

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

**REREVISED**

*This Version Includes All Amendments  
Adopted in the Second House*

LLS NO. 24-0275.01 Shelby Ross x4510

**HOUSE BILL 24-1034**

**HOUSE SPONSORSHIP**

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**House Committees**

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**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.

SENATE  
3rd Reading Unamended  
May 4, 2024

SENATE  
Amended 2nd Reading  
May 3, 2024

HOUSE  
3rd Reading Unamended  
April 22, 2024

HOUSE  
Amended 2nd Reading  
April 20, 2024

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.

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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

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

10 **16-8.5-105. Evaluations, locations, time frames, and report.**

11 (1) (a) (I) The court shall order that the competency evaluation be  
12 conducted on an outpatient basis or, if the defendant is unable to post the  
13 monetary condition of bond or is ineligible to be released on bond, at the  
14 place where the defendant is in-custody, except as provided in subsection  
15 (1)(b) of this section. If the department conducts the evaluation on an  
16 in-custody basis, the department shall begin the evaluation as soon as  
17 practicable after the department's receipt of a court order directing the  
18 evaluation. ~~After July 1, 2020,~~ If the evaluation is conducted on an  
19 in-custody basis, the department shall complete the evaluation no later  
20 than twenty-one days after receipt of the order and the collateral  
21 materials. ~~On and after July 1, 2020,~~ If the evaluation is conducted on an  
22 out-of-custody basis, the department shall complete the evaluation within  
23 forty-two days after receipt of the order and collateral materials, unless  
24 the court extends the time upon a showing of good cause.

25 (III) The court shall determine the type of bond and the conditions  
26 of release after consideration of the presumptions and factors enumerated  
27 in article 4 of this title 16, which include consideration of the information

1 received from any pretrial services program pursuant to the provisions of  
2 section 16-4-106 and any information provided by the BRIDGES court  
3 liaison hired or contracted pursuant to article 95 of title 13. As a condition  
4 of any bond, the court shall require the defendant's cooperation with the  
5 competency evaluation on an outpatient and out-of-custody basis. In  
6 setting the bond, the court shall not consider the need for the defendant  
7 to receive an evaluation pursuant to this article 8.5 as a factor in  
8 determining any monetary condition of bond.

9 (b.6) IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT  
10 IS INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION  
11 SERVICES ARE NOT CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL  
12 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES  
13 AVAILABLE TO THE DEFENDANT.

14 (b.7) ~~On and after July 1, 2020,~~ When the court orders an inpatient  
15 evaluation, the defendant must be offered admission to the hospital or  
16 other inpatient program within fourteen days after receipt of the court  
17 order and collateral materials. The court shall review the case in  
18 twenty-one days to determine if transportation to the hospital or program  
19 has been completed or if further orders are necessary.

20 (d) If a defendant is in the department's custody for purposes of  
21 the competency evaluation ordered pursuant to this article 8.5 and the  
22 defendant has completed the competency evaluation and the evaluator has  
23 concluded that the defendant is competent to proceed, the department may  
24 return the defendant to a county jail or to the community, as determined  
25 by the defendant's bond status. If the evaluator has concluded that the  
26 defendant is incompetent to proceed and that inpatient restoration services  
27 are not clinically appropriate, and outpatient restoration services are

1 available to the defendant in the community, the department shall notify  
2 the court and the BRIDGES court liaison, and the department shall develop  
3 a discharge plan and a plan for community-based restoration services in  
4 coordination with the community restoration services provider. The court  
5 shall hold a hearing within seven days after receiving the notice, at which  
6 the department shall provide to the court the plan for community-based  
7 restoration services, and the court may enter any appropriate orders  
8 regarding the custody of the defendant and ~~his or her~~ the DEFENDANT'S  
9 bond status. The department shall advise the defendant of the date and  
10 time of the court hearing. If the department is returning the defendant to  
11 a county jail, the county sheriff in the jurisdiction where the defendant  
12 must return shall take custody of the defendant within seventy-two hours  
13 after receiving notification from the department that the defendant's  
14 evaluation is completed. At the time the department notifies the sheriff,  
15 the department shall also notify the court and the BRIDGES court liaison  
16 that the department is returning the defendant to the custody of the jail.

17 (4) A written report of the evaluation must be prepared in  
18 ~~triplicate and delivered~~ AND THE DEPARTMENT SHALL ELECTRONICALLY  
19 DELIVER THE REPORT to the COURT clerk ~~of the court~~ that ordered it. The  
20 clerk shall provide a copy of the report ~~both~~ to the prosecuting attorney  
21 ATTORNEY, THE BRIDGES COURT LIAISON, and the DEFENSE counsel ~~for the~~  
22 ~~defendant. The department may utilize~~ USING the e-filing system. ~~to~~  
23 ~~deliver the report to the court and serve it upon the parties.~~ Without  
24 reducing any other timelines set forth in this article 8.5, the competency  
25 evaluator shall provide the written report to the court within fourteen days  
26 after finishing meeting or attempting to meet with the ~~respondent~~  
27 DEFENDANT to evaluate the ~~respondent's~~ DEFENDANT'S competency.



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

3           ■ ■

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

10          (e) An opinion as to whether the defendant is competent to  
11 proceed OR INCOMPETENT TO PROCEED. If the opinion of the competency  
12 evaluator is that the defendant is incompetent to proceed, then THE  
13 REPORT MUST INCLUDE:

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

17           (B) ~~When, pursuant to the requirements of subsection (5)(f) of this~~  
18 ~~section, the evaluator is aware that any court within the previous five~~  
19 ~~years has found the defendant is incompetent to proceed and there is a~~  
20 ~~substantial probability that with restoration services the defendant will not~~  
21 ~~attain competency within the reasonably foreseeable future, the evaluator~~  
22 ~~shall provide an opinion regarding the probability of restoration pursuant~~  
23 ~~to this subsection (5)(e)(I) and, when the opinion is that there is a~~  
24 ~~substantial probability of attaining competency within the reasonably~~  
25 ~~foreseeable future, the evaluator shall state why the defendant's~~  
26 ~~circumstances are different from the prior court's finding;~~

27           (C) (B) IF POSSIBLE, when the defendant is diagnosed with a

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

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

22 (II) ~~A recommendation~~ AN OPINION as to whether inpatient  
23 restoration services are clinically appropriate to restore the defendant to  
24 competency. ~~If inpatient restoration services are not clinically appropriate,~~  
25 ~~the department must detail the outpatient and out-of-custody restoration~~  
26 ~~services available to the defendant. For evaluation reports filed on or after~~  
27 ~~January 1, 2021, the recommendations must be based upon the restoration~~

1 placement guideline developed pursuant to section 16-8.5-121, prior to  
2 its repeal.

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

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

16 (II) IF THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO  
17 PROCEED AFTER BEING FOUND COMPETENT TO PROCEED THREE OR MORE  
18 TIMES WITHIN THE PREVIOUS FIVE YEARS, AN OPINION AS TO WHETHER,  
19 EVEN IF RESTORED, THE DEFENDANT WILL MAINTAIN COMPETENCY  
20 THROUGHOUT THE CURRENT CASE.

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

23 (II) Meets the criteria for a certification for short-term treatment  
24 pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets  
25 such criteria, whether the evaluator believes the defendant could be  
26 treated on an outpatient basis pursuant to section 27-65-111. In assessing  
27 whether the defendant with a pending criminal charge is a danger to self

1 or others or is gravely disabled, if the person is incarcerated, the  
2 competency evaluator or professional person, as defined in section  
3 27-65-102, and the court shall not rely on the fact that the defendant is  
4 incarcerated or is an inpatient in a medical facility to establish that the  
5 defendant is not a danger to self or others or is not gravely disabled. If it  
6 is the evaluator's opinion that the defendant meets criteria for certification  
7 for short-term treatment pursuant to section 27-65-108.5 or 27-65-109,  
8 the evaluator is not required to request a petition for certification for  
9 short-term treatment of the defendant in a court with jurisdiction pursuant  
10 to ~~section 16-8.5-111(2)(a)~~ SECTION 16-8.5-111 (3).

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

19 **SECTION 5.** In Colorado Revised Statutes, **amend** 16-8.5-107  
20 as follows:

21 **16-8.5-107. Counsel and evaluators for indigent defendants.**  
22 In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE  
23 8.5, the court shall appoint A competency ~~evaluators or attorneys~~  
24 EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S  
25 expense upon motion of the defendant with proof that ~~he or she~~ THE  
26 DEFENDANT is indigent and without ~~funds~~ MONEY to employ A  
27 competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which

1 ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this article  
2 ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a  
3 second evaluation is requested by an indigent defendant. ~~it shall be paid~~  
4 ~~for by the court.~~

5 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-108, **amend**  
6 (1)(c) and (2) as follows:

7 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on ~~his or~~  
8 ~~her~~ THE DEFENDANT'S own behalf upon the trial of the issues raised by the  
9 plea of not guilty or, for offenses that occurred before July 1, 1995, a plea  
10 of not guilty by reason of impaired mental condition, or at a sentencing  
11 hearing held pursuant to section 18-1.3-1201 for an offense charged prior  
12 to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged  
13 prior to July 1, 2020, or pursuant to section 18-1.4-102, ~~the provisions of~~  
14 this section ~~shall~~ DOES not bar any evidence used to impeach or rebut the  
15 defendant's testimony.

16 (2) In any hearing concerning competency to proceed or  
17 restoration to competency, competency evaluators and other experts may  
18 testify as to ~~their~~ THE conclusions reached from their examination of  
19 hospital records, laboratory reports, X rays, electroencephalograms, and  
20 psychological test results if the material that ~~they~~ THE EVALUATORS OR  
21 EXPERTS examined in reaching their conclusions is produced at the time  
22 of the hearing. Nothing in this section prevents the parties from obtaining  
23 the information authorized by section 16-8.5-104 prior to the hearing.

24 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-109, **amend**  
25 (1), (2)(b), and (3) as follows:

26 **16-8.5-109. Advisement on matters to be determined.**

27 (1) When a determination is to be made as to a defendant's competency

1 to proceed, the court shall explain to the defendant the nature and  
2 consequences of the proceeding and the rights of the defendant under this  
3 section. The defendant, if ~~he or she~~ THE DEFENDANT wishes to contest the  
4 question, may request a competency hearing that THE COURT shall ~~then be~~  
5 ~~granted~~ GRANT as a matter of right.

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

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

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

14 **SECTION 8.** In Colorado Revised Statutes, **amend** 16-8.5-110  
15 as follows:

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

25 **SECTION 9.** In Colorado Revised Statutes, **repeal and reenact,**  
26 **with amendments,** 16-8.5-111 as follows:

27 **16-8.5-111. Procedure after determination of competency or**

1 **incompetency. (1) Competent to proceed.** IF THE FINAL  
2 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE  
3 DEFENDANT IS COMPETENT TO PROCEED, THE JUDGE SHALL ORDER THAT  
4 THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL WAS DECLARED,  
5 SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

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

12 (a) IF THE DEFENDANT IS OUT OF CUSTODY OR WILL BE RELEASED  
13 SOON, THE COURT SHALL ORDER THE RESTORATION SERVICES TAKE PLACE  
14 ON AN OUTPATIENT BASIS UNLESS THE RECOMMENDATION FROM THE  
15 DEPARTMENT IS THAT INPATIENT RESTORATION SERVICES ARE CLINICALLY  
16 APPROPRIATE AND:

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

19 (II) THE COURT MAY APPOINT A BRIDGES COURT LIAISON OR MAY  
20 ORDER THAT THE DEFENDANT COOPERATE WITH PRETRIAL SERVICES, IF  
21 AVAILABLE, AND THE COURT MAY ORDER PRETRIAL SERVICES OR A  
22 BRIDGES COURT LIAISON, OR BOTH, TO WORK WITH THE DEFENDANT, THE  
23 DEPARTMENT, AND THE RESTORATION SERVICES PROVIDER UNDER  
24 CONTRACT WITH THE DEPARTMENT TO ASSIST IN SECURING APPROPRIATE  
25 SUPPORT AND CARE MANAGEMENT SERVICES FOR THE DEFENDANT, WHICH  
26 MAY INCLUDE HOUSING RESOURCES; AND

27 (III) THE COURT SHALL CONDUCT A NONAPPEARANCE REVIEW

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

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

23 (c) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR  
24 RELEASE FROM CUSTODY OR NOT ABLE TO POST THE MONETARY  
25 CONDITION OF BOND, OR THE COURT APPROVES A RECOMMENDATION FROM  
26 THE DEPARTMENT THAT INPATIENT RESTORATION SERVICES ARE  
27 CLINICALLY APPROPRIATE, THE COURT SHALL COMMIT THE DEFENDANT TO



1 THE CUSTODY OF THE DEPARTMENT AND ORDER INPATIENT RESTORATION  
2 SERVICES.

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

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

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

21 (A) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT  
22 THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION FOR  
23 SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR  
24 27-65-109; AND

25 (B) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY  
26 OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE, OR WITH THE  
27 AGREEMENT OF THE PROSECUTING ATTORNEY, REGARDLESS OF THE

1 SEVERITY OF THE CHARGE.

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

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

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

15 (III) THE BEHAVIORAL HEALTH ADMINISTRATION IN THE  
16 DEPARTMENT SHALL, DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE  
17 COORDINATION SERVICES PURSUANT TO SECTION 27-65-108 AFTER THE  
18 CERTIFICATION FOR SHORT-TERM TREATMENT IS FILED PURSUANT TO  
19 SECTION 27-65-108.5 OR 27-65-109; AND

20 (IV) THE COURT MAY, UPON THE COURT'S OWN MOTION, FORGO AN  
21 ORDER FOR RESTORATION SERVICES AND DISMISS THE CHARGES AGAINST  
22 THE DEFENDANT WITHOUT PREJUDICE WHEN THE CERTIFICATION FOR  
23 SHORT-TERM TREATMENT IS INITIATED IF THE HIGHEST CHARGED OFFENSE  
24 IS A PETTY OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE; OR

25 (V) THE COURT MAY, WITH THE AGREEMENT OF THE PROSECUTING  
26 ATTORNEY AND DEFENDANT, STAY THE RESTORATION ORDER TO ALLOW  
27 CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR

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

- 14 (A) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;  
15 (B) WHETHER THE DEFENDANT IS SUBJECT TO CERTIFICATION FOR  
16 SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE DEFENDANT  
17 IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;  
18 (C) THE DATE AND TIME OF THE PROCEEDINGS, EVEN IF THE  
19 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING  
20 ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND  
21 (D) THE FINAL DISPOSITION OF THE PROCEEDING.

22 (4) **Restoration hearing.** (a) IF THE FINAL DETERMINATION MADE  
23 PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS  
24 INCOMPETENT TO PROCEED AND THE EVALUATOR OPINES AT ANY TIME  
25 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,  
26 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE  
27 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING

1        WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5). IF THE  
2        COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO THIS  
3        SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE COURT  
4        SHALL SET THE HEARING IN LIEU OF ORDERING RESTORATION TREATMENT.

5            (b) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION  
6        16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND  
7        THE EVALUATOR OPINES, PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(B),  
8        OR ANOTHER QUALIFIED EXPERT OPINES THAT THE DEFENDANT'S  
9        DIAGNOSIS LIKELY INCLUDES A MODERATE TO SEVERE INTELLECTUAL OR  
10       DEVELOPMENTAL DISABILITY, ACQUIRED TRAUMATIC BRAIN INJURY, OR  
11       DEMENTIA, WHICH EITHER ALONE OR TOGETHER WITH A CO-OCCURRING  
12       MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR  
13       MAINTAIN COMPETENCY, THE COURT SHALL SET A HEARING WITHIN THE  
14       TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5) ON THE ISSUE OF  
15       WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT  
16       WILL BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE  
17       FUTURE. IF THE COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO  
18       THIS SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE  
19       COURT SHALL SET A HEARING IN LIEU OF ORDERING RESTORATION  
20       TREATMENT.

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

23            (I) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED  
24        EXPERT OPINING THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND  
25        THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,  
26        WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE  
27        REASONABLY FORESEEABLE FUTURE IS PRIMA FACIE EVIDENCE THAT

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

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

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

26 (IV) IF THE COURT HAS ORDERED RESTORATION SERVICES AND THE  
27 COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED

1 AND THE DEFENDANT WAS NOT RESTORED TO COMPETENCY, A PARTY  
2 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY CLEAR  
3 AND CONVINCING EVIDENCE THAT THE DEFENDANT, WITH CONTINUED  
4 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY  
5 FORESEEABLE FUTURE AND THAT THE DEFENDANT CAN MAINTAIN  
6 COMPETENCY THROUGH THE ADJUDICATION OF THE CASE.

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

9 (I) IF THE COURT DOES NOT FIND THAT THE PARTY ASSERTING THAT  
10 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH  
11 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY  
12 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT  
13 SHALL DISMISS THE CASE PURSUANT TO SECTION 16-8.5-116.5 (1)(a);  
14 EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF APPROPRIATE, AS  
15 PROVIDED IN SECTION 16-8.5-116.5 (7); AND

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

21 (5) **Dismissal of charges.** TO ENSURE COMPLIANCE WITH  
22 RELEVANT CONSTITUTIONAL PRINCIPLES, IF THE COURT AT ANY POINT  
23 DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE  
24 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE  
25 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL, UPON MOTION OF  
26 THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON ITS OWN MOTION,  
27 DISMISS THE CRIMINAL PROCEEDINGS PURSUANT TO SECTION 16-8.5-116.5

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

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

17 (b) FOR THE PURPOSES OF THIS SUBSECTION (6), "VOLITIONAL LACK  
18 OF COOPERATION OR UNWILLINGNESS TO PARTICIPATE" INCLUDES THE  
19 DEFENDANT NOT ATTENDING RESTORATION SERVICES OR THE  
20 DEFENDANT'S REFUSAL TO TAKE PRESCRIBED MEDICATIONS, ESPECIALLY  
21 WHEN THE DEFENDANT INTENDS TO AVOID OR DELAY THE COURT CASE  
22 FROM PROCEEDING. "VOLITIONAL LACK OF COOPERATION OR  
23 UNWILLINGNESS TO PARTICIPATE" DOES NOT INCLUDE ACTS THAT RESULT  
24 FROM THE BONA FIDE MEDICAL OR MENTAL HEALTH DISORDER FOR WHICH  
25 THE DEFENDANT IS INCOMPETENT OR A DEFENDANT'S ATTEMPT TO RAISE  
26 A BONA FIDE, GOOD FAITH CONCERN ABOUT MEDICATION SIDE EFFECTS  
27 AND RISKS.

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

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

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

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

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



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

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

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

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

25 (I) A LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY  
26 APPROPRIATE, THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE  
27 COURT AND CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1

1 OF TITLE 24, MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY  
2 IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET  
3 RESTORED TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO  
4 COMPETENCY IN A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT  
5 RELEASED FROM CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO  
6 PROVIDE INPATIENT SERVICES AT A LOCATION DETERMINED BY THE  
7 DEPARTMENT.

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

10 (A) NOTIFY THE COURT AND REQUEST THAT THE DEFENDANT BE  
11 CONSIDERED FOR RELEASE ON A NONMONETARY BOND IF THE DEFENDANT  
12 IS NOT CURRENTLY RELEASED ON BOND; AND

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

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

24 (I) ASSIST THE DEFENDANT WITH ANY NECESSARY  
25 TRANSPORTATION;

26 (II) PROVIDE THE NECESSARY CASE AND MEDICATION  
27 INFORMATION FOR THE DEFENDANT TO THE BRIDGES COURT LIAISON AND

1 THE COMMUNITY AGENCY THAT WILL PROVIDE CONTINUED RESTORATION,  
2 IF APPLICABLE, OR SERVICES;

3 (III) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT  
4 THE DEFENDANT WAS RELEASED AND THE DEFENDANT'S COMMUNITY BOND  
5 STATUS; AND

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

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

14 (I) NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE  
15 DEFENDANT IS TO BE RETURNED;

16 (II) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT  
17 THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE  
18 COUNTY JAIL; AND

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

25 (9) **Return to custody of county jail.** WHEN THE DEPARTMENT  
26 SUBMITS A REPORT TO THE COURT THAT THE DEPARTMENT'S POSITION IS  
27 THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE DEFENDANT

1 MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL. THE SHERIFF  
2 SHALL RETURN THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL  
3 WITHIN SEVENTY-TWO HOURS AFTER RECEIPT OF THE DEPARTMENT'S  
4 NOTICE.

5 **SECTION 10.** In Colorado Revised Statutes, 16-8.5-112, **amend**  
6 (1), (2), and (3) as follows:

7 **16-8.5-112. Venue for collateral hearings.** (1) If a defendant  
8 committed to the custody of the department for evaluation or for  
9 restoration treatment meets the constitutional requirements for the  
10 administration of involuntary medication, the defendant's treating  
11 physician may petition the court for an order requiring that the defendant  
12 accept the treatment or, alternatively, that the medication be forcibly  
13 administered to the defendant. The department shall, prior to the hearing  
14 on the petition, deliver a copy of the petition to the court that committed  
15 the defendant to the custody of the department, the prosecuting attorney,  
16 and the defendant's legal representation in the criminal case, if such  
17 representation exists, and to the defendant directly if ~~he or she~~ THE  
18 DEFENDANT does not have legal representation. A physician shall assess  
19 and document the defendant's mental status prior to the administration of  
20 medication.

21 (2) A petition for involuntary treatment ~~shall~~ MUST be heard in the  
22 court of the jurisdiction where the defendant is located. The department  
23 shall promptly deliver a copy of the order granting or denying the petition  
24 to the court that committed the defendant to the custody of the  
25 department, the prosecuting attorney, and the defendant's legal  
26 representation in the criminal case, if such representation exists, and to  
27 the defendant directly if ~~he or she~~ THE DEFENDANT does not have legal

1 representation.

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

11 **SECTION 11.** In Colorado Revised Statutes, 16-8.5-113, **amend**  
12 (1), (2), (5), and (6) as follows:

13 **16-8.5-113. Restoration to competency.** (1) The court may order  
14 a restoration hearing at any time on its own motion, on motion of the  
15 prosecuting attorney, or on motion of the defendant; EXCEPT THAT THE  
16 COURT SHALL ORDER A RESTORATION HEARING WHEN REQUIRED  
17 PURSUANT TO SECTION 16-8.5-111 (4)(a) OR (4)(b).

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

25 (5) If a party makes a timely request for a hearing, the hearing  
26 ~~shall~~ MUST be held within thirty-five days after the request for a hearing  
27 or, if applicable, within thirty-five days after the filing of the second

1 evaluation report, unless the time is extended by the court after a finding  
2 of good cause.

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

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

13 **16-8.5-116. Certification - reviews - rules.** (1) ~~Subject to the~~  
14 ~~time periods and legal standards set forth in this section, whichever is~~  
15 ~~shortest, a defendant committed to the custody of the department or~~  
16 ~~otherwise confined as a result of a determination of incompetency to~~  
17 ~~proceed must not remain confined for a period in excess of the maximum~~  
18 ~~term of confinement that could be imposed for only the single most~~  
19 ~~serious offense with which the defendant is charged, less thirty percent~~  
20 ~~for a misdemeanor offense and less fifty percent for a felony offense. At~~  
21 ~~the end of such time period, the court shall dismiss the charges, and~~  
22 ~~certification proceedings or provision of services, if any, are governed by~~  
23 ~~article 65 or 10.5 of title 27.~~

24 (2) (b) ~~On and after July 1, 2020,~~ At least ten days before each  
25 review, the individual or entity evaluating the defendant shall provide the  
26 court with a report describing:

27 (c) ~~Additionally, on and after July 1, 2020,~~ At least ten days

1 before each review, the department treating team shall provide to the  
2 court an additional report that summarizes:

3 (V) The opinion of the treating team on the defendant's mental  
4 health functioning and ability to function on an outpatient basis for  
5 restoration services; and

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

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

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

19 (4) ~~After the fourth review, the court shall review the competency~~  
20 ~~of the defendant every ninety-one days until the defendant is restored to~~  
21 ~~competency or the court determines, based on available evidence, that~~  
22 ~~there is not a substantial probability that the defendant will be restored to~~  
23 ~~competency in the reasonably foreseeable future. If the court determines~~  
24 ~~based on available evidence there is not a substantial probability that the~~  
25 ~~defendant will be restored to competency in the reasonably foreseeable~~  
26 ~~future, the court shall dismiss the case subject to the provisions of~~  
27 ~~subsection (10) of this section.~~

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

7 **SECTION 13.** In Colorado Revised Statutes, **add with amended**  
8 **and relocated provisions** 16-8.5-116.5 as follows:

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

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

25 (b) **[Formerly 16-8.5-116 (6)(b) as it will become effective July**  
26 **1, 2024]** ~~If the court finds reasonable grounds to believe the defendant~~  
27 ~~meets criteria for a certification for short-term treatment pursuant to~~



1 ~~section 27-65-108.5 or 27-65-109, the court~~ May order the district  
2 attorney, or upon request from the district attorney, a professional person,  
3 as defined in section 27-65-102; a representative of the behavioral health  
4 administration in the department; or a representative of the office of civil  
5 and forensic mental health to initiate, in a court with jurisdiction, a  
6 proceeding for a certification for short-term treatment of the defendant  
7 pursuant to section 27-65-108.5 or 27-65-109 IF THE COURT FINDS  
8 REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR  
9 A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION  
10 27-65-108.5 OR 27-65-109;

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

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

24 == ==

25 (2) ~~[Formerly 16-8.5-116 (7)] At any~~ A review hearing held  
26 concerning the defendant's competency to proceed, the court shall dismiss  
27 the charges against the defendant and release the defendant from

1 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO  
2 SUBSECTION (7) of this section if:

3 (a) ~~The defendant:~~

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

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

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

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

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

19 (3) [Formerly 16-8.5-116 (8)] At any A review hearing held  
20 concerning the defendant's competency to proceed, the court shall dismiss  
21 the charges against the defendant and release the defendant from  
22 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO  
23 SUBSECTION (7) of this section if:

24 (a) ~~The defendant:~~

25 ~~(I) Is charged with a class 5 or class 6 felony, except for those~~  
26 ~~offenses enumerated in section 24-4.1-302 (1), or with a level 3 or level~~  
27 ~~4 drug felony;~~

1           ~~(II) Has been committed to the custody of the department or~~  
2 ~~otherwise confined as a result of a determination of incompetency to~~  
3 ~~proceed; and~~

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

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

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

14           (4) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S  
15 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES  
16 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM  
17 CONFINEMENT PURSUANT TO SUBSECTION (7) OF THIS SECTION, IF:

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

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

26           (5) [Formerly 16-8.5-116 (9)] SUBSECTIONS (2), (3), AND (4) OF  
27 THIS SECTION DO NOT APPLY if the defendant is charged with ~~any other~~

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

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

13 (b) If a party objects to dismissal of charges pursuant to  
14 subsection (9)(a) of this section, the court shall set the matter for a  
15 hearing. Upon completion of the hearing, the court shall dismiss the  
16 charges unless the court determines that the party objecting to the  
17 dismissal establishes by clear and convincing evidence that there is a  
18 compelling public interest in continuing the prosecution and there is a  
19 substantial probability that the defendant will attain competency in the  
20 foreseeable future. If the court declines to dismiss the charges, the court  
21 shall address the appropriateness of continued confinement and may alter  
22 or reduce bond if appropriate pursuant to article 4 of this title 16 or the  
23 decision to commit the defendant to the department pursuant to section  
24 16-8.5-111.

- 25 (6) THE COURT SHALL DISMISS THE DEFENDANT'S CASE IF:  
26 (a) THE DEFENDANT IS FOUND INCOMPETENT TO PROCEED;  
27 (b) THE CHARGES AGAINST THE DEFENDANT HAVE NOT BEEN

1 DISMISSED PURSUANT TO THIS SECTION; AND

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

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

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

1 INCLUDING COORDINATING WITH GOVERNMENT ENTITIES OR  
2 COMMUNITY-BASED ORGANIZATIONS THAT ARE CAPABLE OF PROVIDING  
3 RESOURCES TO THE DEFENDANT UPON DISMISSAL OF CHARGES.

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

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

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

15 (12) [Formerly 16-8.5-116 (14)] ~~On and after July 1, 2020, The~~  
16 court may, at any time of SHALL, AT AN APPROPRIATE TIME IN the  
17 restoration process, order the department OR THE APPOINTED BRIDGES  
18 COURT LIAISON, AS DEFINED IN SECTION 13-95-102, to provide the court  
19 with an appropriate INDIVIDUALIZED release plan DEVELOPED IN  
20 CONJUNCTION WITH ANY NECESSARY COMMUNITY PROVIDERS OR  
21 RESOURCES for the reintegration of the defendant into the community with  
22 appropriate services.

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

1           (14) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES  
2 NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111,  
3 THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN  
4 SUBSECTIONS (2), (3), AND (4) OF THIS SECTION AND, BASED UPON THE  
5 BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE ADMITTED TO  
6 AN INPATIENT FACILITY TO BEGIN RESTORATION WITHIN THE TIME LIMITS  
7 DESCRIBED IN THE APPLICABLE SUBSECTION, THE COURT MAY RELEASE  
8 THE DEFENDANT OR DISMISS THE CASE IN LIEU OF THE DEFENDANT  
9 REMAINING IN CUSTODY ON A WAIT LIST FOR RESTORATION SERVICES.

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

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

19           **SECTION 14.** In Colorado Revised Statutes, **amend** 16-8.5-117  
20 as follows:

21           **16-8.5-117. Escape - return to institution.** If a defendant  
22 committed to the custody of the executive director for a competency  
23 evaluation or for restoration to competency escapes from the institution  
24 or hospital, ~~it is the duty of the chief officer of the institution or hospital~~  
25 ~~to~~ SHALL apply to the district court for the county in which the institution  
26 or hospital is located for a warrant of arrest directed to the sheriff of the  
27 county, commanding ~~him or her~~ THE SHERIFF to take all necessary legal

1 action to effect the arrest of the defendant and to return the defendant  
2 promptly to the institution or hospital. The fact of an escape becomes a  
3 part of the official record of the defendant and ~~shall~~ MUST be certified to  
4 the committing court as part of the record in any proceeding to determine  
5 whether the defendant is eligible for release on bond or from custody.

6 **SECTION 15.** In Colorado Revised Statutes, **amend** 16-8.5-118  
7 as follows:

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

15 **SECTION 16.** In Colorado Revised Statutes, 27-60-105, **amend**  
16 (2) as follows:

17 **27-60-105. Outpatient restoration to competency services -**  
18 **jail-based behavioral health services - responsible entity - duties -**  
19 **report - legislative declaration.** (2) The state department serves as a  
20 central organizing structure and responsible entity for the provision of  
21 competency restoration education services and coordination of  
22 competency restoration services ordered by the court pursuant to ~~section~~  
23 ~~16-8.5-111 (2)(b) or 19-2.5-704 (2)~~ SECTION 16-8.5-111 (2) OR  
24 19-2.5-704 (2), and the behavioral health administration serves as the  
25 central organizing structure and responsible entity for jail-based  
26 behavioral health services pursuant to section 27-60-106.

27 **SECTION 17.** In Colorado Revised Statutes, 27-65-108.5,



1 amend (1)(b) as follows:

2 27-65-108.5. Court-ordered certification for short-term  
3 treatment for incompetent defendants in a criminal matter - contents  
4 of petition - procedure to contest petition - commitment to behavioral  
5 health administration - definition. (1) Upon petition of the district  
6 attorney, a professional person, a representative of the BHA, or a  
7 representative of the office of civil and forensic mental health, a court  
8 may certify a person for short-term treatment for not more than three  
9 months under the following conditions:

10 (b) The court hearing the criminal matter referred the matter for  
11 filing of a petition pursuant to section 16-8.5-111 or ~~16-8.5-116~~  
12 16-8.5-116.5;

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

17 **SECTION 19. Effective date.** Section 9 of this act takes effect  
18 July 1, 2024.

19 **SECTION 20. Safety clause.** The general assembly finds,  
20 determines, and declares that this act is necessary for the immediate  
21 preservation of the public peace, health, or safety or for appropriations for  
22 the support and maintenance of the departments of the state and state  
23 institutions.