

Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO

BILL B

LLS NO. 22-0141.01 Shelby Ross x4510

HOUSE BILL

HOUSE SPONSORSHIP

Amabile and Benavidez,

SENATE SPONSORSHIP

(None),

House Committees

Senate Committees

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

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

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 in inpatient hospitalization 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 found not guilty by reason of insanity, less 30% for a misdemeanor offense and less 50% for a felony offense. This prohibition does not apply to defendants found not guilty by reason of insanity for a class 1 or class 2 felony.

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. Beginning January 1, 2024, 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. The office of behavioral health has the right to delegate physical custody of the defendant to an appropriate, approved treatment facility on an outpatient or inpatient basis.

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.

The bill requires the medical professional treating the defendant to develop a report certifying whether the defendant continues to meet the criteria for ongoing inpatient hospitalization. The chief executive officer of the facility in which the defendant is confined shall submit the report to the court on an annual basis.

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:

1 **16-8-105.5. Procedure after plea for offenses committed on or**
2 **after July 1, 1995.** (4) (a) If the trier of fact finds the defendant not
3 guilty by reason of insanity, the court shall ~~commit the defendant to the~~
4 ~~custody of the department of human services until such time as the~~
5 ~~defendant is found eligible for release.~~ ORDER AN EVALUATION OF THE
6 DEFENDANT BY A MEDICAL EXPERT IN MENTAL DISORDERS, AS DEFINED IN
7 SECTION 16-8-115 (2)(a), TO DETERMINE WHETHER THE DEFENDANT
8 MEETS THE CRITERIA FOR INPATIENT HOSPITALIZATION OR IF THE
9 DEFENDANT IS ELIGIBLE FOR CONDITIONAL RELEASE IN THE COMMUNITY.
10 THE EVALUATION MUST BE COMPLETED WITHIN THIRTY DAYS AFTER THE
11 COURT'S ORDER AND MAY TAKE PLACE IN THE COMMUNITY OR, IF THE
12 COURT FINDS IT NECESSARY, AT A FACILITY DESIGNATED BY THE
13 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES. THE
14 DEFENDANT MEETS THE CRITERIA FOR INPATIENT HOSPITALIZATION IF THE
15 DEFENDANT HAS AN ABNORMAL MENTAL CONDITION THAT WOULD BE
16 LIKELY TO CAUSE THE DEFENDANT TO BE DANGEROUS TO THE
17 DEFENDANT'S SELF, OTHERS, OR TO THE COMMUNITY IN THE REASONABLY
18 FORESEEABLE FUTURE; THE DEFENDANT IS INCAPABLE OF DISTINGUISHING
19 RIGHT FROM WRONG; AND THE DEFENDANT LACKS SUBSTANTIAL CAPACITY
20 TO CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS
21 DESCRIBED IN SECTION 16-8-120 (3). THE DEFENSE OR PROSECUTING
22 ATTORNEY MAY REQUEST AN ADDITIONAL EVALUATION BY A MEDICAL
23 EXPERT IN MENTAL DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT
24 TO SECTION 16-8-108.

25 (b) THE EVALUATION REPORT MUST INCLUDE:

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

1 (II) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE
2 DEFENDANT IS IN REMISSION;

3 (III) INFORMATION ON MEDICATIONS CURRENTLY PRESCRIBED TO
4 THE DEFENDANT FOR PSYCHIATRIC CONDITIONS AND WHETHER THE
5 DEFENDANT IS COMPLIANT WITH TAKING THE PRESCRIBED MEDICATIONS;

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

9 (V) A SUMMARY OF THE SPECIFIC TREATMENT AVAILABLE TO THE
10 DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT THE
11 DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE EXECUTIVE
12 DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

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

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

19 (c) NO LATER THAN TEN DAYS AFTER RECEIVING THE EVALUATION,
20 UNLESS CONTINUED BY EITHER PARTY, THE COURT SHALL HOLD A HEARING
21 TO DETERMINE WHETHER TO ORDER INPATIENT HOSPITALIZATION OR TO
22 AUTHORIZE RELEASE OF THE DEFENDANT FOR COMMUNITY PLACEMENT OR
23 CONDITIONAL RELEASE ON THE GROUNDS THAT THE DEFENDANT DOES NOT
24 HAVE AN ABNORMAL MENTAL CONDITION THAT IS LIKELY TO CAUSE THE
25 DEFENDANT TO BE DANGEROUS TO THE DEFENDANT'S SELF, OTHERS, OR TO
26 THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE; IS CAPABLE
27 OF DISTINGUISHING RIGHT FROM WRONG; AND THE DEFENDANT HAS

1 SUBSTANTIAL CAPACITY TO CONFORM THE DEFENDANT'S CONDUCT TO THE
2 REQUIREMENTS OF LAW. AT THE HEARING, THE PROSECUTION AND
3 DEFENSE MAY PRESENT EVIDENCE AND ARGUMENT.

4 (d) IF THE COURT ORDERS INPATIENT HOSPITALIZATION, the
5 executive director of the department of human services shall designate the
6 state facility at which the defendant shall be held for care and psychiatric
7 treatment and may transfer the defendant from one facility to another if
8 in the opinion of the director it is desirable to do so in the interest of the
9 proper care, custody, and treatment of the defendant or the protection of
10 the public or the personnel of the facilities in question.

11 (e) IF THE COURT ORDERS COMMUNITY PLACEMENT OR
12 CONDITIONAL RELEASE, THE COURT SHALL SET CONDITIONS OF RELEASE AS
13 OUTLINED IN SECTION 16-8-115 (3)(a) AND THE DEPARTMENT OF HUMAN
14 SERVICES SHALL HAVE THE SAME OBLIGATIONS AS PROVIDED IN SECTION
15 16-8-115 REGARDING CONDITIONAL RELEASE OR IN SECTION 16-8-118
16 REGARDING TEMPORARY PHYSICAL REMOVAL FOR TREATMENT, INCLUDING
17 COMMUNITY PLACEMENT.

18 (5) (a) ~~This section shall apply to offenses committed on or after~~
19 ~~July 1, 1995.~~ A DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY
20 SHALL NOT REMAIN CONFINED IN INPATIENT HOSPITALIZATION FOR A
21 PERIOD IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD
22 BE IMPOSED FOR ONLY THE SINGLE MOST SERIOUS OFFENSE WITH WHICH
23 THE DEFENDANT IS FOUND NOT GUILTY BY REASON OF INSANITY, LESS
24 THIRTY PERCENT FOR A MISDEMEANOR OFFENSE AND LESS FIFTY PERCENT
25 FOR A FELONY OFFENSE; EXCEPT THAT THIS PROVISION DOES NOT APPLY TO
26 A DEFENDANT FOUND NOT GUILTY BY REASON OF INSANITY FOR A CLASS
27 1 OR CLASS 2 FELONY. UPON CONCLUSION OF THE MAXIMUM PERIOD OF

1 CONFINEMENT, THE COURT MAY STAY THE TERMINATION OF CONFINEMENT
2 FOR TWENTY-ONE DAYS TO IDENTIFY WHETHER THE DEFENDANT MEETS
3 THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO ARTICLE 65 OF
4 TITLE 27 OR FOR THE PROVISION OF SERVICES PURSUANT TO ARTICLE 10.5
5 OF TITLE 27 BY DIRECTING THE DEPARTMENT OF HUMAN SERVICES, OR ANY
6 OTHER FACILITY DESIGNATED BY THE EXECUTIVE DIRECTOR OF THE
7 DEPARTMENT OF HUMAN SERVICES, TO EVALUATE THE DEFENDANT FOR
8 EMERGENCY MENTAL HEALTH NEEDS PURSUANT TO SECTION 27-65-105 (6)
9 OR CERTIFICATION PURSUANT TO SECTION 27-65-106. THE EVALUATION
10 MAY TAKE PLACE WHERE THE DEFENDANT IS BEING HELD OR IN A FACILITY
11 DESIGNATED BY THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF
12 HUMAN SERVICES. THE EVALUATION MUST BE PERFORMED AS SOON AS
13 POSSIBLE BUT NO LONGER THAN TWENTY-ONE DAYS AFTER THE
14 EVALUATION IS ORDERED AND MUST IDENTIFY WHETHER THE DEFENDANT
15 HAS A MENTAL HEALTH DISORDER AND, AS A RESULT OF THE MENTAL
16 HEALTH DISORDER, IS AN IMMINENT DANGER TO THE DEFENDANT'S SELF OR
17 OTHERS OR IS GRAVELY DISABLED.

18 (b) (I) IF, AFTER HEARING ALL RELEVANT EVIDENCE, INCLUDING
19 THE EVALUATION AND REPORT, THE COURT FINDS THE REQUIREMENTS FOR
20 CIVIL CERTIFICATION HAVE BEEN ESTABLISHED BY CLEAR AND
21 CONVINCING EVIDENCE, THE COURT SHALL MAKE AN ORDER OF
22 COMMITMENT TO THE OFFICE OF BEHAVIORAL HEALTH IN THE
23 DEPARTMENT OF HUMAN SERVICES. THE OFFICE HAS THE RIGHT TO
24 DELEGATE PHYSICAL CUSTODY OF THE DEFENDANT TO AN APPROPRIATE,
25 APPROVED TREATMENT FACILITY ON AN OUTPATIENT OR INPATIENT BASIS.

26 (II) THIS SUBSECTION (5)(b) IS EFFECTIVE JANUARY 1, 2024.

27 (6) THIS SECTION APPLIES TO OFFENSES COMMITTED ON OR AFTER

1 JULY 1, 1995.

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

4 **16-8-115. Release from commitment after verdict of not guilty**
5 **by reason of insanity or not guilty by reason of impaired mental**
6 **condition.** (1) IF A DEFENDANT IS COMMITTED FOR INPATIENT
7 HOSPITALIZATION PURSUANT TO SECTION 16-8-105.5, the court may
8 SUBSEQUENTLY order a release hearing at any time on its own motion, on
9 motion of the prosecuting attorney, or on motion of the defendant. The
10 court shall order a release hearing upon receipt of the report of the chief
11 officer of the institution in which the defendant is committed that the
12 defendant no longer requires hospitalization, as provided in section
13 16-8-116, or upon motion of the defendant made after one hundred
14 eighty-two days following the date of the initial commitment order.
15 Except for the first hearing following the initial commitment order, unless
16 the court for good cause shown permits, the defendant is not entitled to
17 a hearing within one year subsequent to a previous hearing.

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

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

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

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

26 (IV) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF
27 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT

1 NEEDS BY UTILIZING THE RISK-NEED-RESPONSIVITY MODEL OR OTHER
2 EVIDENCE-BASED MODALITY;

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 SECTION 16-8-105.5 (4)(a), CITING SPECIFIC FACTS AND EVIDENCE
12 SUPPORTING THE OPINION.

13 (d) THE MEDICAL PROFESSIONAL TREATING THE DEFENDANT SHALL
14 DEVELOP A REPORT CERTIFYING WHETHER THE DEFENDANT CONTINUES TO
15 MEET THE CRITERIA FOR ONGOING INPATIENT HOSPITALIZATION. THE CHIEF
16 EXECUTIVE OFFICER OF THE FACILITY IN WHICH THE DEFENDANT IS
17 CONFINED SHALL ANNUALLY SUBMIT THE REPORT TO THE COURT. THE
18 REPORT MUST BE SUBMITTED EACH YEAR BY THE DATE ON WHICH THE
19 DEFENDANT WAS INITIALLY COMMITTED FOR INPATIENT HOSPITALIZATION
20 UNLESS A RELEASE HEARING IS ORDERED WITHIN THE TWELVE MONTHS
21 PRECEDING SUCH DATE. THE REPORT MUST INCLUDE THE SAME
22 INFORMATION IDENTIFIED IN SUBSECTION (2)(c) OF THIS SECTION, AS WELL
23 AS A DESCRIPTION OF THE TYPE AND AMOUNT OF TREATMENT PROVIDED
24 TO THE DEFENDANT SINCE THE LAST REPORT WAS FILED WITH THE COURT
25 AND A PLAN FOR WHAT TREATMENT WILL BE PROVIDED IN THE FOLLOWING
26 YEAR IF THE DEFENDANT REMAINS HOSPITALIZED. A COPY OF THE REPORT
27 MUST BE PROVIDED TO THE DEFENDANT, PROSECUTING ATTORNEY, AND

1 ANY OTHER ATTORNEY OF RECORD. UPON RECEIPT AND AFTER REVIEW OF
2 THE REPORT, THE COURT SHALL MAKE A WRITTEN FINDING AS TO WHETHER
3 THE REQUIREMENTS FOR CONTINUED CERTIFICATION ARE MET BY CLEAR
4 AND CONVINCING EVIDENCE. PRIOR TO MAKING THE FINDING, IF EITHER
5 THE DEFENDANT OR PROSECUTING ATTORNEY REQUESTS A HEARING OR IF
6 THE COURT DETERMINES THE INFORMATION CONTAINED IN THE REPORT IS
7 INADEQUATE TO FORM THE BASIS OF A FINDING, THE COURT SHALL HOLD
8 A HEARING FOR EACH PARTY TO OFFER EVIDENCE AND ARGUMENT. IF THE
9 COURT FINDS THE DEFENDANT DOES NOT MEET THE CRITERIA FOR ONGOING
10 INPATIENT HOSPITALIZATION, THE COURT SHALL HOLD A RELEASE HEARING
11 PURSUANT TO SUBSECTION (1) OF THIS SECTION. AT THE RELEASE
12 HEARING, THE COURT MAY RELY UPON THE EXISTING REPORT OR MAY
13 ORDER ADDITIONAL OR SUPPLEMENTAL INFORMATION BE PROVIDED.

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