

CHAPTER 144

CRIMINAL LAW AND PROCEDURE

SENATE BILL 20-181

BY SENATOR(S) Lee, Bridges, Donovan, Fields, Foote, Ginal, Gonzales, Moreno, Pettersen, Story, Todd, Williams A., Winter, Garcia;
also REPRESENTATIVE(S) Weissman, Duran, Gonzales-Gutierrez, Herod, Hooton, Jackson, Kennedy, Kipp, Lontine, Snyder.

AN ACT**CONCERNING MEASURES TO IMPROVE OUTCOMES FOR DEFENDANTS WHO MAY BE FOUND INCOMPETENT TO PROCEED.**

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

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

16-8.5-105. Evaluations, locations, time frames, and report. (5) On and after July 1, 2020, the competency evaluation and report must include but need not be limited to:

(e) An opinion as to whether the defendant is competent to proceed. If the opinion of the competency evaluator is that the defendant is incompetent to proceed, then:

(I) (A) If possible, an opinion as to whether there is a substantial probability that the defendant, with restoration services, will attain competency within the reasonably foreseeable future; ~~and~~

(B) ~~WHEN, PURSUANT TO THE REQUIREMENTS OF SUBSECTION (5)(f) OF THIS SECTION, THE EVALUATOR IS AWARE THAT ANY COURT WITHIN THE PREVIOUS FIVE YEARS HAS FOUND THE DEFENDANT IS INCOMPETENT TO PROCEED AND THERE IS A SUBSTANTIAL PROBABILITY THAT WITH RESTORATION SERVICES THE DEFENDANT WILL NOT ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE EVALUATOR SHALL PROVIDE AN OPINION REGARDING THE PROBABILITY OF RESTORATION PURSUANT TO THIS SUBSECTION (5)(e)(I) AND, WHEN THE OPINION IS THAT THERE IS A SUBSTANTIAL PROBABILITY OF ATTAINING COMPETENCY WITHIN~~

Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.

THE REASONABLY FORESEEABLE FUTURE, THE EVALUATOR SHALL STATE WHY THE DEFENDANT'S CIRCUMSTANCES ARE DIFFERENT FROM THE PRIOR COURT'S FINDING;

(C) WHEN THE DEFENDANT IS DIAGNOSED WITH A MODERATE TO SEVERE INTELLECTUAL OR DEVELOPMENTAL DISABILITY, ACQUIRED OR TRAUMATIC BRAIN INJURY, OR DEMENTIA, WHICH EITHER ALONE OR TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, THE EVALUATOR SHALL PROVIDE AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WITH RESTORATION SERVICES WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE. WHEN THE OPINION IS THAT THERE IS A SUBSTANTIAL PROBABILITY OF ATTAINING COMPETENCY, THE EVALUATOR SHALL SPECIFICALLY STATE WHETHER THE EVALUATOR BELIEVES THERE ARE UNIQUE OR DIFFERENT SERVICES OUTSIDE THE STANDARD COMPETENCY RESTORATION CURRICULUM DEVELOPED BY THE DEPARTMENT THAT THE DEFENDANT MAY NEED IN ORDER TO BE RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE.

(D) WHEN THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION 16-8.5-103, THREE OR MORE TIMES OVER THE PREVIOUS THREE YEARS IN THE CURRENT CASE OR ANY OTHER CASE, EVEN IF THE DEFENDANT IS LATER RESTORED, THE EVALUATOR SHALL SPECIFICALLY IDENTIFY THOSE INSTANCES OF FINDINGS OF INCOMPETENCY AS A PART OF THE REVIEW REQUIRED PURSUANT TO SUBSECTION (5)(f) OF THIS SECTION. THE EVALUATOR SHALL PROVIDE AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WITH RESTORATION SERVICES WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE AND MAINTAIN COMPETENCY THROUGHOUT THE CASE.

SECTION 2. In Colorado Revised Statutes, 16-8.5-111, **amend** (2)(a) and (2)(b)(II); and **add** (2)(a.5) as follows:

16-8.5-111. Procedure after determination of competency or incompetency.

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

(a) If the defendant is charged with an offense as outlined in section 16-8.5-116 (7), ~~or (8), except for an offense enumerated in section 24-4.1-302 (1)~~; and the competency evaluation has determined that the defendant meets the standard for civil commitment pursuant to article 65 of title 27, the court may forgo any order of restoration and immediately order that proceedings be initiated by the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-111 (6) for the civil commitment of the defendant and dismiss the charges without prejudice in the interest of justice once civil commitment proceedings have been initiated.

(a.5) IF THE EVALUATOR HAS PROVIDED AN OPINION THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(B), (5)(e)(I)(C), OR (5)(e)(I)(D), IN LIEU OF ORDERING RESTORATION TREATMENT THE COURT SHALL SET A HEARING WITHIN THIRTY-FIVE DAYS OF

RECEIVING THE REPORT ON THE ISSUE OF WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE AND IN THE CASE OF A FINDING PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(D) MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE CASE. AT THE HEARING, THERE IS A PRESUMPTION THAT THE DEFENDANT WILL NOT ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE. A PARTY ATTEMPTING TO OVERCOME THAT PRESUMPTION MUST PROVE BY A PREPONDERANCE OF THE EVIDENCE THAT THERE IS A SUBSTANTIAL PROBABILITY THAT RESTORATION EFFORTS WILL BE SUCCESSFUL WITHIN THE REASONABLY FORESEEABLE FUTURE. AT THE CONCLUSION OF THE HEARING WHEN THERE IS AN OPINION PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(D), IF THE COURT FINDS THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE AND MAINTAIN COMPETENCY THROUGHOUT THE CASE, THE COURT SHALL DISMISS THE CASE AND MAY CONSIDER ORDERING THE INITIATION OF PROCEEDINGS PURSUANT TO SECTION 16-8.5-116 (6)(b) OR (6)(c). IF THE COURT DETERMINES THAT THERE IS INSUFFICIENT EVIDENCE TO MAKE AN IMMEDIATE FINDING OF NO SUBSTANTIAL PROBABILITY OF RESTORATION TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THEN THE COURT SHALL ORDER RESTORATION EDUCATION FOR AN INITIAL PERIOD OF TIME NOT TO EXCEED NINETY-ONE DAYS AS PROVIDED FOR IN THIS SECTION AND REVIEW OF THE CASE PURSUANT TO SECTION 16-8.5-116 (3) AND (4). AT THE INITIAL AND SUBSEQUENT REVIEW HEARINGS, IF THE EVALUATOR CONTINUES TO OPINE THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND STILL UNLIKELY TO BE RESTORED, THE COURT SHALL PRESUME THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE AND MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE CASE, AND THE COURT SHALL DISMISS THE CASE UNLESS THERE IS CLEAR AND CONVINCING EVIDENCE THAT THE PERSON HAS MADE PROGRESS TOWARD ATTAINING COMPETENCY AND CAN MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE CASE. IF THE CASE IS ORDERED DISMISSED, THE DEPARTMENT WILL HAVE THE SAME OBLIGATIONS PURSUANT TO SECTION 16-8.5-105 (5)(e)(I).

(b) (II) (A) If the defendant is in custody and the recommendation is for outpatient restoration services, the court shall consider the release of the defendant on bond consistent with article 4 of this title 16 and the Colorado rules of criminal procedure.

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

(C) WHEN THE DEFENDANT IS IN CUSTODY ON A MISDEMEANOR, PETTY OFFENSE,

OR TRAFFIC OFFENSE, THE COURT, WITHIN SEVEN DAYS OF THE DEFENDANT BEING FOUND INCOMPETENT TO PROCEED, SHALL SET A HEARING ON BOND. AT THE BOND HEARING THERE IS A PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL RECOGNIZANCE BOND. IF THE COURT DOES NOT ORDER A PERSONAL RECOGNIZANCE BOND AND THE DEFENDANT IS COMMITTED FOR INPATIENT RESTORATION, THE COURT MUST MAKE FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO OVERCOME THE PRESUMPTION OF A RELEASE AND THE CLINICAL RECOMMENDATION FOR OUTPATIENT TREATMENT BY CLEAR AND CONVINCING EVIDENCE.

SECTION 3. In Colorado Revised Statutes, 16-8.5-116, **amend** (7)(a)(I); and **add** (15) as follows:

16-8.5-116. Certification - reviews - termination of proceedings - rules.

(7) At any review hearing held concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement, subject to the provisions of subsection (10) of this section, if:

(a) The defendant:

(I) Is charged with a misdemeanor, a misdemeanor drug offense, ~~or~~ a petty offense, ~~except for those offenses enumerated in section 24-4.1-302 (1)~~ OR A TRAFFIC OFFENSE;

(15) WHEN THE DEFENDANT IS CHARGED WITH AN OFFENSE IN MUNICIPAL COURT, AND THE DEFENDANT IS FOUND INCOMPETENT TO PROCEED, OR WHEN CIVIL COMMITMENT PROCEEDINGS ARE INITIATED PURSUANT TO ARTICLE 65 OF TITLE 27, THE MUNICIPAL COURT SHALL DISMISS THE CASE.

SECTION 4. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety.

Approved: June 29, 2020