

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

PREAMENDED

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

LLS NO. 24-0275.01 Shelby Ross x4510

HOUSE BILL 24-1034

HOUSE SPONSORSHIP

Amabile and Bradfield, English

SENATE SPONSORSHIP

Fields, Rodriguez

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING ADULT COMPETENCY TO STAND TRIAL.**

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/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill reforms and clarifies the criminal competency to proceed process. The bill provides necessary parties with access to information related to the defendant's claim of incompetency to proceed. The bill requires the department of human services to search prior competency evaluations in its possession when the court orders a competency evaluation or the court finds the defendant incompetent to

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.

proceed and provide any evaluations to the court. The bill adds to the information that is included in a competency report. The bill delineates a court's options when it finds that a defendant is incompetent to proceed. The bill directs when competency services may be provided on an outpatient basis. The bill sets forth the circumstances when a court has to dismiss the defendant's case based on the highest level of charge against the defendant and how long the defendant has been waiting for restoration services.

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

2
3 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-102, **amend**
4 (1), (2)(a), (2)(b), (2)(d), and (3) as follows:

5 **16-8.5-102. Competency to proceed - how and when raised.**

6 (1) While a defendant is incompetent to proceed, the defendant ~~shall~~
7 MUST not be tried or sentenced, nor shall the court consider or decide
8 pretrial matters that are not susceptible of fair determination without the
9 personal participation of the defendant. However, a determination that a
10 defendant is incompetent to proceed ~~shall~~ DOES not preclude the
11 furtherance of the proceedings by the court to consider and decide
12 matters, including a preliminary hearing and motions, that are susceptible
13 of fair determination prior to trial and without the personal participation
14 of the defendant. Those proceedings may be later reopened if, in the
15 discretion of the court, substantial new evidence is discovered after and
16 as a result of the DEFENDANT'S restoration to competency. ~~of the~~
17 ~~defendant.~~

18 (2) The question of a defendant's competency to proceed must be
19 raised in only one of the following manners:

20 (a) If the judge has reason to believe that the defendant is
21 incompetent to proceed, ~~it is the judge's duty to~~ THE JUDGE SHALL suspend

1 the proceeding and determine the competency or incompetency of the
2 defendant pursuant to section 16-8.5-103;

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

20 (d) ~~By the state board of parole when a board member has a~~
21 ~~substantial and good-faith reason to believe that the offender is~~
22 ~~incompetent to proceed as defined in section 16-8.5-101 (12), at a parole~~
23 ~~hearing conducted pursuant to section 17-22.5-403.5 PUBLIC DEFENDER~~
24 LIAISON, AS DESCRIBED IN SECTION 21-1-104 (6), OR AN ATTORNEY
25 REPRESENTING THE OFFENDER IN A PAROLE PROCEEDING.

26 (3) Notwithstanding any provision of this ~~article~~ ARTICLE 8.5 to
27 the contrary, the question of whether a convicted person is mentally

1 incompetent to be executed ~~shall~~ MUST be raised and determined as
2 ~~provided in~~ PURSUANT TO part 14 of article 1.3 of title 18. ~~C.R.S.~~

3 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-103, **amend**
4 (1)(b) and (8) as follows:

5 **16-8.5-103. Determination of competency to proceed.**

6 (1) (b) On or before the date when a court orders that a defendant be
7 evaluated for competency, a BRIDGES court liaison for the district hired or
8 contracted pursuant to article 95 of title 13 may be assigned to the
9 defendant.

10 (8) If the question of the defendant's incompetency to proceed is
11 raised after a jury is impaneled to try the issues raised by a plea of not
12 guilty and the court determines that the defendant is incompetent to
13 proceed or orders a court-ordered competency evaluation, the court may
14 declare a mistrial. Declaration of a mistrial under these circumstances
15 does not constitute jeopardy, nor does it prohibit the trial or sentencing of
16 the defendant for the same offense after ~~he or she~~ THE DEFENDANT has
17 been found restored to competency.

18 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-104, **amend**
19 (1) introductory portion, (3), (4), and (6); and **add** (4.5) as follows:

20 **16-8.5-104. Waiver of privilege.** (1) When a defendant raises the
21 issue of competency to proceed, or when the court determines that the
22 defendant is incompetent to proceed, ~~and orders that the defendant~~
23 ~~undergo restoration treatment~~ any claim by the defendant to
24 confidentiality or privilege is deemed waived ~~and~~ IN THE CASE IN WHICH
25 COMPETENCY IS RAISED AND FOR RECORDS OR INFORMATION FROM ANY
26 PRIOR CRIMINAL CASE IN WHICH THE DEFENDANT RAISED THE ISSUE OF
27 COMPETENCY OR IN WHICH THE COURT DETERMINED THAT THE

1 DEFENDANT WAS INCOMPETENT TO PROCEED. The district attorney, the
2 defense attorney, THE BRIDGES COURT LIAISON, and the court are granted
3 access, without written consent of the defendant or further order of the
4 court, to:

5 (3) An evaluator or a facility providing competency evaluation or
6 restoration treatment services pursuant to a court order issued pursuant to
7 ~~this article is authorized to provide, and~~ ARTICLE 8.5 shall provide
8 procedural information to the court, BRIDGES COURT LIAISON, district
9 attorney, or defense counsel, concerning the defendant's location, the
10 defendant's hospital or facility admission status, the status of evaluation
11 procedures, and other procedural information relevant to the case.

12 (4) Nothing in this section limits the court's ability to order that
13 information in addition to ~~that set forth~~ THE INFORMATION DESCRIBED in
14 subsections (1) and (3) of this section be provided to the evaluator, or to
15 either party to the case, nor does it limit the information that is available
16 after the written consent of the defendant.

17 (4.5) THE COURT MAY, UPON THE REQUEST OF EITHER PARTY,
18 ISSUE AN ORDER TO ASSIST A PARTY IN ACCESSING, RECEIVING COPIES OF,
19 OR DISCUSSING WITH AN EVALUATOR OR TREATMENT PROVIDER
20 INFORMATION OR RECORDS WHICH THE PARTY HAS THE RIGHT TO ACCESS
21 PURSUANT TO THE DEFENDANT'S WAIVER OF PRIVILEGE. IF A PARTY
22 REQUESTS SUCH AN ORDER, THE COURT SHALL ALLOW THE OPPOSING
23 PARTY TO MAKE ANY LEGAL OBJECTION, INCLUDING WHETHER THE
24 REQUESTED INFORMATION IS WITHIN THE SCOPE OF THE DEFENDANT'S
25 WAIVER OF PRIVILEGE, AND CONSIDER ANY REQUESTS FOR PROTECTIVE
26 ORDERS PRIOR TO ISSUING THE COURT ORDER. THIS SECTION DOES NOT
27 LIMIT THE COURT'S ABILITY TO ORDER INFORMATION BE PROVIDED TO A

1 PARTY WITH THE WRITTEN CONSENT OF THE DEFENDANT.

2 (6) Statements made by the defendant in the course of any
3 evaluation ~~shall~~ MUST be protected ~~as provided~~ IN ACCORDANCE WITH
4 section 16-8.5-108.

5 **SECTION 4.** In Colorado Revised Statutes, **add** 16-8.5-104.5 as
6 follows:

7 **16-8.5-104.5. Availability of records.** (1) WHENEVER THE
8 COURT ORDERS A COMPETENCY EVALUATION OF THE DEFENDANT
9 PURSUANT TO SECTION 16-8.5-103 OR THE COURT FINDS THE DEFENDANT
10 INCOMPETENT TO PROCEED PURSUANT TO SECTION 16-8.5-111, THE COURT
11 SHALL ORDER THE DEPARTMENT TO CONDUCT A SEARCH FOR ANY PRIOR
12 COMPETENCY EVALUATIONS OF THE DEFENDANT IN THE DEPARTMENT'S
13 POSSESSION FROM ANY OTHER CRIMINAL CASE. WITHIN SEVENTY-TWO
14 HOURS OF RECEIVING THE COURT'S ORDER, THE DEPARTMENT SHALL FILE
15 THE DEFENDANT'S PRIOR COMPETENCY EVALUATIONS WITH THE COURT
16 AND THE COURT SHALL MAKE THE PRIOR EVALUATIONS AVAILABLE TO
17 EACH PARTY PURSUANT TO SECTION 16-8.5-104 (1).

18 (2) WITHIN SEVENTY-TWO HOURS OF RECEIVING A DEFENDANT'S
19 REQUEST FOR RECORDS, THE SHERIFF OR TREATMENT PROVIDER SHALL
20 PROVIDE THE DEFENDANT COPIES OF ANY RECORDS THAT RELATE TO THE
21 DEFENDANT'S COMPETENCY, INCLUDING ANY RECORDS WITHIN THE SCOPE
22 OF THE DEFENDANT'S WRITTEN CONSENT, IF THE DEFENDANT:

23 (a) PROVIDES A WRITTEN CONSENT FOR RECORDS PURSUANT TO
24 SECTION 16-8.5-104;

25 (b) RAISED THE ISSUE OF COMPETENCY PURSUANT TO SECTION
26 16-8.5-103; OR

27 (c) IS FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION

1 16-8.5-111.

2 (3) WITHIN SEVENTY-TWO HOURS OF RECEIVING THE
3 DEPARTMENT'S REQUEST FOR RECORDS, THE SHERIFF OR TREATMENT
4 PROVIDER SHALL PROVIDE THE DEPARTMENT COPIES OF ANY RECORDS
5 WITHIN THE SCOPE OF THE DEFENDANT'S WRITTEN CONSENT OR WAIVER OF
6 PRIVILEGE PURSUANT TO SECTION 16-8.5-104 THAT RELATE TO THE
7 DEFENDANT'S COMPETENCY. THE DEPARTMENT'S REQUEST MUST BE:

8 (a) IN WRITING AND STATE THAT THE DEPARTMENT MUST ACCESS
9 THE RECORDS IN ORDER TO COMPLY WITH A COURT ORDER FOR A
10 COMPETENCY EVALUATION PURSUANT TO SECTION 16-8.5-103 AND THAT
11 THE DEPARTMENT IS ENTITLED TO RECEIVE THE RECORDS PURSUANT TO
12 THE DEFENDANT'S WAIVER OF PRIVILEGE PURSUANT TO SECTION
13 16-8.5-104; OR

14 (b) ACCOMPANIED BY THE DEFENDANT'S WRITTEN CONSENT FOR
15 RECORDS PURSUANT TO SECTION 16-8.5-104.

16 (4) (a) NOTWITHSTANDING THE CONFIDENTIALITY OF RECORDS
17 PURSUANT TO ARTICLE 65 OF TITLE 27, WHEN THE ISSUE OF COMPETENCY
18 IS RAISED OR AFTER A DEFENDANT HAS BEEN FOUND INCOMPETENT TO
19 PROCEED, AND UPON THE REQUEST OF THE DEFENSE ATTORNEY, THE
20 COURT SHALL ISSUE A COURT ORDER AUTHORIZING THE COURT CLERK TO
21 PROVIDE THE DEFENSE ATTORNEY:

22 (I) A LIST OF THE JURISDICTIONS AND CASE NUMBERS OF ANY
23 CURRENT OR PRIOR PROCEEDINGS, INCLUDING SEALED PROCEEDINGS,
24 BROUGHT PURSUANT TO ARTICLE 65 OF TITLE 27 IN WHICH THE
25 DEFENDANT IS THE RESPONDENT; AND

26 (II) A COPY OF THE DEFENDANT'S RECORDS, INCLUDING SEALED
27 RECORDS, FROM EITHER A DISTRICT COURT CRIMINAL MATTER INVOLVING

1 COMPETENCY OR THE DISTRICT COURT RESPONSIBLE FOR THE DEFENDANT'S
2 CASE BROUGHT PURSUANT TO ARTICLE 65 OF TITLE 27; AND

3 (b) THE COURT CLERK SHALL PROVIDE THE DEFENSE ATTORNEY
4 THE LIST OF JURISDICTIONS AND CASE NUMBERS PURSUANT TO SUBSECTION
5 (4)(a)(I) OF THIS SECTION OR INFORM THE DEFENSE ATTORNEY THAT NO
6 CURRENT OR PRIOR RECORDS, INCLUDING SEALED RECORDS, EXIST IF THE
7 DEFENSE ATTORNEY PROVIDES THE COURT CLERK WITH A COURT ORDER
8 PURSUANT TO SUBSECTION (4)(a)(I) OF THIS SECTION.

9 (c) THE COURT CLERK WHO IS THE CUSTODIAN OF RECORDS FOR
10 THE DEFENDANT'S CASE BROUGHT PURSUANT TO ARTICLE 65 OF TITLE 27
11 SHALL PROVIDE THE DEFENSE ATTORNEY A COPY OF THE RECORDS IF THE
12 DEFENSE ATTORNEY PROVIDES THE COURT CLERK WITH:

- 13 (I) THE DEFENDANT'S WRITTEN RELEASE FOR THE RECORDS; OR
14 (II) A COURT ORDER ISSUED PURSUANT TO SUBSECTION (4)(a)(II)
15 OF THIS SECTION.

16 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-105, **amend**
17 (1)(a)(I), (1)(a)(III), (1)(b.7), (1)(d), (5) introductory portion, (5)(c),
18 (5)(d), (5)(e), (5)(f), and (6); **amend as they will become effective July**
19 **1, 2024**, (4) and (5)(h)(II); and **add** (1)(b.6) and (5)(c.5) as follows:

20 **16-8.5-105. Evaluations, locations, time frames, and report.**

21 (1) (a) (I) The court shall order that the competency evaluation be
22 conducted on an outpatient basis or, if the defendant is unable to post the
23 monetary condition of bond or is ineligible to be released on bond, at the
24 place where the defendant is in-custody, except as provided in subsection
25 (1)(b) of this section. If the department conducts the evaluation on an
26 in-custody basis, the department shall begin the evaluation as soon as
27 practicable after the department's receipt of a court order directing the

1 evaluation. ~~After July 1, 2020~~, If the evaluation is conducted on an
2 in-custody basis, the department shall complete the evaluation no later
3 than twenty-one days after receipt of the order and the collateral
4 materials. ~~On and after July 1, 2020~~, If the evaluation is conducted on an
5 out-of-custody basis, the department shall complete the evaluation within
6 forty-two days after receipt of the order and collateral materials, unless
7 the court extends the time upon a showing of good cause.

8 (III) The court shall determine the type of bond and the conditions
9 of release after consideration of the presumptions and factors enumerated
10 in article 4 of this title 16, which include consideration of the information
11 received from any pretrial services program pursuant to ~~the provisions of~~
12 section 16-4-106 and any information provided by the BRIDGES court
13 liaison hired or contracted pursuant to article 95 of title 13. As a condition
14 of any bond, the court shall require the defendant's cooperation with the
15 competency evaluation on an outpatient and out-of-custody basis. In
16 setting the bond, the court shall not consider the need for the defendant
17 to receive an evaluation pursuant to this article 8.5 as a factor in
18 determining any monetary condition of bond.

19 (b.6) IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT
20 IS INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION
21 SERVICES ARE NOT CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL
22 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES
23 AVAILABLE TO THE DEFENDANT.

24 (b.7) ~~On and after July 1, 2020~~, When the court orders an inpatient
25 evaluation, the defendant must be offered admission to the hospital or
26 other inpatient program within fourteen days after receipt of the court
27 order and collateral materials. The court shall review the case in

1 twenty-one days to determine if transportation to the hospital or program
2 has been completed or if further orders are necessary.

3 (d) If a defendant is in the department's custody for purposes of
4 the competency evaluation ordered pursuant to this article 8.5 and the
5 defendant has completed the competency evaluation and the evaluator has
6 concluded that the defendant is competent to proceed, the department may
7 return the defendant to a county jail or to the community, as determined
8 by the defendant's bond status. If the evaluator has concluded that the
9 defendant is incompetent to proceed and that inpatient restoration services
10 are not clinically appropriate, and outpatient restoration services are
11 available to the defendant in the community, the department shall notify
12 the court and the BRIDGES court liaison, and the department shall develop
13 a discharge plan and a plan for community-based restoration services in
14 coordination with the community restoration services provider. The court
15 shall hold a hearing within seven days after receiving the notice, at which
16 the department shall provide to the court the plan for community-based
17 restoration services, and the court may enter any appropriate orders
18 regarding the custody of the defendant and ~~his or her~~ the DEFENDANT'S
19 bond status. The department shall advise the defendant of the date and
20 time of the court hearing. If the department is returning the defendant to
21 a county jail, the county sheriff in the jurisdiction where the defendant
22 must return shall take custody of the defendant within seventy-two hours
23 after receiving notification from the department that the defendant's
24 evaluation is completed. At the time the department notifies the sheriff,
25 the department shall also notify the court and the BRIDGES court liaison
26 that the department is returning the defendant to the custody of the jail.

27 (4) A written report of the evaluation must be prepared in

1 ~~triplicate and delivered~~ AND THE DEPARTMENT SHALL ELECTRONICALLY
2 DELIVER THE REPORT to the COURT clerk ~~of the court~~ that ordered it. The
3 clerk shall provide a copy of the report both to the prosecuting attorney
4 ATTORNEY, THE BRIDGES COURT LIAISON, and the DEFENSE counsel for the
5 defendant. ~~The department may utilize~~ USING the e-filing system. to
6 ~~deliver the report to the court and serve it upon the parties.~~ Without
7 reducing any other timelines set forth in this article 8.5, the competency
8 evaluator shall provide the written report to the court within fourteen days
9 after finishing meeting or attempting to meet with the respondent
10 DEFENDANT to evaluate the respondent's DEFENDANT'S competency.

11 (5) ~~On and after July 1, 2020,~~ The competency evaluation and
12 report must include, but need not be limited to:

13 (c) ~~A diagnosis and prognosis of the defendant's mental disability~~
14 ~~or developmental disability~~ A DESCRIPTION OF MEDICATIONS RECENTLY
15 PRESCRIBED TO THE DEFENDANT AND WHETHER THE DEFENDANT HAS
16 TAKEN THE MEDICATIONS AS PRESCRIBED, WHETHER THE MEDICATIONS
17 WERE TAKEN VOLUNTARILY OR ADMINISTERED THROUGH A FORCED
18 MEDICATION ORDER, AND WHAT EFFECT THE MEDICATIONS HAVE ON THE
19 DEFENDANT;

20 (c.5) A DESCRIPTION OF ANY PRIOR CASES KNOWN TO THE
21 DEPARTMENT IN WHICH THE DEFENDANT RAISED THE ISSUE OF
22 COMPETENCY OR THE DEFENDANT WAS FOUND INCOMPETENT TO PROCEED,
23 INCLUDING THE JURISDICTION OF THE CASE AND THE CASE NUMBER, AND:

24 (I) THE NUMBER OF PRIOR CASES IN WHICH THE DEFENDANT HAS
25 BEEN FOUND INCOMPETENT TO PROCEED;

26 (II) IF THE COURT FOUND THE DEFENDANT RESTORED TO
27 COMPETENCY AND IF RESTORATION TREATMENT WAS PROVIDED TO THE

1 DEFENDANT;

2 (III) ANY PRIOR OPINION FROM A FORENSIC EVALUATOR
3 CONTRACTED OR EMPLOYED BY THE DEPARTMENT THAT THE DEFENDANT
4 COULD NOT BE RESTORED TO COMPETENCY WITHIN THE REASONABLY
5 FORESEEABLE FUTURE; AND

6 (IV) A DESCRIPTION OF ALL COMPETENCY EVALUATIONS OR
7 RESTORATION SERVICES THAT WERE PREVIOUSLY PROVIDED TO THE
8 DEFENDANT;

9 (d) An opinion as to whether the defendant CURRENTLY suffers
10 from a mental disability or developmental disability. IF THE OPINION OF
11 THE COMPETENCY EVALUATOR IS THAT THE DEFENDANT SUFFERS FROM A
12 MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THEN THE REPORT
13 MUST INCLUDE AN OPINION AS TO THE DIAGNOSIS AND THE PROGNOSIS OF
14 THE DEFENDANT'S MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY.

15 (e) An opinion as to whether the defendant is competent to
16 proceed OR INCOMPETENT TO PROCEED. If the opinion of the competency
17 evaluator is that the defendant is incompetent to proceed, then THE
18 REPORT MUST INCLUDE:

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

22 ~~(B) When, pursuant to the requirements of subsection (5)(f) of this~~
23 ~~section, the evaluator is aware that any court within the previous five~~
24 ~~years has found the defendant is incompetent to proceed and there is a~~
25 ~~substantial probability that with restoration services the defendant will not~~
26 ~~attain competency within the reasonably foreseeable future, the evaluator~~
27 ~~shall provide an opinion regarding the probability of restoration pursuant~~

1 to this subsection ~~(5)(e)(I)~~ and, when the opinion is that there is a
2 substantial probability of attaining competency within the reasonably
3 foreseeable future, the evaluator shall state why the defendant's
4 circumstances are different from the prior court's finding;

5 ~~(C)~~ When the defendant is diagnosed with a moderate to severe
6 intellectual or developmental disability, acquired or traumatic brain
7 injury, or dementia, which either alone or together with a co-occurring
8 mental illness affects the defendant's ability to gain or maintain
9 competency, the evaluator shall provide an opinion as to whether there is
10 a substantial probability that the defendant with restoration services will
11 attain competency within the reasonably foreseeable future. When the
12 opinion is that there is a substantial probability of attaining competency,
13 the evaluator shall specifically state whether the evaluator believes there
14 are unique or different services outside the standard competency
15 restoration curriculum developed by the department that the defendant
16 may need in order to be restored to competency within the reasonably
17 foreseeable future.

18 ~~(D)~~ When the defendant has been found incompetent to proceed
19 pursuant to section 16-8.5-103 three or more times over the previous three
20 years in the current case or any other case, even if the defendant is later
21 restored, the evaluator shall specifically identify those instances of
22 findings of incompetency as a part of the review required pursuant to
23 subsection (5)(f) of this section. The evaluator shall provide an opinion
24 as to whether there is a substantial probability that the defendant with
25 restoration services will attain competency within the reasonably
26 foreseeable future and maintain competency throughout the case.

27 (II) ~~A recommendation~~ AN OPINION as to whether inpatient

1 restoration services are clinically appropriate to restore the defendant to
2 competency. ~~If inpatient restoration services are not clinically appropriate,~~
3 ~~the department must detail the outpatient and out-of-custody restoration~~
4 ~~services available to the defendant. For evaluation reports filed on or after~~
5 ~~January 1, 2021, the recommendations must be based upon the restoration~~
6 ~~placement guideline developed pursuant to section 16-8.5-121, prior to~~
7 ~~its repeal.~~

8 (f) ~~If available within the records of the department, a description~~
9 ~~of all competency evaluations or restoration services that were previously~~
10 ~~provided to the defendant, including a list of recent voluntary or~~
11 ~~involuntary medications administered or administered through a forced~~
12 ~~medication order; AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL~~
13 ~~PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL~~
14 ~~ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE,~~
15 ~~AND:~~

16 (I) IF ANY COURT WITHIN THE PREVIOUS FIVE YEARS FOUND THE
17 DEFENDANT INCOMPETENT TO PROCEED AND THAT THE DEFENDANT
18 WOULD NOT ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE
19 FUTURE, AN OPINION AS TO WHY THE DEFENDANT'S CURRENT
20 CIRCUMSTANCES ARE DIFFERENT FROM THE PRIOR COURT'S FINDINGS; AND

21 (II) IF THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO
22 PROCEED AFTER BEING FOUND COMPETENT TO PROCEED THREE OR MORE
23 TIMES WITHIN THE PREVIOUS FIVE YEARS, AN OPINION AS TO WHETHER,
24 EVEN IF RESTORED, THE DEFENDANT WILL MAINTAIN COMPETENCY
25 THROUGHOUT THE CURRENT CASE.

26 (h) The competency evaluator's opinion and the information and
27 factors considered in making determinations as to whether the defendant:

1 (II) Meets the criteria for a certification for short-term treatment
2 pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets
3 such criteria, whether the evaluator believes the defendant could be
4 treated on an outpatient basis pursuant to section 27-65-111. In assessing
5 whether the defendant with a pending criminal charge is a danger to self
6 or others or is gravely disabled, if the person is incarcerated, the
7 competency evaluator or professional person, as defined in section
8 27-65-102, and the court shall not rely on the fact that the defendant is
9 incarcerated or is an inpatient in a medical facility to establish that the
10 defendant is not a danger to self or others or is not gravely disabled. If it
11 is the evaluator's opinion that the defendant meets criteria for certification
12 for short-term treatment pursuant to section 27-65-108.5 or 27-65-109,
13 the evaluator is not required to request a petition for certification for
14 short-term treatment of the defendant in a court with jurisdiction pursuant
15 to ~~section 16-8.5-111(2)(a)~~ SECTION 16-8.5-111 (3).

16 (6) Whenever a competency evaluation is ordered upon the
17 request of either party, the court may notify the county attorney or district
18 attorney required to conduct proceedings pursuant to section 27-65-113
19 (6) for the county in which the charges are pending and the BRIDGES court
20 liaison hired or contracted pursuant to article 95 of title 13 of all court
21 dates for return of the report on competency to ensure that all parties are
22 on notice of the expected need for coordinated services and planning with
23 consideration of possible civil certification.

24 **SECTION 6.** In Colorado Revised Statutes, **amend** 16-8.5-107
25 as follows:

26 **16-8.5-107. Counsel and evaluators for indigent defendants.**
27 In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE

1 8.5, the court shall appoint A competency ~~evaluators or attorneys~~
2 EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S
3 expense upon motion of the defendant with proof that ~~he or she~~ THE
4 DEFENDANT is indigent and without ~~funds~~ MONEY to employ A
5 competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which
6 ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this ~~article~~
7 ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a
8 second evaluation is requested by an indigent defendant. ~~it shall be paid~~
9 ~~for by the court.~~

10 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-108, **amend**
11 (1)(c) and (2) as follows:

12 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on ~~his or~~
13 ~~her~~ THE DEFENDANT'S own behalf upon the trial of the issues raised by the
14 plea of not guilty or, for offenses that occurred before July 1, 1995, a plea
15 of not guilty by reason of impaired mental condition, or at a sentencing
16 hearing held pursuant to section 18-1.3-1201 for an offense charged prior
17 to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged
18 prior to July 1, 2020, or pursuant to section 18-1.4-102, ~~the provisions of~~
19 this section ~~shall~~ DOES not bar any evidence used to impeach or rebut the
20 defendant's testimony.

21 (2) In any hearing concerning competency to proceed or
22 restoration to competency, competency evaluators and other experts may
23 testify as to ~~their~~ THE conclusions reached from their examination of
24 hospital records, laboratory reports, X rays, electroencephalograms, and
25 psychological test results if the material that ~~they~~ THE EVALUATORS OR
26 EXPERTS examined in reaching their conclusions is produced at the time
27 of the hearing. Nothing in this section prevents the parties from obtaining

1 the information authorized by section 16-8.5-104 prior to the hearing.

2 **SECTION 8.** In Colorado Revised Statutes, 16-8.5-109, **amend**
3 (1), (2)(b), and (3) as follows:

4 **16-8.5-109. Advisement on matters to be determined.**

5 (1) When a determination is to be made as to a defendant's competency
6 to proceed, the court shall explain to the defendant the nature and
7 consequences of the proceeding and the rights of the defendant under this
8 section. The defendant, if ~~he or she~~ THE DEFENDANT wishes to contest the
9 question, may request a competency hearing that THE COURT shall ~~then be~~
10 ~~granted~~ GRANT as a matter of right.

11 (2) At a competency hearing, the defendant and the prosecuting
12 attorney are entitled:

13 (b) To examine any reports of the COMPETENCY evaluation or
14 other matter to be considered by the court as bearing upon the
15 determination;

16 (3) The court may examine or cross-examine any witness called
17 by the defendant or prosecuting attorney at a competency hearing and
18 may summon and examine witnesses on ~~its~~ THE COURT'S own motion.

19 **SECTION 9.** In Colorado Revised Statutes, **amend** 16-8.5-110
20 as follows:

21 **16-8.5-110. Testimony of lay witnesses.** In any hearing at which
22 the competency of the defendant is an issue, witnesses not specially
23 trained in psychiatry or psychology and not testifying as expert witnesses
24 may testify as to ~~their~~ THE WITNESS'S observation of the defendant's
25 actions and conduct and as to conversations that ~~they have~~ THE WITNESS
26 had with the defendant bearing upon the defendant's mental condition.
27 Any such witnesses, as part of ~~their~~ THE WITNESS'S testimony, ~~shall~~ MUST

1 be permitted to give ~~their~~ opinions or conclusions concerning the
2 competency of the defendant.

3 **SECTION 10.** In Colorado Revised Statutes, **repeal and reenact,**
4 **with amendments,** 16-8.5-111 as follows:

5 **16-8.5-111. Procedure after determination of competency or**
6 **incompetency. (1) Competent to proceed.** IF THE FINAL
7 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
8 DEFENDANT IS COMPETENT TO PROCEED, THE JUDGE SHALL ORDER THAT
9 THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL WAS DECLARED,
10 SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

11 **(2) Restoration services ordered.** IF THE FINAL DETERMINATION
12 MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
13 INCOMPETENT TO PROCEED AND THE COURT FINDS THERE IS SUBSTANTIAL
14 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
15 ATTAIN COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, THE
16 COURT HAS THE FOLLOWING REQUIREMENTS AND OPTIONS:

17 **(a)** IF THE DEFENDANT IS OUT OF CUSTODY OR WILL BE RELEASED
18 SOON, THE COURT SHALL ORDER THE RESTORATION SERVICES TAKE PLACE
19 ON AN OUTPATIENT BASIS UNLESS THE RECOMMENDATION FROM THE
20 DEPARTMENT IS THAT INPATIENT RESTORATION SERVICES ARE CLINICALLY
21 APPROPRIATE AND:

22 **(I)** THE COURT SHALL ORDER THAT THE DEFENDANT PARTICIPATE
23 IN RESTORATION SERVICES AS A CONDITION OF ANY BOND;

24 **(II)** THE COURT MAY APPOINT A BRIDGES COURT LIAISON OR MAY
25 ORDER THAT THE DEFENDANT COOPERATE WITH PRETRIAL SERVICES, IF
26 AVAILABLE, AND THE COURT MAY ORDER PRETRIAL SERVICES OR A
27 BRIDGES COURT LIAISON, OR BOTH, TO WORK WITH THE DEFENDANT, THE

1 DEPARTMENT, AND THE RESTORATION SERVICES PROVIDER UNDER
2 CONTRACT WITH THE DEPARTMENT TO ASSIST IN SECURING APPROPRIATE
3 SUPPORT AND CARE MANAGEMENT SERVICES FOR THE DEFENDANT, WHICH
4 MAY INCLUDE HOUSING RESOURCES; AND

5 (III) THE COURT SHALL CONDUCT A NONAPPEARANCE REVIEW
6 FOURTEEN DAYS AFTER THE DEFENDANT'S RELEASE FROM CUSTODY TO
7 ENSURE THE DEFENDANT HAS BEEN RELEASED. IF THE DEFENDANT IS NOT
8 RELEASED BY THE DATE OF THE NONAPPEARANCE REVIEW, THE COURT
9 SHALL SET A HEARING TO DETERMINE WHETHER THE DEFENDANT WILL BE
10 RELEASED OR TO ENTER AN ORDER PURSUANT TO SUBSECTION (2)(c) OF
11 THIS SECTION.

12 (b) IF THE COURT DETERMINES THE DEFENDANT IS INCOMPETENT
13 TO PROCEED AND IS IN CUSTODY ON A MISDEMEANOR, PETTY OFFENSE, OR
14 TRAFFIC OFFENSE, THE COURT SHALL SET A HEARING ON BOND WITHIN
15 SEVEN DAYS AFTER THE COURT'S FINAL DETERMINATION THAT THE
16 DEFENDANT IS INCOMPETENT TO PROCEED. AT THE BOND HEARING, THERE
17 IS A PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL
18 RECOGNIZANCE BOND AND ENTER AN ORDER FOR RESTORATION SERVICES
19 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION. IN ORDER TO DENY THE
20 DEFENDANT A PERSONAL RECOGNIZANCE BOND AND ENTER AN ORDER TO
21 COMMIT THE DEFENDANT FOR INPATIENT RESTORATION SERVICES
22 PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION, THE COURT SHALL
23 MAKE FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO
24 OVERCOME THE PRESUMPTION OF RELEASE BY CLEAR AND CONVINCING
25 EVIDENCE. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE
26 COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FINDINGS THE
27 COURT MADE TO DENY THE PERSONAL RECOGNIZANCE BOND.

1 (c) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR
2 RELEASE FROM CUSTODY OR NOT ABLE TO POST THE MONETARY
3 CONDITION OF BOND, OR THE COURT APPROVES A RECOMMENDATION FROM
4 THE DEPARTMENT THAT INPATIENT RESTORATION SERVICES ARE
5 CLINICALLY APPROPRIATE, THE COURT SHALL COMMIT THE DEFENDANT TO
6 THE CUSTODY OF THE DEPARTMENT AND ORDER INPATIENT RESTORATION
7 SERVICES.

8 (3) **Certification for short-term treatment.** (a) (I) IF THE FINAL
9 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
10 DEFENDANT IS INCOMPETENT TO PROCEED, REGARDLESS OF WHETHER THE
11 COURT FINDS THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
12 DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY
13 WITHIN THE REASONABLY FORESEEABLE FUTURE, THE DISTRICT
14 ATTORNEY; A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102;
15 A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
16 DEPARTMENT; OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
17 FORENSIC MENTAL HEALTH MAY REQUEST TO INITIATE A PETITION FOR
18 CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A
19 COURT WITH JURISDICTION.

20 (II) THE COURT SHALL HEAR AND CONSIDER ANY OBJECTIONS
21 FROM THE DEFENDANT PRIOR TO ORDERING THE REQUESTING PARTY TO
22 INITIATE A PETITION FOR CERTIFICATION FOR SHORT-TERM TREATMENT
23 PURSUANT TO SUBSECTION (3)(a)(I) OF THIS SECTION.

24 (III) THE COURT MAY ORDER INITIATION OF CERTIFICATION FOR
25 SHORT-TERM TREATMENT ONLY:

26 (A) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT
27 THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION FOR

1 SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR
2 27-65-109; AND

3 (B) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY
4 OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE, OR WITH THE
5 AGREEMENT OF THE PROSECUTING ATTORNEY, REGARDLESS OF THE
6 SEVERITY OF THE CHARGE.

7 (b) IF THE COURT REQUIRES THE REQUESTING PARTY TO INITIATE
8 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SUBSECTION
9 (3)(a) OF THIS SECTION:

10 (I) THE PROSECUTING ATTORNEY AND THE DEPARTMENT SHALL
11 TRANSMIT ANY NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS,
12 COMPETENCY EVALUATIONS, MATERIALS USED IN THE COMPETENCY
13 PROCESS, AND RESTORATION RECORDS, TO THE REQUESTING PARTY AND
14 SHALL COOPERATE WITH THE REQUESTING PARTY IN FILING A PETITION FOR
15 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
16 27-65-108.5 OR 27-65-109;

17 (II) THE REQUESTING PARTY SHALL FILE A NOTICE IN THE CRIMINAL
18 CASE WHEN THE PETITION FOR CERTIFICATION FOR SHORT-TERM
19 TREATMENT IS FILED PURSUANT TO SECTION 27-65-108.5 OR 27-65-109;

20 (III) THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
21 DEPARTMENT SHALL, DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE
22 COORDINATION SERVICES PURSUANT TO SECTION 27-65-108 AFTER THE
23 CERTIFICATION FOR SHORT-TERM TREATMENT IS FILED PURSUANT TO
24 SECTION 27-65-108.5 OR 27-65-109; AND

25 (IV) THE COURT MAY, UPON THE COURT'S OWN MOTION, FORGO AN
26 ORDER FOR RESTORATION SERVICES AND DISMISS THE CHARGES AGAINST
27 THE DEFENDANT WITHOUT PREJUDICE WHEN THE CERTIFICATION FOR

1 SHORT-TERM TREATMENT IS INITIATED IF THE HIGHEST CHARGED OFFENSE
2 IS A PETTY OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE; OR

3 (V) THE COURT MAY, WITH THE AGREEMENT OF THE PROSECUTING
4 ATTORNEY AND DEFENDANT, STAY THE RESTORATION ORDER TO ALLOW
5 CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR
6 AND TO ALLOW THE DISTRICT ATTORNEY TO CONSIDER WHETHER
7 DISMISSAL OF THE CASE IS APPROPRIATE. IN DETERMINING WHETHER
8 DISMISSAL IS APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE
9 DEFENDANT, THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND
10 THE PROSECUTING ATTORNEY IN THE CRIMINAL MATTER HAVE ACCESS TO
11 LIMITED INFORMATION ABOUT ANY CIVIL PROCEEDINGS AGAINST THE
12 DEFENDANT PURSUANT TO SECTIONS 27-65-108.5, 27-65-109, 27-65-110,
13 AND 27-65-111. ANY INFORMATION OBTAINED MUST BE KEPT
14 CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW.
15 THE COURT SHALL NOT EXTEND THE DEFENDANT'S CRIMINAL CASE PAST
16 THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116.5. THE LIMITED
17 INFORMATION THAT THE DEFENDANT, DEFENDANT'S ATTORNEY, AND
18 PROSECUTING ATTORNEY MAY ACCESS INCLUDES:

19 (A) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;

20 (B) WHETHER THE DEFENDANT IS SUBJECT TO CERTIFICATION FOR
21 SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE DEFENDANT
22 IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;

23 (C) THE DATE AND TIME OF THE PROCEEDINGS, EVEN IF THE
24 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING
25 ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND

26 (D) THE FINAL DISPOSITION OF THE PROCEEDING.

27 (4) **Restoration hearing.** (a) IF THE FINAL DETERMINATION MADE

1 PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
2 INCOMPETENT TO PROCEED AND THE EVALUATOR OPINES AT ANY TIME
3 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
4 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
5 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING
6 WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5). IF THE
7 COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO THIS
8 SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE COURT
9 SHALL SET THE HEARING IN LIEU OF ORDERING RESTORATION TREATMENT.

10 (b) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION
11 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND
12 THE EVALUATOR OPINES AT ANY TIME THAT THE DEFENDANT'S DIAGNOSIS
13 LIKELY INCLUDES A NEUROCOGNITIVE OR NEURODEVELOPMENTAL
14 IMPAIRMENT THAT EITHER ALONE OR TOGETHER WITH A CO-OCCURRING
15 MENTAL ILLNESS SUBSTANTIALLY AFFECTS THE DEFENDANT'S ABILITY TO
16 GAIN OR MAINTAIN COMPETENCY, THE COURT SHALL SET A HEARING
17 WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5) ON THE
18 ISSUE OF WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
19 DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY
20 FORESEEABLE FUTURE. IF THE COURT RECEIVES THE EVALUATOR'S OPINION
21 PURSUANT TO THIS SUBSECTION (4) PRIOR TO ENTERING A RESTORATION
22 ORDER, THE COURT SHALL SET A HEARING IN LIEU OF ORDERING
23 RESTORATION TREATMENT.

24 (c) AT ANY HEARING CONDUCTED PURSUANT TO SUBSECTION
25 (4)(a) OR (4)(b) OF THIS SECTION:

26 (I) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED
27 EXPERT OPINING THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND

1 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
2 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
3 REASONABLY FORESEEABLE FUTURE IS PRIMA FACIE EVIDENCE THAT
4 CREATES A PRESUMPTION OF FACT. AN ADMITTED REPORT OR TESTIMONY
5 FROM A QUALIFIED EXPERT WHO OPINES THAT THE DEFENDANT'S
6 DIAGNOSIS LIKELY INCLUDES A NEUROCOGNITIVE OR
7 NEURODEVELOPMENTAL IMPAIRMENT THAT [REDACTED] EITHER ALONE OR
8 TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE
9 DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, IS PRIMA FACIE
10 EVIDENCE OF AND CREATES A PRESUMPTION THAT THE DEFENDANT IS
11 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
12 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
13 ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE.

14 (II) IF THE COURT HAS NOT YET ORDERED RESTORATION SERVICES
15 AND RESTORATION SERVICES HAVE NOT BEEN PROVIDED, A PARTY
16 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY A
17 PREPONDERANCE OF THE EVIDENCE THAT THERE IS A VIABLE RESTORATION
18 TREATMENT THAT WILL RESTORE THE DEFENDANT TO COMPETENCY AND
19 A SUBSTANTIAL PROBABILITY THAT RESTORATION EFFORTS WILL BE
20 SUCCESSFUL WITHIN THE REASONABLY FORESEEABLE FUTURE;

21 (III) IF THE DEFENDANT'S DIAGNOSIS INCLUDES A [REDACTED]
22 NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT, [REDACTED] WHETHER
23 OR NOT CO-OCCURRING WITH A MENTAL ILLNESS THAT SUBSTANTIALLY
24 AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY,
25 THE PARTY ATTEMPTING TO OVERCOME THE PRESUMPTION MUST SHOW BY
26 CLEAR AND CONVINCING EVIDENCE THAT THERE IS A VIABLE RESTORATION
27 TREATMENT THAT IS SUBSTANTIALLY LIKELY TO RESTORE THE DEFENDANT

1 TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE; AND

2 (IV) IF THE COURT HAS ORDERED RESTORATION SERVICES AND THE
3 COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED
4 AND THE DEFENDANT WAS NOT RESTORED TO COMPETENCY, A PARTY
5 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY CLEAR
6 AND CONVINCING EVIDENCE THAT THE DEFENDANT, WITH CONTINUED
7 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
8 FORESEEABLE FUTURE AND THAT THE DEFENDANT CAN MAINTAIN
9 COMPETENCY THROUGH THE ADJUDICATION OF THE CASE.

10 (d) AT THE CONCLUSION OF ANY HEARING SET PURSUANT TO
11 SUBSECTION (4)(a) OR (4)(b) OF THIS SECTION:

12 (I) IF THE COURT DOES NOT FIND THAT THE PARTY ASSERTING THAT
13 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
14 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
15 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
16 SHALL DISMISS THE CASE PURSUANT TO SECTION 16-8.5-116.5 (1)(a);
17 EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF APPROPRIATE, AS
18 PROVIDED IN SECTION 16-8.5-116.5 (9); AND

19 (II) IF THE COURT FINDS THAT THE PARTY ASSERTING THAT THERE
20 IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
21 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
22 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
23 SHALL ORDER APPROPRIATE RESTORATION SERVICES AND SET A REVIEW.

24 (5) **Dismissal of charges.** TO ENSURE COMPLIANCE WITH
25 RELEVANT CONSTITUTIONAL PRINCIPLES, IF THE COURT AT ANY POINT
26 DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
27 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE

1 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL, UPON MOTION OF
2 THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON ITS OWN MOTION,
3 DISMISS THE CRIMINAL PROCEEDINGS PURSUANT TO SECTION 16-8.5-116.5
4 (1)(a). SUBJECT TO THE PROVISIONS AND PRESUMPTIONS OF THIS SECTION
5 THAT MAY APPLY, A COURT SHALL NOT CONTINUE CRIMINAL PROCEEDINGS
6 AGAINST AN INCOMPETENT DEFENDANT, EXCEPT TO STAY A DISMISSAL
7 PURSUANT TO SECTION 16-8.5-116.5 (9), UNLESS, AFTER PROPER
8 EVALUATION, THE COURT FINDS IT MORE LIKELY THAN NOT THAT THE
9 DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY
10 FORESEEABLE FUTURE.

11 **(6) Defendant's volitional lack of cooperation or unwillingness**
12 **to participate - definition.** (a) NOTHING IN THIS ARTICLE 8.5 PROHIBITS
13 THE COURT FROM FINDING THAT THE DEFENDANT IS RESTORABLE TO
14 COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE BASED ON THE
15 DEFENDANT'S VOLITIONAL LACK OF COOPERATION OR UNWILLINGNESS TO
16 PARTICIPATE IN RESTORATION SERVICES AND TREATMENT IF THE
17 DEFENDANT COULD BE RESTORED TO COMPETENCY IN THE REASONABLY
18 FORESEEABLE FUTURE IF THE DEFENDANT COOPERATED AND PARTICIPATED
19 IN THE RESTORATION SERVICES AND TREATMENT.

20 (b) FOR THE PURPOSES OF THIS SUBSECTION (6), "VOLITIONAL LACK
21 OF COOPERATION OR UNWILLINGNESS TO PARTICIPATE" INCLUDES THE
22 DEFENDANT NOT ATTENDING RESTORATION SERVICES OR THE
23 DEFENDANT'S REFUSAL TO TAKE PRESCRIBED MEDICATIONS, ESPECIALLY
24 WHEN THE DEFENDANT INTENDS TO AVOID OR DELAY THE COURT CASE
25 FROM PROCEEDING. "VOLITIONAL LACK OF COOPERATION OR
26 UNWILLINGNESS TO PARTICIPATE" DOES NOT INCLUDE ACTS THAT RESULT
27 FROM THE BONA FIDE MEDICAL OR MENTAL HEALTH DISORDER FOR WHICH

1 THE DEFENDANT IS INCOMPETENT OR A DEFENDANT'S ATTEMPT TO RAISE
2 A BONA FIDE, GOOD FAITH CONCERN ABOUT MEDICATION SIDE EFFECTS
3 AND RISKS.

4 (7) **Outpatient restoration services.** IF THE DEFENDANT IS OUT
5 OF CUSTODY AND THE COURT HAS ORDERED RESTORATION SERVICES
6 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION:

7 (a) PURSUANT TO SECTION 27-60-105, THE DEPARTMENT IS THE
8 ENTITY RESPONSIBLE FOR THE COORDINATION OF ALL COMPETENCY
9 RESTORATION SERVICES, INCLUDING THE OVERSIGHT OF RESTORATION
10 EDUCATION;

11 (b) THE RESTORATION SERVICES PROVIDER UNDER CONTRACT WITH
12 THE DEPARTMENT SHALL NOTIFY THE COURT, THE DEPARTMENT, THE
13 BRIDGES COURT LIAISON, AND ANY OTHER DESIGNATED AGENCY WITHIN
14 TWENTY-ONE DAYS AFTER THE COURT'S ORDER IF RESTORATION SERVICES
15 HAVE NOT STARTED AND INCLUDE A DESCRIPTION OF THE EFFORTS THAT
16 HAVE BEEN MADE TO ENGAGE THE DEFENDANT IN SERVICES; AND

17 (c) IF THE DEPARTMENT DETERMINES THAT THE DEPARTMENT IS
18 UNABLE, WITHIN A REASONABLE TIME, TO PROVIDE RESTORATION
19 SERVICES ON AN OUTPATIENT BASIS, THE DEPARTMENT SHALL NOTIFY THE
20 COURT WITHIN FOURTEEN DAYS AFTER THE DEPARTMENT'S
21 DETERMINATION, AT WHICH POINT THE COURT SHALL REVIEW THE CASE
22 AND DETERMINE WHAT INTERIM MENTAL HEALTH SERVICES THE
23 DEPARTMENT OR A COMMUNITY PROVIDER CAN PROVIDE TO THE
24 DEFENDANT. IF A BRIDGES COURT LIAISON IS APPOINTED, THE
25 DEPARTMENT SHALL REPORT TO THE BRIDGES COURT LIAISON EVERY
26 TWENTY-EIGHT DAYS CONCERNING THE AVAILABILITY OF RESTORATION
27 SERVICES ON AN OUTPATIENT BASIS TO THE DEFENDANT.

1 (8) **Inpatient restoration services.** (a) IF THE COURT COMMITS
2 THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT AND ORDERS
3 INPATIENT RESTORATION SERVICES:

4 (I) THE EXECUTIVE DIRECTOR SHALL DESIGNATE A STATE FACILITY
5 OR FACILITIES WHERE THE DEFENDANT IS HELD FOR CARE AND
6 PSYCHIATRIC TREATMENT AND RECEIVES RESTORATION SERVICES, AND
7 MAY TRANSFER THE DEFENDANT FROM ONE FACILITY TO ANOTHER IF, IN
8 THE OPINION OF THE DIRECTOR, DOING SO IS IN THE BEST INTEREST OF
9 PROPER CARE, CUSTODY, AND TREATMENT OF THE DEFENDANT OR THE
10 PROTECTION OF THE PUBLIC OR THE PERSONNEL OF THE FACILITIES IN
11 QUESTION. THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT
12 AN APPROPRIATE INPATIENT PROGRAM. THE DEPARTMENT SHALL NOTIFY
13 THE COURT, THE BRIDGES COURT LIAISON, THE PROSECUTING ATTORNEY,
14 AND THE DEFENSE ATTORNEY WHEN THE DEFENDANT IS PLACED OR MOVED
15 TO A DIFFERENT PROGRAM.

16 (II) THE DEPARTMENT SHALL ADMIT TIER 1 DEFENDANTS FOR
17 RESTORATION SERVICES WITHIN SEVEN DAYS AFTER RECEIPT OF THE
18 COURT ORDER AND COLLATERAL MATERIALS;

19 (III) THE DEPARTMENT SHALL ADMIT TIER 2 DEFENDANTS FOR
20 RESTORATION SERVICES WITHIN TWENTY-EIGHT DAYS AFTER RECEIPT OF
21 THE COURT ORDER AND COLLATERAL MATERIALS AND SHALL ADVISE THE
22 COURT AND THE BRIDGES COURT LIAISON, IF APPLICABLE, EVERY
23 TWENTY-EIGHT DAYS AFTER THE INITIAL TWENTY-EIGHT-DAY PERIOD
24 REGARDING THE AVAILABILITY OF AN INPATIENT BED AND WHEN
25 ADMISSION WILL BE OFFERED TO THE DEFENDANT.

26 (b) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
27 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT:

1 (I) A LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY
2 APPROPRIATE, THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE
3 COURT AND CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1
4 OF TITLE 24, MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY
5 IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET
6 RESTORED TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO
7 COMPETENCY IN A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT
8 RELEASED FROM CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO
9 PROVIDE INPATIENT SERVICES AT A LOCATION DETERMINED BY THE
10 DEPARTMENT.

11 (II) OUTPATIENT RESTORATION SERVICES WOULD BE MORE
12 CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL:

13 (A) NOTIFY THE COURT AND REQUEST THAT THE DEFENDANT BE
14 CONSIDERED FOR RELEASE ON A NONMONETARY BOND IF THE DEFENDANT
15 IS NOT CURRENTLY RELEASED ON BOND; AND

16 (B) PROVIDE TO THE COURT INFORMATION REGARDING THE
17 APPROPRIATE OUTPATIENT RESTORATION SERVICES, DEVELOPED IN
18 CONJUNCTION WITH THE BRIDGES COURT LIAISON, WHEN ASSIGNED, AND
19 THE REASONS WHY THE DEFENDANT COULD BE PROPERLY RESTORED TO
20 COMPETENCY ON AN OUTPATIENT BASIS.

21 (c) IF THE DEFENDANT POSTS BOND OR THE COURT ORDERS
22 OUTPATIENT RESTORATION SERVICES IN LIEU OF CONTINUED INPATIENT
23 SERVICES, OR IF THE DEPARTMENT BELIEVES THAT THE DEFENDANT IS
24 RESTORED TO COMPETENCY AND THE DEFENDANT IS TO BE RELEASED TO
25 THE COMMUNITY RATHER THAN JAIL UPON DISCHARGE, THE DEPARTMENT
26 SHALL:

27 (I) ASSIST THE DEFENDANT WITH ANY NECESSARY

1 TRANSPORTATION;

2 (II) PROVIDE THE NECESSARY CASE AND MEDICATION
3 INFORMATION FOR THE DEFENDANT TO THE BRIDGES COURT LIAISON AND
4 THE COMMUNITY AGENCY THAT WILL PROVIDE CONTINUED RESTORATION,
5 IF APPLICABLE, OR SERVICES;

6 (III) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT
7 THE DEFENDANT WAS RELEASED AND THE DEFENDANT'S COMMUNITY BOND
8 STATUS; AND

9 (IV) COORDINATE WITH THE COURT; PRETRIAL SERVICES, IF
10 APPLICABLE; AND THE BRIDGES COURT LIAISON TO ENSURE THE
11 DEFENDANT RECEIVES WRITTEN NOTICE OF THE DEFENDANT'S NEXT COURT
12 APPEARANCE AND BOND CONDITIONS.

13 (d) IF THE DEFENDANT IS DISCHARGED FROM THE DEPARTMENT'S
14 CUSTODY AFTER RECEIVING INPATIENT RESTORATION SERVICES AND THE
15 DEFENDANT IS TO BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL,
16 THE DEPARTMENT SHALL:

17 (I) NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE
18 DEFENDANT IS TO BE RETURNED;

19 (II) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT
20 THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE
21 COUNTY JAIL; AND

22 (III) WORK WITH THE SHERIFF, THE BRIDGES COURT LIAISON, AND
23 ANY BEHAVIORAL HEALTH PROVIDERS IN THE COUNTY JAIL TO ENSURE
24 THAT THE COUNTY JAIL HAS THE NECESSARY INFORMATION TO PREVENT
25 ANY DECOMPENSATION BY THE DEFENDANT WHILE THE DEFENDANT IS IN
26 THE COUNTY JAIL, WHICH MUST INCLUDE MEDICATION INFORMATION WHEN
27 CLINICALLY APPROPRIATE.

1 (9) **Return to custody of county jail.** WHEN THE DEPARTMENT
2 SUBMITS A REPORT TO THE COURT THAT THE DEPARTMENT'S POSITION IS
3 THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE DEFENDANT
4 MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL. THE SHERIFF
5 SHALL RETURN THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL
6 WITHIN SEVENTY-TWO HOURS AFTER RECEIPT OF THE DEPARTMENT'S
7 NOTICE.

8 **SECTION 11.** In Colorado Revised Statutes, 16-8.5-112, **amend**
9 (1), (2), and (3) as follows:

10 **16-8.5-112. Venue for collateral hearings.** (1) If a defendant
11 committed to the custody of the department for evaluation or for
12 restoration treatment meets the constitutional requirements for the
13 administration of involuntary medication, the defendant's treating
14 physician may petition the court for an order requiring that the defendant
15 accept the treatment or, alternatively, that the medication be forcibly
16 administered to the defendant. The department shall, prior to the hearing
17 on the petition, deliver a copy of the petition to the court that committed
18 the defendant to the custody of the department, the prosecuting attorney,
19 and the defendant's legal representation in the criminal case, if such
20 representation exists, and to the defendant directly if ~~he or she~~ THE
21 DEFENDANT does not have legal representation. A physician shall assess
22 and document the defendant's mental status prior to the administration of
23 medication.

24 (2) A petition for involuntary treatment ~~shall~~ **MUST** be heard in the
25 court of the jurisdiction where the defendant is located. The department
26 shall promptly deliver a copy of the order granting or denying the petition
27 to the court that committed the defendant to the custody of the

1 department, the prosecuting attorney, and the defendant's legal
2 representation in the criminal case, if such representation exists, and to
3 the defendant directly if ~~he or she~~ THE DEFENDANT does not have legal
4 representation.

5 (3) If the committing court elects to transfer venue for medication
6 hearings to the court of the jurisdiction ~~in which~~ WHERE the defendant is
7 located, the committing county shall reimburse the county ~~in which~~
8 WHERE the proceeding is heard for the reasonable costs incurred in
9 conducting the proceeding. Alternatively, the district attorney for the
10 committing county, or in any county or any city and county having a
11 population exceeding fifty thousand ~~persons~~ PEOPLE, the county attorney
12 for the committing county, may prosecute the proceeding as the
13 proponent of the physician's petition.

14 **SECTION 12.** In Colorado Revised Statutes, 16-8.5-113, **amend**
15 (1), (2), (5), and (6) as follows:

16 **16-8.5-113. Restoration to competency.** (1) The court may order
17 a restoration hearing at any time on its own motion, on motion of the
18 prosecuting attorney, or on motion of the defendant; EXCEPT THAT THE
19 COURT SHALL ORDER A RESTORATION HEARING WHEN REQUIRED
20 PURSUANT TO SECTION 16-8.5-111 (4)(a) OR (4)(b).

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

1 (5) If a party makes a timely request for a hearing, the hearing
2 ~~shall~~ MUST be held within thirty-five days after the request for a hearing
3 or, if applicable, within thirty-five days after the filing of the second
4 evaluation report, unless the time is extended by the court after a finding
5 of good cause.

6 (6) At the hearing, THE PARTY ASSERTING THAT THE DEFENDANT
7 IS COMPETENT HAS THE BURDEN OF PROOF BY A PREPONDERANCE OF THE
8 EVIDENCE AND the burden of submitting evidence. ~~and the burden of~~
9 ~~proof by a preponderance of the evidence shall be upon the party~~
10 ~~asserting that the defendant is competent.~~ At the hearing, the court shall
11 determine whether the defendant is restored to competency.

12 **SECTION 13.** In Colorado Revised Statutes, 16-8.5-116, **amend**
13 (2)(b) introductory portion, (2)(c) introductory portion, (2)(c)(V),
14 (2)(c)(VI), (3), and (5); **repeal** (1) and (4); and **add** (2)(c)(VII) as
15 follows:

16 **16-8.5-116. Certification - reviews - rules.** (1) ~~Subject to the~~
17 ~~time periods and legal standards set forth in this section, whichever is~~
18 ~~shortest, a defendant committed to the custody of the department or~~
19 ~~otherwise confined as a result of a determination of incompetency to~~
20 ~~proceed must not remain confined for a period in excess of the maximum~~
21 ~~term of confinement that could be imposed for only the single most~~
22 ~~serious offense with which the defendant is charged, less thirty percent~~
23 ~~for a misdemeanor offense and less fifty percent for a felony offense. At~~
24 ~~the end of such time period, the court shall dismiss the charges, and~~
25 ~~certification proceedings or provision of services, if any, are governed by~~
26 ~~article 65 or 10.5 of title 27.~~

27 (2) (b) ~~On and after July 1, 2020,~~ At least ten days before each

1 review, the individual or entity evaluating the defendant shall provide the
2 court with a report describing:

3 (c) ~~Additionally, on and after July 1, 2020,~~ At least ten days
4 before each review, the department treating team shall provide to the
5 court an additional report that summarizes:

6 (V) The opinion of the treating team on the defendant's mental
7 health functioning and ability to function on an outpatient basis for
8 restoration services; ~~and~~

9 (VI) Whether the defendant, based on observations of the
10 defendant's behavior in the facility, presents a substantial risk to the
11 physical safety of ~~himself or herself~~ THE DEFENDANT'S SELF, of another
12 person, or of the community if released for community restoration; AND

13 (VII) ANY OPINIONS WHICH WOULD BE REQUIRED DURING AN
14 INITIAL EVALUATION PURSUANT TO SECTION 16-8.5-105 (5)(f).

15 (3) After the initial review pursuant to subsection (2)(a) of this
16 section, the court shall review the case of the defendant every ninety-one
17 days. ~~thereafter until four reviews have been conducted.~~ At least ten days
18 before each review, the individual or entity evaluating the defendant shall
19 provide the court with an updated report as described in subsection (2)(b)
20 of this section and the treatment staff shall provide an updated summary
21 of observations as described in subsection (2)(c) of this section.

22 (4) ~~After the fourth review, the court shall review the competency~~
23 ~~of the defendant every ninety-one days until the defendant is restored to~~
24 ~~competency or the court determines, based on available evidence, that~~
25 ~~there is not a substantial probability that the defendant will be restored to~~
26 ~~competency in the reasonably foreseeable future. If the court determines~~
27 ~~based on available evidence there is not a substantial probability that the~~

1 ~~defendant will be restored to competency in the reasonably foreseeable~~
2 ~~future, the court shall dismiss the case subject to the provisions of~~
3 ~~subsection (10) of this section.~~

4 (5) The court shall forward a copy of each report and summary
5 received pursuant to ~~subsections (2), (3), and (4)~~ SUBSECTIONS (2) AND (3)
6 of this section to the county attorney or district attorney required to
7 conduct proceedings pursuant to section 27-65-113 (6) for the county in
8 which the case is pending and, when a BRIDGES court liaison is appointed,
9 to the BRIDGES court liaison.

10 **SECTION 14.** In Colorado Revised Statutes, **add with amended**
11 **and relocated provisions** 16-8.5-116.5 as follows:

12 **16-8.5-116.5. Restoration - time limits - dismissal of charges -**
13 **exceptions - rules.** (1) **[Formerly 16-8.5-116 IP(6)]** ~~Notwithstanding the~~
14 ~~time periods provided in subsections (7), (8), and (9) of this section and~~
15 To ensure compliance with relevant constitutional principles, for any
16 offense for which the defendant is ordered to receive competency
17 restoration services in an inpatient or outpatient setting, if the court
18 determines, based on available evidence, that there is not a substantial
19 probability that the defendant, WITH RESTORATION SERVICES, will be
20 restored to competency within the reasonably foreseeable future, the
21 court: ~~may order the defendant's release from commitment pursuant to~~
22 ~~this article 8.5 through one or more of the following means:~~

23 (a) **[Formerly 16-8.5-116 (6)(a)]** ~~Upon motion of the district~~
24 ~~attorney, the defendant, or on its own motion, the court may terminate~~
25 SHALL DISMISS the criminal proceedings, the commitment, or the
26 restoration services order UPON MOTION OF THE DISTRICT ATTORNEY, THE
27 DEFENDANT, OR ON ITS OWN MOTION;

1 (b) **[Formerly 16-8.5-116 (6)(b) as it will become effective July**
2 **1, 2024]** ~~If the court finds reasonable grounds to believe the defendant~~
3 ~~meets criteria for a certification for short-term treatment pursuant to~~
4 ~~section 27-65-108.5 or 27-65-109, the court~~ May order the district
5 attorney, or upon request from the district attorney, a professional person,
6 as defined in section 27-65-102; a representative of the behavioral health
7 administration in the department; or a representative of the office of civil
8 and forensic mental health to initiate, in a court with jurisdiction, a
9 proceeding for a certification for short-term treatment of the defendant
10 pursuant to section 27-65-108.5 or 27-65-109 IF THE COURT FINDS
11 REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR
12 A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
13 27-65-108.5 OR 27-65-109;

14 (c) **[Formerly 16-8.5-116 (6)(c)]** ~~In the case of a defendant who~~
15 ~~has been found eligible for services pursuant to article 10.5 of title 27 due~~
16 ~~to an intellectual and developmental disability, the court~~ MAY, or a party
17 may, initiate an action to restrict the rights of the defendant pursuant to
18 article 10.5 of title 27 IN THE CASE OF A DEFENDANT WHO HAS BEEN
19 FOUND ELIGIBLE FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27
20 DUE TO AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; or

21 (d) **[Formerly 16-8.5-116 (6)(d)]** ~~On and after July 1, 2020, the~~
22 ~~department shall~~ SHALL REQUIRE THE DEPARTMENT TO ensure that case
23 management services and support are made available to any defendant
24 released from commitment pursuant to this article 8.5 due to the
25 substantial probability that the defendant will not be restored to
26 competency in the ~~reasonable~~ REASONABLY foreseeable future.

27 (2) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S

1 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
2 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
3 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION IF:

4 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY
5 OFFENSE OR TRAFFIC OFFENSE AND THE DEFENDANT HAS BEEN IN THE
6 DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS BEEN
7 CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING TRANSPORT
8 TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR AN
9 AGGREGATE TIME OF SEVEN DAYS; AND

10 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
11 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

12 (3) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
13 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
14 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
15 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION IF:

16 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 2
17 MISDEMEANOR OR ANY MISDEMEANOR DRUG OFFENSE AND THE
18 DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION
19 SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY
20 AWAITING TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED
21 RESTORATION FOR AN AGGREGATE TIME OF NINETY DAYS; AND

22 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
23 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

24 (4) [Formerly 16-8.5-116 (7)] At any A review hearing held
25 concerning the defendant's competency to proceed, the court shall dismiss
26 the charges against the defendant and release the defendant from
27 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO

1 SUBSECTION (9) of this section if:

2 (a) ~~The defendant:~~

3 ~~(I) Is charged with a misdemeanor, a misdemeanor drug offense,~~
4 ~~a petty offense, or a traffic offense;~~

5 ~~(II) Has been committed to the custody of the department or~~
6 ~~otherwise confined as a result of a determination of incompetency to~~
7 ~~proceed;~~

8 ~~(III) Has received competency restoration services while~~
9 ~~committed or otherwise confined for an aggregate time of six months; and~~

10 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 1
11 MISDEMEANOR OR IS A LEVEL 4 DRUG FELONY AND THE DEFENDANT HAS
12 BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS
13 BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING
14 TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR
15 AN AGGREGATE TIME OF SIX MONTHS; AND

16 (b) The court determines, based on available evidence, that the
17 defendant remains incompetent to proceed.

18 (5) [Formerly 16-8.5-116 (8)] At any A review hearing held
19 concerning the defendant's competency to proceed, the court shall dismiss
20 the charges against the defendant and release the defendant from
21 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO
22 SUBSECTION (9) of this section if:

23 (a) ~~The defendant:~~

24 ~~(I) Is charged with a class 5 or class 6 felony, except for those~~
25 ~~offenses enumerated in section 24-4.1-302 (1), or with a level 3 or level~~
26 ~~4 drug felony;~~

27 ~~(II) Has been committed to the custody of the department or~~

1 ~~otherwise confined as a result of a determination of incompetency to~~
2 ~~proceed; and~~

3 ~~(HH) Has received competency restoration services while~~
4 ~~committed or otherwise confined for an aggregate time of one year; and~~

5 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 5 OR CLASS 6
6 FELONY OR A LEVEL 3 DRUG FELONY AND THE DEFENDANT HAS BEEN IN
7 THE DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS BEEN
8 CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING TRANSPORT
9 TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR AN
10 AGGREGATE PERIOD OF ONE YEAR; AND

11 (b) The court determines, based on available evidence, that the
12 defendant remains incompetent to proceed.

13 (6) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
14 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
15 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
16 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION, IF:

17 (a) THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 4
18 FELONY AND THE DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY
19 FOR RESTORATION SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER
20 DETENTION FACILITY AWAITING TRANSPORT TO THE DEPARTMENT FOR
21 COURT-ORDERED RESTORATION FOR AN AGGREGATE PERIOD OF TWO
22 YEARS; AND

23 (b) THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE,
24 THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED.

25 (7) [Formerly 16-8.5-116 (9)] SUBSECTIONS (2), (3), (4), (5), AND
26 (6) OF THIS SECTION DO NOT APPLY if the defendant is charged with ~~any~~
27 ~~other felony offense except~~ a class 1, 2, or 3 felony offense; a sex offense

1 as defined in section 18-1.3-1003 (5); a crime of violence as defined in
2 section 18-1.3-406 (2); or a level 1 or level 2 drug felony. and has been
3 committed to the custody of the department or otherwise confined as a
4 result of a determination of incompetency to proceed the following
5 provisions apply:

6 (a) If the defendant has received competency restoration services
7 while committed or otherwise confined for an aggregate time of two years
8 and the court determines, based on available evidence, that the defendant
9 is not restored to competency, then the court shall dismiss the charges
10 against the defendant, subject to the provisions of subsection (10) of this
11 section, unless any party objects to dismissal.

12 (b) If a party objects to dismissal of charges pursuant to
13 subsection (9)(a) of this section, the court shall set the matter for a
14 hearing. Upon completion of the hearing, the court shall dismiss the
15 charges unless the court determines that the party objecting to the
16 dismissal establishes by clear and convincing evidence that there is a
17 compelling public interest in continuing the prosecution and there is a
18 substantial probability that the defendant will attain competency in the
19 foreseeable future. If the court declines to dismiss the charges, the court
20 shall address the appropriateness of continued confinement and may alter
21 or reduce bond if appropriate pursuant to article 4 of this title 16 or the
22 decision to commit the defendant to the department pursuant to section
23 16-8.5-111.

- 24 (8) THE COURT SHALL DISMISS THE DEFENDANT'S CASE IF:
25 (a) THE DEFENDANT IS FOUND INCOMPETENT TO PROCEED;
26 (b) THE CHARGES AGAINST THE DEFENDANT HAVE NOT BEEN
27 DISMISSED PURSUANT TO THIS SECTION; AND

1 (c) THE DEFENDANT'S PRESENTENCE CONFINEMENT CREDIT,
2 INCLUDING ANY TIME PERIOD THE DEFENDANT WAS COMMITTED FOR
3 INPATIENT RESTORATION, OR CONFINED IN JAIL OR ANOTHER DETENTION
4 FACILITY AWAITING INPATIENT RESTORATION SERVICES, EXCEEDS THE
5 MAXIMUM SENTENCE FOR THE DEFENDANT'S HIGHEST CHARGED OFFENSE.

6 (9) [Formerly 16-8.5-116 (10) as it will become effective July 1,
7 2024] Prior to the dismissal of charges pursuant to ~~subsection (1), (4), (6),~~
8 ~~(7), (8), or (9)~~ of this section OR SECTION 16-8.5-111 (5), unless the court
9 has already ordered a person to initiate proceedings for a certification for
10 short-term treatment, the court shall make findings whether there are
11 reasonable grounds to believe the person meets the standard for a
12 certification for short-term treatment. If the court finds there are
13 reasonable grounds, the court may stay the dismissal for thirty-five days
14 and notify any professional person, as defined in section 27-65-102, a
15 representative of the behavioral health administration in the department,
16 or a representative of the office of civil and forensic mental health who
17 has recently treated or interacted with the defendant that there are
18 reasonable grounds for short-term treatment and afford the person an
19 opportunity to pursue certification proceedings or to arrange necessary
20 services.

21 (10) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO SECTION
22 16-8.5-111 (5), WHEN THE DEFENDANT'S DIAGNOSIS INCLUDES A
23 NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT, THE COURT
24 MAY STAY THE DISMISSAL FOR THIRTY-FIVE DAYS. IF THE COURT STAYS
25 THE DISMISSAL, THE COURT MAY ORDER THE BRIDGES COURT LIAISON TO
26 ASSIST WITH CASE PLANNING AND COORDINATING WITH SERVICES,
27 INCLUDING COORDINATING WITH GOVERNMENT ENTITIES OR

1 COMMUNITY-BASED ORGANIZATIONS THAT ARE CAPABLE OF PROVIDING
2 RESOURCES TO THE DEFENDANT UPON DISMISSAL OF CHARGES.

3 (11) [Formerly 16-8.5-116 (11)] In any circumstance ~~where~~ WHEN
4 the defendant's case was dismissed or the defendant was released from
5 confinement, the court shall enter a written decision explaining why the
6 court did or did not terminate the criminal proceeding or the commitment
7 or restoration order.

8 (12) [Formerly 16-8.5-116 (12)] If charges against a defendant are
9 dismissed pursuant to this section OR SECTION 16-8.5-111 (5), such
10 charges are not eligible for sealing pursuant to section 24-72-705.

11 (13) [Formerly 16-8.5-116 (13)] The department shall promulgate
12 such rules as necessary to consistently enforce the provisions of this
13 article 8.5.

14 (14) [Formerly 16-8.5-116 (14)] ~~On and after July 1, 2020,~~ The
15 court may, at any time ~~of~~ DURING the restoration process, order the
16 department OR THE BRIDGES COURT LIAISON to provide the court with an
17 appropriate release plan for the reintegration of the defendant into the
18 community with appropriate services.

19 (15) [Formerly 16-8.5-116 (15)] When the defendant is charged
20 with an offense in municipal court and the defendant is found
21 incompetent to proceed, or when civil commitment proceedings are
22 initiated pursuant to article 65 of title 27, the municipal court shall
23 dismiss the case.

24 (16) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES
25 NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111,
26 THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN
27 SUBSECTIONS (2), (3), (4), (5), AND (6) OF THIS SECTION AND, BASED UPON

1 THE BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE ADMITTED
2 TO AN INPATIENT FACILITY TO BEGIN RESTORATION WITHIN THE TIME
3 LIMITS DESCRIBED IN THE APPLICABLE SUBSECTION, THE COURT MAY
4 RELEASE THE DEFENDANT OR DISMISS THE CASE IN LIEU OF THE
5 DEFENDANT REMAINING IN CUSTODY ON A WAIT LIST FOR RESTORATION
6 SERVICES.

7 (17) WHEN A DEFENDANT IS IN CUSTODY AND IS FOUND
8 INCOMPETENT TO PROCEED, AT EVERY SUBSEQUENT REVIEW OF THE
9 DEFENDANT'S CASE, THE COURT SHALL MAKE A FINDING ON THE RECORD
10 REGARDING THE EXPIRATION OF APPLICABLE TIME LIMITS SET FORTH IN
11 THIS SECTION.

12 (18) IF A DEFENDANT FILES A MOTION ALLEGING THE COURT IS
13 REQUIRED TO DISMISS THE CASE BECAUSE A TIME LIMIT IN THIS SECTION
14 HAS EXPIRED, THE DEFENDANT IS ENTITLED TO A TIMELY HEARING AND
15 RULING ON THE MOTION.

16 **SECTION 15.** In Colorado Revised Statutes, **amend** 16-8.5-117
17 as follows:

18 **16-8.5-117. Escape - return to institution.** If a defendant
19 committed to the custody of the executive director for a competency
20 evaluation or for restoration to competency escapes from the institution
21 or hospital, ~~it is the duty of the chief officer of the institution or hospital~~
22 ~~to~~ SHALL apply to the district court for the county in which the institution
23 or hospital is located for a warrant of arrest directed to the sheriff of the
24 county, commanding ~~him or her~~ THE SHERIFF to take all necessary legal
25 action to effect the arrest of the defendant and to return the defendant
26 promptly to the institution or hospital. The fact of an escape becomes a
27 part of the official record of the defendant and ~~shall~~ MUST be certified to

1 the committing court as part of the record in any proceeding to determine
2 whether the defendant is eligible for release on bond or from custody.

3 **SECTION 16.** In Colorado Revised Statutes, **amend** 16-8.5-118
4 as follows:

5 **16-8.5-118. Temporary removal for treatment and**
6 **rehabilitation.** The chief officer of an institution ~~in which~~ WHERE a
7 defendant has been committed ~~under this article~~ PURSUANT TO THIS
8 ARTICLE 8.5 may authorize treatment and rehabilitation activities
9 involving temporary physical removal of the ~~person~~ DEFENDANT from the
10 institution ~~in which~~ WHERE the defendant has been placed ~~according to~~ IN
11 ACCORDANCE WITH the procedures and requirements of section 16-8-118.

12 **SECTION 17.** In Colorado Revised Statutes, 27-60-105, **amend**
13 (2) as follows:

14 **27-60-105. Outpatient restoration to competency services -**
15 **jail-based behavioral health services - responsible entity - duties -**
16 **report - legislative declaration.** (2) The state department serves as a
17 central organizing structure and responsible entity for the provision of
18 competency restoration education services and coordination of
19 competency restoration services ordered by the court pursuant to ~~section~~
20 ~~16-8.5-111 (2)(b) or 19-2.5-704 (2)~~ SECTION 16-8.5-111 (2) OR
21 19-2.5-704 (2), and the behavioral health administration serves as the
22 central organizing structure and responsible entity for jail-based
23 behavioral health services pursuant to section 27-60-106.

24 **SECTION 18.** In Colorado Revised Statutes, **repeal of relocated**
25 **provisions in this act,** 16-8.5-116 IP(6), (6)(a), (6)(c), (6)(d), (7), (8), (9),
26 (11), (12), (13), (14), and (15) and 16-8.5-116 (6)(b) and (10) as they will
27 become effective July 1, 2024.

1 **SECTION 19. Act subject to petition - effective date.** This act
2 takes effect at 12:01 a.m. on the day following the expiration of the
3 ninety-day period after final adjournment of the general assembly; except
4 that, if a referendum petition is filed pursuant to section 1 (3) of article V
5 of the state constitution against this act or an item, section, or part of this
6 act within such period, then the act, item, section, or part will not take
7 effect unless approved by the people at the general election to be held in
8 November 2024 and, in such case, will take effect on the date of the
9 official declaration of the vote thereon by the governor.