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Seventy-third General Assembly
STATE OF COLORADO

DRAFT
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BILL 4

LLS NO. 22-0141.01 Shelby Ross x4510

INTERIM COMMITTEE BILL

BILL TOPIC: "Modifications To Not Guilty By Reason Of Insanity"
DEADLINES: File by: 10/6/2021

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO NOT GUILTY BY REASON OF**
102 **INSANITY.**

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 order an evaluation of a defendant found not guilty by reason of insanity to determine whether the defendant meets the criteria for inpatient hospitalization or if the defendant is eligible for conditional release in 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.*

community.

No later than 10 days after receiving the evaluation, the court shall hold a hearing to determine whether to order inpatient hospitalization or to authorize release of the defendant for community placement or conditional release on the grounds that the defendant does not have an abnormal mental condition that is likely to cause the defendant to be dangerous to the defendant's self, others, or the community in the reasonably foreseeable future; is capable of distinguishing right from wrong; and the defendant has substantial capacity to conform the defendant's conduct to the requirement of law.

The bill prohibits a defendant found not guilty by reason of insanity from remaining confined 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 acquitted, less 30% for a misdemeanor offense and less 50% for a felony offense. This prohibition does not apply to defendants acquitted of an offense that carries a potential penalty of life in prison.

Upon conclusion of the maximum period of confinement, the court may stay the termination for 21 days to identify whether the defendant meets the requirements for certification or the provision of services. If, after hearing all relevant evidence, the court finds the requirements for certification have been established by clear and convincing evidence, the court shall make an order of commitment to the office of behavioral health in the department of human services.

Current law requires the court to order a release examination of the defendant when a current examination has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The bill specifies what information the release examination must include.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8-105.5, **amend**
3 (4) and (5); and **add** (6) as follows:

4 **16-8-105.5. Procedure after plea for offenses committed on or**
5 **after July 1, 1995.** (4) (a) If the trier of fact finds the defendant not
6 guilty by reason of insanity, the court shall ~~commit the defendant to the~~
7 ~~custody of the department of human services until such time as the~~
8 ~~defendant is found eligible for release~~ ORDER AN EVALUATION OF THE

1 DEFENDANT BY A MEDICAL EXPERT IN MENTAL DISORDERS, AS DEFINED IN
2 SECTION 16-8-115 (2)(a), TO DETERMINE WHETHER THE DEFENDANT
3 MEETS THE CRITERIA FOR INPATIENT HOSPITALIZATION OR IF THE
4 DEFENDANT IS ELIGIBLE FOR CONDITIONAL RELEASE IN THE COMMUNITY.
5 THE EVALUATION MUST BE COMPLETED WITHIN THIRTY DAYS AFTER THE
6 COURT'S ORDER AND MAY TAKE PLACE IN THE COMMUNITY OR, IF THE
7 COURT FINDS IT NECESSARY, AT A FACILITY DESIGNATED BY THE
8 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES. THE
9 CRITERIA FOR INPATIENT HOSPITALIZATION MEANS THE DEFENDANT HAS
10 AN ABNORMAL MENTAL CONDITION THAT WOULD BE LIKELY TO CAUSE THE
11 DEFENDANT TO BE DANGEROUS TO THE DEFENDANT'S SELF, OTHERS, OR TO
12 THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE; THE
13 DEFENDANT IS INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG; AND
14 THE DEFENDANT LACKS SUBSTANTIAL CAPACITY TO CONFORM THE
15 DEFENDANT'S CONDUCT TO THE REQUIREMENTS DESCRIBED IN SECTION
16 16-8-120 (3). THE DEFENSE MAY REQUEST AN ADDITIONAL EVALUATION
17 BY A MEDICAL EXPERT IN MENTAL DISORDERS OF THE DEFENDANT'S
18 CHOOSING PURSUANT TO SECTION 16-8-108.

19 (b) THE EVALUATION REPORT MUST INCLUDE:

20 (I) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS
21 CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

22 (II) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE
23 DEFENDANT IS IN REMISSION;

24 (III) INFORMATION ON MEDICATIONS CURRENTLY PRESCRIBED TO
25 THE DEFENDANT FOR PSYCHIATRIC CONDITIONS AND WHETHER THE
26 DEFENDANT IS COMPLIANT WITH TAKING THE PRESCRIBED MEDICATIONS;

27 (IV) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF

1 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT
2 NEEDS BY UTILIZING THE RISK-NEED-RESPONSIVITY MODEL;

3 (V) A SUMMARY OF THE SPECIFIC TREATMENT AVAILABLE TO THE
4 DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT THE
5 DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE EXECUTIVE
6 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

7 (VI) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD
8 BE MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

9 (VII) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY
10 MEETS THE CRITERIA FOR INPATIENT HOSPITALIZATION AS DESCRIBED IN
11 SUBSECTION (4)(a) OF THIS SECTION, CITING SPECIFIC FACTS AND
12 EVIDENCE SUPPORTING THE OPINION.

13 (c) NO LATER THAN TEN DAYS AFTER RECEIVING THE EVALUATION,
14 UNLESS CONTINUED BY EITHER PARTY, THE COURT SHALL HOLD A HEARING
15 TO DETERMINE WHETHER TO ORDER INPATIENT HOSPITALIZATION OR TO
16 AUTHORIZE RELEASE OF THE DEFENDANT FOR COMMUNITY PLACEMENT OR
17 CONDITIONAL RELEASE ON THE GROUNDS THAT THE DEFENDANT DOES NOT
18 HAVE AN ABNORMAL MENTAL CONDITION THAT IS LIKELY TO CAUSE THE
19 DEFENDANT TO BE DANGEROUS TO THE DEFENDANT'S SELF, OTHERS, OR TO
20 THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE; IS CAPABLE
21 OF DISTINGUISHING RIGHT FROM WRONG; AND THE DEFENDANT HAS
22 SUBSTANTIAL CAPACITY TO CONFORM THE DEFENDANT'S CONDUCT TO THE
23 REQUIREMENTS OF LAW. AT THE HEARING, THE PROSECUTION AND
24 DEFENSE MAY PRESENT EVIDENCE AND ARGUMENT.

25 (d) IF THE COURT ORDERS INPATIENT HOSPITALIZATION, the
26 executive director of the department of human services shall designate the
27 state facility at which the defendant shall be held for care and psychiatric

1 treatment and may transfer the defendant from one facility to another if
2 in the opinion of the director it is desirable to do so in the interest of the
3 proper care, custody, and treatment of the defendant or the protection of
4 the public or the personnel of the facilities in question.

5 (e) IF THE COURT ORDERS COMMUNITY PLACEMENT OR
6 CONDITIONAL RELEASE, THE COURT SHALL SET CONDITIONS OF RELEASE AS
7 OUTLINED IN SECTION 16-8-115 (3)(a) AND THE DEPARTMENT OF HUMAN
8 SERVICES SHALL HAVE THE SAME OBLIGATIONS AS PROVIDED IN SECTION
9 16-8-115 REGARDING CONDITIONAL RELEASE OR IN SECTION 16-8-118
10 REGARDING TEMPORARY PHYSICAL REMOVAL FOR TREATMENT, INCLUDING
11 COMMUNITY PLACEMENT.

12 (5) (a) ~~This section shall apply to offenses committed on or after~~
13 ~~July 1, 1995.~~ A DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY
14 SHALL NOT REMAIN CONFINED FOR A PERIOD IN EXCESS OF THE MAXIMUM
15 TERM OF CONFINEMENT THAT COULD BE IMPOSED FOR ONLY THE SINGLE
16 MOST SERIOUS OFFENSE WITH WHICH THE DEFENDANT IS ACQUITTED, LESS
17 THIRTY PERCENT FOR A MISDEMEANOR OFFENSE AND LESS FIFTY PERCENT
18 FOR A FELONY OFFENSE; EXCEPT THAT THIS PROVISION DOES NOT APPLY TO
19 A DEFENDANT ACQUITTED OF AN OFFENSE THAT CARRIES A POTENTIAL
20 PENALTY OF LIFE IN PRISON. UPON CONCLUSION OF THE MAXIMUM PERIOD
21 OF CONFINEMENT, THE COURT MAY STAY THE TERMINATION OF
22 CONFINEMENT FOR TWENTY-ONE DAYS TO IDENTIFY WHETHER THE
23 DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO
24 ARTICLE 65 OF TITLE 27 OR FOR THE PROVISION OF SERVICES PURSUANT TO
25 ARTICLE 10.5 OF TITLE 27 BY DIRECTING THE DEPARTMENT OF HUMAN
26 SERVICES, OR ANY OTHER FACILITY DESIGNATED BY THE EXECUTIVE
27 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES, TO EVALUATE THE

1 DEFENDANT FOR EMERGENCY MENTAL HEALTH NEEDS PURSUANT TO
2 SECTION 27-65-105 (6) OR CERTIFICATION PURSUANT TO SECTION
3 27-65-106. THE EVALUATION MAY TAKE PLACE WHERE THE DEFENDANT
4 IS BEING HELD OR IN A FACILITY DESIGNATED BY THE EXECUTIVE
5 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES. THE EVALUATION
6 MUST BE PERFORMED AS SOON AS POSSIBLE BUT NO LONGER THAN
7 TWENTY-ONE DAYS AFTER THE EVALUATION IS ORDERED AND MUST
8 IDENTIFY WHETHER THE DEFENDANT HAS A MENTAL HEALTH DISORDER
9 AND, AS A RESULT OF THE MENTAL HEALTH DISORDER, IS AN IMMINENT
10 DANGER TO THE DEFENDANT'S SELF OR OTHERS OR IS GRAVELY DISABLED.

11 (b) IF, AFTER HEARING ALL RELEVANT EVIDENCE, INCLUDING THE
12 EVALUATION AND REPORT, THE COURT FINDS THE REQUIREMENTS FOR
13 CIVIL CERTIFICATION HAVE BEEN ESTABLISHED BY CLEAR AND
14 CONVINCING EVIDENCE, THE COURT SHALL MAKE AN ORDER OF
15 COMMITMENT TO THE OFFICE OF BEHAVIORAL HEALTH IN THE
16 DEPARTMENT OF HUMAN SERVICES. THE OFFICE HAS THE RIGHT TO
17 DELEGATE PHYSICAL CUSTODY OF THE DEFENDANT TO AN APPROPRIATE,
18 APPROVED TREATMENT FACILITY ON AN OUTPATIENT OR INPATIENT BASIS.

19 (6) THIS SECTION APPLIES TO OFFENSES COMMITTED ON OR AFTER
20 JULY 1, 1995.

21 **SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend** (1);
22 and **add** (2)(c) as follows:

23 **16-8-115. Release from commitment after verdict of not guilty**
24 **by reason of insanity or not guilty by reason of impaired mental**
25 **condition.** (1) IF A DEFENDANT IS COMMITTED FOR INPATIENT
26 HOSPITALIZATION PURSUANT TO SECTION 16-8-105.5, the court may
27 SUBSEQUENTLY order a release hearing at any time on its own motion, on

1 motion of the prosecuting attorney, or on motion of the defendant. The
2 court shall order a release hearing upon receipt of the report of the chief
3 officer of the institution in which the defendant is committed that the
4 defendant no longer requires hospitalization, as provided in section
5 16-8-116, or upon motion of the defendant made after one hundred
6 eighty-two days following the date of the initial commitment order.
7 Except for the first hearing following the initial commitment order, unless
8 the court for good cause shown permits, the defendant is not entitled to
9 a hearing within one year subsequent to a previous hearing.

10 (2) (c) THE RELEASE EXAMINATION REPORT MUST INCLUDE:

11 (I) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS
12 CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

13 (II) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE
14 DEFENDANT IS IN REMISSION;

15 (III) INFORMATION ON MEDICATIONS CURRENTLY PRESCRIBED TO
16 THE DEFENDANT FOR PSYCHIATRIC CONDITIONS AND WHETHER THE
17 DEFENDANT IS COMPLIANT WITH TAKING THE PRESCRIBED MEDICATIONS;

18 (IV) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF
19 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT
20 NEEDS BY UTILIZING THE RISK-NEED-RESPONSIVITY MODEL;

21 (V) A SUMMARY OF THE SPECIFIC TREATMENT AVAILABLE TO THE
22 DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT THE
23 DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE EXECUTIVE
24 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

25 (VI) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD
26 BE MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

27 (VII) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY

1 MEETS THE CRITERIA FOR INPATIENT HOSPITALIZATION AS DESCRIBED IN
2 SECTION 16-8-105.5 (4)(a), CITING SPECIFIC FACTS AND EVIDENCE
3 SUPPORTING THE OPINION.

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