

CHAPTER 423

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 23-1138

BY REPRESENTATIVE(S) Amabile and Soper, Bacon, Bird, Boesenecker, Brown, deGruy Kennedy, Dickson, Epps, Froelich, Gonzales-Gutierrez, Herod, Lieder, Lindsay, Mabrey, McCormick, McLachlan, Michaelson Jenet, Ricks, Sirota, Snyder, Story, Weissman, Young, McCluskie, English, Garcia, Joseph, Sharbini, Valdez;
also SENATOR(S) Rodriguez, Buckner, Coleman, Cutter, Kolker, Moreno.

AN ACT**CONCERNING PROCEDURES RELATED TO ADULT COMPETENCY PROCEEDINGS.**

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

SECTION 1. In Colorado Revised Statutes, 16-8.5-105, **amend** (4) and (5)(h) as follows:

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

(4) A written report of the evaluation ~~shall~~ **MUST** be prepared in triplicate and delivered to the clerk of the court that ordered it. The clerk shall provide a copy of the report both to the prosecuting attorney and the counsel for the defendant. THE DEPARTMENT MAY UTILIZE THE E-FILING SYSTEM TO DELIVER THE REPORT TO THE COURT AND SERVE IT UPON THE PARTIES. WITHOUT REDUCING ANY OTHER TIMELINES SET FORTH IN THIS ARTICLE 8.5, THE COMPETENCY EVALUATOR SHALL PROVIDE THE WRITTEN REPORT TO THE COURT WITHIN FOURTEEN DAYS AFTER FINISHING MEETING OR ATTEMPTING TO MEET WITH THE RESPONDENT TO EVALUATE THE RESPONDENT'S COMPETENCY.

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

(h) The competency evaluator's opinion AND THE INFORMATION AND FACTORS CONSIDERED IN MAKING DETERMINATIONS as to whether the defendant: ~~meets the criteria for certification pursuant to article 65 of title 27 or whether the defendant is eligible for services pursuant to article 10 of title 25.5 or article 10.5 of title 27, including the factors considered in making either determination.~~

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.

(I) MEETS THE CRITERIA FOR AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106;

(II) MEETS THE CRITERIA FOR A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109 AND, IF THE DEFENDANT MEETS SUCH CRITERIA, WHETHER THE EVALUATOR BELIEVES THE DEFENDANT COULD BE TREATED ON AN OUTPATIENT BASIS PURSUANT TO SECTION 27-65-111. IN ASSESSING WHETHER THE DEFENDANT WITH A PENDING CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY DISABLED, IF THE PERSON IS INCARCERATED, THE COMPETENCY EVALUATOR OR PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, AND THE COURT SHALL NOT RELY ON THE FACT THAT THE DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY TO ESTABLISH THAT THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED. IF IT IS THE EVALUATOR'S OPINION THAT THE DEFENDANT MEETS CRITERIA FOR CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, THE EVALUATOR IS NOT REQUIRED TO REQUEST A PETITION FOR CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A COURT WITH JURISDICTION PURSUANT TO SECTION 16-8.5-111 (2)(a).

(III) HAS AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE DEFENDANT MAY BE ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

SECTION 2. In Colorado Revised Statutes, 16-8.5-111, **amend** (2)(a) and (2)(b)(II)(B); and **add** (2)(a.2) and (2)(a.3) 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:

(a) UPON A REQUEST FROM THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH, ~~if the defendant is charged with an offense as outlined in section 16-8.5-116 (7) and the competency evaluation has determined that the defendant meets the standard for civil certification pursuant to article 65 of title 27, the court may forgo any order of restoration and immediately order that proceedings be initiated by the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113 (6) for the civil certification of the defendant and dismiss the charges without prejudice in the interest of justice once civil certification proceedings have been initiated~~ OR THE PROSECUTING ATTORNEY AGREES, AND THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, THE COURT MAY ORDER THAT, PURSUANT TO THIS SUBSECTION (2) OR SECTION 16-8.5-116, THE REQUESTING PARTY INITIATE A PETITION FOR A CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A COURT WITH JURISDICTION. THE COURT SHALL HEAR AND CONSIDER ANY OBJECTIONS FROM THE DEFENDANT PRIOR TO ORDERING THE REFERRING PARTY TO INITIATE SUCH PROCEEDINGS. THE PROSECUTING ATTORNEY AND DEPARTMENT SHALL TRANSMIT ANY NECESSARY INFORMATION,

INCLUDING MEDICAL RECORDS, COMPETENCY EVALUATIONS, MATERIALS USED IN THE COMPETENCY PROCESS, AND RESTORATION RECORDS, AND COOPERATE WITH THE REQUESTING PARTY IN FILING A PETITION PURSUANT TO SECTION 27-65-108.5. WITH THE DEFENDANT'S CONSENT, THE DEFENSE ATTORNEY REPRESENTING THE DEFENDANT MAY TRANSMIT ANY INFORMATION AND COOPERATE IN THE SHORT-TERM CERTIFICATION PROCESS. THE REQUESTING PARTY SHALL FILE NOTICE IN THE CRIMINAL CASE WHEN THE CERTIFICATION FOR SHORT-TERM TREATMENT IS FILED. UPON THE FILING OF A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5, THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT SHALL, DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE COORDINATION SERVICES PURSUANT TO SECTION 27-65-108.

(a.2) THE COURT MAY FORGO ANY ORDER OF RESTORATION AND DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE WHEN A CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS IS INITIATED AND WHEN ALL OF THE DEFENDANT'S CHARGES ARE SUBJECT TO SECTION 16-8.5-116 (7).

(a.3) IF THE COURT ORDERS THE INITIATION OF CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS AND ANY CHARGE AGAINST THE DEFENDANT IS NOT SUBJECT TO SECTION 16-8.5-116 (7) OR THE COURT DOES NOT ORDER DISMISSAL OF THE CASE PURSUANT TO SUBSECTION (1) OF THIS SECTION, WITH AGREEMENT OF THE PARTIES, THE COURT MAY STAY THE RESTORATION ORDER TO ALLOW CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR AND TO ALLOW THE DISTRICT ATTORNEY TO CONSIDER WHETHER DISMISSAL OF THE CASE IS APPROPRIATE. TO ENABLE EVALUATION OF WHETHER DISMISSAL IS APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE DEFENDANT, THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND THE PROSECUTING ATTORNEY IN THE CRIMINAL MATTER IN WHICH COMPETENCY IS PENDING SHALL HAVE ACCESS TO THE FOLLOWING LIMITED INFORMATION ABOUT ANY PROCEEDINGS PURSUANT TO SECTION 27-65-108.5, 27-65-109, 27-65-110, OR 27-65-111. THE INFORMATION MUST BE KEPT CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW. THE COURT SHALL NOT EXTEND THE CRIMINAL CASE PAST THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116, AND INFORMATION MUST NOT BE SHARED PURSUANT TO THIS SUBSECTION (2)(a.3) AFTER DISMISSAL OF THE CRIMINAL CASE UNLESS OTHERWISE ALLOWED BY SECTION 27-65-123 OR OTHER LAW. THE LIMITED INFORMATION ALLOWED TO BE SHARED WITH THE DEFENDANT, THE DEFENDANT'S CRIMINAL ATTORNEY, OR THE PROSECUTING ATTORNEY PURSUANT TO THIS SUBSECTION (2)(a.3) INCLUDES:

(I) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;

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

(III) WHEN PROCEEDINGS ARE OCCURRING, EVEN IF THE PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING ATTORNEY OR DEFENDANT'S CRIMINAL ATTORNEY; AND

(IV) THE ULTIMATE OUTCOME OF THE PROCEEDING.

(b) (II) (B) As a condition of bond, the court shall order that the restoration take place on an outpatient basis. Pursuant to section 27-60-105, the ~~behavioral health administration in the~~ department is the entity responsible for the oversight of restoration education and coordination of all competency restoration services. As a condition of release for outpatient restoration services, the court may require pretrial services, if available, to work with ~~the behavioral health administration~~ THE DEPARTMENT and the restoration services provider under contract with the behavioral health administration to assist in securing appropriate support and care management services, which may include housing resources. The individual agency responsible for providing outpatient restoration services for the defendant shall notify the court or other designated agency within twenty-one days if restoration services have not commenced AND SHALL NOTIFY THE COURT OF EFFORTS THAT HAVE BEEN MADE TO ENGAGE THE DEFENDANT IN SERVICES.

SECTION 3. In Colorado Revised Statutes, 16-8.5-116, **amend** (2)(b)(IV), (6)(b), and (10); and **add** (2)(b)(IV.3) and (2)(b)(IV.5) as follows:

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

(2) (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:

(IV) Whether the defendant ~~meets the requirements for certification set forth in article 65 of title 27 or is eligible for services pursuant to article 10.5 of title 27~~ MEETS THE CRITERIA FOR AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106;

(IV.3) WHETHER THE DEFENDANT MEETS THE CRITERIA FOR A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109 AND, IF THE DEFENDANT MEETS SUCH CRITERIA, WHETHER THE EVALUATOR BELIEVES THE DEFENDANT COULD BE TREATED ON AN OUTPATIENT BASIS PURSUANT TO SECTION 27-65-111. IN ASSESSING WHETHER A DEFENDANT WITH A PENDING CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY DISABLED, IF THE PERSON IS INCARCERATED, THE EVALUATOR SHALL NOT RELY ON THE FACT THAT THE DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY TO ESTABLISH THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED.

(IV.5) WHETHER THE DEFENDANT HAS AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE DEFENDANT MAY BE ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

(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 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:

(b) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, the court may ~~in coordination with the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113 (6) for the county in which the defendant is charged, order the commencement of certification proceedings pursuant to the provisions of article 65 of title 27 if the defendant meets the requirements for certification pursuant to article 65 of title 27~~ ORDER THE DISTRICT ATTORNEY, OR UPON REQUEST FROM THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH TO INITIATE, IN A COURT WITH JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109;

(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~~ UNLESS THE COURT HAS ALREADY ORDERED A PERSON TO INITIATE PROCEEDINGS FOR A CERTIFICATION FOR SHORT-TERM TREATMENT, THE COURT SHALL MAKE FINDINGS WHETHER THERE ARE REASONABLE GROUNDS TO BELIEVE THE PERSON MEETS THE STANDARD FOR A CERTIFICATION FOR SHORT-TERM TREATMENT. If the court finds ~~the requirements for certification or provision of services are met or the defendant does not agree to a voluntary commitment~~ THERE ARE REASONABLE GROUNDS, the court may stay the dismissal for ~~twenty-one~~ THIRTY-FIVE days and notify ~~the department and county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113 (6) in the relevant jurisdiction of the pending dismissal so as to provide the department and the county attorney or district attorney with the~~ ANY PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH WHO HAS RECENTLY TREATED OR INTERACTED WITH THE DEFENDANT THAT THERE ARE REASONABLE GROUNDS FOR SHORT-TERM TREATMENT AND AFFORD THE PERSON AN opportunity to pursue certification proceedings or ~~the provision of~~ TO ARRANGE necessary services.

SECTION 4. In Colorado Revised Statutes, 19-2.5-704, **amend** (2)(b) as follows:

19-2.5-704. Procedure after determination of competency or incompetency.

(2) (b) Pursuant to section 27-60-105, the ~~behavioral health administration in the department of human services~~ is the entity responsible for the oversight of restoration education and coordination of services necessary to competency restoration.

SECTION 5. In Colorado Revised Statutes, **add** 27-65-108.5 as follows:

27-65-108.5. Court-ordered certification for short-term treatment for incompetent defendants in a criminal matter - contents of petition - procedure to contest petition - commitment to behavioral health administration - definition. (1) UPON PETITION OF THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, A REPRESENTATIVE OF THE BHA, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH, A COURT MAY CERTIFY A PERSON FOR SHORT-TERM TREATMENT FOR NOT MORE THAN THREE MONTHS UNDER THE FOLLOWING CONDITIONS:

(a) THE PERSON IS A RESPONDENT IN A CRIMINAL MATTER IN WHICH THE PERSON HAS BEEN FOUND INCOMPETENT TO PROCEED;

(b) THE COURT HEARING THE CRIMINAL MATTER REFERRED THE MATTER FOR FILING OF A PETITION PURSUANT TO SECTION 16-8.5-111 OR 16-8.5-116;

(c) THE PERSON HAS BEEN ADVISED OF THE AVAILABILITY OF, BUT HAS NOT ACCEPTED, VOLUNTARY TREATMENT, OR, IF REASONABLE GROUNDS EXIST TO BELIEVE THAT THE PERSON WILL NOT REMAIN IN A VOLUNTARY TREATMENT PROGRAM, THE PERSON'S ACCEPTANCE OF VOLUNTARY TREATMENT DOES NOT PRECLUDE CERTIFICATION;

(d) THE FACILITY OR COMMUNITY PROVIDER THAT WILL PROVIDE SHORT-TERM TREATMENT HAS BEEN DESIGNATED OR APPROVED BY THE COMMISSIONER TO PROVIDE SUCH TREATMENT; AND

(e) THE PERSON, THE PERSON'S LEGAL GUARDIAN, AND THE PERSON'S LAY PERSON, IF APPLICABLE, HAVE BEEN ADVISED OF THE PERSON'S RIGHT TO AN ATTORNEY AND TO CONTEST THE CERTIFICATION FOR SHORT-TERM TREATMENT.

(2) THE PETITION FILED PURSUANT TO SUBSECTION (1) OF THIS SECTION MUST:

(a) STATE SUFFICIENT FACTS TO ESTABLISH REASONABLE GROUNDS THAT THE RESPONDENT HAS A MENTAL HEALTH DISORDER AND, AS A RESULT OF THE MENTAL HEALTH DISORDER, IS A DANGER TO THE RESPONDENT'S SELF OR OTHERS OR IS GRAVELY DISABLED;

(b) BE ACCOMPANIED BY A REPORT OF THE COMPETENCY EVALUATOR OR PROFESSIONAL PERSON WHO HAS EVALUATED THE RESPONDENT WITHIN FIFTY-SIX DAYS BEFORE SUBMISSION OF THE PETITION, UNLESS THE RESPONDENT WHOSE CERTIFICATION IS SOUGHT HAS REFUSED TO SUBMIT TO AN EVALUATION OR THE RESPONDENT CANNOT BE EVALUATED DUE TO THE RESPONDENT'S CONDITION;

(c) BE FILED WITHIN FOURTEEN DAYS AFTER THE INITIATING PARTY RECEIVED THE COURT ORDER FROM THE CRIMINAL COURT INITIATING THE PROCESS;

(d) BE FILED WITH THE COURT IN THE COUNTY WHERE THE RESPONDENT RESIDED OR WAS PHYSICALLY PRESENT IMMEDIATELY PRIOR TO THE FILING OF THE PETITION; EXCEPT THAT IF THE PERSON WAS ARRESTED FOR THE PRIOR CASE AND HELD IN CUSTODY, THE PETITION MAY BE FILED IN THE COUNTY WHERE THE RESPONDENT RESIDED OR WAS PHYSICALLY PRESENT IMMEDIATELY PRIOR TO THE RESPONDENT'S ARREST; AND

(e) PROVIDE RECOMMENDATIONS IF ANY CERTIFICATION SHOULD OCCUR ON AN INPATIENT OR OUTPATIENT BASIS.

(3) WITHIN TWENTY-FOUR HOURS AFTER CERTIFICATION, COPIES OF THE CERTIFICATION MUST BE PERSONALLY DELIVERED TO THE RESPONDENT, THE BHA, OR THE OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH. THE DEPARTMENT SHALL RETAIN A COPY AS PART OF THE RESPONDENT'S RECORD. IF THE CRIMINAL CASE IS PENDING, OR NOT YET DISMISSED, NOTICE OF THE FILING OF THE PETITION SHOULD BE GIVEN BY THE PETITIONING PARTY TO THE CRIMINAL COURT, WHICH SHALL PROVIDE SUCH NOTICE TO THE PROSECUTING AND DEFENSE ATTORNEYS IN THE CRIMINAL CASE AND ANY ATTORNEY APPOINTED PURSUANT TO SECTION 27-65-113. THE COURT SHALL ASK THE RESPONDENT TO DESIGNATE ONE OTHER PERSON WHOM THE RESPONDENT WANTS TO BE INFORMED REGARDING THE PETITION. IF THE RESPONDENT IS INCAPABLE OF MAKING SUCH A DESIGNATION AT THE TIME THE PETITION IS DELIVERED, THE COURT MAY ASK THE RESPONDENT TO DESIGNATE SUCH PERSON AS SOON AS THE RESPONDENT IS CAPABLE.

(4) WHENEVER A PETITION IS FILED PURSUANT TO THIS SECTION, THE COURT SHALL IMMEDIATELY APPOINT AN ATTORNEY TO REPRESENT THE RESPONDENT. THE COURT SHALL PROVIDE THE RESPONDENT WITH A WRITTEN NOTICE THAT THE RESPONDENT HAS A RIGHT TO A HEARING ON THE PETITION AND MAY MAKE A WRITTEN REQUEST FOR A JURY TRIAL. THE RESPONDENT HAS THE RIGHT TO AN ATTORNEY FOR ALL PROCEEDINGS CONDUCTED PURSUANT TO THIS SECTION, INCLUDING ANY APPEALS. THE ATTORNEY REPRESENTING THE RESPONDENT MUST BE PROVIDED WITH A COPY OF THE PETITION AND ANY SUPPORTING MATERIALS IMMEDIATELY UPON THE ATTORNEY'S APPOINTMENT. THE RESPONDENT MAY ONLY WAIVE COUNSEL WHEN THE RESPONDENT MAKES A KNOWING AND VOLUNTARY WAIVER IN FRONT OF THE COURT.

(5) UPON THE FILING OF THE PETITION PURSUANT TO THIS SECTION AND AFFORDING THE RESPONDENT A CHANCE TO CONTEST THE PETITION, THE COURT MAY GRANT OR DENY CERTIFICATION BASED ON THE FACTS ESTABLISHED IN THE PETITION, SUBJECT TO THE COURT'S FURTHER REVIEW OR A JURY TRIAL.

(6) WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE PETITION FILED PURSUANT TO THIS SECTION, THE RESPONDENT, OR THE RESPONDENT'S ATTORNEY, MAY REQUEST A JURY TRIAL BY FILING A WRITTEN MOTION WITH THE COURT.

(7) THE RESPONDENT MAY KNOWINGLY AND VOLUNTARILY CONSENT IN WRITING TO THE PETITION.

(8) THE RESPONDENT OR THE RESPONDENT'S ATTORNEY MAY, AT ANY TIME, FILE A WRITTEN REQUEST FOR THE COURT TO REVIEW SHORT-TERM CERTIFICATION OR REQUEST THAT INPATIENT CERTIFICATION BE CHANGED TO OUTPATIENT TREATMENT. IF THE REVIEW IS REQUESTED, THE COURT SHALL HEAR THE MATTER WITHIN FOURTEEN DAYS AFTER THE REQUEST, AND THE COURT SHALL GIVE NOTICE TO THE RESPONDENT, THE RESPONDENT'S ATTORNEY, THE DEPARTMENT, AND THE COMMUNITY OR FACILITY PROVIDER WHO IS OR WILL PROVIDE TREATMENT. THE HEARING MUST BE HELD IN ACCORDANCE WITH SECTION 27-65-113. AT THE CONCLUSION OF THE HEARING, THE COURT MAY ENTER OR CONFIRM THE

CERTIFICATION FOR SHORT-TERM TREATMENT, DISCHARGE THE RESPONDENT, OR ENTER ANY OTHER APPROPRIATE ORDER.

(9) SECTION 27-65-109 (7) TO (10) APPLIES TO PROCEEDINGS HELD PURSUANT TO THIS SECTION.

(10) IN ASSESSING WHETHER THE RESPONDENT WITH A PENDING CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY DISABLED, IF THE PERSON IS INCARCERATED, THE PROFESSIONAL PERSON AND COURT SHALL NOT RELY UPON THE FACT THAT THE PERSON IS INCARCERATED TO ESTABLISH THAT THE RESPONDENT IS NOT A DANGER TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED.

(11) AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106 IS NOT A PREREQUISITE TO A PROCEEDING PURSUANT TO THIS SECTION.

(12) FOR THE PURPOSES OF THIS SECTION ONLY, "RESPONDENT" MEANS THE DEFENDANT IN THE REFERRING CRIMINAL MATTER.

SECTION 6. In Colorado Revised Statutes, 13-5-142, **amend** (1)(c) as follows:

13-5-142. National instant criminal background check system - reporting.

(1) On and after March 20, 2013, the state court administrator shall send electronically the following information to the Colorado bureau of investigation created pursuant to section 24-33.5-401, referred to in this section as the "bureau":

(c) The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109, for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10), or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110.

SECTION 7. In Colorado Revised Statutes, 13-5-142.5, **amend** (2)(a)(III) as follows:

13-5-142.5. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration.

(2) **Eligibility.** A person may petition for relief pursuant to this section if:

(a) (III) The court has entered an order for the person's involuntary certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109, for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10), or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110; and

SECTION 8. In Colorado Revised Statutes, **amend** 13-5-142.8 as follows:

13-5-142.8. Notice by professional persons. Under sections 13-9-123 (1), 13-9-124 (2), 13-5-142 (1), and 13-5-142.5 (2), an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109 must also include a notice filed by a professional person pursuant to

section 27-65-108.5 OR 27-65-109, and an order for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10) must also include a notice filed by a professional person pursuant to section 27-65-109 (10).

SECTION 9. In Colorado Revised Statutes, 13-9-123, **amend** (1)(c) as follows:

13-9-123. National instant criminal background check system - reporting.

(1) On and after March 20, 2013, the state court administrator shall send electronically the following information to the Colorado bureau of investigation created pursuant to section 24-33.5-401, referred to in this section as the "bureau":

(c) The name of each person with respect to whom the court has entered an order for involuntary certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109, for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10), or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110.

SECTION 10. In Colorado Revised Statutes, 13-9-124, **amend** (2)(a)(III) as follows:

13-9-124. National instant criminal background check system - judicial process for awarding relief from federal prohibitions - legislative declaration.

(2) **Eligibility.** A person may petition for relief pursuant to this section if:

(a) (III) The court has entered an order for the person's involuntary certification for short-term treatment of a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109, for extended certification for treatment of a mental health disorder pursuant to section 27-65-109 (10), or for long-term care and treatment of a mental health disorder pursuant to section 27-65-110; and

SECTION 11. In Colorado Revised Statutes, 25-3-102.1, **amend** (1)(c) as follows:

25-3-102.1. Deemed status for certain facilities. (1) (c) Upon submission of a completed application for license renewal, the department of public health and environment shall accept proof of the accreditation in lieu of licensing inspections or other requirements. Nothing in this section exempts an accredited health facility from inspections or from other forms of oversight by the department as necessary to ensure public health and safety. Nothing in this section prevents the department of public health and environment from conducting an inspection of a hospital or other health facility described in section 25-3-101 to investigate a complaint regarding the provisions of section 27-65-106, 27-65-107, ~~27-65-108.5~~, 27-65-109, 27-65-110, or 27-65-119 to the extent the complaint is applicable to health facilities licensed by the department of public health and environment.

SECTION 12. In Colorado Revised Statutes, 26-20-103, **amend** (3) as follows:

26-20-103. Basis for use of restraint or seclusion. (3) In addition to the circumstances described in subsection (1) of this section, a facility, as defined in section 27-65-102, that is designated by the commissioner of the behavioral health

administration in the state department to provide treatment pursuant to section 27-65-106, 27-65-108, **27-65-108.5**, 27-65-109, or 27-65-110 to an individual with a mental health disorder, as defined in section 27-65-102, may use seclusion to restrain an individual with a mental health disorder when the seclusion is necessary to eliminate a continuous and serious disruption of the treatment environment.

SECTION 13. In Colorado Revised Statutes, **amend as it will become effective July 1, 2024**, 27-65-108 as follows:

27-65-108. Care coordination for persons certified or in need of ongoing treatment. (1) A facility designated by the commissioner shall notify and engage the BHA prior to terminating or transferring a person certified pursuant to section **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-111. The BHA may provide care coordination services to support a person whose certification is terminated but who is in need of ongoing treatment and services.

(2) The BHA shall, directly or through a contract, provide care coordination services to a person certified pursuant to section **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-111 and determined by the designated facility and the BHA to need care coordination services.

SECTION 14. In Colorado Revised Statutes, 27-65-111, **amend as it will become effective July 1, 2024**, (1) introductory portion and (5)(a)(I) as follows:

27-65-111. Certification on an outpatient basis - short-term and long-term care. (1) Any respondent certified pursuant to section **27-65-108.5**, 27-65-109, or 27-65-110 may be provided treatment on an outpatient basis. The outpatient treatment provider shall develop a treatment plan for the respondent receiving treatment on an outpatient basis with the goal of the respondent finding and sustaining recovery. The treatment plan must include measures to keep the respondent or others safe, as informed by the respondent's need for certification. The treatment plan may include, but is not limited to:

(5) (a) In addition to any other limitation on liability, a person providing care to a respondent placed on short-term or long-term certification on an outpatient basis is only liable for harm subsequently caused by or to a respondent who:

(I) Has been terminated from certification despite meeting statutory criteria for certification pursuant to section **27-65-108.5**, 27-65-109, or 27-65-110; or

SECTION 15. In Colorado Revised Statutes, 27-65-112, **amend as it will become effective July 1, 2024**, (1) as follows:

27-65-112. Termination of certification for short-term and long-term treatment. (1) An original or extended certification for short-term treatment issued pursuant to section 27-65-108.5 OR 27-65-109, or an order or extension for certification for long-term care and treatment pursuant to section 27-65-110 terminates as soon as the professional person in charge of treatment of the respondent and the BHA determine the respondent has received sufficient benefit from the treatment for the respondent to end involuntary treatment. Whenever a certification or extended certification is terminated pursuant to this section, the

professional person in charge of providing treatment shall notify the court in writing within five days after the termination.

SECTION 16. In Colorado Revised Statutes, 27-65-113, **amend** (1), (5)(a), and (5)(b) as follows:

27-65-113. Hearing procedures - jurisdiction. (1) Hearings before the court pursuant to section ~~27-65-108.5~~, 27-65-109, or 27-65-110 are conducted in the same manner as other civil proceedings before the court. The burden of proof is on the person or facility seeking to detain the respondent. The court or jury shall determine that the respondent is in need of care and treatment only if the court or jury finds by clear and convincing evidence that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled.

(5) (a) In the event that a respondent or a person found not guilty by reason of impaired mental condition pursuant to section 16-8-103.5 (5), or by reason of insanity pursuant to section 16-8-105 (4) or 16-8-105.5, refuses to accept medication, the court having jurisdiction of the action pursuant to subsection (4) of this section, the court committing the person or defendant to the custody of the ~~BHA~~ DEPARTMENT pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, or the court of the jurisdiction in which the designated facility treating the respondent or person is located has jurisdiction and venue to accept a petition by a treating physician and to enter an order requiring that the respondent or person accept such treatment or, in the alternative, that the medication be forcibly administered to the respondent or person. The court of the jurisdiction in which the designated facility is located shall not exercise its jurisdiction without the permission of the court that committed the person to the custody of the ~~BHA~~ DEPARTMENT. Upon the filing of such a petition, the court shall appoint an attorney, if one has not been appointed, to represent the respondent or person and hear the matter within ten days.

(b) In any case brought pursuant to subsection (5)(a) of this section in a court for the county in which the treating facility is located, the county where the proceeding was initiated pursuant to subsection (4) of this section or the court committing the person to the custody of the ~~BHA~~ DEPARTMENT pursuant to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5 shall either reimburse the county in which the proceeding pursuant to this subsection (5) was filed and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

SECTION 17. In Colorado Revised Statutes, 27-65-119, **amend as it will become effective July 1, 2023**, (1) introductory portion as follows:

27-65-119. Rights of respondents certified for short-term treatment or long-term care and treatment. (1) ~~Each~~ EACH respondent certified for short-term treatment or long-term care and treatment on an inpatient basis pursuant to sections ~~27-65-108.5~~, 27-65-109, and 27-65-110 has the following rights and shall be advised of such rights by the facility:

SECTION 18. In Colorado Revised Statutes, 27-66.5-102, **amend** (3)(a)(II) as follows:

27-66.5-102. Definitions. As used in this article 66.5, unless the context otherwise requires:

(3) "High-risk individual" means a person who:

(a) Has a significant mental health or substance use disorder, as evidenced by:

(II) A certification for short-term treatment or extended short-term treatment pursuant to section 27-65-108.5 OR 27-65-109;

SECTION 19. In Colorado Revised Statutes, 27-80-303, **amend** (3)(c) as follows:

27-80-303. Office of ombudsman for behavioral health access to care - creation - appointment of ombudsman - duties. (3) The ombudsman shall:

(c) Receive and assist consumers and providers in reporting concerns and filing complaints with appropriate regulatory or oversight agencies relating to inappropriate care, a procedure for an emergency mental health hold pursuant to section 27-65-106, a certification for short-term treatment pursuant to section 27-65-108.5 OR 27-65-109, or a certification for long-term care and treatment pursuant to section 27-65-110;

SECTION 20. In Colorado Revised Statutes, 27-65-123, **add** (6) as follows:

27-65-123. Records. (6) NOTHING IN THIS SECTION PROHIBITS THE LIMITED DISCLOSURE OF NECESSARY INFORMATION TO THE PROSECUTING ATTORNEY AND CRIMINAL DEFENSE COUNSEL IF A CRIMINAL CASE IS STILL PENDING AGAINST THE PERSON.

SECTION 21. Act subject to petition - effective date. This act takes effect July 1, 2024; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within the ninety-day period after final adjournment of the general assembly, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2024 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: June 7, 2023