

Second Regular Session
Seventy-second General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 20-0572.03 Michael Dohr x4347

SENATE BILL 20-181

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Weissman,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING MEASURES TO IMPROVE OUTCOMES FOR DEFENDANTS
102 WHO MAY BE FOUND INCOMPETENT TO PROCEED.

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>.)

Under current law, a competency report must include an opinion regarding whether the defendant can be restored to competency. In relation to that report and opinion:

- ! If a court within the previous 5 years has found that the defendant will not attain competency within the reasonably foreseeable future and the evaluator provides an opinion

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.

that there is a substantial probability of attaining competency within the reasonably foreseeable future, the evaluator shall state why the defendant's circumstances are different from the prior court's finding;

- ! When the defendant is diagnosed with a moderate to severe intellectual or developmental disability, acquired or traumatic brain injury, or dementia that affects the defendant's ability to gain or maintain competency and the evaluator's opinion is that there is a substantial probability of attaining competency, the evaluator shall state what circumstances will reasonably change in the defendant's condition to believe the defendant will be restored to competency within the reasonably foreseeable future; and
- ! When the defendant has been found incompetent to proceed 3 or more times over the previous 3 years in the current case or any other case and even if the defendant is later restored, the evaluator shall specifically identify those instances of findings of incompetency in the report.

When the defendant's evaluation includes one of the above situations, the court shall hold a hearing, within 35 days of receiving the report, on the issue of whether there is a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future. At the hearing, there is a presumption that the defendant will not attain competency within the reasonably foreseeable future. A party attempting to overcome that presumption must prove by a preponderance of the evidence that there is a substantial probability that restoration efforts will be successful within the reasonably foreseeable future.

Under current law, when a defendant is found incompetent to proceed and charged with certain offenses that are not victims' rights act crimes, the court may dismiss those the charges. The bill removes the victims' rights act crimes limitation.

When the defendant is in custody on a misdemeanor, petty offense, traffic offense, or traffic infraction and is incompetent to proceed, the court, within 7 days of the defendant being found incompetent to proceed, shall set a hearing on bond. At the bond hearing there is a presumption that the court shall order a personal recognizance bond. If the court does not order a personal recognizance bond, the court must make findings of fact that extraordinary circumstances exist to overcome the presumption of a release and the clinical recommendation for outpatient treatment by clear and convincing evidence.

When a defendant is found incompetent to proceed or where civil commitment proceedings are initiated in a municipal case, the municipal court shall dismiss the case.

The state court administrator shall appoint a 6-member committee

to review the impacts of enhanced sentencing laws on people with health conditions, including mental health, intellectual or developmental disabilities, traumatic brain injuries, and other neurocognitive health conditions such as Alzheimer's or dementia. The committee shall produce a report outlining budgetary, legislative, regulatory, and practice recommendations no later than November 15, 2020. Recommendations must include ways to help protect the safety and well-being of first responders and shall also include mechanisms to ensure people with health conditions are not unnecessarily involved in the criminal or juvenile justice systems due to unmet health needs.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-105, **amend**
3 (5)(e)(I) as follows:

4 **16-8.5-105. Evaluations, locations, time frames, and report.**

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

7 (e) An opinion as to whether the defendant is competent to
8 proceed. If the opinion of the competency evaluator is that the defendant
9 is incompetent to proceed, then:

10 (I) (A) If possible, an opinion as to whether there is a substantial
11 probability that the defendant, with restoration services, will attain
12 competency within the reasonably foreseeable future; ~~and~~

13 (B) WHEN, PURSUANT TO THE REQUIREMENTS OF SUBSECTION
14 (5)(f) OF THIS SECTION, THE EVALUATOR IS AWARE THAT ANY COURT
15 WITHIN THE PREVIOUS FIVE YEARS HAS FOUND THE DEFENDANT IS
16 INCOMPETENT TO PROCEED AND THERE IS A SUBSTANTIAL PROBABILITY
17 THAT WITH RESTORATION SERVICES THE DEFENDANT WILL NOT ATTAIN
18 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE
19 EVALUATOR SHALL PROVIDE AN OPINION REGARDING THE PROBABILITY OF
20 RESTORATION PURSUANT TO THIS SUBSECTION (5)(e)(I) AND, WHEN THE

1 OPINION IS THAT THERE IS A SUBSTANTIAL PROBABILITY OF ATTAINING
2 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE
3 EVALUATOR SHALL STATE WHY THE DEFENDANT'S CIRCUMSTANCES ARE
4 DIFFERENT FROM THE PRIOR COURT'S FINDING;

5 (C) WHEN THE DEFENDANT IS DIAGNOSED WITH A MODERATE TO
6 SEVERE INTELLECTUAL OR DEVELOPMENTAL DISABILITY, ACQUIRED OR
7 TRAUMATIC BRAIN INJURY, OR DEMENTIA, WHICH EITHER ALONE OR
8 TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE
9 DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, THE
10 EVALUATOR SHALL PROVIDE AN OPINION AS TO WHETHER THERE IS A
11 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WITH RESTORATION
12 SERVICES WILL ATTAIN COMPETENCY WITHIN THE REASONABLY
13 FORESEEABLE FUTURE. WHEN THE OPINION IS THAT THERE IS A
14 SUBSTANTIAL PROBABILITY OF ATTAINING COMPETENCY, THE EVALUATOR
15 SHALL SPECIFICALLY STATE WHETHER THE EVALUATOR BELIEVES THERE
16 ARE UNIQUE OR DIFFERENT SERVICES OUTSIDE THE STANDARD
17 COMPETENCY RESTORATION CURRICULUM DEVELOPED BY THE
18 DEPARTMENT THAT THE DEFENDANT MAY NEED IN ORDER TO BE RESTORED
19 TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE.

20 (D) WHEN THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO
21 PROCEED THREE OR MORE TIMES OVER THE PREVIOUS THREE YEARS IN THE
22 CURRENT CASE OR ANY OTHER CASE, EVEN IF THE DEFENDANT IS LATER
23 RESTORED, THE EVALUATOR SHALL SPECIFICALLY IDENTIFY THOSE
24 INSTANCES OF FINDINGS OF INCOMPETENCY AS A PART OF THE REVIEW
25 REQUIRED PURSUANT TO SUBSECTION (5)(f) OF THIS SECTION. THE
26 EVALUATOR SHALL PROVIDE AN OPINION AS TO WHETHER THERE IS A
27 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WITH RESTORATION

1 SERVICES WILL ATTAIN COMPETENCY WITHIN THE REASONABLY
2 FORESEEABLE FUTURE AND MAINTAIN COMPETENCY THROUGHOUT THE
3 CASE.

4 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-111, **amend**
5 (2)(a) and (2)(b)(II); and **add** (2)(a.5) 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 in
11 section 16-8.5-116 (7) or (8), ~~except for an offense enumerated in section~~
12 ~~24-4.1-302 (1)~~, and the competency evaluation has determined that the
13 defendant meets the standard for civil commitment pursuant to article 65
14 of title 27, the court may forgo any order of restoration and immediately
15 order that proceedings be initiated by the county attorney or district
16 attorney required to conduct proceedings pursuant to section 27-65-111
17 (6) for the civil commitment of the defendant and dismiss the charges
18 without prejudice in the interest of justice once civil commitment
19 proceedings have been initiated.

20 (a.5) IF THE EVALUATOR HAS PROVIDED AN OPINION PURSUANT TO
21 SECTION 16-8.5-105 (5)(e)(I)(B), (5)(e)(I)(C), OR (5)(e)(I)(D), IN LIEU OF
22 ORDERING RESTORATION TREATMENT THE COURT SHALL SET A HEARING
23 WITHIN THIRTY-FIVE DAYS OF RECEIVING THE REPORT ON THE ISSUE OF
24 WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT
25 WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY
26 FORESEEABLE FUTURE AND IN THE CASE OF A FINDING PURSUANT TO
27 SECTION 16-8.5-105 (5)(e)(I)(D) MAINTAIN COMPETENCY THROUGH THE

1 ADJUDICATION OF THE CASE. AT THE HEARING, THERE IS A PRESUMPTION
2 THAT THE DEFENDANT WILL NOT ATTAIN COMPETENCY WITHIN THE
3 REASONABLY FORESEEABLE FUTURE. A PARTY ATTEMPTING TO OVERCOME
4 THAT PRESUMPTION MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE
5 THAT THERE IS A SUBSTANTIAL PROBABILITY THAT RESTORATION EFFORTS
6 WILL BE SUCCESSFUL WITHIN THE REASONABLY FORESEEABLE FUTURE. AT
7 THE CONCLUSION OF THE HEARING WHEN THERE IS AN OPINION PURSUANT
8 TO SECTION 16-8.5-105 (5)(e)(I)(D), IF THE COURT FINDS THAT THERE IS
9 NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE
10 RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE
11 FUTURE AND MAINTAIN COMPETENCY THROUGHOUT THE CASE, THE COURT
12 SHALL DISMISS THE CASE AND MAY CONSIDER ORDERING THE INITIATION
13 OF PROCEEDINGS PURSUANT TO SECTION 16-8.5-116 (6)(b) OR (6)(c). IF
14 THE COURT DETERMINES THAT THERE IS INSUFFICIENT EVIDENCE TO MAKE
15 AN IMMEDIATE FINDING OF NO SUBSTANTIAL PROBABILITY OF
16 RESTORATION TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE
17 FUTURE, THEN THE COURT SHALL ORDER RESTORATION EDUCATION FOR AN
18 INITIAL PERIOD OF TIME NOT TO EXCEED NINETY-ONE DAYS AS PROVIDED
19 FOR IN THIS SECTION AND REVIEW OF THE CASE PURSUANT TO SECTION
20 16-8.5-116 (3) AND (4). AT THE INITIAL AND SUBSEQUENT REVIEW
21 HEARINGS, THE COURT SHALL PRESUME THAT THERE IS NOT A
22 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO
23 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE AND
24 MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE CASE AND
25 SHALL DISMISS THE CASE UNLESS THERE IS CLEAR AND CONVINCING
26 EVIDENCE THAT THE PERSON HAS MADE PROGRESS TOWARD ATTAINING
27 COMPETENCY AND CAN MAINTAIN COMPETENCY THROUGH THE

1 ADJUDICATION OF THE CASE. WHEN THE CASE IS ORDERED DISMISSED, THE
2 DEPARTMENT WILL HAVE THE SAME OBLIGATIONS PURSUANT TO SECTION
3 16-8.5-105 (5)(e)(I).

4 (b) (II) (A) If the defendant is in custody and the recommendation
5 is for outpatient restoration services, the court shall consider the release
6 of the defendant on bond consistent with article 4 of this title 16 and the
7 Colorado rules of criminal procedure.

8 (B) As a condition of bond, the court shall order that the
9 restoration take place on an outpatient basis. Pursuant to section
10 27-60-105, the department through the office of behavioral health is the
11 entity responsible for the oversight of restoration education and
12 coordination of all competency restoration services. As a condition of
13 release for outpatient restoration services, the court may require pretrial
14 services, if available, to work with the department and the restoration
15 services provider under contract with the department to assist in securing
16 appropriate support and care management services, which may include
17 housing resources. The individual agency responsible for providing
18 outpatient restoration services for the defendant shall notify the court or
19 other designated agency within twenty-one days if restoration services
20 have not commenced.

21 (C) WHEN THE DEFENDANT IS IN CUSTODY ON A MISDEMEANOR,
22 PETTY OFFENSE, TRAFFIC OFFENSE, OR TRAFFIC INFRACTION, THE COURT,
23 WITHIN SEVEN DAYS OF THE DEFENDANT BEING FOUND INCOMPETENT TO
24 PROCEED, SHALL SET A HEARING ON BOND. IF THE DEFENDANT IS NOT
25 ORDERED RELEASED ON A PERSONAL RECOGNIZANCE BOND AT THE TIME
26 OF THE FINDING OF INCOMPETENCY, THE COURT SHALL APPOINT A COURT
27 LIAISON TO ASSIST IN A PLAN FOR RELEASE AND NOTIFY THE FORENSIC

1 SUPPORT TEAM THAT THE DEFENDANT IS LIKELY TO BE RELEASED AT THE
2 BOND HEARING SO THAT THEY MAY COORDINATE WITH THE BRIDGES
3 LIAISON TO CREATE A DISCHARGE PLAN CONSISTENT WITH THE PLAN
4 DESCRIBED IN SECTION 16-8.5-105 (1)(d). AT THE BOND HEARING THERE
5 IS A PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL
6 RECOGNIZANCE BOND. IF THE COURT DOES NOT ORDER A PERSONAL
7 RECOGNIZANCE BOND AND THE DEFENDANT IS COMMITTED FOR INPATIENT
8 RESTORATION, THE COURT MUST MAKE FINDINGS OF FACT THAT
9 EXTRAORDINARY CIRCUMSTANCES EXIST TO OVERCOME THE PRESUMPTION
10 OF A RELEASE AND THE CLINICAL RECOMMENDATION FOR OUTPATIENT
11 TREATMENT BY CLEAR AND CONVINCING EVIDENCE.

12 (D) THE PROVISIONS FOR EXPEDITED APPELLATE REVIEW OF THE
13 TERMS AND CONDITIONS OF BOND IN SECTION 16-4-204 APPLY TO THIS
14 DETERMINATION.

15 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-116, **amend**
16 (7)(a)(I) and (8)(a)(I); and **add** (15) as follows:

17 **16-8.5-116. Certification - reviews - termination of**
18 **proceedings - rules.** (7) At any review hearing held concerning the
19 defendant's competency to proceed, the court shall dismiss the charges
20 against the defendant and release the defendant from confinement, subject
21 to the provisions of subsection (10) of this section, if:

22 (a) The defendant:

23 (I) Is charged with a misdemeanor, a misdemeanor drug offense,
24 ~~or a petty offense, except for those offenses enumerated in section~~
25 ~~24-4.1-302(1)~~ A TRAFFIC OFFENSE, OR A TRAFFIC INFRACTION;

26 (8) At any review hearing held concerning the defendant's
27 competency to proceed, the court shall dismiss the charges against the

1 defendant and release the defendant from confinement, subject to the
2 provisions of subsection (10) of this section, if:

3 (a) The defendant:

4 (I) Is charged with a class 5 or class 6 felony; ~~except for those~~
5 ~~offenses enumerated in section 24-4.1-302 (1)~~; with a level 3 or level 4
6 drug felony; or with any misdemeanor offense that is not included in
7 subsection (7) of this section;

8 (15) WHEN THE DEFENDANT IS CHARGED WITH AN OFFENSE IN
9 MUNICIPAL COURT, AND THE DEFENDANT IS FOUND INCOMPETENT TO
10 PROCEED, OR WHEN CIVIL COMMITMENT PROCEEDINGS ARE INITIATED
11 PURSUANT TO ARTICLE 65 OF TITLE 27, THE MUNICIPAL COURT SHALL
12 DISMISS THE CASE.

13 **SECTION 4.** In Colorado Revised Statutes, **add** 13-1-139 as
14 follows:

15 **13-1-139. Study impact of sentencing laws on a person with a**
16 **health condition - repeal.** (1) ON OR BEFORE JULY 1, 2020, THE STATE
17 COURT ADMINISTRATOR SHALL APPOINT A SIX-MEMBER COMMITTEE TO
18 REVIEW THE IMPACTS OF SECTION 18-3-202 (1)(e) OR (1)(f), 18-3-203
19 (1)(c), (1)(f), (1)(f.5), OR (1)(h), OR 18-3-204 (1)(b) ON PEOPLE WITH
20 HEALTH CONDITIONS, INCLUDING MENTAL HEALTH, INTELLECTUAL OR
21 DEVELOPMENTAL DISABILITIES, TRAUMATIC OR ACQUIRED BRAIN INJURIES,
22 AND OTHER NEUROCOGNITIVE HEALTH CONDITIONS SUCH AS ALZHEIMER'S
23 OR DEMENTIA.

24 (2) THE STATE COURT ADMINISTRATOR SHALL APPOINT TO THE
25 COMMITTEE:

26 (a) A MEMBER REPRESENTING THE COLORADO DISTRICT
27 ATTORNEYS' COUNCIL;

1 (b) A MEMBER REPRESENTING THE STATE PUBLIC DEFENDER'S
2 OFFICE;

3 (c) A MEMBER REPRESENTING A LOCAL LAW ENFORCEMENT
4 AGENCY;

5 (d) A MEMBER REPRESENTING A FIRST RESPONDER AGENCY;

6 (e) A MEMBER REPRESENTING AN ADVOCACY ORGANIZATION FOR
7 PEOPLE WITH BEHAVIORAL HEALTH CONDITIONS; AND

8 (f) A MEMBER REPRESENTING A PERSON WITH A HEALTH
9 CONDITION AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION WHO WAS
10 IMPACTED BY SECTION 18-3-202 (1)(e) OR (1)(f), 18-3-203 (1)(c), (1)(f),
11 (1)(f.5), OR (1)(h), OR 18-3-204 (1)(b) OR A FAMILY MEMBER OF A PERSON
12 WITH A HEALTH CONDITION WHO WAS IMPACTED BY SECTION 18-3-202
13 (1)(e) OR (1)(f), 18-3-203 (1)(c), (1)(f), (1)(f.5), OR (1)(h), OR 18-3-204
14 (1)(b).

15 (3) THE COMMITTEE SHALL PRODUCE A REPORT OUTLINING
16 BUDGETARY, LEGISLATIVE, REGULATORY, AND PRACTICE
17 RECOMMENDATIONS NO LATER THAN NOVEMBER 15, 2020.
18 RECOMMENDATIONS MUST INCLUDE WAYS TO HELP PROTECT THE SAFETY
19 AND WELL-BEING OF FIRST RESPONDERS AND SHALL ALSO INCLUDE
20 MECHANISMS TO ENSURE PEOPLE WITH HEALTH CONDITIONS ARE NOT
21 UNNECESSARILY INVOLVED IN THE CRIMINAL OR JUVENILE JUSTICE
22 SYSTEMS DUE TO UNMET HEALTH NEEDS. THE COMMITTEE SHALL FOCUS
23 THEIR ATTENTION ON THE FOLLOWING AREAS:

24 (a) THE IMPACT CRIMINAL CHARGES HAVE HAD ON PEOPLE WITH
25 HEALTH CONDITIONS AND THE IMPACT THEY HAVE HAD AS A DETERRENT
26 TO ASSAULTS ON FIRST RESPONDERS; AND

27 (b) PATHWAYS TO KEEP FIRST RESPONDERS SAFE, INCLUDING

1 THOSE THAT DO NOT INVOLVE CRIMINAL JUSTICE INVOLVEMENT FOR THE
2 INDIVIDUALS THEY INTERACT WITH.

3 (4) THE COMMITTEE SHALL SOLICIT FEEDBACK FROM COMMUNITY
4 MEMBERS, INCLUDING CLINICIANS, CONSUMERS, ADVOCATES, HOSPITALS,
5 FIRST RESPONDERS, AND VICTIMS.

6 (5) THE JUDICIAL DEPARTMENT, THE DEPARTMENT OF HUMAN
7 SERVICES, AND THE DEPARTMENT OF HEALTH CARE POLICY AND FINANCING
8 SHALL PROVIDE ANY DATA NEEDED TO THE COMMITTEE TO COMPLETE ITS
9 WORK.

10 (6) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

11 **SECTION 5. Safety clause.** The general assembly hereby finds,
12 determines, and declares that this act is necessary for the immediate
13 preservation of the public peace, health, or safety.