

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 23-0179.02 Jane Ritter x4342

HOUSE BILL 23-1138

HOUSE SPONSORSHIP

Amabile and Soper,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING PROCEDURES RELATED TO ADULT COMPETENCY**
102 **PROCEEDINGS.**

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 removes the requirement that if a defendant is in jail or an inpatient setting, a finding that the defendant is an imminent danger to the defendant's self or others is required for the competency evaluation and report. If the competency evaluation determines that the defendant meets the criteria for civil certification and inpatient services, the behavioral health administration (BHA) shall, directly or through a contract, provide

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

care coordination services for the defendant. If the court orders, as a condition of bond, that restoration to competency take place on an outpatient basis, the department of human services is responsible for the oversight of restoration education and coordination of services.

Under specific conditions, the bill allows that upon petition of the district attorney, a professional person, a representative of the BHA, a representative of the office of civil and forensic mental health, or other responsible person (responsible party), a court may certify a respondent for short-term treatment in the custody of the BHA for not more than 3 months without requiring an emergency 72-hour hold. A court shall not accept a petition for certification for short-term treatment unless the respondent has a documented refusal to certified treatment.

Upon filing of the petition, the court shall immediately appoint an attorney to represent the respondent. The respondent's attorney may request a jury trial within 14 days after receipt of the petition. The respondent has the right to an attorney for all proceedings conducted related to the respondent's competency and certification for treatment and services.

The respondent may, at any time, file a written request to contest the petition, in which case the court shall set the hearing no later than 14 days after the petition was filed. If, after hearing all of the relevant evidence, the court finds grounds for certification have been established by clear and convincing evidence and that the BHA is able to provide adequate and appropriate treatment for the respondent that will likely be beneficial to the respondent's recovery, the court shall commit the respondent to the BHA's custody.

The act takes effect January 1, 2024.

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

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

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

(4) A written report of the evaluation ~~shall~~ **MUST** be prepared in triplicate and delivered to the clerk of the court that ordered it. The clerk shall provide a copy of the report both to the prosecuting attorney and the counsel for the defendant. **THE DEPARTMENT MAY UTILIZE THE E-FILING SYSTEM TO DELIVER THE REPORT TO THE COURT AND SERVE IT UPON THE PARTIES. WITHOUT REDUCING ANY OTHER TIMELINES SET FORTH IN THIS**

1 ARTICLE 8.5, THE COMPETENCY EVALUATOR SHALL PROVIDE THE WRITTEN
2 REPORT TO THE COURT WITHIN FOURTEEN DAYS AFTER FINISHING MEETING
3 OR ATTEMPTING TO MEET WITH THE RESPONDENT TO EVALUATE THE
4 RESPONDENT'S COMPETENCY.

5 (5) On and after July 1, 2020, the competency evaluation and
6 report must include, but need not be limited to:

7 (h) The competency evaluator's opinion AND THE INFORMATION
8 AND FACTORS CONSIDERED IN MAKING DETERMINATIONS as to whether the
9 defendant: ~~meets the criteria for certification pursuant to article 65 of title~~
10 ~~27 or whether the defendant is eligible for services pursuant to article 10~~
11 ~~of title 25.5 or article 10.5 of title 27, including the factors considered in~~
12 ~~making either determination.~~

13 (I) MEETS THE CRITERIA FOR AN EMERGENCY MENTAL HEALTH
14 HOLD PURSUANT TO SECTION 27-65-106;

15 (II) MEETS THE CRITERIA FOR A CERTIFICATION FOR SHORT-TERM
16 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109 AND, IF THE
17 DEFENDANT MEETS SUCH CRITERIA, WHETHER THE EVALUATOR BELIEVES
18 THE DEFENDANT COULD BE TREATED ON AN OUTPATIENT BASIS PURSUANT
19 TO SECTION 27-65-111. IN ASSESSING WHETHER THE DEFENDANT WITH A
20 PENDING CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS
21 GRAVELY DISABLED, IF THE PERSON IS INCARCERATED, THE COMPETENCY
22 EVALUATOR OR PROFESSIONAL PERSON, AS DEFINED IN SECTION
23 27-65-102, AND THE COURT SHALL NOT RELY ON THE FACT THAT THE
24 DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY
25 TO ESTABLISH THAT THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS
26 OR IS NOT GRAVELY DISABLED.

27 (III) ~~HAS~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS

1 DEFINED IN SECTION 25.5-10-202, AND IF THE DEFENDANT DOES HAVE
2 SUCH A DISABILITY, WHETHER THE DEFENDANT ~~MAY BE~~ ELIGIBLE FOR ANY
3 ADDITIONAL SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR
4 ARTICLE 10.5 OF TITLE 27.

5 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-111, **amend**
6 (2)(a) and (2)(b)(II)(B); and **add** (2)(a.2) and (2)(a.3) as follows:

7 **16-8.5-111. Procedure after determination of competency or**
8 **incompetency.** (2) If the final determination made pursuant to section
9 16-8.5-103 is that the defendant is incompetent to proceed, the court has
10 the following options:

11 (a) UPON A REQUEST FROM THE DISTRICT ATTORNEY, A
12 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A
13 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
14 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
15 FORENSIC MENTAL HEALTH, if the defendant is charged with an offense as
16 outlined in section 16-8.5-116 (7) and ~~the competency evaluation has~~
17 ~~determined that the defendant meets the standard for civil certification~~
18 ~~pursuant to article 65 of title 27, the court may forgo any order of~~
19 ~~restoration and immediately order that proceedings be initiated by the~~
20 ~~county attorney or district attorney required to conduct proceedings~~
21 ~~pursuant to section 27-65-113 (6) for the civil certification of the~~
22 ~~defendant and dismiss the charges without prejudice in the interest of~~
23 ~~justice once civil certification proceedings have been initiated~~ THE
24 PROSECUTING ATTORNEY AGREES, AND THE COURT FINDS REASONABLE
25 GROUNDS TO BELIEVE THE DEFENDANT MEETS THE STANDARD FOR A
26 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
27 27-65-108.5 OR 27-65-109, THE COURT MAY ORDER THAT, PURSUANT TO

1 THIS SUBSECTION (2) OR SECTION 16-8.5-116, THE REQUESTING PARTY
2 INITIATE A PETITION FOR A CERTIFICATION FOR SHORT-TERM TREATMENT
3 OF THE DEFENDANT IN A COURT WITH JURISDICTION. THE COURT SHALL
4 HEAR AND CONSIDER ANY OBJECTIONS FROM THE DEFENDANT PRIOR TO
5 ORDERING THE REFERRING PARTY TO INITIATE SUCH PROCEEDINGS. THE
6 PROSECUTING ATTORNEY AND DEPARTMENT SHALL TRANSMIT ANY
7 NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS, COMPETENCY
8 EVALUATIONS, MATERIALS USED IN THE COMPETENCY PROCESS, AND
9 RESTORATION RECORDS, AND COOPERATE WITH THE REQUESTING PARTY
10 IN FILING A PETITION PURSUANT TO SECTION 27-65-108.5. WITH THE
11 DEFENDANT'S CONSENT, THE DEFENSE ATTORNEY REPRESENTING THE
12 DEFENDANT MAY TRANSMIT ANY INFORMATION AND COOPERATE IN THE
13 SHORT-TERM CERTIFICATION PROCESS. THE REQUESTING PARTY SHALL
14 FILE NOTICE IN THE CRIMINAL CASE WHEN THE CERTIFICATION FOR
15 SHORT-TERM TREATMENT IS FILED. UPON THE FILING OF A CERTIFICATION
16 FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5, THE
17 BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT SHALL,
18 DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE COORDINATION
19 SERVICES PURSUANT TO SECTION 27-65-108.

20 (a.2) THE COURT MAY FORGO ANY ORDER OF RESTORATION AND
21 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE
22 WHEN A CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS IS
23 INITIATED AND WHEN ALL OF THE DEFENDANT'S CHARGES ARE SUBJECT TO
24 SECTION 16-8.5-116 (7).

25 (a.3) IF THE COURT ORDERS THE INITIATION OF CERTIFICATION FOR
26 SHORT-TERM TREATMENT PROCEEDINGS AND ANY CHARGE AGAINST THE
27 DEFENDANT IS NOT SUBJECT TO SECTION 16-8.5-116 (7) OR THE COURT

1 DOES NOT ORDER DISMISSAL OF THE CASE PURSUANT TO SUBSECTION (1)
2 OF THIS SECTION, WITH AGREEMENT OF THE PARTIES, THE COURT MAY
3 STAY THE RESTORATION ORDER TO ALLOW CERTIFICATION FOR
4 SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR AND TO ALLOW THE
5 DISTRICT ATTORNEY TO CONSIDER WHETHER DISMISSAL OF THE CASE IS
6 APPROPRIATE. TO ENABLE EVALUATION OF WHETHER DISMISSAL IS
7 APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE DEFENDANT,
8 THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND THE
9 PROSECUTING ATTORNEY IN THE CRIMINAL MATTER IN WHICH
10 COMPETENCY IS PENDING SHALL HAVE ACCESS TO THE FOLLOWING
11 LIMITED INFORMATION ABOUT ANY PROCEEDINGS PURSUANT TO SECTION
12 27-65-108.5, 27-65-109, 27-65-110, OR 27-65-111. THE INFORMATION
13 MUST BE KEPT CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE
14 AUTHORIZED BY LAW. THE COURT SHALL NOT EXTEND THE CRIMINAL CASE
15 PAST THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116, AND
16 INFORMATION MUST NOT BE SHARED PURSUANT TO THIS SUBSECTION
17 (2)(a.3) AFTER DISMISSAL OF THE CRIMINAL CASE UNLESS OTHERWISE
18 ALLOWED BY SECTION 27-65-123 OR OTHER LAW. THE LIMITED
19 INFORMATION ALLOWED TO BE SHARED WITH THE DEFENDANT, THE
20 DEFENDANT'S CRIMINAL ATTORNEY, OR THE PROSECUTING ATTORNEY
21 PURSUANT TO THIS SUBSECTION (2)(a.3) INCLUDES:

- 22 (I) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;
- 23 (II) WHETHER THE DEFENDANT IS SUBJECT TO A CERTIFICATION
24 FOR SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE
25 DEFENDANT IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;
- 26 (III) WHEN PROCEEDINGS ARE OCCURRING, EVEN IF THE
27 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING

1 ATTORNEY OR DEFENDANT'S CRIMINAL ATTORNEY; AND

2 (IV) THE ULTIMATE OUTCOME OF THE PROCEEDING.

3 (b) (II) (B) As a condition of bond, the court shall order that the
4 restoration take place on an outpatient basis. Pursuant to section
5 27-60-105, the ~~behavioral health administration in the~~ department is the
6 entity responsible for the oversight of restoration education and
7 coordination of all competency restoration services. As a condition of
8 release for outpatient restoration services, the court may require pretrial
9 services, if available, to work with the behavioral health administration
10 IN THE DEPARTMENT and the restoration services provider under contract
11 with the behavioral health administration to assist in securing appropriate
12 support and care management services, which may include housing
13 resources. The individual agency responsible for providing outpatient
14 restoration services for the defendant shall notify the court or other
15 designated agency within twenty-one days if restoration services have not
16 commenced AND SHALL NOTIFY THE COURT OF EFFORTS THAT HAVE BEEN
17 MADE TO ENGAGE THE DEFENDANT IN SERVICES.

18 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-116, **amend**
19 (2)(b)(IV), (6)(b), and (10); and **add** (2)(b)(IV.3) and (2)(b)(IV.5) as
20 follows:

21 **16-8.5-116. Certification - reviews - termination of**
22 **proceedings - rules.** (2) (b) On and after July 1, 2020, at least ten days
23 before each review, the individual or entity evaluating the defendant
24 shall provide the court with a report describing:

25 (IV) Whether the defendant ~~meets the requirements for~~
26 ~~certification set forth in article 65 of title 27 or is eligible for services~~
27 ~~pursuant to article 10.5 of title 27~~ MEETS THE CRITERIA FOR AN

1 EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106;
2 (IV.3) WHETHER THE DEFENDANT MEETS THE CRITERIA FOR A
3 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
4 27-65-108.5 OR 27-65-109 AND, IF THE DEFENDANT MEETS SUCH CRITERIA,
5 WHETHER THE EVALUATOR BELIEVES THE DEFENDANT COULD BE TREATED
6 ON AN OUTPATIENT BASIS PURSUANT TO SECTION 27-65-111. IN ASSESSING
7 WHETHER A DEFENDANT WITH A PENDING CRIMINAL CHARGE IS A DANGER
8 TO SELF OR OTHERS OR IS GRAVELY DISABLED, IF THE PERSON IS
9 INCARCERATED, THE EVALUATOR SHALL NOT RELY ON THE FACT THAT THE
10 DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY
11 TO ESTABLISH THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS OR
12 IS NOT GRAVELY DISABLED.

13 (IV.5) WHETHER THE DEFENDANT HAS AN INTELLECTUAL AND
14 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND
15 IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE
16 DEFENDANT MAY BE ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT
17 TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

18 (6) Notwithstanding the time periods provided in subsections (7),
19 (8), and (9) of this section and to ensure compliance with relevant
20 constitutional principles, for any offense for which the defendant is
21 ordered to receive competency restoration services in an inpatient or
22 outpatient setting, if the court determines, based on available evidence,
23 that there is not a substantial probability that the defendant will be
24 restored to competency within the reasonably foreseeable future, the court
25 may order the defendant's release from commitment pursuant to this
26 article 8.5 through one or more of the following means:

27 (b) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE

1 DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT-TERM
2 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, the court
3 may ~~in coordination with the county attorney or district attorney required~~
4 ~~to conduct proceedings pursuant to section 27-65-113 (6) for the county~~
5 ~~in which the defendant is charged, order the commencement of~~
6 ~~certification proceedings pursuant to the provisions of article 65 of title~~
7 ~~27 if the defendant meets the requirements for certification pursuant to~~
8 ~~article 65 of title 27~~ ORDER THE DISTRICT ATTORNEY, OR UPON REQUEST
9 FROM THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, AS DEFINED IN
10 SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH
11 ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE
12 OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH TO INITIATE, IN A COURT
13 WITH JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR
14 SHORT-TERM TREATMENT OF THE DEFENDANT PURSUANT TO SECTION
15 27-65-108.5 OR 27-65-109;

16 (10) Prior to the dismissal of charges pursuant to subsection (1),
17 (4), (6), (7), (8), or (9) of this section, ~~the court shall identify whether the~~
18 ~~defendant meets the requirements for certification pursuant to article 65~~
19 ~~of title 27, or for the provision of services pursuant to article 10.5 of title~~
20 ~~27, or whether the defendant will agree to a voluntary commitment~~
21 UNLESS THE COURT HAS ALREADY ORDERED A PERSON TO INITIATE
22 PROCEEDINGS FOR A CERTIFICATION FOR SHORT-TERM TREATMENT, THE
23 COURT SHALL MAKE FINDINGS WHETHER THERE ARE REASONABLE
24 GROUNDS TO BELIEVE THE PERSON MEETS THE STANDARD FOR A
25 CERTIFICATION FOR SHORT-TERM TREATMENT. If the court finds ~~the~~
26 ~~requirements for certification or provision of services are met or the~~
27 ~~defendant does not agree to a voluntary commitment~~ THERE ARE

1 REASONABLE GROUNDS, the court may stay the dismissal for ~~twenty-one~~
2 THIRTY-FIVE days and notify ~~the department and county attorney or~~
3 ~~district attorney required to conduct proceedings pursuant to section~~
4 ~~27-65-113 (6) in the relevant jurisdiction of the pending dismissal so as~~
5 ~~to provide the department and the county attorney or district attorney with~~
6 ~~the~~ ANY PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A
7 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
8 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
9 FORENSIC MENTAL HEALTH WHO HAS RECENTLY TREATED OR INTERACTED
10 WITH THE DEFENDANT THAT THERE ARE REASONABLE GROUNDS FOR
11 SHORT-TERM TREATMENT AND AFFORD THE PERSON AN opportunity to
12 pursue certification proceedings or ~~the provision of~~ TO ARRANGE
13 necessary services.

14 **SECTION 4.** In Colorado Revised Statutes, 19-2.5-704, **amend**
15 (2)(b) as follows:

16 **19-2.5-704. Procedure after determination of competency or**
17 **incompetency.** (2) (b) Pursuant to section 27-60-105, the ~~behavioral~~
18 ~~health administration in the department of human services~~ is the entity
19 responsible for the oversight of restoration education and coordination of
20 services necessary to competency restoration.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 27-65-108.5 as
22 follows:

23 **27-65-108.5. Court-ordered certification for short-term**
24 **treatment for incompetent defendants in a criminal matter - contents**
25 **of petition - procedure to contest petition - commitment to behavioral**
26 **health administration - definition.** (1) UPON PETITION OF THE DISTRICT
27 ATTORNEY, A PROFESSIONAL PERSON, A REPRESENTATIVE OF THE BHA, OR

1 A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL
2 HEALTH, A COURT MAY CERTIFY A PERSON FOR SHORT-TERM TREATMENT
3 FOR NOT MORE THAN THREE MONTHS UNDER THE FOLLOWING CONDITIONS:

4 (a) THE PERSON IS A RESPONDENT IN A CRIMINAL MATTER IN WHICH
5 THE PERSON HAS BEEN FOUND INCOMPETENT TO PROCEED;

6 (b) THE COURT HEARING THE CRIMINAL MATTER REFERRED THE
7 MATTER FOR FILING OF A PETITION PURSUANT TO SECTION 16-8.5-111 OR
8 16-8.5-116;

9 (c) THE PERSON HAS BEEN ADVISED OF THE AVAILABILITY OF, BUT
10 HAS NOT ACCEPTED, VOLUNTARY TREATMENT, OR, IF REASONABLE
11 GROUNDS EXIST TO BELIEVE THAT THE PERSON WILL NOT REMAIN IN A
12 VOLUNTARY TREATMENT PROGRAM, THE PERSON'S ACCEPTANCE OF
13 VOLUNTARY TREATMENT DOES NOT PRECLUDE CERTIFICATION;

14 (d) THE FACILITY OR COMMUNITY PROVIDER THAT WILL PROVIDE
15 SHORT-TERM TREATMENT HAS BEEN DESIGNATED OR APPROVED BY THE
16 COMMISSIONER TO PROVIDE SUCH TREATMENT; AND

17 (e) THE PERSON, THE PERSON'S LEGAL GUARDIAN, AND THE
18 PERSON'S LAY PERSON, IF APPLICABLE, HAVE BEEN ADVISED OF THE
19 PERSON'S RIGHT TO AN ATTORNEY AND TO CONTEST THE CERTIFICATION
20 FOR SHORT-TERM TREATMENT.

21 (2) THE PETITION FILED PURSUANT TO SUBSECTION (1) OF THIS
22 SECTION MUST:

23 (a) STATE SUFFICIENT FACTS TO ESTABLISH REASONABLE GROUNDS
24 THAT THE RESPONDENT HAS A MENTAL HEALTH DISORDER AND, AS A
25 RESULT OF THE MENTAL HEALTH DISORDER, IS A DANGER TO THE
26 RESPONDENT'S SELF OR OTHERS OR IS GRAVELY DISABLED;

27 (b) BE ACCOMPANIED BY A REPORT OF THE COMPETENCY

1 EVALUATOR OR PROFESSIONAL PERSON WHO HAS EVALUATED THE
2 RESPONDENT WITHIN FIFTY-SIX DAYS BEFORE SUBMISSION OF THE
3 PETITION, UNLESS THE RESPONDENT WHOSE CERTIFICATION IS SOUGHT HAS
4 REFUSED TO SUBMIT TO AN EVALUATION OR THE RESPONDENT CANNOT BE
5 EVALUATED DUE TO THE RESPONDENT'S CONDITION;

6 (c) BE FILED WITHIN FOURTEEN DAYS AFTER THE INITIATING PARTY
7 RECEIVED THE COURT ORDER FROM THE CRIMINAL COURT INITIATING THE
8 PROCESS;

9 (d) BE FILED WITH THE COURT IN THE COUNTY WHERE THE
10 RESPONDENT RESIDED OR WAS PHYSICALLY PRESENT IMMEDIATELY PRIOR
11 TO THE FILING OF THE PETITION; EXCEPT THAT IF THE PERSON WAS
12 ARRESTED FOR THE PRIOR CASE AND HELD IN CUSTODY, THE PETITION MAY
13 BE FILED IN THE COUNTY WHERE THE RESPONDENT RESIDED OR WAS
14 PHYSICALLY PRESENT IMMEDIATELY PRIOR TO THE RESPONDENT'S ARREST;
15 AND

16 (e) PROVIDE RECOMMENDATIONS IF ANY CERTIFICATION SHOULD
17 OCCUR ON AN INPATIENT OR OUTPATIENT BASIS.

18 (3) WITHIN TWENTY-FOUR HOURS AFTER CERTIFICATION, COPIES
19 OF THE CERTIFICATION MUST BE PERSONALLY DELIVERED TO THE
20 RESPONDENT, THE BHA, OR THE OFFICE OF CIVIL AND FORENSIC MENTAL
21 HEALTH. THE DEPARTMENT SHALL RETAIN A COPY AS PART OF THE
22 RESPONDENT'S RECORD. IF THE CRIMINAL CASE IS PENDING, OR NOT YET
23 DISMISSED, NOTICE OF THE FILING OF THE PETITION SHOULD BE GIVEN BY
24 THE PETITIONING PARTY TO THE CRIMINAL COURT, WHICH SHALL PROVIDE
25 SUCH NOTICE TO THE PROSECUTING AND DEFENSE ATTORNEYS IN THE
26 CRIMINAL CASE AND ANY ATTORNEY APPOINTED PURSUANT TO SECTION
27 27-65-113. THE COURT SHALL ASK THE RESPONDENT TO DESIGNATE ONE

1 OTHER PERSON WHOM THE RESPONDENT WANTS TO BE INFORMED
2 REGARDING THE PETITION. IF THE RESPONDENT IS INCAPABLE OF MAKING
3 SUCH A DESIGNATION AT THE TIME THE PETITION IS DELIVERED, THE COURT
4 MAY ASK THE RESPONDENT TO DESIGNATE SUCH PERSON AS SOON AS THE
5 RESPONDENT IS CAPABLE.

6 (4) WHENEVER A PETITION IS FILED PURSUANT TO THIS SECTION,
7 THE COURT SHALL IMMEDIATELY APPOINT AN ATTORNEY TO REPRESENT
8 THE RESPONDENT. THE COURT SHALL PROVIDE THE RESPONDENT WITH A
9 WRITTEN NOTICE THAT THE RESPONDENT HAS A RIGHT TO A HEARING ON
10 THE PETITION AND MAY MAKE A WRITTEN REQUEST FOR A JURY TRIAL. THE
11 RESPONDENT HAS THE RIGHT TO AN ATTORNEY FOR ALL PROCEEDINGS
12 CONDUCTED PURSUANT TO THIS SECTION, INCLUDING ANY APPEALS. THE
13 ATTORNEY REPRESENTING THE RESPONDENT MUST BE PROVIDED WITH A
14 COPY OF THE PETITION AND ANY SUPPORTING MATERIALS IMMEDIATELY
15 UPON THE ATTORNEY'S APPOINTMENT. THE RESPONDENT MAY ONLY WAIVE
16 COUNSEL WHEN THE RESPONDENT MAKES A KNOWING AND VOLUNTARY
17 WAIVER IN FRONT OF THE COURT.

18 (5) UPON THE FILING OF THE PETITION PURSUANT TO THIS SECTION
19 AND AFFORDING THE RESPONDENT A CHANCE TO CONTEST THE PETITION,
20 THE COURT MAY GRANT OR DENY CERTIFICATION BASED ON THE FACTS
21 ESTABLISHED IN THE PETITION, SUBJECT TO THE COURT'S FURTHER REVIEW
22 OR A JURY TRIAL.

23 (6) WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE PETITION FILED
24 PURSUANT TO THIS SECTION, THE RESPONDENT, OR THE RESPONDENT'S
25 ATTORNEY, MAY REQUEST A JURY TRIAL BY FILING A WRITTEN MOTION
26 WITH THE COURT.

27 (7) THE RESPONDENT MAY KNOWINGLY AND VOLUNTARILY

1 CONSENT IN WRITING TO THE PETITION.

2 (8) THE RESPONDENT OR THE RESPONDENT'S ATTORNEY MAY, AT
3 ANY TIME, FILE A WRITTEN REQUEST FOR THE COURT TO REVIEW
4 SHORT-TERM CERTIFICATION OR REQUEST THAT INPATIENT CERTIFICATION
5 BE CHANGED TO OUTPATIENT TREATMENT. IF THE REVIEW IS REQUESTED,
6 THE COURT SHALL HEAR THE MATTER WITHIN FOURTEEN DAYS AFTER THE
7 REQUEST, AND THE COURT SHALL GIVE NOTICE TO THE RESPONDENT, THE
8 RESPONDENT'S ATTORNEY, THE DEPARTMENT, AND THE COMMUNITY OR
9 FACILITY PROVIDER WHO IS OR WILL PROVIDE TREATMENT. THE HEARING
10 MUST BE HELD IN ACCORDANCE WITH SECTION 27-65-113. AT THE
11 CONCLUSION OF THE HEARING, THE COURT MAY ENTER OR CONFIRM THE
12 CERTIFICATION FOR SHORT-TERM TREATMENT, DISCHARGE THE
13 RESPONDENT, OR ENTER ANY OTHER APPROPRIATE ORDER.

14 (9) SECTION 27-65-109 (7) TO (10) APPLIES TO PROCEEDINGS HELD
15 PURSUANT TO THIS SECTION.

16 (10) IN ASSESSING WHETHER THE RESPONDENT WITH A PENDING
17 CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY
18 DISABLED, IF THE PERSON IS INCARCERATED, THE PROFESSIONAL PERSON
19 AND COURT SHALL NOT RELY UPON THE FACT THAT THE PERSON IS
20 INCARCERATED TO ESTABLISH THAT THE RESPONDENT IS NOT A DANGER
21 TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED.

22 (11) AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO
23 SECTION 27-65-106 IS NOT A PREREQUISITE TO A PROCEEDING PURSUANT
24 TO THIS SECTION.

25 (12) FOR THE PURPOSES OF THIS SECTION ONLY, "RESPONDENT"
26 MEANS THE DEFENDANT IN THE REFERRING CRIMINAL MATTER.

27 **SECTION 6.** In Colorado Revised Statutes, 13-5-142, **amend**

1 (1)(c) as follows:

2 **13-5-142. National instant criminal background check system**
3 **- reporting.** (1) On and after March 20, 2013, the state court
4 administrator shall send electronically the following information to the
5 Colorado bureau of investigation created pursuant to section 24-33.5-401,
6 referred to in this section as the "bureau":

7 (c) The name of each person with respect to whom the court has
8 entered an order for involuntary certification for short-term treatment of
9 a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109,
10 for extended certification for treatment of a mental health disorder
11 pursuant to section 27-65-109 (10), or for long-term care and treatment
12 of a mental health disorder pursuant to section 27-65-110.

13 **SECTION 7.** In Colorado Revised Statutes, 13-5-142.5, **amend**
14 (2)(a)(III) as follows:

15 **13-5-142.5. National instant criminal background check**
16 **system - judicial process for awarding relief from federal**
17 **prohibitions - legislative declaration.** (2) **Eligibility.** A person may
18 petition for relief pursuant to this section if:

19 (a) (III) The court has entered an order for the person's involuntary
20 certification for short-term treatment of a mental health disorder pursuant
21 to section 27-65-108.5 OR 27-65-109, for extended certification for
22 treatment of a mental health disorder pursuant to section 27-65-109 (10),
23 or for long-term care and treatment of a mental health disorder pursuant
24 to section 27-65-110; and

25 **SECTION 8.** In Colorado Revised Statutes, **amend** 13-5-142.8
26 as follows:

27 **13-5-142.8. Notice by professional persons.** Under sections

1 13-9-123 (1), 13-9-124 (2), 13-5-142 (1), and 13-5-142.5 (2), an order for
2 involuntary certification for short-term treatment of a mental health
3 disorder pursuant to section 27-65-108.5 OR 27-65-109 must also include
4 a notice filed by a professional person pursuant to section 27-65-108.5 OR
5 27-65-109, and an order for extended certification for treatment of a
6 mental health disorder pursuant to section 27-65-109 (10) must also
7 include a notice filed by a professional person pursuant to section
8 27-65-109 (10).

9 **SECTION 9.** In Colorado Revised Statutes, 13-9-123, **amend**
10 (1)(c) as follows:

11 **13-9-123. National instant criminal background check system**
12 **- reporting.** (1) On and after March 20, 2013, the state court
13 administrator shall send electronically the following information to the
14 Colorado bureau of investigation created pursuant to section 24-33.5-401,
15 referred to in this section as the "bureau":

16 (c) The name of each person with respect to whom the court has
17 entered an order for involuntary certification for short-term treatment of
18 a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109,
19 for extended certification for treatment of a mental health disorder
20 pursuant to section 27-65-109 (10), or for long-term care and treatment
21 of a mental health disorder pursuant to section 27-65-110.

22 **SECTION 10.** In Colorado Revised Statutes, 13-9-124, **amend**
23 (2)(a)(III) as follows:

24 **13-9-124. National instant criminal background check system**
25 **- judicial process for awarding relief from federal prohibitions -**
26 **legislative declaration.** (2) **Eligibility.** A person may petition for relief
27 pursuant to this section if:

1 (a) (III) The court has entered an order for the person's involuntary
2 certification for short-term treatment of a mental health disorder pursuant
3 to section 27-65-108.5 OR 27-65-109, for extended certification for
4 treatment of a mental health disorder pursuant to section 27-65-109 (10),
5 or for long-term care and treatment of a mental health disorder pursuant
6 to section 27-65-110; and

7 **SECTION 11.** In Colorado Revised Statutes, 25-3-102.1, **amend**
8 (1)(c) as follows:

9 **25-3-102.1. Deemed status for certain facilities.** (1) (c) Upon
10 submission of a completed application for license renewal, the department
11 of public health and environment shall accept proof of the accreditation
12 in lieu of licensing inspections or other requirements. Nothing in this
13 section exempts an accredited health facility from inspections or from
14 other forms of oversight by the department as necessary to ensure public
15 health and safety. Nothing in this section prevents the department of
16 public health and environment from conducting an inspection of a
17 hospital or other health facility described in section 25-3-101 to
18 investigate a complaint regarding the provisions of section 27-65-106,
19 27-65-107, **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-119 to the
20 extent the complaint is applicable to health facilities licensed by the
21 department of public health and environment.

22 **SECTION 12.** In Colorado Revised Statutes, 26-20-103, **amend**
23 (3) as follows:

24 **26-20-103. Basis for use of restraint or seclusion.** (3) In
25 addition to the circumstances described in subsection (1) of this section,
26 a facility, as defined in section 27-65-102, that is designated by the
27 commissioner of the behavioral health administration in the state

1 department to provide treatment pursuant to section 27-65-106,
2 27-65-108, **27-65-108.5**, 27-65-109, or 27-65-110 to an individual with
3 a mental health disorder, as defined in section 27-65-102, may use
4 seclusion to restrain an individual with a mental health disorder when the
5 seclusion is necessary to eliminate a continuous and serious disruption of
6 the treatment environment.

7 **SECTION 13.** In Colorado Revised Statutes, **amend as it will**
8 **become effective July 1, 2024**, 27-65-108 as follows:

9 **27-65-108. Care coordination for persons certified or in need**
10 **of ongoing treatment.** (1) A facility designated by the commissioner
11 shall notify and engage the BHA prior to terminating or transferring a
12 person certified pursuant to section **27-65-108.5**, 27-65-109, 27-65-110,
13 or 27-65-111. The BHA may provide care coordination services to
14 support a person whose certification is terminated but who is in need of
15 ongoing treatment and services.

16 (2) The BHA shall, directly or through A contract, provide care
17 coordination services to a person certified pursuant to section
18 **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-111 and determined by the
19 designated facility and the BHA to need care coordination services.

20 **SECTION 14.** In Colorado Revised Statutes, 27-65-111, **amend**
21 **as it will become effective July 1, 2024**, (1) introductory portion and
22 (5)(a)(I) as follows:

23 **27-65-111. Certification on an outpatient basis - short-term**
24 **and long-term care.** (1) Any respondent certified pursuant to section
25 **27-65-108.5**, 27-65-109, or 27-65-110 may be provided treatment on an
26 outpatient basis. The outpatient treatment provider shall develop a
27 treatment plan for the respondent receiving treatment on an outpatient

1 basis with the goal of the respondent finding and sustaining recovery. The
2 treatment plan must include measures to keep the respondent or others
3 safe, as informed by the respondent's need for certification. The treatment
4 plan may include, but is not limited to:

5 (5) (a) In addition to any other limitation on liability, a person
6 providing care to a respondent placed on short-term or long-term
7 certification on an outpatient basis is only liable for harm subsequently
8 caused by or to a respondent who:

9 (I) Has been terminated from certification despite meeting
10 statutory criteria for certification pursuant to section *27-65-108.5*,
11 *27-65-109*, or *27-65-110*; or

12 **SECTION 15.** In Colorado Revised Statutes, *27-65-112*, **amend**
13 **as it will become effective July 1, 2024**, (1) as follows:

14 **27-65-112. Termination of certification for short-term and**
15 **long-term treatment.** (1) An original or extended certification for
16 short-term treatment issued pursuant to section *27-65-108.5* OR
17 *27-65-109*, or an order or extension for certification for long-term care
18 and treatment pursuant to section *27-65-110* terminates as soon as the
19 professional person in charge of treatment of the respondent and the BHA
20 determine the respondent has received sufficient benefit from the
21 treatment for the respondent to end involuntary treatment. Whenever a
22 certification or extended certification is terminated pursuant to this
23 section, the professional person in charge of providing treatment shall
24 notify the court in writing within five days after the termination.

25 **SECTION 16.** In Colorado Revised Statutes, *27-65-113*, **amend**
26 (1), (5)(a), and (5)(b) as follows:

27 **27-65-113. Hearing procedures - jurisdiction.** (1) Hearings

1 before the court pursuant to section *27-65-108.5*, 27-65-109, or
2 27-65-110 are conducted in the same manner as other civil proceedings
3 before the court. The burden of proof is on the person or facility seeking
4 to detain the respondent. The court or jury shall determine that the
5 respondent is in need of care and treatment only if the court or jury finds
6 by clear and convincing evidence that the respondent has a mental health
7 disorder and, as a result of the mental health disorder, is a danger to the
8 respondent's self or others or is gravely disabled.

9 (5) (a) In the event that a respondent or a person found not guilty
10 by reason of impaired mental condition pursuant to section 16-8-103.5
11 (5), or by reason of insanity pursuant to section 16-8-105 (4) or
12 16-8-105.5, refuses to accept medication, the court having jurisdiction of
13 the action pursuant to subsection (4) of this section, the court committing
14 the person or defendant to the custody of the BHA pursuant to section
15 16-8-103.5 (5), 16-8-105 (4), ~~or~~ 16-8-105.5, ~~OR~~ 27-65-108.5, or the court
16 of the jurisdiction in which the designated facility treating the respondent
17 or person is located has jurisdiction and venue to accept a petition by a
18 treating physician and to enter an order requiring that the respondent or
19 person accept such treatment or, in the alternative, that the medication be
20 forcibly administered to the respondent or person. The court of the
21 jurisdiction in which the designated facility is located shall not exercise
22 its jurisdiction without the permission of the court that committed the
23 person to the custody of the BHA. Upon the filing of such a petition, the
24 court shall appoint an attorney, if one has not been appointed, to represent
25 the respondent or person and hear the matter within ten days.

26 (b) In any case brought pursuant to subsection (5)(a) of this
27 section in a court for the county in which the treating facility is located,

1 the county where the proceeding was initiated pursuant to subsection (4)
2 of this section or the court committing the person to the custody of the
3 BHA pursuant to section 16-8-103.5 (5), 16-8-105 (4), ~~or~~ 16-8-105.5 OR
4 27-65-108.5 shall either reimburse the county in which the proceeding
5 pursuant to this subsection (5) was filed and in which the proceeding was
6 held for the reasonable costs incurred in conducting the proceeding or
7 conduct the proceeding itself using its own personnel and resources,
8 including its own district or county attorney, as the case may be.

9 **SECTION 17.** In Colorado Revised Statutes, 27-65-119, **amend**
10 **as it will become effective July 1, 2023,** (1) introductory portion as
11 follows:

12 **27-65-119. Rights of respondents certified for short-term**
13 **treatment or long-term care and treatment.** (1) ~~Each~~ EACH respondent
14 certified for short-term treatment or long-term care and treatment on an
15 inpatient basis pursuant to sections **27-65-108.5,** 27-65-109, and
16 27-65-110 has the following rights and shall be advised of such rights by
17 the facility:

18 **SECTION 18.** In Colorado Revised Statutes, 27-66.5-102,
19 **amend** (3)(a)(II) as follows:

20 **27-66.5-102. Definitions.** As used in this article 66.5, unless the
21 context otherwise requires:

22 (3) "High-risk individual" means a person who:

23 (a) Has a significant mental health or substance use disorder, as
24 evidenced by:

25 (II) A certification for short-term treatment or extended short-term
26 treatment pursuant to section 27-65-108.5 OR 27-65-109;

27 **SECTION 19.** In Colorado Revised Statutes, 27-80-303, **amend**

1 (3)(c) as follows:

2 **27-80-303. Office of ombudsman for behavioral health access**
3 **to care - creation - appointment of ombudsman - duties.** (3) The
4 ombudsman shall:

5 (c) Receive and assist consumers and providers in reporting
6 concerns and filing complaints with appropriate regulatory or oversight
7 agencies relating to inappropriate care, a procedure for an emergency
8 mental health hold pursuant to section 27-65-106, a certification for
9 short-term treatment pursuant to section 27-65-108.5 OR 27-65-109, or a
10 certification for long-term care and treatment pursuant to section
11 27-65-110;

12 **SECTION 20.** In Colorado Revised Statutes, 27-65-123, **add** (6)
13 as follows:

14 **27-65-123. Records.** (6) NOTHING IN THIS SECTION PROHIBITS
15 THE LIMITED DISCLOSURE OF NECESSARY INFORMATION TO THE
16 PROSECUTING ATTORNEY AND CRIMINAL DEFENSE COUNSEL IF A CRIMINAL
17 CASE IS STILL PENDING AGAINST THE PERSON.

18 **SECTION 21. Act subject to petition - effective date.** This act
19 takes effect July 1, 2024; except that, if a referendum petition is filed
20 pursuant to section 1 (3) of article V of the state constitution against this
21 act or an item, section, or part of this act within the ninety-day period
22 after final adjournment of the general assembly, then the act, item,
23 section, or part will not take effect unless approved by the people at the
24 general election to be held in November 2024 and, in such case, will take
25 effect on the date of the official declaration of the vote thereon by the
26 governor.