

CHAPTER 317

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 22-1386

BY REPRESENTATIVE(S) Amabile and Soper, Bacon, Bernett, Bird, Bockenfeld, Boesenecker, Cutter, Esgar, Gonzales-Gutierrez, Herod, Hooton, Jodeh, Kipp, Lindsay, Lontine, McCluskie, McCormick, Michaelson Jenet, Ricks, Weissman, Young;
also SENATOR(S) Hansen and Gardner, Gonzales, Lee, Moreno, Pettersen, Rankin, Fenberg.

AN ACT

CONCERNING MEASURES RELATED TO COMPETENCY TO PROCEED, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

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

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

16-8.5-103. Determination of competency to proceed. (4) If a party requests a second evaluation, any pending requests for a hearing must be continued until the receipt of the second evaluation report. The report of the expert conducting the second evaluation must be completed and filed with the court within thirty-five days after the court order allowing the second evaluation, unless the time period is extended by the court for good cause. **IF A SECOND EVALUATION IS COMPLETED AND RESTORATION IS ULTIMATELY ORDERED, THEN THE COURT SHALL MAKE THE SECOND EVALUATION AVAILABLE TO THE DEPARTMENT.** If the second evaluation is requested by the court, it must be paid for by the court.

SECTION 2. In Colorado Revised Statutes, 16-8.5-105, **amend** (1)(b)(II) as follows:

16-8.5-105. Evaluations, locations, time frames, and report. (1) (b) Notwithstanding the provisions of subsection (1)(a) of this section, the court may order the defendant placed in the department's custody for the time necessary to conduct the inpatient competency evaluation if:

(II) The court finds that ~~an inadequate~~ **THE** competency evaluation and report ~~has been completed~~ **PROVIDED BY THE DEPARTMENT IS INSUFFICIENT BECAUSE IT DOES**

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

NOT MEET STATUTORY REQUIREMENTS PURSUANT TO SUBSECTION (5) OF THIS SECTION or that two or more conflicting competency evaluations and reports have been completed; ~~and the court finds that an inpatient evaluation is necessary;~~ or

SECTION 3. In Colorado Revised Statutes, 16-8.5-111, **amend** (2)(b)(II)(C), (2)(d), (2)(f)(I), (2)(f)(II)(A), and (2)(h)(I)(B); and **add** (2)(i) as follows:

16-8.5-111. Procedure after determination of competency or incompetency.

(2) If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed, the court has the following options:

(b) (II) (C) When the defendant is in custody on a misdemeanor, petty offense, or traffic offense, the court, within seven 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 AND OUTPATIENT RESTORATION SERVICES. If the court does not order a personal recognizance bond and the defendant is committed for inpatient restoration, the court ~~must~~ SHALL 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. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FACTS AND FINDINGS WHICH IT RELIED UPON IN THE ORDER FOR RESTORATION TREATMENT.

(d) If the court has ordered outpatient restoration services and the department determines that it is unable, within a reasonable time, to provide restoration services on an outpatient basis, the department shall notify the court within fourteen days after its determination, at which point the court shall review the case and determine what interim mental health services can be provided within the community by the department or other community provider. IF A COURT LIAISON IS APPOINTED, the department shall report to the court liaison every ~~ten~~ TWENTY-EIGHT days thereafter concerning the availability of restoration services on an outpatient basis.

(f) (I) If the court has ordered inpatient restoration services, the department shall provide restoration services at an appropriate inpatient restoration services program. On and after July 1, 2019, the department shall offer tier 1 defendants admission for restoration services within seven days after receipt of the court order and collateral materials. On and after July 1, 2021, the department shall offer admission to tier 2 defendants within twenty-eight days after receipt of the court order and collateral materials. For tier 2 defendants, the department shall advise the court and, IF A COURT LIAISON IS APPOINTED, the court liaison every ~~ten~~ TWENTY-EIGHT days after the initial twenty-eight day period regarding the availability of a bed and when admission will be offered.

(II) If the defendant is not offered admission and transported to the inpatient restoration services program within the time frames provided or in accordance with other court orders, the court may:

(A) Review the case for consideration of outpatient restoration services and appropriate and necessary case management services coordinated with the department; IF A COURT LIAISON IS APPOINTED, the court liaison; and pretrial

services, if available; or

(h) (I) If the defendant is receiving inpatient restoration services and the executive director concludes that community-based restoration services would be more clinically appropriate, the department shall:

(B) Provide to the court information regarding the appropriate outpatient restoration services, developed in conjunction with the court liaison, WHEN ASSIGNED, and the reasons why the defendant could be properly restored to competency on an outpatient basis.

(i) FOR A DEFENDANT ALLOWED TO RESIDE OUT OF THE STATE OF COLORADO, THE DEPARTMENT MAY OFFER ASSISTANCE TO AN OUT-OF-STATE PROVIDER PROVIDING RESTORATION SERVICES TO THE DEFENDANT IN THE STATE WHERE THE DEFENDANT RESIDES.

SECTION 4. In Colorado Revised Statutes, 16-8.5-116, **amend** (2)(a), (4), (5), (6) introductory portion, (8)(a)(I), and (10); and **repeal** (2)(b)(VI) as follows:

16-8.5-116. Certification - reviews - termination of proceedings - rules.

(2) (a) Within ninety-one days after the entry of the court's order of commitment OR ORDER TO RECEIVE OUTPATIENT RESTORATION, the court shall review the case of a defendant who has been determined to be incompetent to proceed with regard to the probability that the defendant will ~~eventually~~ be restored to competency WITHIN THE REASONABLY FORESEEABLE FUTURE and with regard to the justification for certification, ~~or confinement,~~ OR CONTINUED RESTORATION TREATMENT. The review may be held in conjunction with a restoration hearing held pursuant to section 16-8.5-113. However, if at the review hearing, there is a request by the defendant for a restoration hearing pursuant to section 16-8.5-113, the court shall set the restoration hearing within thirty-five days after the request pursuant to the provisions of section 16-8.5-113.

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

(VI) ~~Whether there is a substantial probability that the defendant will be restored to competency and remain competent with the use of medications or will not remain competent without the use of forced medication;~~

(4) After the fourth review, the court shall review the competency of the defendant every ~~sixty-three~~ NINETY-ONE days until the defendant is restored to competency or the court determines, based on available evidence, that there is not a substantial probability that the defendant will be restored to competency in the REASONABLY foreseeable future. ~~and in that case,~~ IF THE COURT DETERMINES BASED ON AVAILABLE EVIDENCE THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, the court shall dismiss the case SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS SECTION.

(5) The court shall forward a copy of each report and summary received pursuant to subsections (2), (3), and (4) of this section to the county attorney or district

attorney required to conduct proceedings pursuant to section 27-65-111 (6) for the county in which the case is pending and, WHEN A COURT LIAISON IS APPOINTED, to the court liaison.

(6) Notwithstanding the time periods provided in subsections (7), (8), and (9) of this section and to ensure compliance with relevant constitutional principles, for any offense for which the defendant ~~remains confined as a result of a determination of incompetency to proceed~~ IS ORDERED TO RECEIVE COMPETENCY RESTORATION SERVICES IN AN INPATIENT OR OUTPATIENT SETTING, if the court determines, based on available evidence, that there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future, the court may order the defendant's release from commitment pursuant to this article 8.5 through one or more of the following means:

(8) At any review hearing held concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement, subject to the provisions of subsection (10) of this section, if:

(a) The defendant:

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

(10) Prior to the dismissal of charges pursuant to subsection (1), ~~(4)~~, (6), (7), (8), or (9) of this section, the court shall identify whether the defendant meets the requirements for certification pursuant to article 65 of title 27, or for the provision of services pursuant to article 10.5 of title 27, or whether the defendant will agree to a voluntary commitment. If the court finds the requirements for certification or provision of services are met or the defendant does not agree to a voluntary commitment, the court may stay the dismissal for twenty-one days and notify the department and county attorney or district attorney required to conduct proceedings pursuant to section 27-65-111 (6) in the relevant jurisdiction of the pending dismissal so as to provide the department and the county attorney or district attorney with the opportunity to pursue certification proceedings or the provision of necessary services.

SECTION 5. In Colorado Revised Statutes, **add** 16-8.5-123 as follows:

16-8.5-123. Competency services - inpatient beds - funding - repeal. (1) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE DEPARTMENT TWENTY-EIGHT MILLION FIVE HUNDRED SIXTY-TWO THOUSAND EIGHT HUNDRED TWENTY-EIGHT DOLLARS FROM THE ECONOMIC RECOVERY AND RELIEF CASH FUND CREATED IN SECTION 24-75-228 (2)(a) TO CONTRACT FOR ADDITIONAL INPATIENT BEDS FOR COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111 OR FOR ADDITIONAL INPATIENT BEDS FOR INDIVIDUALS RECEIVING MENTAL HEALTH CARE AND TREATMENT PURSUANT TO ARTICLE 65 OF TITLE 27. IF ANY UNEXPENDED OR UNENCUMBERED MONEY APPROPRIATED FOR A FISCAL YEAR REMAINS AT THE END OF THAT FISCAL YEAR, THE DEPARTMENT MAY EXPEND THE MONEY FOR THE SAME PURPOSES IN THE NEXT FISCAL YEAR WITHOUT FURTHER APPROPRIATION.

(2) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE DEPARTMENT EIGHT HUNDRED THOUSAND DOLLARS FROM THE BEHAVIORAL AND MENTAL HEALTH CASH FUND CREATED IN SECTION 24-75-230 (2)(a) TO CONTRACT FOR A FEASIBILITY STUDY OF RENOVATING AND STAFFING A FACILITY IN ADAMS COUNTY TO PROVIDE INPATIENT BEDS FOR COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111 AND INDIVIDUALS RECEIVING MENTAL HEALTH CARE AND TREATMENT PURSUANT TO ARTICLE 65 OF TITLE 27. THE DEPARTMENT MUST RECEIVE THE RESULTS FROM THE FEASIBILITY STUDY ON OR BEFORE SEPTEMBER 15, 2022.

(3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

SECTION 6. Appropriation. (1) For the 2022-23 state fiscal year, \$28,562,828 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the economic recovery and relief cash fund created in section 24-75-228 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. To implement this act, the office may use this appropriation for purchased inpatient bed capacity. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the office from July 1, 2023, through December 30, 2024, for the same purpose.

(2) For the 2022-23 state fiscal year, \$800,000 is appropriated to the department of human services for use by the office of behavioral health. This appropriation is from the behavioral and mental health cash fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state received from the federal coronavirus state fiscal recovery fund. To implement this act, the office may use this appropriation to contract for a feasibility study of renovating a facility in Adams county to provide inpatient beds for competency services provided pursuant to section 16-18.5-111, C.R.S. Any money appropriated in this section not expended prior to July 1, 2023, is further appropriated to the office from July 1, 2023, through December 30, 2024, for the same purpose.

SECTION 7. Effective date. This act takes effect July 1, 2022.

SECTION 8. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 2, 2022