUNTARILY
22 WITHOUT PAY OR REIMBURSEMENT FOR EXPENSES.

23 (3) THE PLACEMENT GUIDELINE MUST BE CREATED BY JULY 1,
24 2020, AND MUST BE USED BY ALL FORENSIC EVALUATORS ON AND AFTER
25 JANUARY 1, 2021, TO ENSURE CONSISTENCY IN EVALUATIONS ACROSS THE
26 STATE.

27 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

1 **SECTION 11.** In Colorado Revised Statutes, **add** 16-8.5-122 as
2 follows:

3 **16-8.5-122. Forensic evaluator training.** BY FEBRUARY 1, 2020,
4 THE DEPARTMENT SHALL CREATE A PARTNERSHIP WITH AN ACCREDITED
5 INSTITUTION OF HIGHER EDUCATION IN THE STATE TO DEVELOP AND
6 PROVIDE RIGOROUS TRAINING IN FORENSIC EVALUATION. ON OR BEFORE
7 JANUARY 1, 2021, NEWLY HIRED COMPETENCY EVALUATORS MUST
8 COMPLETE A TRAINING THAT ADDRESSES COMPETENCY, SANITY, REPORT
9 WRITING, EXPERT TESTIMONY, AND OTHER SKILLS CRUCIAL FOR FORENSIC
10 EVALUATORS; EXCEPT THAT COMPETENCY EVALUATORS WHO ARE
11 FORENSIC PSYCHIATRISTS CERTIFIED OR CERTIFICATION-ELIGIBLE BY THE
12 AMERICAN BOARD OF PSYCHIATRY AND NEUROLOGY AND FORENSIC
13 PSYCHOLOGISTS WHO ARE CERTIFIED OR CERTIFICATION-ELIGIBLE BY THE
14 AMERICAN BOARD OF FORENSIC PSYCHOLOGY MAY BE EXEMPT FROM ANY
15 TRAINING REQUIREMENTS AS OUTLINED IN THIS SECTION THROUGH AN
16 EXEMPTION PROCESS TO BE DEVELOPED BY THE DEPARTMENT. THE STATE
17 WILL MANAGE AN OVERSIGHT PROGRAM THAT WILL PROVIDE SUPPORT AND
18 ENSURE QUALITY OF FORENSIC EVALUATORS.

19 **SECTION 12.** In Colorado Revised Statutes, 27-60-105, **amend**
20 (4) introductory portion as follows:

21 **27-60-105. Outpatient restoration to competency services -**
22 **jail-based behavioral health services - responsible entity - duties -**
23 **report - legislative declaration.** (4) Beginning July 1, ~~2018~~ 2019, the
24 office has the following duties and responsibilities, subject to available
25 appropriations:

26 ==

27 **SECTION 13.** In Colorado Revised Statutes, **repeal** 27-65-125

1 as follows:

2 **27-65-125. Criminal proceedings.** ~~Proceedings under section~~
3 ~~27-65-105, 27-65-106, or 27-65-107 shall not be initiated or carried out~~
4 ~~involving a person charged with a criminal offense unless or until the~~
5 ~~criminal offense has been tried or dismissed; except that the judge of the~~
6 ~~court wherein the criminal action is pending may request the district or~~
7 ~~probate court to authorize and permit such proceedings.~~

8 **SECTION 14.** In Colorado Revised Statutes, 13-1-137, **amend**
9 (1)(d) and (1)(e); and **add** (1)(f) as follows:

10 **13-1-137. Reporting of data concerning juvenile proceedings.**

11 (1) Notwithstanding section 24-1-136 (11)(a)(I), the judicial branch shall
12 report annually to the judiciary committees of the house of representatives
13 and senate, or to any successor committees, information concerning:

14 (d) The status of recommended reviews to juvenile court rules,
15 forms, and chief justice directives regarding the representation of children
16 in juvenile delinquency courts; ~~and~~

17 (e) The number of juvenile delinquency cases that involved a
18 detention hearing, the number of juveniles who were released after the
19 detention hearing, and the number of juveniles who remained in detention
20 after the detention hearing; AND

21 (f) THE PROCESS OF TRAINING JUDICIAL OFFICERS AND PRIVATE
22 DEFENSE ATTORNEYS CONCERNING DETERMINATIONS OF COMPETENCY TO
23 PROCEED FOR JUVENILES AND ADULTS, COMPETENCY EVALUATION
24 REPORTS, SERVICES TO RESTORE COMPETENCY, AND CERTIFICATION
25 PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

26 **SECTION 15.** In Colorado Revised Statutes, 20-1-111, **add**
27 (4)(c) as follows:

1 **20-1-111. District attorneys may cooperate on contract -**
2 **contents - appropriation.** (4) (c) THE GENERAL ASSEMBLY SHALL MAKE
3 AN APPROPRIATION TO THE DEPARTMENT OF LAW FOR STATE FISCAL YEAR
4 2019-20 FOR ALLOCATION TO THE STATEWIDE ORGANIZATION
5 REPRESENTING DISTRICT ATTORNEYS FOR THE PUBLIC PURPOSE OF
6 PROVIDING PROSECUTION TRAINING CONCERNING DETERMINATIONS OF
7 COMPETENCY TO PROCEED FOR JUVENILES AND ADULTS, COMPETENCY
8 EVALUATION REPORTS, SERVICES TO RESTORE COMPETENCY, AND
9 CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

10 **SECTION 16.** In Colorado Revised Statutes, 21-1-104, **amend**
11 (4)(d) and (4)(e); and **add** (4)(f) as follows:

12 **21-1-104. Duties of public defender - report.**
13 (4) Notwithstanding section 24-1-136 (11)(a)(I), pursuant to section
14 2-7-203, the state public defender shall report annually to the judiciary
15 committees of the house of representatives and senate, or to any successor
16 committees, information concerning:

17 (d) The average length of time attorneys are assigned to juvenile
18 court; ~~and~~

19 (e) The outcome of efforts to reduce juvenile court rotations and
20 increase opportunities for promotional advancement in salaries for
21 attorneys in juvenile court; AND

22 (f) THE PROCESS OF TRAINING ATTORNEYS AND OTHER EMPLOYEES
23 OF THE OFFICE CONCERNING DETERMINATIONS OF COMPETENCY TO
24 PROCEED FOR JUVENILES AND ADULTS, COMPETENCY EVALUATION
25 REPORTS, SERVICES TO RESTORE COMPETENCY, AND CERTIFICATION
26 PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

27 **SECTION 17.** In Colorado Revised Statutes, 21-2-104, **amend**

1 (3) introductory portion, (3)(d), and (3)(e); and **add** (3)(f) as follows:

2 **21-2-104. Duties of alternate defense counsel and contract**
3 **attorneys - report.** (3) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I),
4 pursuant to section 2-7-203, ~~C.R.S.~~, the office of alternate defense
5 counsel shall report annually to the judiciary committees of the house of
6 representatives and senate, or to any successor committees, information
7 concerning:

8 (d) The average length of time attorneys are assigned to juvenile
9 court; ~~and~~

10 (e) The outcome of efforts to reduce juvenile court rotations and
11 increase opportunities for promotional advancement in salaries for
12 attorneys in juvenile court; AND

13 (f) THE PROCESS OF TRAINING EMPLOYEES AND CONTRACTORS
14 CONCERNING DETERMINATIONS OF COMPETENCY TO PROCEED FOR
15 JUVENILES AND ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES
16 TO RESTORE COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED
17 BY ARTICLE 65 OF TITLE 27.

18 **SECTION 18.** In Colorado Revised Statutes, 17-1-102, **amend**
19 (7.5)(a)(IV) as follows:

20 **17-1-102. Definitions.** As used in this title 17, unless the context
21 otherwise requires:

22 (7.5) (a) "Special needs offender" means a person in the custody
23 of the department:

24 (IV) Who, as determined by a licensed health care provider who
25 is employed by or under contract with the department, on the basis of
26 available evidence, not including evidence resulting from a refusal of the
27 person to accept treatment, does not have a substantial probability of

1 being restored to competency for the completion of any sentence and is
2 not likely to pose a risk to public safety. As used in this subsection
3 (7.5)(a)(IV), "competency" has the same meaning as "competent to
4 proceed", as defined in ~~section 16-8.5-101(4)~~ SECTION 16-8.5-101 (5).

5 **SECTION 19.** In Colorado Revised Statutes, 17-22.5-403.5,
6 **amend** (4)(d) as follows:

7 **17-22.5-403.5. Special needs parole.** (4) (d) The state board of
8 parole shall make a determination of whether to grant special needs
9 parole within thirty days after receiving the referral from the department.
10 The board may delay the decision in order to request that the department
11 modify the special needs parole plan. If, prior to or during any parole
12 hearing, the board or any member of the board has a substantial and
13 good-faith reason to believe that the offender is incompetent to proceed,
14 as defined in ~~section 16-8.5-101(11)~~ SECTION 16-8.5-101 (12), the board
15 shall suspend all proceedings and notify the trial court that imposed any
16 active sentence, and the court shall determine the competency or
17 incompetency of the defendant pursuant to section 16-8.5-103. The court
18 shall appoint counsel to represent the offender with respect to the
19 determination of competency of the offender, but the presence of the
20 offender is not required for any court proceedings unless good cause is
21 shown.

22 **SECTION 20.** In Colorado Revised Statutes, 27-60-105, **amend**
23 (2); and add (5) as follows:

24 **27-60-105. Outpatient restoration to competency services -**
25 **jail-based behavioral health services - responsible entity - duties -**
26 **report - legislative declaration.** (2) The office of behavioral health shall
27 serve as a central organizing structure and responsible entity for the

1 provision of competency restoration education services, coordination of
2 competency restoration services ordered by the court pursuant to ~~section~~
3 ~~19-2-1303 (2) or 16-8.5-111 (2)(a)~~ SECTION 16-8.5-111 (2)(b) OR
4 19-2-1303 (2), and jail-based behavioral health services pursuant to
5 section 27-60-106.

6 (5) IN ADDITION TO SUBSECTION (4) OF THIS SECTION AND SUBJECT
7 TO AVAILABLE APPROPRIATIONS, THE OFFICE SHALL REQUIRE ANY COUNTY
8 JAIL TO ASSIST IN THE PROVISION OF INTERIM MENTAL HEALTH SERVICES
9 FOR INDIVIDUALS WHO HAVE BEEN COURT-ORDERED FOR INPATIENT
10 COMPETENCY RESTORATION AND WHO ARE WAITING ADMISSION FOR AN
11 INPATIENT BED. THIS SECTION DOES NOT TOLL OR OTHERWISE MODIFY THE
12 TIME FRAMES FOR THE DEPARTMENT TO OFFER INPATIENT ADMISSION
13 PURSUANT TO THE PROVISIONS OF SECTION 16-8.5-111.

14 **SECTION 21. Appropriation.** (1) For the 2018-19 state fiscal
15 year, \$10,983,000 is appropriated to the department of human services for
16 use by the office of behavioral health. This appropriation is from the
17 general fund. To implement this act, the office may use this appropriation
18 as follows:

19 (a) \$10,483,000 for fines, liquidated damages, costs, or attorney
20 fees for non-compliance with the consent decree from the center for legal
21 advocacy v. Barnes case; and

22 (b) \$500,000 for compensation for the special master pursuant to
23 the consent decree from the center for legal advocacy v. Barnes case.

24 Any money appropriated in this section not expended prior to July
25 1, 2019, is further appropriated to the office for the 2019-20 state fiscal
26 year for the same purpose.

APPROPRIATION FROM

ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

SECTION 22. Appropriation to the department of human services for the fiscal year beginning July 1, 2018. In Session Laws of Colorado 2018, section 2 of chapter 424, (HB 18-1322), **amend** Part VII (8)(D), footnote 50a, and the affected totals, as the affected totals are amended by section 1 of SB19-114 and section 11 SB19-207, as follows:

Section 2. Appropriation.

PART VII

DEPARTMENT OF HUMAN SERVICES

(8) OFFICE OF BEHAVIORAL HEALTH

(D) Integrated Behavioral Health Services

Behavioral Health Crisis

<u>Response System Services</u>	<u>27,893,709</u>		<u>23,506,902</u>		<u>4,386,807^a</u>
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Behavioral Health Crisis

Response System Telephone

<u>Hotline</u>	<u>3,068,291</u>		<u>3,068,291</u>		
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Behavioral Health Crisis

Response System Public

<u>Information Campaign</u>	<u>600,000</u>		<u>600,000</u>		
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APPROPRIATION FROM

	ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$	\$	\$
1	<u>Community Transition</u>						
2	<u>Services</u>	<u>4,350,523</u>		<u>4,350,523</u>			
3		<u>2,200,523</u>		<u>2,200,523</u>			
4	<u>Criminal Justice Diversion</u>						
5	<u>Programs</u>	<u>5,561,828</u>			<u>5,561,828^a</u>		
6					<u>(1.3 FTE)</u>		
7	<u>Jail-based Behavioral Health</u>						
8	<u>Services</u>	<u>5,297,610</u>				<u>5,297,610^b</u>	
9	<u>Community-based Circle</u>						
10	<u>Program</u>	<u>1,993,511</u>			<u>1,993,511^a</u>		
11	<u>Rural Co-occurring Disorder</u>						
12	<u>Services^{50,50a}</u>	<u>4,045,884</u>		<u>3,000,000</u>	<u>1,045,884^a</u>		
13		<u>2,670,884</u>		<u>1,625,000</u>			

APPROPRIATION FROM

	ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
	\$	\$	\$	\$	\$	\$	\$
1	<u>Medication Consistency and</u>						
2	<u>Health Information</u>						
3	<u>491,700</u>				<u>491,700^a</u>		
4	<u>53,303,056</u>						
5	<u>49,778,056</u>						
6							
7	^a <u>These amounts shall be from the Marijuana Tax Cash Fund created in Section 39-28.8-501 (1), C.R.S.</u>						
8	^b <u>This amount shall be transferred from the Judicial Department, Probation and Related Services, from the Offender Treatment and Services line item appropriation.</u>						
9							
10							
11	<u>TOTALS PART VII</u>						
12	<u>(HUMAN SERVICES)</u>	<u>\$2,162,187,694</u>	<u>\$949,550,231</u>		<u>\$417,396,954^a</u>	<u>\$190,954,685^b</u>	<u>\$604,285,824^c</u>
13		<u>\$2,158,662,694</u>	<u>\$946,025,231</u>				
14							
15	^a <u>Of this amount, \$138,512,243 contains an (L) notation and \$286,510,386 contains an (I) notation and are included for informational purposes only.</u>						

APPROPRIATION FROM

ITEM & SUBTOTAL	TOTAL	GENERAL FUND	GENERAL FUND EXEMPT	CASH FUNDS	REAPPROPRIATED FUNDS	FEDERAL FUNDS
\$	\$	\$	\$	\$	\$	\$

1 Of this amount, \$1,340,200 contains an (I) notation and is included for informational purposes only.

2 Of this amount, \$279,781,173 contains an (I) notation and is included for informational purposes only.

3

4 **FOOTNOTES -- The following statements are referenced to the numbered footnotes throughout section 2.**

5

6 50a Department of Human Services, Office of Behavioral Health, Integrated Behavioral Health Services, Rural Co-occurring Disorder Services -- It is the General
 7 Assembly's intent that of this appropriation ~~\$3,000,000~~ \$1,625,000 General Fund be used to expand residential treatment services in one or more rural areas
 8 of Colorado for individuals with co-occurring mental health and substance use disorders. It is also the General Assembly's intent that this appropriation be
 9 used to cover initial expenses necessary to establish, license, and begin operating one or more programs that provide these services, such as building
 10 renovations, furnishing, and equipment.

1 **SECTION 24. Appropriation to the department of human**
2 **services for the fiscal year beginning July 1, 2018.** In Session Laws of
3 **Colorado 2018, amend section 4 of chapter 403, (SB 18-250), as follows:**

4 Section 4. **Appropriation.** For the 2018-19 state fiscal year,
5 ~~\$2,564,603~~ \$1,564,603 is appropriated to the department of human
6 services for use by the office of behavioral health. This appropriation is
7 from the general fund and is based on an assumption that the office will
8 require an additional 1.8 FTE. To implement this act, the office may use
9 this appropriation as follows:

10 **Community behavioral health administration**

11 <u>Personal services</u>	<u>\$122,117 (1.8 FTE)</u>
12 <u>Operating expenses</u>	<u>\$15,819</u>
13 <u>Integrated behavioral health services</u>	
14 <u>Jail-based behavioral health services</u>	<u>\$2,426,667 \$1,426,667</u>

15 **SECTION 23. Appropriation.** (1) For the 2019-20 state fiscal
16 year, \$8,141,194 is appropriated to the department of human services.
17 This appropriation is from the general fund. To implement this act, the
18 department may use this appropriation as follows:

19 **Executive director's office**

20 <u>Health, life, and dental</u>	<u>\$167,076</u>
21 <u>Short-term disability</u>	<u>\$2,441</u>
22 <u>S.B. 04-257 amortization equalization disbursement</u>	<u>\$64,225</u>
23 <u>S.B. 04-257 supplemental amortization equalization</u>	
24 <u>disbursement</u>	<u>\$64,225</u>
25 <u>Legal services</u>	<u>\$139,901</u>
26 <u>Office of information technology services</u>	
27 <u>Payments to OIT</u>	<u>\$454,539</u>
28 <u>Office of operations</u>	

1 this appropriation to provide information technology services for the
2 department of human services.

3 (5) For the 2019-20 state fiscal year, \$750,570 is appropriated to
4 the judicial department. This appropriation is from the general fund. To
5 implement this act, the department may use this appropriation as follows:

6	<u>Courts administration, centrally-administered programs</u>	
7	<u>Courthouse furnishings and infrastructure</u>	
8	<u> maintenance</u>	<u>\$130,636</u>
9	<u>Judicial education and training</u>	<u>\$50,000</u>
10	<u>Trial courts</u>	
11	<u>Trial court programs</u>	<u>\$499,934 (5.4 FTE)</u>
12	<u>Office of the state public defender</u>	
13	<u>Operating expenses</u>	<u>\$50,000</u>
14	<u>Office of the alternate defense counsel</u>	
15	<u>Training and conferences</u>	
16		<u>\$20,000</u>

17 **SECTION 25. Effective date.** This act takes effect July 1, 2019.

18 **SECTION 26. Safety clause.** The general assembly hereby finds,
19 determines, and declares that this act is necessary for the immediate
20 preservation of the public peace, health, and safety.