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BILL 3

LLS NO. 22-0140.01 Shelby Ross x4510

INTERIM COMMITTEE BILL

BILL TOPIC: "Modifications To Incompetent To Proceed"
DEADLINES: File by: 10/6/2021

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO INCOMPETENT TO PROCEED TO SHIFT**
102 **TOWARD RELIANCE ON COMMUNITY-BASED RESOURCES.**

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/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. The bill requires the court to reconsider a defendant's type of bond and conditions of release whenever the court orders an evaluation on an in-custody or inpatient basis. The bill allows the court to lower or remove any monetary condition of bond to allow the

*Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

defendant to post bond and receive necessary mental health services on an outpatient and out-of-custody basis if the defendant's mental health needs cannot be adequately met on an inpatient or in-custody basis. The bill requires the court to enter any appropriate orders to ensure a defendant's right to post bond is not jeopardized by a revocation of bond or mental health stay pending a competency evaluation or restoration services. If a defendant posts bond while awaiting an inpatient or in-custody evaluation or restoration services, the court shall convert the order to an order for an outpatient and out-of-custody evaluation or treatment.

The bill clarifies that the court may order outpatient restoration services if the court disagrees with the recommendation for inpatient restoration services and finds that community-based services would be more clinically appropriate.

If the court orders inpatient restoration services despite the recommendation for outpatient restoration services, the court shall make a finding as to why the discharge plan for community-based restoration services is inadequate to meet the defendant's needs and what other interim mental health services need to be provided to make the defendant appropriate for community-based restoration services.

The bill requires the court to set a bond hearing within 7 days after a defendant is found incompetent to proceed when a defendant is in custody and statutorily eligible for bond, rather than only if the defendant is in custody on a misdemeanor, petty offense, or traffic offense. If the defendant is eligible for bond; is being held on charges other than a misdemeanor, petty offense, or traffic offense; and does not meet the criteria for involuntary mental health treatment, there is a presumption that the defendant be released on a nonmonetary bond.

The bill authorizes the court to direct the department of human services (department) to evaluate a defendant for certification if the basis of the court's order for inpatient restoration services is based on the defendant's danger to the defendant's self or others or being gravely disabled.

The bill requires the court to conduct a bond hearing and consider any improvements in the defendant's mental health during inpatient restoration services if the defendant is found competent to proceed and is statutorily eligible for bond but has remained unable to post a monetary condition of bond.

If a defendant is eligible for bond but has been unable to post a monetary condition of bond, the court shall hold a bond hearing within 7 days after finding that the defendant has been restored to competency to reconsider the type of bond and the conditions of release.

Current law prohibits the confinement of a defendant committed to the custody of the department or otherwise confined as a result of a determination of incompetency to proceed for a period in excess of the

maximum term of confinement that could be imposed for only the single most serious offense with which the defendant is charged, less 30% for a misdemeanor and less 50% for a felony. The bill prohibits the confinement or requirement to engage in outpatient restoration services in excess of these time periods for any defendant who is found incompetent to proceed.

The bill authorizes the court to dismiss a defendant's case at any time and direct the department to evaluate the defendant for civil certification.

The bill authorizes the court to stay the defendant's dismissal for 21 days to identify whether the defendant meets the requirements for certification or provision of services. The court shall order a defendant committed to the office of behavioral health in the department if the court finds the requirements for certification have been established by clear and convincing evidence.

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 (1)(a); and **repeal** (1)(d) as follows:

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

5 (1) (a) (I) The court shall order that the competency evaluation be
6 conducted on an outpatient basis or, if the defendant is ~~unable~~ REMAINS
7 IN CUSTODY DUE TO AN INABILITY to post ~~the~~ A monetary condition of
8 bond or is ineligible to be released on bond, at the place where the
9 defendant is in-custody, except as provided in subsection (1)(b) of this
10 section. If the department conducts the evaluation on an in-custody basis,
11 the department shall begin the evaluation as soon as practicable after the
12 department's receipt of a court order directing the evaluation. After July
13 1, 2020, if the evaluation is conducted on an in-custody basis, the
14 department shall complete the evaluation no later than twenty-one days
15 after receipt of the order and the collateral materials. On and after July 1,
16 2020, if the evaluation is conducted on an out-of-custody basis, the
17 department shall complete the evaluation within forty-two days after

1 receipt of the order and collateral materials, unless the court extends the
2 time upon a showing of good cause.

3 (II) At the time any evaluation is ordered, the court shall order that
4 the collateral materials be transmitted to the department within
5 twenty-four hours after the order by the appropriate party with a
6 certificate of service of the materials provided to the court and other
7 necessary parties by the party ordered to transmit the collateral materials.

8 (III) WHEN THE COURT ORDERS AN EVALUATION ON AN
9 IN-CUSTODY OR INPATIENT BASIS, the court shall ~~determine~~ RECONSIDER
10 the type of bond and the conditions of release after consideration of the
11 presumptions and factors enumerated in article 4 of this title 16, which
12 include consideration of the information received from any pretrial
13 services program pursuant to the provisions of section 16-4-106 and any
14 information provided by the court liaison hired pursuant to part 2 of
15 article 11.9 of this title 16. As a condition of any bond, the court shall
16 require the defendant's cooperation with the competency evaluation on an
17 outpatient and out-of-custody basis. In setting the bond, the court shall
18 not consider the need for the defendant to receive an evaluation pursuant
19 to this article 8.5 as a factor in determining any monetary condition of
20 bond. HOWEVER, IN DETERMINING ANY MONETARY CONDITION OF BOND
21 THROUGHOUT THE ENTIRETY OF THE CRIMINAL PROCEEDINGS, THE COURT
22 MAY CONSIDER WHETHER THE DEFENDANT'S MENTAL HEALTH NEEDS CAN
23 BE ADEQUATELY MET ON AN INPATIENT OR IN-CUSTODY BASIS AND, IF NOT,
24 THE COURT MAY LOWER OR REMOVE ANY MONETARY CONDITION OF BOND
25 TO ALLOW THE DEFENDANT TO POST BOND AND RECEIVE RESTORATION
26 SERVICES AND ANY OTHER NECESSARY MENTAL HEALTH SERVICES ON AN
27 OUTPATIENT AND OUT-OF-CUSTODY BASIS.

1 (IV) IF THE COURT ORDERS AN INPATIENT OR IN-CUSTODY
2 COMPETENCY EVALUATION DUE TO THE DEFENDANT'S INABILITY TO POST
3 A MONETARY CONDITION OF BOND, THE COURT SHALL ENTER ANY
4 APPROPRIATE ORDERS TO ENSURE THAT THE DEFENDANT'S RIGHT TO POST
5 BOND IS NOT JEOPARDIZED BY A REVOCATION OF BOND OR MENTAL
6 HEALTH STAY PENDING A COMPETENCY EVALUATION. IF THE DEFENDANT
7 POSTS BOND WHILE AWAITING AN INPATIENT OR IN-CUSTODY EVALUATION,
8 THE COURT SHALL CONVERT THE ORDER TO AN ORDER FOR A COMPETENCY
9 EVALUATION ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS.

10 ~~(IV)~~ (V) Nothing in this subsection (1)(a) limits the availability of
11 a court-ordered evaluation for a person with a mental health disorder
12 pursuant to section 27-65-106 or invokes the emergency procedure set
13 forth in section 27-65-105.

14 ~~(d) If a defendant is in the department's custody for purposes of~~
15 ~~the competency evaluation ordered pursuant to this article 8.5 and the~~
16 ~~defendant has completed the competency evaluation and the evaluator has~~
17 ~~concluded that the defendant is competent to proceed, the department may~~
18 ~~return the defendant to a county jail or to the community, as determined~~
19 ~~by the defendant's bond status. If the evaluator has concluded that the~~
20 ~~defendant is incompetent to proceed and that inpatient restoration services~~
21 ~~are not clinically appropriate, and outpatient restoration services are~~
22 ~~available to the defendant in the community, the department shall notify~~
23 ~~the court and the court liaison, and the department shall develop a~~
24 ~~discharge plan and a plan for community-based restoration services in~~
25 ~~coordination with the community restoration services provider. The court~~
26 ~~shall hold a hearing within seven days after receiving the notice, at which~~
27 ~~the department shall provide to the court the plan for community-based~~

1 ~~restoration services, and the court may enter any appropriate orders~~
2 ~~regarding the custody of the defendant and his or her bond status. The~~
3 ~~department shall advise the defendant of the date and time of the court~~
4 ~~hearing. If the department is returning the defendant to a county jail, the~~
5 ~~county sheriff in the jurisdiction where the defendant must return shall~~
6 ~~take custody of the defendant within seventy-two hours after receiving~~
7 ~~notification from the department that the defendant's evaluation is~~
8 ~~completed. At the time the department notifies the sheriff, the department~~
9 ~~shall also notify the court and the court liaison that the department is~~
10 ~~returning the defendant to the custody of the jail.~~

11 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-111, **amend**
12 (1), (2)(a.5), (2)(b), (2)(c), and (2)(f)(II) introductory portion; and **add**
13 (3)(c) as follows:

14 **16-8.5-111. Procedure after determination of competency or**
15 **incompetency.** (1) If the final determination made pursuant to section
16 16-8.5-103 is that the defendant is competent to proceed, the judge shall
17 order that the suspended proceeding continue or, if a mistrial has been
18 declared, shall reset the case for trial at the earliest possible date. IF A
19 DEFENDANT IS IN THE DEPARTMENT'S CUSTODY FOR PURPOSES OF THE
20 COMPETENCY EVALUATION ORDERED PURSUANT TO THIS ARTICLE 8.5 AND
21 THE DEFENDANT HAS COMPLETED THE COMPETENCY EVALUATION AND THE
22 EVALUATOR HAS CONCLUDED THAT THE DEFENDANT IS COMPETENT TO
23 PROCEED, THE DEPARTMENT MAY RETURN THE DEFENDANT TO A COUNTY
24 JAIL OR TO THE COMMUNITY, AS DETERMINED BY THE DEFENDANT'S BOND
25 STATUS. IF THE DEFENDANT IS PLACED IN THE DEPARTMENT'S CUSTODY
26 PURSUANT TO SECTION 16-8.5-105 (1)(b), THE COURT SHALL ENTER ANY
27 APPROPRIATE ORDERS TO ENSURE THAT THE DEFENDANT'S RIGHT TO POST

1 BOND IS NOT JEOPARDIZED BY A REVOCATION OF BOND OR MENTAL
2 HEALTH STAY.

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

6 (a.5) If the evaluator has provided an opinion that the defendant
7 is incompetent to proceed and there is not a substantial probability that
8 the defendant, with restoration services, will attain competency within the
9 reasonably foreseeable future pursuant to section 16-8.5-105 (5)(e)(I)(B),
10 (5)(e)(I)(C), or (5)(e)(I)(D), in lieu of ordering restoration treatment the
11 court shall set a hearing within thirty-five days of receiving the report on
12 the issue of whether there is a substantial probability that the defendant
13 will be restored to competency within the reasonably foreseeable future
14 and, in the case of a finding pursuant to section 16-8.5-105 (5)(e)(I)(D),
15 maintain competency through the adjudication of the case. At the hearing,
16 there is a presumption that the defendant will not attain competency
17 within the reasonably foreseeable future. A party attempting to overcome
18 that presumption must prove by a preponderance of the evidence that
19 there is a substantial probability that restoration efforts will be successful
20 within the reasonably foreseeable future. At the conclusion of the hearing
21 when there is an opinion pursuant to section 16-8.5-105 (5)(e)(I)(D), if
22 the court finds that there is not a substantial probability that the defendant
23 will be restored to competency within the reasonably foreseeable future
24 and maintain competency throughout the case, the court shall dismiss the
25 case and may consider ordering the initiation of proceedings pursuant to
26 section 16-8.5-116 ~~(6)(b)~~ or (6)(c). If the court determines that there is
27 insufficient evidence to make an immediate finding of no substantial

1 probability of restoration to competency within the reasonably foreseeable
2 future, then the court shall order restoration education for an initial period
3 of time not to exceed ninety-one days as provided for in this section and
4 review of the case pursuant to section 16-8.5-116 (3) and (4). At the
5 initial and subsequent review hearings, if the evaluator continues to opine
6 that the defendant is incompetent to proceed and still unlikely to be
7 restored, the court shall presume that there is not a substantial probability
8 that the defendant will be restored to competency within the reasonably
9 foreseeable future and maintain competency through the adjudication of
10 the case, and the court shall dismiss the case unless there is clear and
11 convincing evidence that the person has made progress toward attaining
12 competency and can maintain competency through the adjudication of the
13 case. If the case is ordered dismissed, the department will have the same
14 obligations pursuant to section 16-8.5-105 (5)(e)(I).

15 (b) (I) If the defendant is on bond or summons, the court shall
16 order that restoration to competency take place on an outpatient basis,
17 unless the department recommends inpatient restoration services pursuant
18 to section 16-8.5-105 (5)(e)(II). HOWEVER, THE COURT MAY ORDER
19 OUTPATIENT RESTORATION SERVICES IF THE COURT DISAGREES WITH THE
20 RECOMMENDATION FOR INPATIENT RESTORATION SERVICES AND FINDS
21 THAT COMMUNITY-BASED RESTORATION SERVICES WOULD BE MORE
22 CLINICALLY APPROPRIATE.

23 (II) (A) If the defendant is in-custody and the recommendation is
24 for outpatient restoration services, the court shall consider the release of
25 the defendant on bond consistent with article 4 of this title 16 and the
26 Colorado rules of criminal procedure. IF THE EVALUATOR HAS
27 CONCLUDED THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND

1 THAT INPATIENT RESTORATION SERVICES ARE NOT CLINICALLY
2 APPROPRIATE, AND COMMUNITY-BASED RESTORATION SERVICES ARE
3 AVAILABLE TO THE DEFENDANT, THE DEPARTMENT SHALL NOTIFY THE
4 COURT AND THE COURT LIAISON, AND THE DEPARTMENT SHALL DEVELOP
5 A DISCHARGE PLAN AND A PLAN FOR COMMUNITY-BASED RESTORATION
6 SERVICES IN COORDINATION WITH THE COMMUNITY RESTORATION
7 SERVICES PROVIDER. THE COURT SHALL HOLD A HEARING WITHIN SEVEN
8 DAYS AFTER RECEIVING THE REPORT, AT WHICH TIME THE DEPARTMENT
9 SHALL PROVIDE THE COURT WITH THE PLAN FOR COMMUNITY-BASED
10 RESTORATION SERVICES AND THE COURT MAY ENTER ANY APPROPRIATE
11 ORDERS REGARDING THE CUSTODY OF THE DEFENDANT AND THE
12 DEFENDANT'S BOND STATUS. THE DEPARTMENT SHALL ADVISE THE
13 DEFENDANT OF THE DATE AND TIME OF THE COURT HEARING. IF THE
14 DEPARTMENT IS RETURNING THE DEFENDANT TO A COUNTY JAIL, THE
15 COUNTY SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT MUST
16 RETURN SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN SEVENTY-TWO
17 HOURS AFTER RECEIVING NOTIFICATION FROM THE DEPARTMENT THAT THE
18 DEFENDANT'S EVALUATION IS COMPLETE. AT THE TIME THE DEPARTMENT
19 NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO NOTIFY THE COURT
20 AND THE COURT LIAISON THAT THE DEPARTMENT IS RETURNING THE
21 DEFENDANT TO THE CUSTODY OF THE JAIL.

22 (B) IF THE COURT ORDERS INPATIENT RESTORATION SERVICES
23 DESPITE THE RECOMMENDATION FOR OUTPATIENT RESTORATION SERVICES,
24 THE COURT SHALL MAKE A FINDING AS TO WHY THE DISCHARGE PLAN FOR
25 COMMUNITY-BASED RESTORATION SERVICES DESCRIBED IN SUBSECTION
26 (2)(b)(II)(A) OF THIS SECTION IS INADEQUATE TO MEET THE DEFENDANT'S
27 NEEDS AND WHAT OTHER INTERIM MENTAL HEALTH SERVICES NEED TO BE

1 PROVIDED TO MAKE THE DEFENDANT APPROPRIATE FOR
2 COMMUNITY-BASED RESTORATION SERVICES. UNLESS THE DEFENDANT IS
3 STATUTORILY INELIGIBLE FOR BOND PURSUANT TO SECTION 16-4-102, THE
4 COURT SHALL ENTER ANY APPROPRIATE ORDERS TO ENSURE THAT THE
5 DEFENDANT'S RIGHT TO POST BOND IS NOT JEOPARDIZED BY A REVOCATION
6 OF BOND OR MENTAL HEALTH STAY PENDING RESTORATION SERVICES. IF
7 THE DEFENDANT POSTS BOND WHILE AWAITING INPATIENT OR IN-CUSTODY
8 RESTORATION SERVICES, THE COURT SHALL CONVERT THE ORDER TO AN
9 ORDER FOR RESTORATION SERVICES ON AN OUTPATIENT AND
10 OUT-OF-CUSTODY BASIS.

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

24 ~~(C)~~ (D) When the defendant is in custody, ~~on a misdemeanor,~~
25 ~~petty offense, or traffic offense,~~ the court, within seven days ~~of~~ AFTER the
26 defendant ~~being~~ IS found incompetent to proceed, shall set a hearing on
27 bond. ~~At the bond hearing~~ IF THE DEFENDANT IS BEING HELD ON A

1 MISDEMEANOR, PETTY OFFENSE, OR TRAFFIC OFFENSE, there is a
2 presumption AT THE BOND HEARING that the court shall order a personal
3 recognizance bond. If the court does not order a personal recognizance
4 bond FOR A DEFENDANT BEING HELD ON A MISDEMEANOR, PETTY OFFENSE,
5 OR TRAFFIC OFFENSE and the defendant is committed for inpatient
6 restoration, the court must make findings of fact that extraordinary
7 circumstances exist to overcome the presumption of a release and the
8 clinical recommendation for outpatient treatment by clear and convincing
9 evidence. IF THE DEFENDANT IS ELIGIBLE FOR BOND; IS BEING HELD ON
10 CHARGES OTHER THAN A MISDEMEANOR, PETTY OFFENSE, OR TRAFFIC
11 OFFENSE; AND DOES NOT MEET THE CRITERIA FOR INVOLUNTARY MENTAL
12 HEALTH TREATMENT PURSUANT TO ARTICLE 65 OF TITLE 27, THERE IS A
13 PRESUMPTION THAT THE DEFENDANT BE RELEASED ON A NONMONETARY
14 BOND. AT THE BOND HEARING, THE COURT SHALL CONSIDER THE
15 PRESUMPTIONS AND FACTORS ENUMERATED IN SECTIONS 16-4-102 (1);
16 16-4-103 (1), (4)(A), AND (5); AND 16-8.5-114 (1.5) AND THE COURT MUST
17 MAKE FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO
18 OVERCOME THE PRESUMPTION OF A RELEASE AND THE CLINICAL
19 RECOMMENDATION FOR OUTPATIENT TREATMENT BY CLEAR AND
20 CONVINCING EVIDENCE.

21 (E) IF THE BASIS OF THE COURT'S ORDER FOR INPATIENT
22 RESTORATION SERVICES IS BASED ON THE DEFENDANT'S DANGER TO SELF
23 OR OTHERS OR BEING GRAVELY DISABLED, THE COURT MAY DIRECT THE
24 DEPARTMENT, OR ANY APPROVED FACILITY DESIGNATED BY THE
25 EXECUTIVE DIRECTOR OF THE DEPARTMENT, TO EVALUATE THE
26 DEFENDANT FOR CERTIFICATION PURSUANT TO SECTION 27-65-106.

27 (c) If, AFTER RECONSIDERING BOND AT A HEARING DESCRIBED IN

1 SUBSECTION (2)(b)(II) OF THIS SECTION, the court finds that the defendant
2 is not eligible for release from custody or ~~not able to post the monetary~~
3 ~~condition of bond~~ THAT THE DEFENDANT REMAINS IN CUSTODY DUE TO AN
4 INABILITY TO POST A MONETARY CONDITION OF BOND, the court may
5 commit the defendant to the custody of the department, in which case the
6 executive director has the same powers with respect to commitment as the
7 executive director has following a commitment pursuant to section
8 16-8-105.5 (4). UNLESS THE DEFENDANT IS STATUTORILY INELIGIBLE FOR
9 BOND PURSUANT TO SECTION 16-4-102, THE COURT SHALL ENTER ANY
10 APPROPRIATE ORDERS TO ENSURE THAT THE DEFENDANT'S RIGHT TO POST
11 BOND IS NOT JEOPARDIZED BY A REVOCATION OF BOND OR MENTAL
12 HEALTH STAY PENDING INPATIENT RESTORATION SERVICES. At such time
13 as the department recommends to the court that the defendant is restored
14 to competency, the defendant may be returned to custody of the county
15 jail or to previous bond status.

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

19 (3) (c) IF THE DEFENDANT IS FOUND COMPETENT TO PROCEED AND
20 IS STATUTORILY ELIGIBLE FOR BOND BUT HAS REMAINED UNABLE TO POST
21 A MONETARY CONDITION OF BOND, THE COURT SHALL CONDUCT A BOND
22 HEARING PURSUANT TO SUBSECTION (2)(b)(II)(D) OF THIS SECTION AND
23 SHALL CONSIDER ANY IMPROVEMENTS IN THE DEFENDANT'S MENTAL
24 HEALTH DURING INPATIENT RESTORATION SERVICES, INCLUDING ANY
25 MEDICATIONS TAKEN ON A VOLUNTARY OR INVOLUNTARY BASIS. IF THE
26 DEPARTMENT IS RETURNING THE DEFENDANT TO A COUNTY JAIL, THE
27 COUNTY SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT MUST

1 RETURN SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN SEVENTY-TWO
2 HOURS AFTER RECEIVING NOTIFICATION FROM THE DEPARTMENT THAT THE
3 DEFENDANT IS FOUND COMPETENT TO PROCEED. AT THE TIME THE
4 DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO
5 NOTIFY THE COURT AND THE COURT LIAISON THAT THE DEPARTMENT IS
6 RETURNING THE DEFENDANT TO THE CUSTODY OF THE JAIL SO THAT THE
7 COURT MAY ORDER A HEARING TO REVIEW BOND PURSUANT TO
8 SUBSECTION (2)(b)(II)(D) OF THIS SECTION.

9 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-114, **add** (1.5)
10 as follows:

11 **16-8.5-114. Procedure after hearing concerning restoration to**
12 **competency. (1.5)** IF A DEFENDANT IS FOUND TO BE RESTORED TO
13 COMPETENCY AFTER THE HEARING HELD PURSUANT TO SECTION
14 16-8.5-113 AND THE DEFENDANT IS ELIGIBLE FOR BOND BUT IS UNABLE TO
15 POST A MONETARY CONDITION OF BOND, THE COURT SHALL HOLD A BOND
16 HEARING WITHIN SEVEN DAYS AFTER FINDING THAT THE DEFENDANT HAS
17 BEEN RESTORED TO COMPETENCY TO RECONSIDER THE TYPE OF BOND AND
18 THE CONDITIONS OF RELEASE AFTER CONSIDERATION OF THE
19 PRESUMPTIONS AND FACTORS ENUMERATED IN ARTICLE 4 OF THIS TITLE 16,
20 WHICH INCLUDE CONSIDERATION OF THE INFORMATION RECEIVED FROM
21 ANY PRETRIAL SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF
22 SECTION 16-4-106, ANY INFORMATION PROVIDED BY THE COURT LIAISON
23 HIRED PURSUANT TO PART 2 OF ARTICLE 11.9 OF THIS TITLE 16, AND ANY
24 INFORMATION CONTAINED WITHIN THE COMPETENCY EVALUATION REPORT.
25 IN SETTING BOND, THE COURT SHALL NOT CONSIDER THE NEED FOR THE
26 DEFENDANT TO RECEIVE RESTORATION TREATMENT PURSUANT TO THIS
27 ARTICLE 8.5 AS A FACTOR IN DETERMINING ANY MONETARY CONDITION OF

1 BOND. HOWEVER, THE COURT MAY CONSIDER ANY IMPROVEMENT IN THE
2 DEFENDANT'S MENTAL HEALTH SINCE THE LAST BOND REVIEW, WHETHER
3 THE DEFENDANT'S MENTAL HEALTH NEEDS CAN BE ADEQUATELY MET ON
4 AN INPATIENT OR IN-CUSTODY BASIS AND, IF NOT, THE COURT MAY LOWER
5 OR REMOVE ANY MONETARY CONDITION OF BOND TO ALLOW THE
6 DEFENDANT TO POST BOND AND RECEIVE APPROPRIATE MENTAL HEALTH
7 SERVICES ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS.

8 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-116, **amend**
9 (2)(a), (6) introductory portion, and (10); **amend as it will become**
10 **effective March 1, 2022**, (1); **repeal** (6)(b); and **add** (4.5) as follows:

11 **16-8.5-116. Certification - reviews - termination of**
12 **proceedings - rules.** (1) Subject to the time periods and legal standards
13 set forth in this section, whichever is shortest, a defendant ~~committed to~~
14 ~~the custody of the department or otherwise confined as a result of a~~
15 ~~determination of incompetency to proceed~~ WHO IS FOUND INCOMPETENT
16 TO PROCEED must not remain confined OR REQUIRED TO ENGAGE IN
17 OUTPATIENT COMPETENCY RESTORATION SERVICES for a period in excess
18 of the maximum term of confinement that could be imposed for only the
19 single most serious offense with which the defendant is charged, less
20 thirty percent for a misdemeanor offense and less fifty percent for a
21 felony offense. At the end of such time period, the court shall dismiss the
22 charges, and certification proceedings or provision of services, if any, are
23 governed by article 65 or 10.5 of title 27.

24 (2) (a) Within ninety-one days after the entry of the court's ~~order~~
25 ~~of commitment~~ DETERMINATION THAT THE DEFENDANT IS INCOMPETENT
26 TO PROCEED, the court shall review the case of a defendant who has been
27 determined to be incompetent to proceed with regard to the probability

1 that the defendant will eventually be restored to competency and with
2 regard to the justification for certification or confinement. The review
3 may be held in conjunction with a restoration hearing held pursuant to
4 section 16-8.5-113. However, if at the review hearing there is a request
5 by the defendant for a restoration hearing pursuant to section 16-8.5-113,
6 the court shall set the restoration hearing within thirty-five days after the
7 request pursuant to the provisions of section 16-8.5-113.

8 (4.5) NOTWITHSTANDING SUBSECTIONS (2), (3), AND (4) OF THIS
9 SECTION, THE COURT MAY DISMISS THE DEFENDANT'S CASE AT ANY TIME
10 AND DIRECT THE DEPARTMENT, OR ANY OTHER FACILITY DESIGNATED BY
11 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, TO EVALUATE THE
12 DEFENDANT FOR CERTIFICATION PURSUANT TO SECTION 27-65-106. FOR
13 PURPOSES OF THIS SUBSECTION (4.5), THE EVALUATOR'S REPORT MUST
14 INCLUDE THE INFORMATION DESCRIBED IN SECTION 27-65-106 (5).

15 (6) Notwithstanding the time periods provided in subsections (7),
16 (8), and (9) of this section and to ensure compliance with relevant
17 constitutional principles, for any offense for which the defendant ~~remains~~
18 ~~confined as a result of a determination of incompetency to proceed~~ IS
19 FOUND INCOMPETENT TO PROCEED if the court determines, based on
20 available evidence, that there is not a substantial probability that the
21 defendant will be restored to competency within the reasonably
22 foreseeable future, the court may order the defendant's release from
23 commitment pursuant to this article 8.5 through one or more of the
24 following means:

25 (b) ~~The court may, in coordination with the county attorney or~~
26 ~~district attorney required to conduct proceedings pursuant to section~~
27 ~~27-65-111 (6) for the county in which the defendant is charged, order the~~

1 commencement of certification proceedings pursuant to the provisions of
2 article 65 of title 27 if the defendant meets the requirements for
3 certification pursuant to article 65 of title 27;

4 (10) (a) Prior to the dismissal of charges pursuant to subsection
5 (1), ~~(4.5)~~, (6), (7), (8), or (9) of this section, the court ~~shall~~ MAY STAY THE
6 DISMISSAL FOR TWENTY-ONE DAYS TO identify whether the defendant
7 meets the requirements for certification pursuant to article 65 of title 27
8 or for the provision of services pursuant to article 10.5 of title 27 ~~or~~
9 ~~whether the defendant will agree to a voluntary commitment~~ BY
10 DIRECTING THE DEPARTMENT, OR ANY OTHER FACILITY DESIGNATED BY
11 THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, TO EVALUATE THE
12 DEFENDANT FOR EMERGENCY MENTAL HEALTH NEEDS PURSUANT TO
13 SECTION 27-65-105 (6) OR CERTIFICATION PURSUANT TO SECTION
14 27-65-106. THE EVALUATION MAY TAKE PLACE WHERE THE DEFENDANT
15 IS BEING HELD OR IN A FACILITY DESIGNATED BY THE EXECUTIVE
16 DIRECTOR OF THE DEPARTMENT. THE EVALUATION MUST BE PERFORMED
17 AS SOON AS POSSIBLE BUT NO LONGER THAN TWENTY-ONE DAYS AFTER
18 THE EVALUATION IS ORDERED AND MUST IDENTIFY WHETHER THE
19 DEFENDANT HAS A MENTAL HEALTH DISORDER AND, AS A RESULT OF THE
20 MENTAL HEALTH DISORDER, IS AN IMMINENT DANGER TO THE
21 DEFENDANT'S SELF OR OTHERS OR IS GRAVELY DISABLED.

22 (b) If, AFTER HEARING ALL RELEVANT EVIDENCE, INCLUDING THE
23 EVALUATION AND REPORT, the court finds the requirements for
24 certification ~~or provision of services are met, or the defendant does not~~
25 ~~agree to a voluntary commitment, the court may stay the dismissal for~~
26 ~~twenty-one days and notify the department and county attorney or district~~
27 ~~attorney required to conduct proceedings pursuant to section 27-65-111~~

1 ~~(6) in the relevant jurisdiction of the pending dismissal so as to provide~~
2 ~~the department and the county attorney or district attorney with the~~
3 ~~opportunity to pursue certification proceedings or the provision of~~
4 ~~necessary services~~ HAVE BEEN ESTABLISHED BY CLEAR AND CONVINCING
5 EVIDENCE, THE COURT SHALL MAKE AN ORDER OF COMMITMENT TO THE
6 OFFICE OF BEHAVIORAL HEALTH IN THE DEPARTMENT. THE OFFICE HAS THE
7 RIGHT TO DELEGATE PHYSICAL CUSTODY OF THE DEFENDANT TO AN
8 APPROPRIATE APPROVED TREATMENT FACILITY ON AN OUTPATIENT OR
9 INPATIENT BASIS.

10 **SECTION 5. Act subject to petition - effective date.** This act
11 takes effect at 12:01 a.m. on the day following the expiration of the
12 ninety-day period after final adjournment of the general assembly; except
13 that, if a referendum petition is filed pursuant to section 1 (3) of article V
14 of the state constitution against this act or an item, section, or part of this
15 act within such period, then the act, item, section, or part will not take
16 effect unless approved by the people at the general election to be held in
17 November 2022 and, in such case, will take effect on the date of the
18 official declaration of the vote thereon by the governor.