

**Second Regular Session
Seventy-third General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 22-1024.01 Michael Dohr x4347

HOUSE BILL 22-1386

HOUSE SPONSORSHIP

Amabile and Soper,

SENATE SPONSORSHIP

Hansen and Gardner,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES RELATED TO COMPETENCY TO PROCEED, AND,**
102 **IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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>.)

Under current law in a dispute over a defendant's competency, a party may request a second evaluation of the defendant. The bill requires that if a second evaluation is completed and restoration is ordered, the court shall make the second evaluation available to the department of human services (department).

The bill permits a defendant to be placed in the department's

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.*

HOUSE
Amended 2nd Reading
April 28, 2022

custody for an inpatient competency evaluation if the court finds the competency report provided by the department does not meet statutory requirements.

For a defendant whose highest charge is a misdemeanor, with some exceptions, the bill requires the court to order outpatient restoration services and grant the defendant a personal recognizance bond unless the defendant meets certification criteria or the court finds by clear and convincing evidence that extraordinary circumstances exist that make release inappropriate and that inpatient restoration services are appropriate.

If the defendant is in custody and the recommendation is that inpatient restoration services are not clinically appropriate to restore the defendant to competency, the bill directs the court to consider releasing the defendant on bond. The bill limits outpatient restoration services to a defendant or juvenile who is a resident of Colorado and requires the services be provided in Colorado.

The bill eliminates the requirement to opine on whether there is a substantial probability that the defendant will be restored to competency and remain competent with the use of medication or not remain competent without the use of forced medication.

After the court has conducted at least 4 competency reviews, the bill requires the court to conduct a competency review every 91 days. The bill requires the court to dismiss the defendant's case if there is not a substantial probability that the defendant will be restored to competency in the reasonably foreseeable future.

Under current law when a court determines that an adult defendant is incompetent to proceed and orders the defendant to undergo restoration treatment, any claim of privilege or confidentiality by the defendant is deemed waived. The bill creates the same waiver for a juvenile defendant who is determined to be incompetent to proceed and is ordered to undergo restoration treatment. A court may order a restoration progress review hearing for a juvenile defendant at any time on the motion of any party or the court. The bill requires that when a court orders a restoration to competency evaluation for a juvenile that the evaluation be completed by the department.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-103, **amend**
3 (4) as follows:

4 **16-8.5-103. Determination of competency to proceed.** (4) If a
5 party requests a second evaluation, any pending requests for a hearing

1 must be continued until the receipt of the second evaluation report. The
2 report of the expert conducting the second evaluation must be completed
3 and filed with the court within thirty-five days after the court order
4 allowing the second evaluation, unless the time period is extended by the
5 court for good cause. IF A SECOND EVALUATION IS COMPLETED AND
6 RESTORATION IS ULTIMATELY ORDERED, THEN THE COURT SHALL MAKE
7 THE SECONDEVALUATION AVAILABLE TO THE DEPARTMENT. If the second
8 evaluation is requested by the court, it must be paid for by the court.

9 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-105, **amend**
10 (1)(b)(II) as follows:

11 **16-8.5-105. Evaluations, locations, time frames, and report.**

12 (1) (b) Notwithstanding the provisions of subsection (1)(a) of this
13 section, the court may order the defendant placed in the department's
14 custody for the time necessary to conduct the inpatient competency
15 evaluation if:

16 (II) The court finds that ~~an inadequate~~ THE competency evaluation
17 and report ~~has been completed~~ PROVIDED BY THE DEPARTMENT IS
18 INSUFFICIENT BECAUSE IT DOES NOT MEET STATUTORY REQUIREMENTS
19 PURSUANT TO SUBSECTION (5) OF THIS SECTION or that two or more
20 conflicting competency evaluations and reports have been completed; ~~and~~
21 ~~the court finds that an inpatient evaluation is necessary; or~~

22 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-111, **amend**
23 (2)(b)(II)(C), (2)(d), (2)(f)(I), (2)(f)(II)(A), and (2)(h)(I)(B); and **add**
24 (2)(i) as follows:

25 **16-8.5-111. Procedure after determination of competency or**
26 **incompetency.** (2) If the final determination made pursuant to section
27 16-8.5-103 is that the defendant is incompetent to proceed, the court has

1 the following options:

2

3 (b) (II) (C) When the defendant is in custody on a misdemeanor,
4 petty offense, or traffic offense, the court, within seven days of the
5 defendant being found incompetent to proceed, shall set a hearing on
6 bond. At the bond hearing there is a presumption that the court shall order
7 a personal recognizance bond AND OUTPATIENT RESTORATION SERVICES.

8 If the court does not order a personal recognizance bond and the
9 defendant is committed for inpatient restoration, the court ~~must~~ SHALL
10 make findings of fact that extraordinary circumstances exist to overcome
11 the presumption of a release and the clinical recommendation for
12 outpatient treatment by clear and convincing evidence. IF THE COURT
13 DENIES A PERSONAL RECOGNIZANCE BOND, THE COURT SHALL NOTIFY THE
14 DEPARTMENT OF THE SPECIFIC FACTS AND FINDINGS WHICH IT RELIED UPON
15 IN THE ORDER FOR RESTORATION TREATMENT.

16 (d) If the court has ordered outpatient restoration services and the
17 department determines that it is unable, within a reasonable time, to
18 provide restoration services on an outpatient basis, the department shall
19 notify the court within fourteen days after its determination, at which
20 point the court shall review the case and determine what interim mental
21 health services can be provided within the community by the department
22 or other community provider. IF A COURT LIAISON IS APPOINTED, the
23 department shall report to the court liaison every ~~ten~~ TWENTY-EIGHT days
24 thereafter concerning the availability of restoration services on an
25 outpatient basis.

26 (f) (I) If the court has ordered inpatient restoration services, the
27 department shall provide restoration services at an appropriate inpatient

1 restoration services program. On and after July 1, 2019, the department
2 shall offer tier 1 defendants admission for restoration services within
3 seven days after receipt of the court order and collateral materials. On and
4 after July 1, 2021, the department shall offer admission to tier 2
5 defendants within twenty-eight days after receipt of the court order and
6 collateral materials. For tier 2 defendants, the department shall advise the
7 court and, IF A COURT LIAISON IS APPOINTED, the court liaison every ~~ten~~
8 TWENTY-EIGHT days after the initial twenty-eight day period regarding the
9 availability of a bed and when admission will be offered.

10 (II) If the defendant is not offered admission and transported to
11 the inpatient restoration services program within the time frames provided
12 or in accordance with other court orders, the court may:

13 (A) Review the case for consideration of outpatient restoration
14 services and appropriate and necessary case management services
15 coordinated with the department; IF A COURT LIAISON IS APPOINTED, the
16 court liaison; and pretrial services, if available; or

17 (h) (I) If the defendant is receiving inpatient restoration services
18 and the executive director concludes that community-based restoration
19 services would be more clinically appropriate, the department shall:

20 (B) Provide to the court information regarding the appropriate
21 outpatient restoration services, developed in conjunction with the court
22 liaison, WHEN ASSIGNED, and the reasons why the defendant could be
23 properly restored to competency on an outpatient basis.

24 (i) FOR A DEFENDANT ALLOWED TO RESIDE OUT OF THE STATE OF
25 COLORADO, THE DEPARTMENT MAY OFFER ASSISTANCE TO AN
26 OUT-OF-STATE PROVIDER PROVIDING RESTORATION SERVICES TO THE
27 DEFENDANT IN THE STATE WHERE THE DEFENDANT RESIDES.

1 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-116, **amend**
2 (2)(a), (4), (5), (6) introductory portion, (8)(a)(I), and (10); and **repeal**
3 (2)(b)(VI) as follows:

4 **16-8.5-116. Certification - reviews - termination of**
5 **proceedings - rules.** (2) (a) Within ninety-one days after the entry of the
6 court's order of commitment OR ORDER TO RECEIVE OUTPATIENT
7 RESTORATION, the court shall review the case of a defendant who has
8 been determined to be incompetent to proceed with regard to the
9 probability that the defendant will ~~eventually~~ be restored to competency
10 WITHIN THE REASONABLY FORESEEABLE FUTURE and with regard to the
11 justification for certification, ~~or~~ confinement, OR CONTINUED
12 RESTORATION TREATMENT. The review may be held in conjunction with
13 a restoration hearing held pursuant to section 16-8.5-113. However, if at
14 the review hearing, there is a request by the defendant for a restoration
15 hearing pursuant to section 16-8.5-113, the court shall set the restoration
16 hearing within thirty-five days after the request pursuant to the provisions
17 of section 16-8.5-113.

18 (b) On and after July 1, 2020, at least ten days before each review,
19 the individual or entity evaluating the defendant shall provide the court
20 with a report describing:

21 (VI) ~~Whether there is a substantial probability that the defendant~~
22 ~~will be restored to competency and remain competent with the use of~~
23 ~~medications or will not remain competent without the use of forced~~
24 ~~medication;~~

25 (4) After the fourth review, the court shall review the competency
26 of the defendant every ~~sixty-three~~ NINETY-ONE days until the defendant
27 is restored to competency or the court determines, based on available

1 evidence, that there is not a substantial probability that the defendant will
2 be restored to competency in the REASONABLY foreseeable future. ~~and in~~
3 ~~that case.~~ IF THE COURT DETERMINES BASED ON AVAILABLE EVIDENCE
4 THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE
5 RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE,
6 the court shall dismiss the case SUBJECT TO THE PROVISIONS OF
7 SUBSECTION (10) OF THIS SECTION.

8 (5) The court shall forward a copy of each report and summary
9 received pursuant to subsections (2), (3), and (4) of this section to the
10 county attorney or district attorney required to conduct proceedings
11 pursuant to section 27-65-111 (6) for the county in which the case is
12 pending and, WHEN A COURT LIAISON IS APPOINTED, to the court liaison.

13 (6) Notwithstanding the time periods provided in subsections (7),
14 (8), and (9) of this section and to ensure compliance with relevant
15 constitutional principles, for any offense for which the defendant ~~remains~~
16 ~~confined as a result of a determination of incompetency to proceed~~ IS
17 ORDERED TO RECEIVE COMPETENCY RESTORATION SERVICES IN AN
18 INPATIENT OR OUTPATIENT SETTING, if the court determines, based on
19 available evidence, that there is not a substantial probability that the
20 defendant will be restored to competency within the reasonably
21 foreseeable future, the court may order the defendant's release from
22 commitment pursuant to this article 8.5 through one or more of the
23 following means:

24 

25 (8) At any review hearing held concerning the defendant's
26 competency to proceed, the court shall dismiss the charges against the
27 defendant and release the defendant from confinement, subject to the

1 provisions of subsection (10) of this section, if:

2 (a) The defendant:

3 (I) Is charged with a class 5 or class 6 felony, except for those
4 offenses enumerated in section 24-4.1-302 (1), OR with a level 3 or level
5 4 drug felony; ~~or with any misdemeanor offense that is not included in~~
6 ~~subsection (7) of this section;~~

7
8 (10) Prior to the dismissal of charges pursuant to subsection (1),
9 ~~(4)~~, (6), (7), (8), or (9) of this section, the court shall identify whether the
10 defendant meets the requirements for certification pursuant to article 65
11 of title 27, or for the provision of services pursuant to article 10.5 of title
12 27, or whether the defendant will agree to a voluntary commitment. If the
13 court finds the requirements for certification or provision of services are
14 met or the defendant does not agree to a voluntary commitment, the court
15 may stay the dismissal for twenty-one days and notify the department and
16 county attorney or district attorney required to conduct proceedings
17 pursuant to section 27-65-111 (6) in the relevant jurisdiction of the
18 pending dismissal so as to provide the department and the county attorney
19 or district attorney with the opportunity to pursue certification
20 proceedings or the provision of necessary services.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 16-8.5-123 as
22 follows:

23 **16-8.5-123. Competency services - inpatient beds - funding -**
24 **repeal.** (1) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE
25 DEPARTMENT TWENTY-EIGHT MILLION FIVE HUNDRED SIXTY-TWO
26 THOUSAND EIGHT HUNDRED TWENTY-EIGHT DOLLARS FROM THE
27 ECONOMIC RECOVERY AND RELIEF CASH FUND CREATED IN SECTION

1 24-75-228 (2)(a) TO CONTRACT FOR ADDITIONAL INPATIENT BEDS FOR
2 COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111 OR
3 FOR ADDITIONAL INPATIENT BEDS FOR INDIVIDUALS RECEIVING MENTAL
4 HEALTH CARE AND TREATMENT PURSUANT TO ARTICLE 65 OF TITLE 27. IF
5 ANY UNEXPENDED OR UNENCUMBERED MONEY APPROPRIATED FOR A
6 FISCAL YEAR REMAINS AT THE END OF THAT FISCAL YEAR, THE
7 DEPARTMENT MAY EXPEND THE MONEY FOR THE SAME PURPOSES IN THE
8 NEXT FISCAL YEAR WITHOUT FURTHER APPROPRIATION.

9 (2) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE
10 DEPARTMENT EIGHT HUNDRED THOUSAND DOLLARS FROM THE
11 BEHAVIORAL AND MENTAL HEALTH CASH FUND CREATED IN SECTION
12 24-75-230 (2)(a) TO CONTRACT FOR A FEASIBILITY STUDY OF RENOVATING
13 AND STAFFING A FACILITY IN ADAMS COUNTY TO PROVIDE INPATIENT BEDS
14 FOR COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111
15 AND INDIVIDUALS RECEIVING MENTAL HEALTH CARE AND TREATMENT
16 PURSUANT TO ARTICLE 65 OF TITLE 27. THE DEPARTMENT MUST RECEIVE
17 THE RESULTS FROM THE FEASIBILITY STUDY ON OR BEFORE SEPTEMBER 15,
18 2022.

19 (3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

20 **SECTION 6. Appropriation.** (1) For the 2022-23 state fiscal
21 year, \$28,562,828 is appropriated to the department of human services for
22 use by the office of behavioral health. This appropriation is from the
23 economic recovery and relief cash fund created in section 24-75-228
24 (2)(a), C.R.S., and is of money the state received from the federal
25 coronavirus state fiscal recovery fund. To implement this act, the office
26 may use this appropriation for purchased inpatient bed capacity. Any
27 money appropriated in this section not expended prior to July 1, 2023, is

1 further appropriated to the office from July 1, 2023, through December
2 30, 2024, for the same purpose.

3 (2) For the 2022-23 state fiscal year, \$800,000 is appropriated to
4 the department of human services for use by the office of behavioral
5 health. This appropriation is from the behavioral and mental health cash
6 fund created in section 24-75-230 (2)(a), C.R.S., and is of money the state
7 received from the federal coronavirus state fiscal recovery fund. To
8 implement this act, the office may use this appropriation to contract for
9 a feasibility study of renovating a facility in Adams county to provide
10 inpatient beds for competency services provided pursuant to section
11 16-18.5-111, C.R.S. Any money appropriated in this section not expended
12 prior to July 1, 2023, is further appropriated to the office from July 1,
13 2023, through December 30, 2024, for the same purpose.

14 **SECTION 7. Effective date.** This act takes effect July 1, 2022.

15 **SECTION 8. Safety clause.** The general assembly hereby finds,
16 determines, and declares that this act is necessary for the immediate
17 preservation of the public peace, health, or safety.

18

