

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1250.01 Jane Ritter x4342

SENATE BILL 18-252

SENATE SPONSORSHIP

Gardner and Lambert, Jahn, Lundberg, Moreno

HOUSE SPONSORSHIP

Lee and Young, Hamner, Rankin, Singer

Senate Committees

Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING ACTIONS RELATED TO DETERMINATIONS OF
102 COMPETENCY TO PROCEED.

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>.)

The bill makes numerous changes to statutes related to the process of determination of competency to proceed in a criminal case.

Sections 1 and 2 of the bill updates the definitions section that uses outdated terminology of a "developmental disability" to now reference "intellectual and developmental disability".

Section 3 of the bill makes changes in the regulation of a second

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.

competency evaluation (evaluation) requested by the court, including reducing the time frame that the prosecution or defense may request a second evaluation from 14 days to 7 days and clarifying that the department of human services (department) is not responsible for conducting a second evaluation.

Section 4 of the bill concerns changes to competency evaluations and reports, including that:

- ! If a defendant is eligible for bond, they must be released on bond on condition that he or she cooperate with an evaluation on an outpatient and out-of-custody (outpatient) basis;
- ! For misdemeanors, petty offenses, and traffic offenses, excluding crimes considered victim's rights crimes, the court shall grant bond without a monetary condition, on the condition the defendant cooperates with the evaluation process on an outpatient basis;
- ! Bond must not be granted if the court determines the defendant is likely to willfully fail to appear or is likely to be a danger to himself or herself or others in the reasonably foreseeable future. In such case, the evaluation must be conducted at the place at which the defendant is in custody.
- ! If the defendant is in the custody of the department and the department recommends an inpatient evaluation, the court may so order such evaluation. A sheriff in the jurisdiction where the defendant is to return after the evaluation shall pick up the defendant within 72 hours after receiving notice that the evaluation is complete.
- ! The competency evaluation report (report) must include:
 - ! If the defendant is determined to be incompetent to proceed, whether or not there is a substantial probability that he or she can be restored to competency within the allowable time frame and whether inpatient or outpatient restoration services are recommended;
 - ! If available, information on previous evaluations or restoration services provided to the defendant; and
 - ! If the defendant meets the criteria for civil certification.

Sections 5 and 6 of the bill outline procedures to follow after a determination of competency or incompetency to proceed, including that:

- ! If the defendant is released on bond, a determination of whether restoration services are to be provided on an outpatient or inpatient basis. If the defendant is ordered to outpatient restoration services and he or she is uncooperative or fails to begin services, the individual

agency responsible for providing restoration services shall notify the court within 45 days;

- ! If the defendant remains in custody, a determination of the most suitable location to provide restoration services;
- ! If outpatient restoration services have been ordered, the court shall review the case every 30 days to assess the defendant's progress toward restoration to competency;
- ! If outpatient restoration services have been ordered and the department is unable to provide such services, the court may commit the defendant to the department's custody until outpatient services are available; and
- ! If inpatient restoration services have been ordered, the most clinically appropriate setting must be used.

Section 7 of the bill outlines the options for reviews, civil certification (certification), provision of services for persons with intellectual and developmental disabilities (provision of services), and termination of proceedings (termination), including that:

- ! Time periods for review and final determinations related to certification, provision of services, and termination are established for different levels of offenses;
- ! In no instance may confinement exceed the maximum sentence for the crime charged, and time is calculated to include aggregate time spent in custody;
- ! At the end of any maximum amount of time, the court shall dismiss the charges with prejudice;
- ! The court is required to review the case of a defendant determined to be incompetent to proceed at least every 3 months, using a report from the individual or entity responsible for evaluating the defendant. The court shall review the defendant's competency, whether there is a substantial probability he or she will be restored to competency within the allowable time frame, and if the defendant meets the criteria for certification or the provision of services.
- ! Based on the level of the crime involved (misdemeanor, petty offense, traffic offense, excluding victim's rights offenses; class 5 or class 6 felony, excluding victim's rights offenses; or any other felony offenses, excluding class 1 or class 2 felonies, any sex offenses, and crimes of violence), the court shall determine, at the appropriate review time and as applicable, whether:
 - ! The charges must be dismissed;
 - ! The defendant meets the criteria for certification;
 - ! The defendant meets the criteria for provision of services; or

- ! The defendant presents a substantial and unacceptable risk to the safety of himself or herself or of the community and should remain in the custody of the department.
- ! In all cases except those involving class 1 or class 2 felonies, sex offenses, and crimes of violence, if, after 3 years in confinement, the defendant has not been restored to competency, the charges against the defendant must be dismissed;
- ! Certification proceedings may be brought against a defendant at any time; and
- ! The party contesting a defendant's release bears the burden of proving, by clear and convincing evidence, that the defendant continues to present a substantial and unacceptable risk to the safety of himself or herself or of the community in the reasonably foreseeable future.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-101, **amend**
3 the introductory portion, (4), and (11); **repeal** (9); and **add** (11.3) as
4 follows:

5 **16-8.5-101. Definitions.** As used in this ~~article~~ ARTICLE 8.5,
6 unless the context otherwise requires:

7 (4) "Competent to proceed" means that the defendant does not
8 have a mental disability or AN INTELLECTUAL AND developmental
9 disability that prevents the defendant from having sufficient present
10 ability to consult with the defendant's lawyer with a reasonable degree of
11 rational understanding in order to assist in the defense or prevents the
12 defendant from having a rational and factual understanding of the
13 criminal proceedings.

14 (9) ~~"Developmental disability" means a disability that has~~
15 ~~manifested before the person reaches twenty-two years of age, that~~
16 ~~constitutes a substantial disability to the affected individual, and is~~

1 ~~attributable to mental retardation or other neurological conditions when~~
2 ~~such conditions result in impairment of general intellectual functioning~~
3 ~~or adaptive behavior similar to that of a person with mental retardation.~~
4 ~~Unless otherwise specifically stated, the federal definition of~~
5 ~~"developmental disability", 42 U.S.C. sec. 15001 et seq., shall not apply.~~

6 (11) "Incompetent to proceed" means that, as a result of a mental
7 disability or AN INTELLECTUAL AND developmental disability, the
8 defendant does not have sufficient present ability to consult with the
9 defendant's lawyer with a reasonable degree of rational understanding in
10 order to assist in the defense, or that, as a result of a mental disability or
11 AN INTELLECTUAL AND developmental disability, the defendant does not
12 have a rational and factual understanding of the criminal proceedings.

13 (11.3) "INTELLECTUAL AND DEVELOPMENTAL DISABILITY" MEANS
14 A DISABILITY THAT HAS MANIFESTED BEFORE THE PERSON REACHES
15 TWENTY-TWO YEARS OF AGE, THAT CONSTITUTES A SUBSTANTIAL
16 DISABILITY TO THE AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO
17 NEUROLOGICAL CONDITIONS WHEN SUCH CONDITIONS RESULT IN
18 IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE
19 BEHAVIOR. UNLESS OTHERWISE SPECIFICALLY STATED, THE FEDERAL
20 DEFINITION OF "DEVELOPMENTAL DISABILITY", 42 U.S.C. SEC. 15001 ET
21 SEQ., DOES NOT APPLY.

22 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**
23 (2)(b) as follows:

24 **16-8.5-102. Mental incompetency to proceed - how and when**
25 **raised.** (2) The question of a defendant's competency to proceed shall be
26 raised in the following manner:

27 (b) If either the defense or the prosecution has reason to believe

1 that the defendant is incompetent to proceed, either party may file a
2 motion in advance of the commencement of the particular proceeding. A
3 motion to determine competency shall be in writing and contain a
4 certificate of counsel stating that the motion is based on a good faith
5 doubt that the defendant is competent to proceed. The motion shall set
6 forth the specific facts that have formed the basis for the motion. The
7 motion shall be sealed by the court. If the motion is made by the
8 prosecution, the prosecution shall provide to the defense a copy of the
9 motion. If the motion is made by the defense, the defense shall provide to
10 the prosecution notice of the filing of the motion at the time of filing, and
11 if the defense requests a hearing, the defense shall provide the motion to
12 the prosecution at the time the hearing is requested. The motion may be
13 filed after the commencement of the proceeding if, for good cause shown,
14 the mental disability or INTELLECTUAL AND developmental disability of
15 the defendant was not known or apparent before the commencement of
16 the proceeding.

17 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**
18 (3) and (4) as follows:

19 **16-8.5-103. Determination of competency to proceed.**

20 (3) Within ~~fourteen~~ SEVEN days after receipt of the court-ordered report,
21 either party may request a hearing or a second COMPETENCY evaluation.

22 (4) If a party requests a second COMPETENCY evaluation, any
23 pending requests for a hearing shall be continued until the receipt of the
24 second COMPETENCY evaluation report. The report of the expert
25 conducting the second COMPETENCY evaluation ~~shall~~ MUST be completed
26 and filed with the court within ~~sixty-three~~ THIRTY-FIVE days after the
27 court order allowing the second COMPETENCY evaluation, unless the time

1 period is extended by the court for good cause. If the second
2 COMPETENCY evaluation is requested by the court, it ~~shall~~ MUST be paid
3 for by the court. REGARDLESS OF THE SOURCE OF THE REQUEST FOR THE
4 SECOND COMPETENCY EVALUATION, THE DEPARTMENT IS NOT
5 RESPONSIBLE FOR CONDUCTING THE SECOND COMPETENCY EVALUATION.

6 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**
7 (1), (2), and (5) as follows:

8 **16-8.5-105. Competency evaluations and reports.**

9 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
10 conducted on an outpatient basis or, if the defendant is in custody, at the
11 place where the defendant is in custody, EXCEPT AS PROVIDED IN
12 SUBSECTION (1)(b) OF THIS SECTION. The defendant ~~shall~~ MUST be
13 released on bond if ~~otherwise~~ eligible for bond. IF THE DEFENDANT IS
14 ELIGIBLE FOR BOND, AFTER CONSIDERATION OF THE FACTORS IN ARTICLE
15 4 OF THIS TITLE 16, THE COURT SHALL DETERMINE THE TYPE OF BOND AND
16 THE CONDITIONS OF RELEASE, WHICH MUST INCLUDE COOPERATION WITH
17 THE COMPETENCY EVALUATION ON AN OUTPATIENT AND OUT-OF-CUSTODY
18 BASIS. A REQUEST FOR A COMPETENCY EVALUATION IS NOT A BARRIER TO
19 RELEASE ON BOND WITH APPROPRIATE AND LEAST RESTRICTIVE
20 CONDITIONS. NOTHING IN THIS SUBSECTION (1)(a)(I) LIMITS THE
21 AVAILABILITY OF A COURT-ORDERED EVALUATION FOR A PERSON WITH A
22 MENTAL HEALTH DISORDER PURSUANT TO SECTION 27-65-106 OR INVOKES
23 THE EMERGENCY PROCEDURE SET FORTH IN SECTION 27-65-105.

24 (II) FOR ALL MISDEMEANORS, ALL PETTY OFFENSES, AND TRAFFIC
25 OFFENSES SET FORTH IN TITLE 42, EXCLUDING THOSE OFFENSES
26 ENUMERATED IN SECTION 24-4.1-302 (1), THE COURT SHALL GRANT THE
27 DEFENDANT BOND WITHOUT A MONETARY CONDITION OF RELEASE UNLESS

1 THE COURT DETERMINES, ON THE RECORD, THAT THE DEFENDANT
2 PRESENTS A SUBSTANTIAL RISK:

3 (A) OF FLIGHT FROM PROSECUTION;

4 (B) TO THE SAFETY OF ANOTHER PERSON OR PERSONS, KNOWN OR
5 UNKNOWN; OR

6 (C) OF HARASSING OR INTIMIDATING A VICTIM OR WITNESS.

7 (III) AS A CONDITION OF ANY NONMONETARY BOND GRANTED
8 PURSUANT TO THIS SUBSECTION (1)(a)(III), THE COURT SHALL INCLUDE A
9 CONDITION REQUIRING THE COOPERATION WITH THE COMPETENCY
10 EVALUATION ON AN OUTPATIENT AND OUT-OF-CUSTODY BASIS.

11 (IV) IF THE DEFENDANT REMAINS IN CUSTODY AND IS UNABLE TO
12 MEET THE MONETARY CONDITIONS OF BOND, WHEN APPLICABLE, THE
13 COURT SHALL ORDER THE COMPETENCY EVALUATION TO BE CONDUCTED
14 AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY.

15 (b) Notwithstanding the provisions of ~~paragraph (a) of this~~
16 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, IF THE DEPARTMENT
17 PROVIDES A RECOMMENDATION TO THE COURT THAT CONDUCTING THE
18 COMPETENCY EVALUATION ON AN INPATIENT BASIS IS APPROPRIATE, the
19 court may order the defendant placed in the DEPARTMENT'S custody ~~of the~~
20 ~~Colorado mental health institute at Pueblo~~ for the time necessary to
21 conduct the COMPETENCY evaluation. ~~if~~ UPON ENTRY OF SUCH A COURT
22 ORDER, THE EXECUTIVE DIRECTOR HAS THE SAME AUTHORITY WITH
23 RESPECT TO CUSTODY AS PROVIDED FOR IN SECTION 16-8-105.5 (4).

24 ~~(I) The court finds the defendant may be a danger to self or others~~
25 ~~as defined in section 27-65-102, C.R.S.;~~

26 ~~(II) The court finds that an inadequate competency evaluation and~~
27 ~~report has been completed or two or more conflicting competency~~

1 ~~evaluations and reports have been completed;~~

2 ~~(III) The court finds that an observation period is necessary to~~
3 ~~determine if the defendant is competent to stand trial;~~

4 ~~(IV) The court receives a recommendation from the Colorado~~
5 ~~mental health institute at Pueblo court services evaluator that conducting~~
6 ~~the evaluation at the Colorado mental health institute at Pueblo is~~
7 ~~appropriate because the evaluator conducting the evaluation for the~~
8 ~~Colorado mental health institute at Pueblo determines that the defendant~~
9 ~~has been uncooperative or the defendant has clinical needs that warrant~~
10 ~~transfer to the Colorado mental health institute at Pueblo; or~~

11 ~~(V) The court receives written approval for the evaluation to be~~
12 ~~conducted at the Colorado mental health institute at Pueblo from the~~
13 ~~executive director of the department of human services, or his or her~~
14 ~~designee.~~

15 (c) The court, when setting bond pursuant to section 16-4-103, if
16 the defendant is eligible for bond, and after receiving any information
17 pursuant to section 16-4-106, shall not consider the need for the
18 defendant to receive ~~an~~ A COMPETENCY evaluation pursuant to this ~~article~~
19 ARTICLE 8.5.

20 (d) If a defendant is in THE DEPARTMENT'S custody ~~at the Colorado~~
21 ~~mental health institute at Pueblo~~ for purposes of the COMPETENCY
22 evaluation ordered pursuant to this ~~article~~ ARTICLE 8.5 and the defendant
23 has completed the COMPETENCY evaluation and must be returned to a
24 county jail, the ~~county~~ sheriff in the jurisdiction where the defendant must
25 return shall ~~make all reasonable efforts to take custody of the defendant~~
26 ~~as soon as practicable once the defendant's evaluation is completed~~ TAKE
27 CUSTODY OF THE DEFENDANT WITHIN SEVENTY-TWO HOURS AFTER

1 RECEIVING NOTIFICATION FROM THE DEPARTMENT THAT THE DEFENDANT'S
2 COMPETENCY EVALUATION IS COMPLETE. AT THE TIME THE DEPARTMENT
3 NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO NOTIFY THE COURT
4 THAT THE DEFENDANT'S COMPETENCY EVALUATION IS COMPLETE.

5 (e) Nothing in this section ~~shall restrict~~ RESTRICTS the right of the
6 defendant to procure ~~an~~ A COMPETENCY evaluation as provided in ~~section~~
7 ~~16-8.5-107~~ SECTION 16-8.5-106.

8 (2) The defendant shall cooperate with the competency evaluator
9 and with other personnel providing ancillary services, such as testing and
10 radiological services. Statements made by the defendant in the course of
11 the evaluation shall be protected as provided in section 16-8.5-108. If the
12 defendant does not cooperate with the competency evaluator and other
13 personnel providing ancillary services and the lack of cooperation is not
14 the result of ~~a~~ AN INTELLECTUAL AND developmental disability or a mental
15 disability, the fact of the defendant's noncooperation with the competency
16 evaluator and other personnel providing ancillary services may be
17 admissible in the defendant's competency or restoration hearing to rebut
18 any evidence introduced by the defendant with regard to the defendant's
19 competency.

20 (5) The ~~report of evaluation shall~~ COMPETENCY EVALUATION
21 REPORT MUST include but need not be limited to:

22 (a) The name of each physician, psychologist, or other expert who
23 examined the defendant; ~~and~~

24 (b) A description of the nature, content, extent, and results of the
25 COMPETENCY evaluation and any tests conducted; ~~and~~

26 (c) A diagnosis and prognosis of the defendant's mental disability
27 or INTELLECTUAL AND developmental disability; ~~and~~

1 (d) An opinion as to whether the defendant suffers from a mental
2 disability or AN INTELLECTUAL AND developmental disability; ~~and~~

3 (e) An opinion as to whether the defendant is competent to
4 proceed;

5 (f) IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
6 DEFENDANT IS INCOMPETENT TO PROCEED:

7 (I) AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL
8 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
9 ATTAIN COMPETENCY WITHIN THE TIME ALLOWED PURSUANT TO SECTION
10 16-8.5-116;

11 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
12 RESTORATION SERVICES ARE CLINICALLY NECESSARY TO RESTORE THE
13 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
14 NOT CLINICALLY NECESSARY, AND THE COMPETENCY EVALUATOR
15 THEREFORE RECOMMENDS OUTPATIENT AND OUT-OF-CUSTODY
16 RESTORATION SERVICES, THE COMPETENCY EVALUATION REPORT MUST
17 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES
18 AVAILABLE TO THE DEFENDANT.

19 (g) IF AVAILABLE, A DESCRIPTION OF ALL COMPETENCY
20 EVALUATIONS OR RESTORATION SERVICES THAT WERE PREVIOUSLY
21 PROVIDED TO THE DEFENDANT; AND

22 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
23 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
24 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
25 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
26 TITLE 27.

27 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-111, **amend**

1 (2); and **add** (3) as follows:

2 **16-8.5-111. Procedure after determination of competency or**
3 **incompetency.** (2) If the final determination made pursuant to section
4 16-8.5-103 is that the defendant is incompetent to proceed, the court has
5 the following options:

6 (a) (I) If the defendant is on bond or summons, the court shall
7 ~~consider whether~~ ORDER THAT restoration to competency ~~should occur~~
8 TAKE PLACE on an outpatient and out-of-custody basis, UNLESS THE
9 DEPARTMENT RECOMMENDS INPATIENT RESTORATION SERVICES PURSUANT
10 TO SECTION 16-8.5-105 (5)(f)(II).

11 (II) If the defendant is in custody, the court may release the
12 defendant on bond ~~upon compliance with the standards and procedures~~
13 ~~for such release prescribed by statute and by~~ CONSISTENT WITH ARTICLE
14 4 OF THIS TITLE 16 AND the Colorado rules of criminal procedure. As a
15 condition of SUCH bond, the court ~~may~~ SHALL ORDER THAT THE
16 RESTORATION TAKE PLACE ON AN OUTPATIENT AND OUT-OF-CUSTODY
17 BASIS. THE COURT MAY require the defendant to obtain any OUTPATIENT
18 treatment or habilitation services that are available to the defendant, such
19 as ~~inpatient or~~ outpatient treatment at a community mental health center
20 or in any other appropriate OUTPATIENT treatment setting, as determined
21 by the court. Nothing in this section authorizes the court to order
22 community mental health centers or other providers to provide treatment
23 for persons not otherwise eligible for these services. ~~At any hearing to~~
24 ~~determine eligibility for release on bond, the court shall consider any~~
25 ~~effect the defendant's incompetency may have on the court's ability to~~
26 ~~ensure the defendant's presence for hearing or trial. There is a~~
27 ~~presumption that the defendant's incompetency will inhibit the defendant's~~

1 ~~ability to ensure his or her presence for trial. Pursuant to section~~
2 ~~27-60-105, the office of behavioral health is the entity responsible for the~~
3 ~~oversight of restoration education and coordination of services necessary~~
4 ~~to competency restoration~~ THE INDIVIDUAL AGENCY RESPONSIBLE FOR
5 PROVIDING RESTORATION SERVICES FOR THE DEFENDANT SHALL NOTIFY
6 THE COURT WITHIN FORTY-FIVE DAYS OF BEGINNING OR ATTEMPTING TO
7 BEGIN RESTORATION SERVICES IF THE DEFENDANT IS UNCOOPERATIVE
8 WITH ACCEPTING RESTORATION SERVICES. PURSUANT TO SECTION
9 27-60-105, THE DEPARTMENT IS THE ENTITY RESPONSIBLE FOR THE
10 DEVELOPMENT OF RESTORATION CURRICULA AND NECESSARY TRAINING TO
11 CREATE OUTPATIENT RESTORATION SERVICES IN ANY SETTING.

12 (b) ~~If the court finds that the defendant is not eligible for release~~
13 IF THE DEFENDANT IS NOT RELEASED from custody, THE COURT SHALL
14 ORDER THE DEPARTMENT TO PROVIDE RESTORATION SERVICES AT THE
15 PLACE WHERE THE DEFENDANT IS IN CUSTODY, UNLESS THE COURT ORDERS
16 INPATIENT RESTORATION SERVICES UNDER ONE OF THE FOLLOWING
17 EXCEPTIONS:

18 (I) The court may commit the defendant to the custody of the
19 department ~~in which case~~ IF THE DEPARTMENT HAS RECOMMENDED THAT
20 RESTORATION SERVICES BE PROVIDED ON AN INPATIENT BASIS PURSUANT
21 TO SECTION 16-8.5-105 (5)(f)(II); OR

22 (II) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
23 THE DEPARTMENT, the executive director has the same powers with
24 respect to A commitment ~~as the executive director has following a~~
25 ~~commitment under~~ PROVIDED FOR IN section 16-8-105.5 (4).

26 (c) ~~At such time as the department recommends to the court that~~
27 ~~the defendant is restored to competency, the defendant may be returned~~

1 ~~to custody of the county jail or to previous bond status~~ IF THE COURT HAS
2 ORDERED OUTPATIENT RESTORATION SERVICES AND THE DEPARTMENT
3 REPORTS THAT IT IS UNABLE TO PROVIDE RESTORATION SERVICES ON AN
4 OUTPATIENT BASIS, THE COURT MAY COMMIT THE DEFENDANT TO THE
5 CUSTODY OF THE DEPARTMENT UNTIL SUCH TIME AS THE DEPARTMENT IS
6 ABLE TO PROVIDE OUTPATIENT RESTORATION SERVICES, AT WHICH POINT
7 THE DEPARTMENT MAY DISCHARGE THE DEFENDANT AND BEGIN OR
8 RESUME PROVIDING SERVICES ON AN OUTPATIENT BASIS, SUBJECT TO THE
9 PROVISIONS OF SECTION 16-8.5-116.

10 (d) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
11 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
12 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
13 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, HAS THE
14 AUTHORITY TO MOVE THE DEFENDANT TO A LESS RESTRICTIVE FACILITY IF,
15 IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET
16 RESTORED TO COMPETENCY BUT HE OR SHE COULD BE PROPERLY
17 RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY.

18 (e) AT SUCH TIME AS THE DEPARTMENT RECOMMENDS TO THE
19 COURT THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE
20 DEFENDANT MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, IF
21 THE DEFENDANT IS NOT ON BOND OR SUMMONS, OR TO PREVIOUS BOND
22 STATUS. IF THE RECOMMENDATION IS TO RETURN THE DEFENDANT TO THE
23 CUSTODY OF THE COUNTY JAIL, THE DEPARTMENT SHALL NOTIFY THE
24 SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT IS TO BE RETURNED,
25 AND THE SHERIFF SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN
26 SEVENTY-TWO HOURS AFTER RECEIVING SUCH NOTIFICATION. AT THE TIME
27 THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO

1 NOTIFY THE COURT THAT THE DEPARTMENT IS RETURNING THE DEFENDANT
2 TO THE CUSTODY OF THE JAIL.

3 (3) FOR A DEFENDANT WHO IS RECEIVING OUTPATIENT AND
4 IN-CUSTODY RESTORATION SERVICES, THE COURT SHALL REVIEW THE CASE
5 EVERY THIRTY DAYS TO ASSESS THE CLINICAL STATUS OF THE DEFENDANT
6 AND HIS OR HER PROGRESS TOWARD RESTORATION.

7 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-114, **amend**
8 (2) as follows:

9 **16-8.5-114. Procedure after hearing concerning restoration to**
10 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
11 the court determines that the defendant remains incompetent to proceed,
12 the court may continue or modify any orders entered at the time of the
13 original determination of incompetency and may commit or recommit the
14 defendant or enter any new order necessary to facilitate the defendant's
15 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS
16 OF SECTION 16-8.5-111.

17 **SECTION 7.** In Colorado Revised Statutes, **repeal and reenact,**
18 **with amendments,** 16-8.5-116 as follows:

19 **16-8.5-116. Certification - reviews - termination of**
20 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS SET FORTH IN
21 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, WHICHEVER IS SHORTEST,
22 A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
23 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
24 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
25 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
26 IMPOSED FOR THE OFFENSE OR OFFENSES WITH WHICH THE DEFENDANT IS
27 CHARGED, LESS ANY TIME CREDITS THE DEFENDANT WOULD BE ENTITLED

1 TO PURSUANT TO ARTICLE 22.5 OF TITLE 17 AND SECTION 17-26-109. THE
2 TIME PERIODS SET FORTH IN SUBSECTIONS (3), (4), AND (5) OF THIS
3 SECTION MUST BE CALCULATED USING THE AGGREGATE TIME SPENT IN
4 CUSTODY OF THE DEPARTMENT OR A COUNTY JAIL. AT THE END OF SUCH
5 TIME PERIOD, THE COURT SHALL DISMISS THE CHARGES WITH PREJUDICE,
6 AND CERTIFICATION PROCEEDINGS OR PROVISION OF SERVICES, IF ANY,
7 MUST BE GOVERNED BY ARTICLE 65 OR 10.5 OF TITLE 27.

8 (2) AT LEAST EVERY THREE MONTHS, THE COURT SHALL REVIEW
9 THE CASE OF A DEFENDANT WHO HAS BEEN DETERMINED TO BE
10 INCOMPETENT TO PROCEED WITH REGARD TO THE PROBABILITY THAT THE
11 DEFENDANT WILL EVENTUALLY BE RESTORED TO COMPETENCY AND WITH
12 REGARD TO THE JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE
13 REVIEW MAY BE HELD IN CONJUNCTION WITH A RESTORATION HEARING
14 HELD PURSUANT TO SECTION 16-8.5-113. PRIOR TO EACH REVIEW, THE
15 INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE
16 COURT WITH A CURRENT REPORT REGARDING:

17 (a) THE DEFENDANT'S COMPETENCY;

18 (b) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
19 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
20 PERIODS SET FORTH IN THIS SECTION; AND

21 (c) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
22 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
23 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27.

24 (3) IF THE DEFENDANT IS CHARGED WITH A MISDEMEANOR, A
25 MISDEMEANOR TRAFFIC OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE
26 OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1), AND, IF AFTER THE
27 FIRST THREE-MONTH REVIEW DESCRIBED IN SUBSECTION (2) OF THIS

1 SECTION, THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT
2 THE DEFENDANT REMAINS INCOMPETENT AND:

3 (a) THERE IS NOT A SUBSTANTIAL PROBABILITY THE DEFENDANT
4 WILL BE RESTORED TO COMPETENCY WITHIN THE NEXT THREE MONTHS,
5 THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT,
6 SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION; OR

7 (b) BASED ON AVAILABLE EVIDENCE, THERE IS A SUBSTANTIAL
8 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
9 WITHIN THE NEXT THREE MONTHS, RESTORATION SERVICES MAY CONTINUE
10 AND A SECOND REVIEW MUST BE HELD NO LATER THAN THREE MONTHS
11 AFTER THE FIRST THREE-MONTH REVIEW. IF, AT THE TIME OF THE SECOND
12 THREE-MONTH REVIEW, THE DEFENDANT IS NOT RESTORED TO
13 COMPETENCY, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST
14 THE DEFENDANT. ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET
15 FORTH IN SUBSECTION (6) OF THIS SECTION.

16 (4) IF THE DEFENDANT IS CHARGED WITH ANY CLASS 5 OR CLASS
17 6 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION
18 24-4.1-302 (1), OR WITH ANY MISDEMEANOR OFFENSE THAT IS NOT
19 INCLUDED IN SUBSECTION (3)(a) OF THIS SECTION, AND, AFTER THE
20 FOURTH THREE-MONTH REVIEW, AS DESCRIBED IN SUBSECTION (2) OF THIS
21 SECTION, THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT
22 THE DEFENDANT REMAINS INCOMPETENT TO PROCEED AND EITHER THAT:

23 (a) THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
24 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE NEXT SIX
25 MONTHS, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE
26 DEFENDANT. ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET FORTH
27 IN SUBSECTION (6) OF THIS SECTION.

1 (b) BASED ON AVAILABLE EVIDENCE THERE IS A SUBSTANTIAL
2 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
3 WITHIN THE NEXT SIX MONTHS, THEN RESTORATION SERVICES MAY
4 CONTINUE, AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS
5 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION. IF THE DEFENDANT IS
6 NOT RESTORED TO COMPETENCY WITHIN SIX MONTHS AFTER THE FOURTH
7 THREE-MONTH REVIEW, AS DESCRIBED IN SUBSECTION (2) OF THIS SECTION,
8 THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT.
9 ANY FURTHER PROCEEDINGS MAY BE INITIATED AS SET FORTH IN
10 SUBSECTION (6) OF THIS SECTION.

11 (5) (a) IF THE DEFENDANT IS CHARGED WITH ANY OTHER FELONY
12 OFFENSE, EXCEPT A CLASS 1 OR CLASS 2 FELONY, A SEX OFFENSE AS
13 DEFINED IN SECTION 18-1.3-1003 (5), OR A CRIME OF VIOLENCE AS
14 DEFINED IN SECTION 18-1.3-406 (2), THE COURT REVIEW MUST BE
15 CONDUCTED EVERY THREE MONTHS, AS DESCRIBED IN SUBSECTION (2) OF
16 THIS SECTION, AND PURSUANT TO THE PROVISIONS OF THIS SUBSECTION
17 (5).

18 (b) IF, AFTER THREE YEARS, A DEFENDANT WHO HAS BEEN
19 COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR OTHERWISE
20 CONFINED AS A RESULT OF A DETERMINATION OF INCOMPETENCY HAS NOT
21 BEEN RESTORED TO COMPETENCY, THE COURT SHALL DISMISS THE
22 CHARGES, SUBJECT TO THE PROVISIONS OF SUBSECTION (5)(c) OR (5)(d) OF
23 THIS SECTION.

24 (c) IF THE CHARGES AGAINST A DEFENDANT WHO IS GOVERNED BY
25 THE PROVISIONS OF THIS SUBSECTION (5) ARE DISMISSED PURSUANT TO
26 SUBSECTION (5)(b) OF THIS SECTION, SUBSEQUENT ACTIONS INCLUDE:

27 (I) CERTIFICATION PROCEEDINGS, PURSUANT TO ARTICLE 65 OF

1 TITLE 27, IF THE DEFENDANT MEETS THE REQUIREMENTS FOR
2 CERTIFICATION PURSUANT TO ARTICLE 65 OF TITLE 27; OR

3 (II) THE PROVISION OF SERVICES, PURSUANT TO ARTICLE 10.5 OF
4 TITLE 27, IF THE DEFENDANT MEETS THE CRITERIA FOR SUCH SERVICES; OR

5 (III) THE COURT MAY COMMIT THE DEFENDANT TO THE CUSTODY
6 OF THE DEPARTMENT IF:

7 (A) THE DEFENDANT DOES NOT MEET THE CRITERIA FOR
8 CERTIFICATION OR SERVICES PURSUANT TO SUBSECTIONS (5)(c)(I) AND
9 (5)(c)(II) OF THIS SECTION; AND

10 (B) THE COURT FINDS BY CLEAR AND CONVINCING EVIDENCE THAT
11 THE DEFENDANT, DUE TO A MENTAL ILLNESS, PRESENTS A SUBSTANTIAL
12 AND UNACCEPTABLE RISK TO THE SAFETY OF HIMSELF OR HERSELF OR TO
13 ANOTHER PERSON OR PERSONS IN THE REASONABLY FORESEEABLE FUTURE.
14 THE COURT SHALL REVIEW THE COMMITMENT ORDER EVERY SIX MONTHS
15 TO DETERMINE WHETHER THE DEFENDANT CONTINUES TO MEET THIS
16 STANDARD.

17 (d) (I) IF, WHILE THE DEFENDANT IS IN THE DEPARTMENT'S
18 CUSTODY, THE DEPARTMENT DETERMINES THAT THE DEFENDANT DOES
19 NOT PRESENT A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
20 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE
21 REASONABLY FORESEEABLE FUTURE, THE DEPARTMENT SHALL REPORT
22 SUCH DETERMINATION TO THE COURT THAT COMMITTED THE DEFENDANT
23 TO ITS CUSTODY. IF THE PROSECUTION OR DEFENSE DOES NOT FILE A
24 WRITTEN OBJECTION WITH THE COURT PURSUANT TO SUBSECTION
25 (5)(d)(II) OF THIS SECTION WITHIN FOURTEEN DAYS, THE COURT SHALL
26 TERMINATE THE COMMITMENT MADE PURSUANT TO SUBSECTION (5)(c)(III)
27 OF THIS SECTION AND RELEASE THE DEFENDANT FROM THE DEPARTMENT'S

1 CUSTODY.

2 (II) IF THE PROSECUTION OR DEFENSE OBJECTS TO A DEFENDANT'S
3 RELEASE PURSUANT TO SUBSECTION (5)(d)(I) OF THIS SECTION, THE COURT
4 SHALL HOLD A HEARING WITHIN TWENTY-ONE DAYS AFTER THE FILING OF
5 THE OBJECTION. THE PARTY CONTESTING THE DEFENDANT'S RELEASE
6 BEARS THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE,
7 THAT THE DEFENDANT, DUE TO A MENTAL ILLNESS, CONTINUES TO
8 PRESENT A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
9 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE
10 REASONABLY FORESEEABLE FUTURE. IF THE COURT FINDS BY CLEAR AND
11 CONVINCING EVIDENCE THAT THE DEFENDANT, DUE TO A MENTAL ILLNESS,
12 PRESENTS A SUBSTANTIAL AND UNACCEPTABLE RISK TO THE SAFETY OF
13 HIMSELF OR HERSELF OR TO ANOTHER PERSON OR PERSONS IN THE
14 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL MAKE WRITTEN
15 FINDINGS AUTHORIZING THE CONTINUED COMMITMENT OF THE
16 DEFENDANT.

17 (6) IF THE CHARGES AGAINST A DEFENDANT ARE DISMISSED
18 PURSUANT TO SUBSECTION (3)(b) OR (4)(b) OF THIS SECTION, SUBSEQUENT
19 ACTIONS INCLUDE:

20 (a) CERTIFICATION PROCEEDINGS, IF ANY, GOVERNED BY ARTICLE
21 65 OF TITLE 27, IF THE DEFENDANT MEETS THE REQUIREMENTS FOR
22 CERTIFICATION PURSUANT TO TITLE 27; OR

23 (b) THE PROVISION OF SERVICES, PURSUANT TO ARTICLE 10.5 OF
24 TITLE 27, IF THE DEFENDANT MEETS THE CRITERIA FOR SUCH SERVICES.

25 (7) NOTWITHSTANDING THE TIME FRAMES PROVIDED IN
26 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, FOR ANY OFFENSE FOR
27 WHICH THE DEFENDANT REMAINS CONFINED FOR A PERIOD OF TIME IN

1 EXCESS OF ONE YEAR, IF THE COURT DETERMINES, BASED ON AVAILABLE
2 EVIDENCE, THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
3 DEFENDANT WILL NOT BE RESTORED TO COMPETENCY WITHIN THE
4 FORESEEABLE FUTURE, THE COURT MAY ORDER THE DEFENDANT'S
5 RELEASE FROM COMMITMENT PURSUANT TO THIS ARTICLE 8.5 THROUGH
6 ONE OR MORE OF THE FOLLOWING MEANS:

7 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
8 OR, ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
9 PROCEEDING, TERMINATE THE COMMITMENT MADE PURSUANT TO
10 SUBSECTION (5)(c)(III) OF THIS SECTION, OR TERMINATE THE
11 RESTORATION SERVICES ORDER;

12 (b) THE COURT MAY COMMENCE CERTIFICATION PROCEEDINGS
13 PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27, IF THE
14 DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO
15 SAID ARTICLE 65; OR

16 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
17 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
18 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
19 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
20 PURSUANT TO ARTICLE 10.5 OF TITLE 27.

21 (8) IN EACH CASE, THE COURT SHALL ENTER A WRITTEN DECISION
22 OUTLINING WHY THE COURT DID OR DID NOT TERMINATE THE CRIMINAL
23 PROCEEDING.

24 (9) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
25 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE
26 8.5.

27 **SECTION 8. Safety clause.** The general assembly hereby finds,

- 1 determines, and declares that this act is necessary for the immediate
- 2 preservation of the public peace, health, and safety.