

SENATE COMMITTEE OF REFERENCE REPORT

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Chair of Committee

February 12, 2025  
Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

SB25-041 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 3, line 9, strike "PURSUANT TO SECTION  
2 16-8.5-111 OR 16-8.5-116.5".

3 Page 3, lines 20 and 21, strike "PURSUANT TO SECTION 16-8.5-111 OR  
4 16-8.5-116.5".

5 Page 4, lines 1 and 2, strike "PURSUANT TO SECTION 16-8.5-111 OR  
6 16-8.5-116.5".

7 Page 4, strike lines 26 and 27, and substitute:  
8 "SECTION 3. In Colorado Revised Statutes, 16-8.5-103, amend  
9 (3) and (4) as follows:

10 **16-8.5-103. Determination of competency to proceed.**  
11 (3) Within ~~seven~~ FOURTEEN days after receipt of the court-ordered report,  
12 either party may request a hearing or a second evaluation.

13 (4) If a party requests a second evaluation, any pending requests  
14 for a hearing must be continued until the receipt of the second evaluation  
15 report. The report of the expert conducting the second evaluation must be  
16 completed and filed with the court within thirty-five days after the court  
17 order allowing the second evaluation, unless the time period is extended  
18 by the court for good cause. ~~If a second evaluation is completed and~~  
19 ~~restoration is ultimately ordered, then~~ The court shall ~~make~~ PROVIDE the  
20 second evaluation ~~available~~ to THE PARTIES AND the department. THE  
21 DEPARTMENT SHALL USE THE SECOND EVALUATION TO ENSURE THAT THE  
22 DEPARTMENT COMPLIES WITH ITS RESPONSIBILITIES, INCLUDING  
23 REVIEWING AND SUMMARIZING PRIOR COMPETENCY OPINIONS AS  
24 REQUIRED IN SECTION 16-8.5-105 (5)(f). If the second evaluation is  
25 requested by the court, it must be paid for by the court.

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

3           **16-8.5-105. Evaluations, locations, time frames, and report.**  
4 (5) The competency evaluation and report must include, but need not be  
5 limited to:

6           (f) An opinion as to whether there is a substantial probability that  
7 the defendant, with restoration services, will attain competency within the  
8 reasonably foreseeable future. ~~and: AS PART OF FORMING THEIR OPINION,~~  
9 ~~THE COMPETENCY EVALUATOR SHALL USE DUE DILIGENCE IN THE REVIEW~~  
10 ~~AND SUMMARY OF ANY PRIOR COMPETENCY OPINIONS REGARDING THE~~  
11 ~~DEFENDANT. IF THE COMPETENCY EVALUATOR'S OPINION REGARDING~~  
12 ~~RESTORABILITY DIFFERS FROM OPINIONS IN PAST EVALUATIONS OF THE~~  
13 ~~DEFENDANT, THE COMPETENCY EVALUATOR SHALL EXPLAIN THE BASIS~~  
14 ~~FOR THEIR DIFFERENT OPINION.~~

15           ~~(F) If any court within the previous five years found the defendant~~  
16 ~~incompetent to proceed and that the defendant would not attain~~  
17 ~~competency within the reasonably foreseeable future, an opinion as to~~  
18 ~~why the defendant's current circumstances are different from the prior~~  
19 ~~court's findings; and~~

20           ~~(H) If the defendant has been found incompetent to proceed after~~  
21 ~~being found competent to proceed three or more times within the previous~~  
22 ~~five years, an opinion as to whether, even if restored, the defendant will~~  
23 ~~maintain competency throughout the current case.~~

24           **SECTION 5.** In Colorado Revised Statutes, 16-8.5-106, **amend**  
25 (2) as follows:

26           **16-8.5-106. Evaluation at request of defendant.** (2) THE  
27 DEFENDANT SHALL PROVIDE a copy of the second evaluation ~~shall be~~  
28 ~~furnished~~ to the COURT AND prosecution in a reasonable amount of time  
29 in advance of the competency or restoration hearing. UPON RECEIPT OF  
30 THE SECOND EVALUATION, THE COURT SHALL FURNISH THE SECOND  
31 EVALUATION TO THE DEPARTMENT.

32           **SECTION 6.** In Colorado Revised Statutes, 16-8.5-111, **amend**  
33 (2)(b), (3)(a)(III), (3)(b)(IV), (3)(b)(V) introductory portion, (4)(a), and  
34 (4)(b) as follows:".

35           Strike page 5.

36           Page 6, strike lines 25 through 27 and substitute:

37           "(3) **Certification for short-term treatment.** (a) (III) The court  
38 may order initiation of certification for short-term treatment only:

39           (A) UPON A SPECIFIC REQUEST FROM A PERSON AUTHORIZED TO  
40 MAKE THE REQUEST PURSUANT TO SUBSECTION (3)(a)(I) OF THIS SECTION;

41           ~~(A)~~ (B) If the court finds reasonable grounds to believe that the

1 defendant meets the standard for a certification for short-term treatment  
2 pursuant to section 27-65-108.5 or 27-65-109; and

3 ~~(B)~~ (C) If the defendant's highest charged offense is a petty  
4 offense, traffic offense, or misdemeanor offense, or with the agreement  
5 of the prosecuting attorney, regardless of the severity of the charge.

6 (b) If the court requires the requesting party to initiate certification  
7 for short-term treatment pursuant to subsection (3)(a) of this section:

8 (IV) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A  
9 MISDEMEANOR THAT IS NOT SUBJECT TO DISMISSAL PURSUANT TO  
10 SUBSECTION (1.6) OF THIS SECTION, the court may, upon the court's own  
11 motion, forgo an order for restoration services and dismiss the charges  
12 against the defendant without prejudice when the certification for  
13 short-term treatment is initiated; ~~if the highest charged offense is a petty  
14 offense, traffic offense, or misdemeanor offense;~~ or

15 (V) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A FELONY,  
16 the court may, ONLY with the agreement of the prosecuting attorney and  
17 defendant, stay the restoration order to allow certification for short-term  
18 treatment proceedings to occur and to allow the district attorney to  
19 consider whether dismissal of the case is appropriate. In determining  
20 whether dismissal is appropriate while the criminal matter is pending, the  
21 defendant, the defendant's attorney in the criminal matter, and the  
22 prosecuting attorney in the criminal matter have access to limited  
23 information about any civil proceedings against the defendant pursuant  
24 to sections 27-65-108.5, 27-65-109, 27-65-110, and 27-65-111. Any  
25 information obtained must be kept confidential unless disclosure is  
26 otherwise authorized by law. The court shall not extend the defendant's  
27 criminal case past the time limits set forth in section 16-8.5-116.5. The  
28 limited information that the defendant, defendant's attorney, and  
29 prosecuting attorney may access includes:

30 (4) **Restoration hearing.** (a) (I) If the final determination made  
31 pursuant to section 16-8.5-103 is that the defendant is incompetent to  
32 proceed and the evaluator opines at any time that there is not a substantial  
33 probability that the defendant, with restoration services, will attain  
34 competency within the reasonably foreseeable future, the court shall set  
35 a hearing within the time frame set forth in section 16-8.5-113 (5). If the  
36 court receives the evaluator's opinion pursuant to this subsection (4) prior  
37 to entering a restoration order AND A PARTY REQUESTS A HEARING, the  
38 court shall set the hearing in lieu of ordering restoration treatment.

39 (II) WITHIN FOURTEEN DAYS AFTER RECEIPT OF A COURT-ORDERED  
40 REPORT REGARDING THE DEFENDANT'S COMPETENCY, EITHER PARTY MAY  
41 REQUEST A HEARING OR A SECOND EVALUATION. IF A PARTY REQUESTS A  
42 SECOND EVALUATION, THE COURT SHALL CONTINUE THE HEARING UNTIL  
43 THE COURT RECEIVES THE SECOND REPORT. THE EXPERT CONDUCTING THE

1 SECOND EVALUATION SHALL COMPLETE AND FILE THE EXPERT'S REPORT  
2 WITH THE COURT WITHIN THIRTY-FIVE DAYS AFTER THE COURT ORDER  
3 ALLOWING THE SECOND EVALUATION, UNLESS THE COURT EXTENDS THE  
4 TIME PERIOD AFTER A FINDING OF GOOD CAUSE. THE COURT SHALL  
5 PROVIDE THE SECOND EVALUATION TO THE PARTIES AND THE  
6 DEPARTMENT.

7 (b) If the final determination made pursuant to section 16-8.5-103  
8 is that the defendant is incompetent to proceed and the evaluator opines,  
9 pursuant to section 16-8.5-105 (5)(e)(I)(B), or another qualified expert  
10 opines that the defendant's diagnosis likely includes a moderate to severe  
11 intellectual or developmental disability, acquired traumatic brain injury,  
12 or dementia, which either alone or together with a co-occurring mental  
13 illness affects the defendant's ability to gain or maintain competency, the  
14 court shall set a hearing within the time frame set forth in section  
15 16-8.5-113 (5) on the issue of whether there is a substantial probability  
16 that the defendant will be restored to competency in the reasonably  
17 foreseeable future. If the court receives the evaluator's opinion pursuant  
18 to this subsection (4) prior to entering a restoration order AND A PARTY  
19 REQUESTS A HEARING, the court shall set a hearing in lieu of ordering  
20 restoration treatment.

21 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-113, **amend**  
22 (2) and (3) as follows:

23 **16-8.5-113. Restoration to competency.** (2) Within fourteen  
24 days after receipt of a report from the department or other court-approved  
25 ~~provider of restoration services~~ COMPETENCY EVALUATOR certifying that  
26 the defendant is competent to proceed, either party may request a hearing  
27 or a second evaluation. The court shall determine whether to allow the  
28 second evaluation or proceed to a hearing on competency. If the second  
29 evaluation is requested by the court or by an indigent defendant, the  
30 evaluation must be paid for by the court.

31 (3) If a second evaluation is allowed, any pending requests for a  
32 hearing must be continued until receipt of the second evaluation report.  
33 The report of the expert conducting the second evaluation report must be  
34 completed and filed with the court within thirty-five days after the court  
35 order allowing the second evaluation, unless the time period is extended  
36 by the court after a finding of good cause. THE COURT SHALL PROVIDE THE  
37 SECOND EVALUATION TO THE PARTIES AND THE DEPARTMENT.

38 **SECTION 8.** In Colorado Revised Statutes, 16-8.5-116, **amend**  
39 (2)(c)(V) and (2)(c)(VI); and **repeal** (2)(c)(VII) as follows:

40 **16-8.5-116. Certification - reviews - rules.** (2) (c) At least ten  
41 days before each review, the department treating team shall provide to the  
42 court an additional report that summarizes:

43 (V) The opinion of the treating team on the defendant's mental

1 health functioning and ability to function on an outpatient basis for  
2 restoration services; AND

3 (VI) Whether the defendant, based on observations of the  
4 defendant's behavior in the facility, presents a substantial risk to the  
5 physical safety of the defendant's self, of another person, or of the  
6 community if released for community restoration. and

7 (VII) ~~Any opinions which would be required during an initial~~  
8 ~~evaluation pursuant to section 16-8.5-105 (5)(f).~~

9 **SECTION 9.** In Colorado Revised Statutes, 16-8.5-116.5, **amend**  
10 (1)(b) and (7) as follows:

11 **16-8.5-116.5. Restoration - time limits - dismissal of charges -**  
12 **exceptions - rules.** (1) To ensure compliance with relevant constitutional  
13 principles, for any offense for which the defendant is ordered to receive  
14 competency restoration services in an inpatient or outpatient setting, if the  
15 court determines, based on available evidence, that there is not a  
16 substantial probability that the defendant, with restoration services, will  
17 be restored to competency within the reasonably foreseeable future, the  
18 court:

19 (b) May, IF AFTER GIVING DUE WEIGHT TO THE OPINION OF A  
20 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, EMPLOYED BY  
21 OR UNDER CONTRACT WITH THE OFFICE OF CIVIL AND FORENSIC MENTAL  
22 HEALTH, THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT THE  
23 DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT TERM  
24 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR SECTION 27-65-109,  
25 ORDER ONE OF THE FOLLOWING PERSONS TO INITIATE, IN A COURT WITH  
26 JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR SHORT-TERM  
27 TREATMENT OF THE DEFENDANT PURSUANT TO SECTION 27-65-108.5 OR  
28 27-65-109: The district attorney, or upon request from the district  
29 attorney; a professional person, as defined in section 27-65-102, WHO IS  
30 NOT EMPLOYED BY OR UNDER CONTRACT WITH THE BEHAVIORAL HEALTH  
31 ADMINISTRATION IN THE DEPARTMENT OR THE OFFICE OF CIVIL AND  
32 FORENSIC MENTAL HEALTH; a representative of DESIGNATED BY the  
33 behavioral health administration in the department, or a representative of  
34 DESIGNATED BY the office of civil and forensic mental health. ~~to initiate,~~  
35 ~~in a court with jurisdiction, a proceeding for a certification for short-term~~  
36 ~~treatment of the defendant pursuant to section 27-65-108.5 or 27-65-109.~~  
37 ~~If the court finds reasonable grounds to believe the defendant meets~~  
38 ~~criteria for a certification for short-term treatment pursuant to section~~  
39 ~~27-65-108.5 or 27-65-109.~~ NOTWITHSTANDING THE AUTHORITY GRANTED  
40 PURSUANT TO THIS SUBSECTION (1)(b), A COURT SHALL NOT ORDER A  
41 PERSON TO INITIATE A PROCEEDING PURSUANT TO THIS SUBSECTION (1)(b)  
42 IF INITIATING A PROCEEDING WOULD CONTRADICT THE PERSON'S  
43 PROFESSIONAL MEDICAL OPINION OR OTHERWISE VIOLATE THE PERSON'S

1 PROFESSIONAL CONDUCT RULES.

2 (7) (a) Prior to the dismissal of charges pursuant to this section or  
3 section 16-8.5-111 (5), ~~unless the court has already ordered a person to~~  
4 ~~initiate proceedings for a certification for short-term treatment~~, the court  
5 shall make findings ABOUT whether there are reasonable grounds to  
6 believe the person meets the standard for a certification for short-term  
7 treatment. If the court finds there are reasonable grounds, the court may  
8 stay the dismissal for thirty-five days, SET A REVIEW HEARING, and notify  
9 any professional person, as defined in section 27-65-102; a representative  
10 ~~of~~ DESIGNATED BY the behavioral health administration in the department;  
11 or a representative ~~of~~ DESIGNATED BY the office of civil and forensic  
12 mental health who has recently treated or interacted with the defendant  
13 that there are reasonable grounds for short-term treatment and afford the  
14 person an opportunity to pursue certification proceedings or to arrange  
15 necessary services.

16 (b) THE COURT SHALL GRANT THIRTY-FIVE DAY EXTENSIONS OF  
17 THE STAY DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION:

18 (I) ANY NUMBER OF TIMES WITH THE CONSENT OF THE DEFENDANT;  
19 AND

20 (II) REGARDLESS OF THE DEFENDANT'S CONSENT, UPON REQUEST  
21 OF THE PROSECUTION IF THE COURT FINDS GOOD CAUSE:

22 (A) UP TO FOUR TIMES, IN ADDITION TO THE INITIAL STAY  
23 AUTHORIZED IN SUBSECTION (7)(a) OF THIS SECTION, BUT NOT TO EXCEED  
24 ONE HUNDRED SEVENTY-FIVE DAYS IN TOTAL, IF THE DEFENDANT IS  
25 CHARGED WITH A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406,  
26 OR FOR FELONY UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION  
27 16-22-102; OR

28 (B) ONCE, IN ADDITION TO THE INITIAL STAY AUTHORIZED IN  
29 SUBSECTION (7)(a) OF THIS SECTION, BUT NOT TO EXCEED SEVENTY DAYS  
30 IN TOTAL, IF THE DEFENDANT IS NOT CHARGED WITH A CRIME OF VIOLENCE,  
31 AS DEFINED IN SECTION 18-1.3-406, OR FOR FELONY UNLAWFUL SEXUAL  
32 BEHAVIOR AS DEFINED IN SECTION 16-22-102.

33 (c) FOR THE PURPOSES OF SUBSECTION (7)(b) OF THIS SECTION,  
34 GOOD CAUSE DOES NOT INCLUDE A PERSON'S REFUSAL OR FAILURE TO  
35 TIMELY FILE A PETITION PURSUANT TO SECTION 27-65-108.5.

36 (d) WHEN A DEFENDANT'S CHARGES ARE DISMISSED PURSUANT TO  
37 THIS SECTION OR SECTION 16-8.5-111(5), THE COURT SHALL NOTIFY THE  
38 DEPARTMENT IN WRITING THAT THE CHARGES WERE DISMISSED AND THE  
39 REASON FOR THE DISMISSAL.

40 **SECTION 10.** In Colorado Revised Statutes, **add** 16-8.6-113 as  
41 follows:

42 **16-8.6-113. Effect of acceptance.** A COURT SHALL VACATE ANY  
43 EXISTING ORDER AND SHALL NOT ENTER A NEW ORDER DIRECTING THE

1 DEPARTMENT TO CONDUCT A COMPETENCY EVALUATION OR PROVIDE  
2 RESTORATION SERVICES TO A DEFENDANT IF THE DEFENDANT WAS  
3 ACCEPTED TO PARTICIPATE IN THE BRIDGES WRAPAROUND CARE PROGRAM.

4 **SECTION 11.** In Colorado Revised Statutes, 16-5-401, **add** (2.5)  
5 as follows:

6 **16-5-401. Limitation for commencing criminal proceedings,**  
7 **civil infraction proceedings, and juvenile delinquency proceedings -**  
8 **definitions.** (2.5) (a) (I) THE TIME LIMITATIONS IMPOSED BY THIS SECTION  
9 ARE TOLLED WHILE THE OFFENDER IS IN A COMPETENCY-RELATED  
10 DIVERSION OR DEFLECTION PROGRAM.

11 (II) AS USED IN THIS SUBSECTION (2.5)(a), "COMPETENCY-RELATED  
12 DIVERSION OR DEFLECTION PROGRAM" MEANS A PROGRAM THAT OFFERS  
13 A POTENTIALLY INCOMPETENT OFFENDER THE OPPORTUNITY TO AVOID THE  
14 FILING OR RE-FILING OF CHARGES IN EXCHANGE FOR THE OFFENDER'S  
15 PARTICIPATION AND SUCCESSFUL COMPLETION OF A PROGRAM DESIGNED  
16 FOR POTENTIALLY INCOMPETENT PERSONS.

17 (b) THE TIME LIMITATIONS IMPOSED BY THIS SECTION ARE TOLLED  
18 BEGINNING WHEN A DEFENDANT'S CASE IS DISMISSED WITHOUT PREJUDICE  
19 FOR THE PURPOSE OF FACILITATING CERTIFICATION FOR SHORT-TERM  
20 TREATMENT PURSUANT TO SECTION 16-8.5-111 (3) UNTIL EITHER THE  
21 DEFENDANTS CRIMINAL CASE IS RE-FILED OR SIX MONTHS HAS PASSED  
22 SINCE THE CASE WAS DISMISSED, WHICHEVER IS EARLIER.

23 **SECTION 12.** In Colorado Revised Statutes, 27-65-110, **amend**  
24 (1) introductory portion as follows:

25 **27-65-110. Long-term care and treatment of persons with**  
26 **mental health disorders - procedure.** (1) Whenever a respondent has  
27 received an extended certification for treatment pursuant section  
28 27-65-109 (10), INCLUDING AS IT IS APPLIED TO COURT-ORDERED  
29 CERTIFICATION PURSUANT TO SECTION 27-65-108.5 (9), the professional  
30 person in charge of the certification for short-term treatment or the BHA  
31 may file a petition with the court at least thirty days prior to the expiration  
32 date of the extended certification for long-term care and treatment of the  
33 respondent under the following conditions:".

34 Renumber succeeding section accordingly.

35 Page 7, strike lines 1 through 18.

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