

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 20-0572.03 Michael Dohr x4347

SENATE BILL 20-181

SENATE SPONSORSHIP

Lee,

HOUSE SPONSORSHIP

Weissman,

Senate Committees

Judiciary
Appropriations

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 PURSUANT TO SECTION 16-8.5-103, THREE OR MORE TIMES OVER
22 THE PREVIOUS THREE YEARS IN THE CURRENT CASE OR ANY OTHER CASE,
23 EVEN IF THE DEFENDANT IS LATER RESTORED, THE EVALUATOR SHALL
24 SPECIFICALLY IDENTIFY THOSE INSTANCES OF FINDINGS OF INCOMPETENCY
25 AS A PART OF THE REVIEW REQUIRED PURSUANT TO SUBSECTION (5)(f) OF
26 THIS SECTION. THE EVALUATOR SHALL PROVIDE AN OPINION AS TO
27 WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT

1 WITH RESTORATION SERVICES WILL ATTAIN COMPETENCY WITHIN THE
2 REASONABLY FORESEEABLE FUTURE AND MAINTAIN COMPETENCY
3 THROUGHOUT THE 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 THAT THE
21 DEFENDANT IS INCOMPETENT TO PROCEED AND THERE IS NOT A
22 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION
23 SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY
24 FORESEEABLE FUTURE PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(B),
25 (5)(e)(I)(C), OR (5)(e)(I)(D), IN LIEU OF ORDERING RESTORATION
26 TREATMENT THE COURT SHALL SET A HEARING WITHIN THIRTY-FIVE DAYS
27 OF RECEIVING THE REPORT ON THE ISSUE OF WHETHER THERE IS A

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

1 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
2 REASONABLY FORESEEABLE FUTURE AND MAINTAIN COMPETENCY
3 THROUGH THE ADJUDICATION OF THE CASE, AND THE COURT SHALL
4 DISMISS THE CASE UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE
5 THAT THE PERSON HAS MADE PROGRESS TOWARD ATTAINING COMPETENCY
6 AND CAN MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE
7 CASE. IF THE CASE IS ORDERED DISMISSED, THE DEPARTMENT WILL HAVE
8 THE SAME OBLIGATIONS PURSUANT TO SECTION 16-8.5-105 (5)(e)(I).

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

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

26 (C) WHEN THE DEFENDANT IS IN CUSTODY ON A MISDEMEANOR,
27 PETTY OFFENSE, OR TRAFFIC OFFENSE, THE COURT, WITHIN SEVEN DAYS OF

1 THE DEFENDANT BEING FOUND INCOMPETENT TO PROCEED, SHALL SET A
2 HEARING ON BOND. AT THE BOND HEARING THERE IS A
3 PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL RECOGNIZANCE
4 BOND. IF THE COURT DOES NOT ORDER A PERSONAL RECOGNIZANCE BOND
5 AND THE DEFENDANT IS COMMITTED FOR INPATIENT RESTORATION, THE
6 COURT MUST MAKE FINDINGS OF FACT THAT EXTRAORDINARY
7 CIRCUMSTANCES EXIST TO OVERCOME THE PRESUMPTION OF A RELEASE
8 AND THE CLINICAL RECOMMENDATION FOR OUTPATIENT TREATMENT BY
9 CLEAR AND CONVINCING EVIDENCE.

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

13 **16-8.5-116. Certification - reviews - termination of**
14 **proceedings - rules.** (7) At any review hearing held concerning the
15 defendant's competency to proceed, the court shall dismiss the charges
16 against the defendant and release the defendant from confinement, subject
17 to the provisions of subsection (10) of this section, if:

18 (a) The defendant:

19 (I) Is charged with a misdemeanor, a misdemeanor drug offense,
20 ~~or a petty offense, except for those offenses enumerated in section~~
21 ~~24-4.1-302 (1)~~ OR A TRAFFIC OFFENSE;

22

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

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SECTION 4. Safety clause. The general assembly hereby finds,

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determines, and declares that this act is necessary for the immediate

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preservation of the public peace, health, or safety.