

Second Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

DRAFT  
9/29/23

**BILL 3**

LLS NO. 24-0275.01 Shelby Ross x4510

**INTERIM COMMITTEE BILL**

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**Legislative Oversight Committee Concerning the Treatment of Persons  
with Behavioral Health Disorders in the Criminal and Juvenile Justice  
Systems**

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**BILL TOPIC:** Adult Competency To Stand Trial  
**DEADLINES:** File by: 9/29/2023

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**A BILL FOR AN ACT**

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

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**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

*Capital letters or bold & italic numbers indicate new material to be added to existing law.  
Dashes through the words 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 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 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-101, **add**  
3 (16.5) as follows:

4 **16-8.5-101. Definitions.** As used in this article 8.5, unless the  
5 context otherwise requires:

6 (16.5) "REASONABLY FORESEEABLE FUTURE" MEANS AN  
7 EVALUATOR'S CONSIDERATION OF THE DIAGNOSIS OR PROGNOSIS OF THE  
8 DEFENDANT AND WHETHER THERE IS A TIME FRAME IN WHICH, IF THERE IS  
9 NOT IMPROVEMENT, THAT THE DIAGNOSIS OR PROGNOSIS IS UNLIKELY TO  
10 CHANGE.

11 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**  
12 (1), (2)(a), (2)(b), (2)(d), and (3) as follows:

13 **16-8.5-102. Competency to proceed - how and when raised.**

14 (1) While a defendant is incompetent to proceed, the defendant ~~shall~~  
15 MUST not be tried or sentenced, nor shall the court consider or decide  
16 pretrial matters that are not susceptible of fair determination without the  
17 personal participation of the defendant. However, a determination that a  
18 defendant is incompetent to proceed ~~shall~~ DOES not preclude the  
19 ~~furtherance~~ CONTINUANCE of the proceedings by the court to consider and  
20 decide matters, including a preliminary hearing and motions, that are  
21 susceptible of fair determination prior to trial and without the personal

1 participation of the defendant. Those proceedings may be later reopened  
2 if, in the discretion of the court, substantial new evidence is discovered  
3 after and as a result of the DEFENDANT'S restoration to competency. ~~of the~~  
4 ~~defendant.~~

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

7 (a) If the judge has reason to believe that the defendant is  
8 incompetent to proceed, ~~it is the judge's duty to~~ THE JUDGE SHALL suspend  
9 the proceeding and determine the competency or incompetency of the  
10 defendant pursuant to section 16-8.5-103;

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

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

7           (3) Notwithstanding any provision of this ~~article~~ ARTICLE 8.5 to  
8 the contrary, the question of whether a convicted person is mentally  
9 incompetent to be executed ~~shall~~ MUST be raised and determined as  
10 ~~provided in~~ PURSUANT TO part 14 of article 1.3 of title 18. ~~C.R.S.~~

11           **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**  
12 (8) as follows:

13           **16-8.5-103. Determination of competency to proceed.** (8) If the  
14 question of the defendant's incompetency to proceed is raised after a jury  
15 is impaneled to try the issues raised by a plea of not guilty and the court  
16 determines that the defendant is incompetent to proceed or orders a  
17 court-ordered competency evaluation, the court may declare a mistrial.  
18 Declaration of a mistrial under these circumstances does not constitute  
19 jeopardy, nor does it prohibit the trial or sentencing of the defendant for  
20 the same offense after ~~he or she~~ THE DEFENDANT has been found restored  
21 to competency.

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

24           **16-8.5-104. Waiver of privilege.** (1) When a defendant raises the  
25 issue of competency to proceed, or when the court determines that the  
26 defendant is incompetent to proceed, ~~and orders that the defendant~~  
27 ~~undergo restoration treatment~~ any claim by the defendant to

1 confidentiality or privilege is deemed waived ~~and~~ IN THE CASE IN WHICH  
2 COMPETENCY IS RAISED AND FOR RECORDS OR INFORMATION FROM ANY  
3 PRIOR CRIMINAL CASE IN WHICH THE DEFENDANT RAISED THE ISSUE OF  
4 COMPETENCY OR IN WHICH THE COURT DETERMINED THAT THE  
5 DEFENDANT WAS INCOMPETENT TO PROCEED. The district attorney, the  
6 defense attorney, and the court are granted access, without written  
7 consent of the defendant or further order of the court, to:

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

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

20 (4.5) THE COURT MAY, UPON THE REQUEST OF EITHER PARTY,  
21 ISSUE AN ORDER TO ASSIST A PARTY IN ACCESSING, RECEIVING COPIES OF,  
22 OR DISCUSSING WITH AN EVALUATOR OR TREATMENT PROVIDER  
23 INFORMATION OR RECORDS WHICH THE PARTY HAS THE RIGHT TO ACCESS  
24 PURSUANT TO THE DEFENDANT'S WAIVER OF PRIVILEGE. IF A PARTY  
25 REQUESTS SUCH AN ORDER, THE COURT SHALL ALLOW THE OPPOSING  
26 PARTY TO MAKE ANY LEGAL OBJECTION, INCLUDING WHETHER THE  
27 REQUESTED INFORMATION IS WITHIN THE SCOPE OF THE DEFENDANT'S

1 WAIVER OF PRIVILEGE, AND CONSIDER ANY REQUESTS FOR PROTECTIVE  
2 ORDERS PRIOR TO ISSUING THE COURT ORDER. THIS SECTION DOES NOT  
3 LIMIT THE COURT'S ABILITY TO ORDER INFORMATION BE PROVIDED TO A  
4 PARTY WITH THE WRITTEN CONSENT OF THE DEFENDANT.

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

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

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

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

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

1 (b) RAISED THE ISSUE OF COMPETENCY PURSUANT TO SECTION  
2 16-8.5-103; OR

3 (c) IS FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION  
4 16-8.5-111.

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

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

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

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

23 **16-8.5-105. Evaluations, locations, time frames, and report.**

24 (1) (a) (I) The court shall order that the competency evaluation be  
25 conducted on an outpatient basis or, if the defendant is unable to post the  
26 monetary condition of bond or is ineligible to be released on bond, at the  
27 place where the defendant is in-custody, except as provided in subsection

1 (1)(b) of this section. If the department conducts the evaluation on an  
2 in-custody basis, the department shall begin the evaluation as soon as  
3 practicable after the department's receipt of a court order directing the  
4 evaluation. ~~After July 1, 2020,~~ If the evaluation is conducted on an  
5 in-custody basis, the department shall complete the evaluation no later  
6 than twenty-one days after receipt of the order and the collateral  
7 materials. ~~On and after July 1, 2020,~~ If the evaluation is conducted on an  
8 out-of-custody basis, the department shall complete the evaluation within  
9 forty-two days after receipt of the order and collateral materials, unless  
10 the court extends the time upon a showing of good cause.

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

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

27 (5) ~~On and after July 1, 2020,~~ The competency evaluation and



1 report must include, but need not be limited to:

2 (c) ~~A diagnosis and prognosis of the defendant's mental disability~~  
3 ~~or developmental disability~~ A DESCRIPTION OF MEDICATIONS RECENTLY

4 PRESCRIBED TO THE DEFENDANT AND WHETHER THE DEFENDANT HAS  
5 TAKEN THE MEDICATIONS AS PRESCRIBED, WHETHER THE MEDICATIONS  
6 WERE TAKEN VOLUNTARILY OR ADMINISTERED THROUGH A FORCED  
7 MEDICATION ORDER, AND WHAT EFFECT THE MEDICATIONS HAVE ON THE  
8 DEFENDANT;

9 (c.5) A DESCRIPTION OF ANY PRIOR CASES KNOWN TO THE  
10 DEPARTMENT IN WHICH THE DEFENDANT WAS FOUND INCOMPETENT TO  
11 PROCEED, INCLUDING THE JURISDICTION OF THE CASE AND THE CASE  
12 NUMBER, AND:

13 (I) THE NUMBER OF TIMES THE DEFENDANT HAS BEEN FOUND  
14 INCOMPETENT TO PROCEED;

15 (II) IF THE COURT FOUND THE DEFENDANT RESTORED TO  
16 COMPETENCY AND IF RESTORATION TREATMENT WAS PROVIDED TO THE  
17 DEFENDANT;

18 (III) ANY PRIOR OPINION OR COURT FINDINGS THAT THE  
19 DEFENDANT COULD NOT BE RESTORED TO COMPETENCY WITHIN THE  
20 REASONABLY FORESEEABLE FUTURE; AND

21 (IV) A DESCRIPTION OF ALL COMPETENCY EVALUATIONS OR  
22 RESTORATION SERVICES THAT WERE PREVIOUSLY PROVIDED TO THE  
23 DEFENDANT;

24 (d) An opinion as to whether the defendant CURRENTLY suffers  
25 from a mental disability or developmental disability. IF THE OPINION OF  
26 THE COMPETENCY EVALUATOR IS THAT THE DEFENDANT SUFFERS FROM A  
27 MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THEN THE REPORT

1 MUST INCLUDE AN OPINION AS TO THE DIAGNOSIS AND THE PROGNOSIS OF  
2 THE DEFENDANT'S MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY.

3 (e) An opinion as to whether the defendant is competent to  
4 proceed OR INCOMPETENT TO PROCEED. If the opinion of the competency  
5 evaluator is that the defendant is incompetent to proceed, then THE  
6 REPORT MUST INCLUDE:

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

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

20 ~~(C) When the defendant is diagnosed with a moderate to severe~~  
21 ~~intellectual or developmental disability, acquired or traumatic brain~~  
22 ~~injury, or dementia, which either alone or together with a co-occurring~~  
23 ~~mental illness affects the defendant's ability to gain or maintain~~  
24 ~~competency, the evaluator shall provide an opinion as to whether there is~~  
25 ~~a substantial probability that the defendant with restoration services will~~  
26 ~~attain competency within the reasonably foreseeable future. When the~~  
27 ~~opinion is that there is a substantial probability of attaining competency,~~

1 the evaluator shall specifically state whether the evaluator believes there  
2 are ~~unique or different services outside the standard competency~~  
3 ~~restoration curriculum developed by the department that the defendant~~  
4 ~~may need in order to be restored to competency within the reasonably~~  
5 ~~foreseeable future.~~

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

15 (II) A recommendation as to whether ~~inpatient~~ OUTPATIENT  
16 restoration services are clinically appropriate to restore the defendant to  
17 competency. If ~~inpatient~~ OUTPATIENT restoration services are ~~not~~  
18 clinically appropriate, the department must detail the outpatient and  
19 out-of-custody restoration services available to the defendant. ~~For~~  
20 ~~evaluation reports filed on or after January 1, 2021, the recommendations~~  
21 ~~must be based upon the restoration placement guideline developed~~  
22 ~~pursuant to section 16-8.5-121, prior to its repeal.~~

23 (III) A LIST OF CLINICALLY APPROPRIATE INPATIENT RESTORATION  
24 SERVICES IF THE DEFENDANT IS IN THE DEPARTMENT'S CUSTODY AND IS  
25 NOT CURRENTLY RECEIVING INPATIENT RESTORATION SERVICES OR IF  
26 OUTPATIENT RESTORATION SERVICES ARE NOT CLINICALLY APPROPRIATE.

27 (f) ~~If available within the records of the department, a description~~

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

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

13 (B) IF THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO  
14 PROCEED AFTER BEING FOUND COMPETENT TO PROCEED THREE OR MORE  
15 TIMES WITHIN THE PREVIOUS FIVE YEARS, AN OPINION AS TO WHETHER,  
16 EVEN IF RESTORED, THE DEFENDANT WILL MAINTAIN COMPETENCY  
17 THROUGHOUT THE CURRENT CASE, WHAT IS REQUIRED TO MAINTAIN  
18 COMPETENCY, AND WHETHER THE DEFENDANT SHOULD BE TREATED AS IF  
19 THE DEFENDANT IS UNLIKELY TO BE RESTORED TO COMPETENCY IN THE  
20 REASONABLY FORESEEABLE FUTURE.

21 **SECTION 7.** In Colorado Revised Statutes, **amend** 16-8.5-107  
22 as follows:

23 **16-8.5-107. Counsel and evaluators for indigent defendants.**

24 In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE  
25 8.5, the court shall appoint A competency ~~evaluators or attorneys~~  
26 EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S  
27 expense upon motion of the defendant with proof that ~~he or she~~ THE

1 DEFENDANT is indigent and without ~~funds~~ MONEY to employ A  
2 competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which  
3 ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this article  
4 ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a  
5 second evaluation is requested by an indigent defendant. ~~it shall be paid~~  
6 ~~for by the court.~~

7 **SECTION 8.** In Colorado Revised Statutes, 16-8.5-108, **amend**  
8 (1)(c) and (2) as follows:

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

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

26 **SECTION 9.** In Colorado Revised Statutes, 16-8.5-109, **amend**  
27 (1), (2)(b), and (3) as follows:

1           **16-8.5-109. Advisement on matters to be determined.**

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

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

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

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

16           **SECTION 10.** In Colorado Revised Statutes, **amend** 16-8.5-110  
17           as follows:

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

27           **SECTION 11.** In Colorado Revised Statutes, **repeal and reenact,**

1 **with amendments**, 16-8.5-111 as follows:

2 **16-8.5-111. Procedure after determination of competency or**

3 **incompetency.** (1) IF THE FINAL DETERMINATION MADE PURSUANT TO

4 SECTION 16-8.5-103 IS THAT THE DEFENDANT IS COMPETENT TO PROCEED,

5 THE JUDGE SHALL ORDER THAT THE SUSPENDED PROCEEDING CONTINUE

6 OR, IF A MISTRIAL WAS DECLARED, SHALL RESET THE CASE FOR TRIAL AT

7 THE EARLIEST POSSIBLE DATE.

8 (2) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION

9 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED, THE

10 COURT HAS THE FOLLOWING REQUIREMENTS AND OPTIONS:

11 (a) UPON A REQUEST FROM THE DISTRICT ATTORNEY; A

12 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102; A

13 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE

14 DEPARTMENT; OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND

15 FORENSIC MENTAL HEALTH, IF THE DEFENDANT IS CHARGED WITH AN

16 OFFENSE AS OUTLINED IN SECTION 16-8.5-116.5 (4) OR THE PROSECUTING

17 ATTORNEY AGREES THE DEFENDANT MEETS THE STANDARD FOR

18 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION

19 27-65-108.5 OR 27-65-109, AND THE COURT FINDS REASONABLE GROUNDS

20 TO BELIEVE THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION

21 FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR

22 27-65-109, THE COURT MAY ORDER THAT, PURSUANT TO THIS SUBSECTION

23 (2) OR SECTION 16-8.5-116.5, THE REQUESTING PARTY INITIATE A PETITION

24 FOR A CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT

25 IN A COURT WITH JURISDICTION. THE COURT SHALL HEAR AND CONSIDER

26 ANY OBJECTIONS FROM THE DEFENDANT PRIOR TO ORDERING THE

27 REFERRING PARTY TO INITIATE SUCH PROCEEDINGS. THE PROSECUTING

1 ATTORNEY AND THE DEPARTMENT SHALL TRANSMIT ANY NECESSARY  
2 INFORMATION, INCLUDING MEDICAL RECORDS, COMPETENCY  
3 EVALUATIONS, MATERIALS USED IN THE COMPETENCY PROCESS, AND  
4 RESTORATION RECORDS, AND COOPERATE WITH THE REQUESTING PARTY  
5 IN FILING A PETITION PURSUANT TO SECTION 27-65-108.5. WITH THE  
6 DEFENDANT'S CONSENT, THE DEFENSE ATTORNEY REPRESENTING THE  
7 DEFENDANT MAY TRANSMIT ANY INFORMATION AND COOPERATE IN THE  
8 SHORT-TERM CERTIFICATION PROCESS. THE REQUESTING PARTY SHALL  
9 FILE NOTICE IN THE CRIMINAL CASE WHEN THE CERTIFICATION FOR  
10 SHORT-TERM TREATMENT IS FILED. UPON THE FILING OF A CERTIFICATION  
11 FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5, THE  
12 BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT SHALL,  
13 DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE COORDINATION  
14 SERVICES PURSUANT TO SECTION 27-65-108.

15 (b) THE COURT MAY FORGO ANY ORDER OF RESTORATION AND  
16 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE  
17 WHEN A CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS IS  
18 INITIATED IF ALL OF THE DEFENDANT'S CHARGES ARE SUBJECT TO SECTION  
19 16-8.5-116.5 (4).

20 (c) IF THE COURT ORDERS THE INITIATION OF CERTIFICATION FOR  
21 SHORT-TERM TREATMENT PROCEEDINGS AND SECTION 16-8.5-116.5 (4)  
22 DOES NOT APPLY TO THE DEFENDANT'S CHARGES OR THE COURT DOES NOT  
23 ORDER DISMISSAL OF THE CASE PURSUANT TO SUBSECTION (1) OF THIS  
24 SECTION, WITH AGREEMENT OF THE PARTIES, THE COURT MAY STAY THE  
25 RESTORATION ORDER TO ALLOW CERTIFICATION FOR SHORT-TERM  
26 TREATMENT PROCEEDINGS TO OCCUR AND TO ALLOW THE DISTRICT  
27 ATTORNEY TO CONSIDER WHETHER DISMISSAL OF THE CASE IS



1 APPROPRIATE. TO ENABLE EVALUATION OF WHETHER DISMISSAL IS  
2 APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE DEFENDANT,  
3 THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND THE  
4 PROSECUTING ATTORNEY IN THE CRIMINAL MATTER IN WHICH  
5 COMPETENCY IS PENDING SHALL HAVE ACCESS TO LIMITED INFORMATION  
6 ABOUT ANY PROCEEDINGS PURSUANT TO SECTIONS 27-65-108.5,  
7 27-65-109, 27-65-110, AND 27-65-111. THE INFORMATION MUST BE KEPT  
8 CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW.  
9 THE COURT SHALL NOT EXTEND THE CRIMINAL CASE PAST THE TIME LIMITS  
10 SET FORTH IN SECTION 16-8.5-116.5, AND INFORMATION MUST NOT BE  
11 SHARED PURSUANT TO THIS SUBSECTION (2)(c) AFTER DISMISSAL OF THE  
12 CRIMINAL CASE UNLESS OTHERWISE ALLOWED BY SECTION 27-65-123 OR  
13 OTHER LAW. THE LIMITED INFORMATION ALLOWED TO BE SHARED WITH  
14 THE DEFENDANT, THE DEFENDANT'S CRIMINAL ATTORNEY, OR THE  
15 PROSECUTING ATTORNEY PURSUANT TO THIS SUBSECTION (2)(c) INCLUDES:  
16 (I) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;  
17 (II) WHETHER THE DEFENDANT IS SUBJECT TO A CERTIFICATION  
18 FOR SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE  
19 DEFENDANT IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;  
20 (III) WHEN PROCEEDINGS ARE OCCURRING, EVEN IF THE  
21 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING  
22 ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND  
23 (IV) THE ULTIMATE OUTCOME OF THE PROCEEDING.  
24 (d) IF THE EVALUATOR HAS PROVIDED AN OPINION AT ANY TIME  
25 THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THERE IS NOT A  
26 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION  
27 SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY

1 FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING WITHIN  
2 THIRTY-FIVE DAYS AFTER RECEIVING THE REPORT ON THE ISSUE OF  
3 WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT  
4 WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY  
5 FORESEEABLE FUTURE. IF THE COURT RECEIVES THE EVALUATOR'S OPINION  
6 PRIOR TO ENTERING A RESTORATION ORDER, THE COURT SHALL SET A  
7 HEARING IN LIEU OF ORDERING RESTORATION TREATMENT.

8 (e) IF THE EVALUATOR PROVIDES AN OPINION AT ANY TIME THAT  
9 THE DEFENDANT'S DIAGNOSIS LIKELY INCLUDES A MODERATE TO SEVERE  
10 INTELLECTUAL OR DEVELOPMENTAL DISABILITY, AN ACQUIRED OR  
11 TRAUMATIC BRAIN INJURY, OR A NON-REVERSIBLE DEGENERATIVE BRAIN  
12 DISEASE, WHICH EITHER ALONE OR TOGETHER WITH A CO-OCCURRING  
13 MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR  
14 MAINTAIN COMPETENCY, THE COURT SHALL SET A HEARING WITHIN  
15 THIRTY-FIVE DAYS AFTER RECEIVING THE REPORT ON THE ISSUE OF  
16 WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT  
17 WILL BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE  
18 FUTURE. IF THE COURT RECEIVES THE EVALUATOR'S OPINION PRIOR TO  
19 ENTERING A RESTORATION ORDER, THE COURT SHALL SET A HEARING IN  
20 LIEU OF ORDERING RESTORATION TREATMENT.

21 (f) AT THE CONCLUSION OF THE HEARING CONDUCTED PURSUANT  
22 TO SUBSECTION (2)(d) OR (2)(e) OF THIS SECTION:

23 (I) UNLESS THE COURT FINDS THAT THE PARTY ASSERTING THE  
24 DEFENDANT IS RESTORABLE IN THE REASONABLY FORESEEABLE FUTURE  
25 HAS OVERCOME THE APPLICABLE PRESUMPTION, THE COURT SHALL DISMISS  
26 THE CASE; EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF  
27 APPROPRIATE, AS PROVIDED IN SECTION 16-8.5-116.5 (8); AND

1           (II) IF THE COURT FINDS THAT THE PARTY ASSERTING THE  
2 DEFENDANT IS RESTORABLE IN THE REASONABLY FORESEEABLE FUTURE  
3 HAS OVERCOME THE PRESUMPTION, THE COURT SHALL ORDER  
4 RESTORATION SERVICES AND SET A REVIEW AND ORDER AN UPDATED  
5 COMPETENCY REPORT. THE HEARING MUST BE HELD AND THE UPDATED  
6 COMPETENCY REPORT MUST BE PROVIDED TO THE COURT WITHIN NINETY-  
7 ONE DAYS OF THE COURT'S ORDER.

8           (g) IF THE COURT FINDS THE DEFENDANT IS RESTORABLE IN THE  
9 REASONABLY FORESEEABLE FUTURE AND:

10           (I) THE DEFENDANT IS OUT OF CUSTODY, THE COURT SHALL ORDER  
11 THAT RESTORATION TO COMPETENCY TAKE PLACE ON AN OUTPATIENT  
12 BASIS; OR

13           (II) (A) THE DEFENDANT IS IN CUSTODY AND THE  
14 RECOMMENDATION IS FOR OUTPATIENT RESTORATION SERVICES, THE  
15 COURT SHALL SET A BOND HEARING TO CONSIDER THE RELEASE OF THE  
16 DEFENDANT ON BOND CONSISTENT WITH ARTICLE 4 OF THIS TITLE 16 AND  
17 THE COLORADO RULES OF CRIMINAL PROCEDURE;

18           (B) AS A CONDITION OF BOND, THE COURT SHALL ORDER THAT THE  
19 RESTORATION TAKE PLACE ON AN OUTPATIENT BASIS. PURSUANT TO  
20 SECTION 27-60-105, THE DEPARTMENT IS THE ENTITY RESPONSIBLE FOR  
21 THE OVERSIGHT OF RESTORATION EDUCATION AND COORDINATION OF ALL  
22 COMPETENCY RESTORATION SERVICES. AS A CONDITION OF RELEASE FOR  
23 OUTPATIENT RESTORATION SERVICES, THE COURT MAY REQUIRE PRETRIAL  
24 SERVICES, IF AVAILABLE, TO WORK WITH THE DEPARTMENT AND THE  
25 RESTORATION SERVICES PROVIDER UNDER CONTRACT WITH THE  
26 DEPARTMENT TO ASSIST IN SECURING APPROPRIATE SUPPORT AND CARE  
27 MANAGEMENT SERVICES, WHICH MAY INCLUDE HOUSING RESOURCES. THE

1 INDIVIDUAL AGENCY RESPONSIBLE FOR PROVIDING OUTPATIENT  
2 RESTORATION SERVICES FOR THE DEFENDANT SHALL NOTIFY THE COURT  
3 OR OTHER DESIGNATED AGENCY WITHIN TWENTY-ONE DAYS IF  
4 RESTORATION SERVICES HAVE NOT STARTED AND SHALL NOTIFY THE  
5 COURT OF EFFORTS THAT HAVE BEEN MADE TO ENGAGE THE DEFENDANT  
6 IN SERVICES.

7 (C) IF THE DEFENDANT IS IN CUSTODY ON A MISDEMEANOR, PETTY  
8 OFFENSE, OR TRAFFIC OFFENSE, THE COURT, WITHIN SEVEN DAYS OF THE  
9 DEFENDANT BEING FOUND INCOMPETENT TO PROCEED, SHALL SET A  
10 HEARING ON BOND. AT THE BOND HEARING THERE IS A PRESUMPTION THAT  
11 THE COURT SHALL ORDER A PERSONAL RECOGNIZANCE BOND AND  
12 OUTPATIENT RESTORATION SERVICES. IN ORDER FOR THE COURT TO DENY  
13 THE DEFENDANT A PERSONAL RECOGNIZANCE BOND AND COMMIT THE  
14 DEFENDANT FOR INPATIENT RESTORATION, THE COURT SHALL MAKE  
15 FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO  
16 OVERCOME THE PRESUMPTION OF RELEASE BY CLEAR AND CONVINCING  
17 EVIDENCE. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE  
18 COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FACTS AND  
19 FINDINGS THAT IT RELIED UPON IN THE ORDER FOR RESTORATION  
20 TREATMENT.

21 (D) IF THE DEFENDANT IS IN CUSTODY AND THE COURT HAS  
22 ORDERED OUTPATIENT RESTORATION SERVICES AND THE DEPARTMENT  
23 DETERMINES THAT IT IS UNABLE, WITHIN A REASONABLE TIME, TO PROVIDE  
24 RESTORATION SERVICES ON AN OUTPATIENT BASIS, THE DEPARTMENT  
25 SHALL NOTIFY THE COURT WITHIN FOURTEEN DAYS AFTER ITS  
26 DETERMINATION, AT WHICH POINT THE COURT SHALL REVIEW THE CASE  
27 AND DETERMINE WHAT INTERIM MENTAL HEALTH SERVICES CAN BE

1 PROVIDED WITHIN THE COMMUNITY BY THE DEPARTMENT OR OTHER  
2 COMMUNITY PROVIDER. IF A COURT LIAISON IS APPOINTED, THE  
3 DEPARTMENT SHALL REPORT TO THE COURT LIAISON EVERY  
4 TWENTY-EIGHT DAYS THEREAFTER CONCERNING THE AVAILABILITY OF  
5 RESTORATION SERVICES ON AN OUTPATIENT BASIS.

6 (h) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR  
7 RELEASE FROM CUSTODY OR NOT ABLE TO POST THE MONETARY  
8 CONDITION OF BOND, THE COURT SHALL COMMIT THE DEFENDANT TO THE  
9 CUSTODY OF THE DEPARTMENT UNTIL THE DEPARTMENT RECOMMENDS TO  
10 THE COURT THAT THE DEFENDANT IS COMPETENT, IS RELEASED FROM  
11 CUSTODY, OR THE CASE IS DISMISSED. AT SUCH TIME AS THE DEPARTMENT  
12 RECOMMENDS TO THE COURT THAT THE DEFENDANT IS RESTORED TO  
13 COMPETENCY, THE DEFENDANT MAY BE RETURNED TO CUSTODY OF THE  
14 COUNTY JAIL OR TO PREVIOUS BOND STATUS.

15 (i) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF  
16 THE DEPARTMENT, THE EXECUTIVE DIRECTOR SHALL DESIGNATE A STATE  
17 FACILITY AT WHICH THE DEFENDANT IS HELD FOR CARE AND PSYCHIATRIC  
18 TREATMENT AND TO RECEIVE RESTORATION SERVICES AND MAY TRANSFER  
19 THE DEFENDANT FROM ONE FACILITY TO ANOTHER IF, IN THE OPINION OF  
20 THE DIRECTOR, IT IS DESIRABLE TO DO SO IN THE INTEREST OF PROPER  
21 CARE, CUSTODY, AND TREATMENT OF THE DEFENDANT OR THE PROTECTION  
22 OF THE PUBLIC OR THE PERSONNEL OF THE FACILITIES IN QUESTION.

23 (j) (I) IF THE COURT HAS ORDERED INPATIENT RESTORATION  
24 SERVICES, THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT  
25 AN APPROPRIATE INPATIENT RESTORATION SERVICES PROGRAM. THE  
26 DEPARTMENT SHALL OFFER TIER 1 DEFENDANTS ADMISSION FOR  
27 RESTORATION SERVICES WITHIN SEVEN DAYS AFTER RECEIPT OF THE

1 COURT ORDER AND COLLATERAL MATERIALS. THE DEPARTMENT SHALL  
2 OFFER ADMISSION TO TIER 2 DEFENDANTS WITHIN TWENTY-EIGHT DAYS  
3 AFTER RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS. FOR  
4 TIER 2 DEFENDANTS, THE DEPARTMENT SHALL ADVISE THE COURT AND, IF  
5 A COURT LIAISON IS APPOINTED, THE COURT LIAISON EVERY  
6 TWENTY-EIGHT DAYS AFTER THE INITIAL TWENTY-EIGHT-DAY PERIOD  
7 REGARDING THE AVAILABILITY OF A BED AND WHEN ADMISSION WILL BE  
8 OFFERED.

9 (II) IF THE DEFENDANT IS NOT OFFERED ADMISSION AND  
10 TRANSPORTED TO THE INPATIENT RESTORATION SERVICES PROGRAM  
11 WITHIN THE TIME FRAMES PROVIDED OR IN ACCORDANCE WITH OTHER  
12 COURT ORDERS, THE COURT MAY:

13 (A) REVIEW THE CASE FOR CONSIDERATION OF OUTPATIENT  
14 RESTORATION SERVICES AND APPROPRIATE AND NECESSARY CASE  
15 MANAGEMENT SERVICES COORDINATED WITH THE DEPARTMENT; THE  
16 COURT LIAISON, IF A COURT LIAISON IS APPOINTED; AND PRETRIAL  
17 SERVICES, IF AVAILABLE; OR

18 (B) MAKE ANY OTHER ORDER DETERMINED TO BE NECESSARY IN  
19 ORDER TO SECURE THE NECESSARY RESTORATION SERVICES.

20 (III) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION  
21 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A  
22 LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE,  
23 THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, AND  
24 CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,  
25 MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY IF, IN THE  
26 EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET RESTORED  
27 TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO COMPETENCY IN

1 A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT RELEASED FROM  
2 CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO PROVIDE  
3 INPATIENT SERVICES AT A LOCATION DETERMINED BY THE DEPARTMENT.

4 (IV) IF THE DEFENDANT IS RECEIVING INPATIENT RESTORATION  
5 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT  
6 COMMUNITY-BASED RESTORATION SERVICES WOULD BE MORE CLINICALLY  
7 APPROPRIATE, THE DEPARTMENT SHALL:

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

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

16 (V) THE COURT SHALL RULE ON THE REQUEST THAT THE  
17 DEFENDANT BE CONSIDERED FOR RELEASE ON A NONMONETARY BOND  
18 WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE REQUEST FROM THE  
19 DEPARTMENT.

20 (VI) IF THE DEFENDANT WAS RELEASED ON BOND PRIOR TO THE  
21 INPATIENT HOSPITALIZATION, THE DEFENDANT MUST BE RELEASED  
22 PURSUANT TO THE BOND WITH THE CONDITIONS IMPOSED BY THE COURT.  
23 THE DEPARTMENT SHALL ASSIST THE DEFENDANT WITH ANY AND ALL  
24 NECESSARY TRANSPORTATION AND PROVIDE THE NECESSARY CASE AND  
25 MEDICATION INFORMATION FOR THE DEFENDANT TO THE COMMUNITY  
26 AGENCY THAT WILL PROVIDE ONGOING SERVICES AND MEDICATION  
27 SUPPORT. THE DEPARTMENT SHALL NOTIFY THE COURT AND THE COURT

1 LIAISON THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE  
2 COMMUNITY ON BOND STATUS. THE DEPARTMENT, THE COURT LIAISON,  
3 AND THE COURT, INCLUDING PRETRIAL SERVICES, SHALL COORDINATE TO  
4 ENSURE THAT THE DEFENDANT IS ADVISED OF THE DEFENDANT'S NEXT  
5 COURT APPEARANCE AND ALL OF THE REQUIRED TERMS AND CONDITIONS  
6 OF THE RELEASE ON BOND.

7 (k) FOR A DEFENDANT ALLOWED TO RESIDE OUT OF THE STATE OF  
8 COLORADO, THE DEPARTMENT MAY OFFER ASSISTANCE TO AN  
9 OUT-OF-STATE PROVIDER PROVIDING RESTORATION SERVICES TO THE  
10 DEFENDANT IN THE STATE WHERE THE DEFENDANT RESIDES.

11 (3) WHEN THE DEPARTMENT SUBMITS A REPORT TO THE COURT  
12 THAT IT IS THE POSITION OF THE DEPARTMENT THAT THE DEFENDANT IS  
13 RESTORED TO COMPETENCY, THE DEFENDANT MAY BE RETURNED TO THE  
14 CUSTODY OF THE COUNTY JAIL. IF THE RECOMMENDATION IS THAT THE  
15 DEFENDANT BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, THE  
16 DEPARTMENT SHALL NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE  
17 DEFENDANT IS TO BE RETURNED AND THE COURT LIAISON. WITHIN  
18 SEVENTY-TWO HOURS AFTER RECEIPT OF THE NOTICE, THE SHERIFF SHALL  
19 RETURN THE DEFENDANT TO THE JAIL. WHEN A DEFENDANT IS  
20 TRANSFERRED TO THE PHYSICAL CUSTODY OF THE SHERIFF, THE  
21 DEPARTMENT SHALL WORK WITH THE SHERIFF AND ANY BEHAVIORAL  
22 HEALTH PROVIDERS IN THE JAIL TO ENSURE THAT THE JAIL HAS THE  
23 NECESSARY INFORMATION TO PREVENT ANY DECOMPENSATION BY THE  
24 DEFENDANT WHILE THE DEFENDANT IS IN JAIL, WHICH MUST INCLUDE  
25 MEDICATION INFORMATION WHEN CLINICALLY APPROPRIATE. THE REPORT  
26 TO THE COURT MUST ALSO INCLUDE A STATEMENT THAT THE DEPARTMENT  
27 IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL.



1           (4) AT THE HEARING CONDUCTED PURSUANT TO SUBSECTION (2)(d)  
2 OR (2)(e) OF THIS SECTION:

3           (a) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED  
4 EXPERT PRESENTING AN OPINION THAT THE DEFENDANT IS INCOMPETENT  
5 TO PROCEED AND THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT  
6 THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN  
7 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE IS PRIMA  
8 FACIE EVIDENCE THAT CREATES A PRESUMPTION OF THAT FACT AS TO THE  
9 EXPERT'S OPINION. AN ADMITTED REPORT OR TESTIMONY FROM A  
10 QUALIFIED EXPERT WHO PRESENTS AN OPINION THAT THE DEFENDANT'S  
11 DIAGNOSIS LIKELY INCLUDES A MODERATE TO SEVERE INTELLECTUAL OR  
12 DEVELOPMENTAL DISABILITY, ACQUIRED OR TRAUMATIC BRAIN INJURY, OR  
13 NON-REVERSIBLE DEGENERATIVE BRAIN DISEASE, WHICH EITHER ALONE OR  
14 TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE  
15 DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, IS PRIMA FACIE  
16 EVIDENCE OF AND CREATES A PRESUMPTION THAT THE DEFENDANT IS  
17 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL  
18 PROBABILITY THAT THE DEFENDANT WILL ATTAIN COMPETENCY WITHIN  
19 THE REASONABLY FORESEEABLE FUTURE.

20           (b) IF THE COURT HAS NOT YET ORDERED RESTORATION SERVICES  
21 AND NO RESTORATION SERVICES HAVE BEEN PROVIDED, A PARTY  
22 ATTEMPTING TO OVERCOME THAT PRESUMPTION MUST PROVE BY A  
23 PREPONDERANCE OF THE EVIDENCE THAT THERE IS A VIABLE RESTORATION  
24 TREATMENT THAT WILL RESTORE THE DEFENDANT AND A SUBSTANTIAL  
25 PROBABILITY THAT RESTORATION EFFORTS WILL BE SUCCESSFUL WITHIN  
26 THE REASONABLY FORESEEABLE FUTURE;

27           (c) WHEN THE DEFENDANT'S DIAGNOSIS INCLUDES A MODERATE TO

1 SEVERE INTELLECTUAL OR DEVELOPMENTAL DISABILITY, ACQUIRED OR  
2 TRAUMATIC BRAIN INJURY, OR NON-REVERSIBLE DEGENERATIVE BRAIN  
3 DISEASE, WHETHER OR NOT CO-OCCURRING WITH MENTAL ILLNESS, A PARTY  
4 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST SHOW BY CLEAR AND  
5 CONVINCING EVIDENCE THAT THERE IS A VIABLE RESTORATION  
6 TREATMENT FOR THE DEFENDANT'S DIAGNOSIS THAT HAS A PROGNOSIS  
7 THAT IT IS EXTREMELY LIKELY TO RESTORE THE DEFENDANT TO  
8 COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE AND THE  
9 TREATMENT CAN BE ADMINISTERED IN A TIMELY MANNER TO THE  
10 DEFENDANT; AND

11 (d) IF THE COURT HAS ORDERED RESTORATION SERVICES OR THE  
12 COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED, A  
13 PARTY ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY  
14 CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT HAS MADE  
15 PROGRESS TOWARD ATTAINING COMPETENCY, THE DEFENDANT WILL  
16 ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE,  
17 AND THE DEFENDANT CAN MAINTAIN COMPETENCY THROUGH THE  
18 ADJUDICATION OF THE CASE.

19 (5) TO ENSURE COMPLIANCE WITH RELEVANT CONSTITUTIONAL  
20 PRINCIPLES, IF THE COURT AT ANY POINT DETERMINES THAT THERE IS NOT  
21 A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO  
22 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE COURT  
23 SHALL, UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON  
24 ITS OWN MOTION, DISMISS THE CRIMINAL PROCEEDINGS, THE  
25 COMMITMENT, OR THE RESTORATION SERVICES ORDER. SUBJECT TO THE  
26 PROVISIONS AND OTHER HEIGHTENED PRESUMPTIONS OF THIS SECTION  
27 WHICH MAY APPLY, A COURT MUST NOT CONTINUE CRIMINAL PROCEEDINGS

1 AGAINST AN INCOMPETENT DEFENDANT UNLESS, AFTER PROPER  
2 EVALUATION, THE COURT FINDS IT MORE LIKELY THAN NOT THAT THE  
3 DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY  
4 FORESEEABLE FUTURE, EXCEPT TO STAY A DISMISSAL PURSUANT TO  
5 SECTION 16-8.5-116.5 (6), (7), (8), OR (9).

6 **SECTION 12.** In Colorado Revised Statutes, 16-8.5-112, **amend**  
7 (1), (2), and (3) as follows:

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

22 (2) A petition for involuntary treatment ~~shall~~ MUST be heard in the  
23 court of the jurisdiction where the defendant is located. The department  
24 shall promptly deliver a copy of the order granting or denying the petition  
25 to the court that committed the defendant to the custody of the  
26 department, the prosecuting attorney, and the defendant's legal  
27 representation in the criminal case, if such representation exists, and to

1 the defendant directly if ~~he or she~~ THE DEFENDANT does not have legal  
2 representation.

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

12 **SECTION 13.** In Colorado Revised Statutes, 16-8.5-113, **amend**  
13 (1), (2), (5), and (6) as follows:

14 **16-8.5-113. Restoration to competency.** (1) The court may order  
15 a restoration hearing at any time on its own motion, on motion of the  
16 prosecuting attorney, or on motion of the defendant; EXCEPT THAT THE  
17 COURT SHALL ORDER A RESTORATION HEARING WHEN REQUIRED  
18 PURSUANT TO SECTION 16-8.5-111 (2)(d) OR (2)(e).

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

26 (5) If a party makes a timely request for a hearing, the hearing  
27 ~~shall~~ MUST be held within thirty-five days after the request for a hearing

1 or, if applicable, within thirty-five days after the filing of the second  
2 evaluation report, unless the time is extended by the court after a finding  
3 of good cause.

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

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

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

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

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

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

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

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

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

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

1 ~~subsection (10) of this section.~~

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

8 **SECTION 15.** In Colorado Revised Statutes, **add with amended**  
9 **and relocated provisions** 16-8.5-116.5 as follows:

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

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

26 (b) **[Formerly 16-8.5-116 (6)(b) as it will become effective July**  
27 **1, 2024]** ~~If the court finds reasonable grounds to believe the defendant~~

1 ~~meets criteria for a certification for short-term treatment pursuant to~~  
2 ~~section 27-65-108.5 or 27-65-109, the court~~ May order the district  
3 attorney, or upon request from the district attorney, a professional person,  
4 as defined in section 27-65-102; a representative of the behavioral health  
5 administration in the department; or a representative of the office of civil  
6 and forensic mental health to initiate, in a court with jurisdiction, a  
7 proceeding for a certification for short-term treatment of the defendant  
8 pursuant to section 27-65-108.5 or 27-65-109 IF THE COURT FINDS  
9 REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR  
10 A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION  
11 27-65-108.5 OR 27-65-109;

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

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

25 (2) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S  
26 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES  
27 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM



1 CONFINEMENT PURSUANT TO SUBSECTION (8) OF THIS SECTION IF:

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

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

10 (3) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S  
11 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES  
12 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM  
13 CONFINEMENT PURSUANT TO SUBSECTION (8) OF THIS SECTION IF:

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

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

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

27 (a) ~~The defendant:~~

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

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

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

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

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

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

21               (a) ~~The defendant:~~

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

25                       ~~(II) Has been committed to the custody of the department or~~  
26                       ~~otherwise confined as a result of a determination of incompetency to~~  
27                       ~~proceed; and~~

1           ~~(HH) Has received competency restoration services while~~  
2 ~~committed or otherwise confined for an aggregate time of one year; and~~  
3 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 5 OR CLASS 6  
4 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION  
5 24-4.1-302 (1) OR THE OFFENSE IS A LEVEL 3 DRUG FELONY, AND THE  
6 DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION  
7 SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY  
8 AWAITING TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED  
9 RESTORATION FOR AN AGGREGATE PERIOD OF ONE YEAR; AND

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

12           (6) 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 (8) OF THIS SECTION, IF:

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

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

24           (7) **[Formerly 16-8.5-116 (9)]** SUBSECTIONS (2), (3), (4), (5), AND  
25 (6) OF THIS SECTION DO NOT APPLY if the defendant is charged with ~~any~~  
26 ~~other felony offense except~~ a class 1, 2, or 3 felony offense; a sex offense  
27 as defined in section 18-1.3-1003 (5); a crime of violence as defined in

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

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

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

23 (8) [Formerly 16-8.5-116 (10) as it will become effective July 1,  
24 2024] Prior to the dismissal of charges pursuant to subsection (1), (4),  
25 (6), (7), (8), or (9) of this section OR SECTION 16-8.5-111 (2)(f), unless the  
26 court has already ordered a person to initiate proceedings for a  
27 certification for short-term treatment, the court shall make findings

1 whether there are reasonable grounds to believe the person meets the  
2 standard for a certification for short-term treatment. If the court finds  
3 there are reasonable grounds, the court may stay the dismissal for  
4 thirty-five days and notify any professional person, as defined in section  
5 27-65-102, a representative of the behavioral health administration in the  
6 department, or a representative of the office of civil and forensic mental  
7 health who has recently treated or interacted with the defendant that there  
8 are reasonable grounds for short-term treatment and afford the person an  
9 opportunity to pursue certification proceedings or to arrange necessary  
10 services.

11 (9) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO SECTION  
12 16-8.5-111 (2)(f), WHEN THE DEFENDANT'S DIAGNOSIS INCLUDES:

13 (a) A MODERATE TO SEVERE INTELLECTUAL OR DEVELOPMENTAL  
14 DISABILITY, THE COURT MAY STAY THE DISMISSAL FOR THIRTY-FIVE DAYS  
15 AND [PLACEHOLDER]...

16 (b) ACQUIRED OR TRAUMATIC BRAIN INJURY, THE COURT MAY  
17 STAY THE DISMISSAL FOR THIRTY-FIVE DAYS AND [PLACEHOLDER]...

18 (c) NON-REVERSIBLE DEGENERATIVE BRAIN DISEASE, THE COURT  
19 MAY STAY THE DISMISSAL FOR THIRTY-FIVE DAYS AND [PLACEHOLDER]...

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

25 (11) [Formerly 16-8.5-116 (12)] If charges against a defendant are  
26 dismissed pursuant to this section OR SECTION 16-8.5-111 (2)(f), such  
27 charges are not eligible for sealing pursuant to section 24-72-705.

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

4           (13) **[Formerly 16-8.5-116 (14)]** ~~On and after July 1, 2020,~~ The  
5 court may, at any time ~~of~~ DURING the restoration process, order the  
6 department to provide the court with an appropriate release plan for the  
7 reintegration of the defendant into the community with appropriate  
8 services.

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

14           (15) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES  
15 NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111,  
16 THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN  
17 SUBSECTIONS (2), (3), (4), (5), AND (6) OF THIS SECTION AND, BASED UPON  
18 THE BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE RESTORED  
19 TO COMPETENCY WITHIN THE TIME LIMITS DESCRIBED IN THE APPLICABLE  
20 SUBSECTION, THE COURT MAY RELEASE THE DEFENDANT OR DISMISS THE  
21 CASE IN LIEU OF THE DEFENDANT REMAINING IN CUSTODY ON A WAIT LIST  
22 FOR RESTORATION SERVICES.

23           (16) WHEN A DEFENDANT IS IN CUSTODY AND IS FOUND  
24 INCOMPETENT TO PROCEED, AT EVERY SUBSEQUENT REVIEW OF THE  
25 DEFENDANT'S CASE, THE COURT SHALL MAKE A FINDING ON THE RECORD  
26 REGARDING THE EXPIRATION OF APPLICABLE TIME LIMITS SET FORTH IN  
27 THIS SECTION.

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

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

7 **16-8.5-117. Escape - return to institution.** If a defendant  
8 committed to the custody of the executive director for a competency  
9 evaluation or for restoration to competency escapes from the institution  
10 or hospital, ~~it is the duty of the chief officer of the institution or hospital~~  
11 ~~to~~ SHALL apply to the district court for the county in which the institution  
12 or hospital is located for a warrant of arrest directed to the sheriff of the  
13 county, commanding ~~him or her~~ THE SHERIFF to take all necessary legal  
14 action to effect the arrest of the defendant and to return the defendant  
15 promptly to the institution or hospital. The fact of an escape becomes a  
16 part of the official record of the defendant and ~~shall~~ MUST be certified to  
17 the committing court as part of the record in any proceeding to determine  
18 whether the defendant is eligible for release on bond or from custody.

19 **SECTION 17.** In Colorado Revised Statutes, **amend** 16-8.5-118  
20 as follows:

21 **16-8.5-118. Temporary removal for treatment and**  
22 **rehabilitation.** The chief officer of an institution ~~in which~~ WHERE a  
23 defendant has been committed ~~under this article~~ PURSUANT TO THIS  
24 ARTICLE 8.5 may authorize treatment and rehabilitation activities  
25 involving temporary physical removal of the ~~person~~ DEFENDANT from the  
26 institution ~~in which~~ WHERE the defendant has been placed ~~according to~~ IN  
27 ACCORDANCE WITH the procedures and requirements of section 16-8-118.

1           **SECTION 18.** In Colorado Revised Statutes, **repeal of relocated**  
2           **provisions in this act**, 16-8.5-116 IP(6), (6)(a), (6)(c), (6)(d), (7), (8), (9),  
3           (11), (12), (13), (14), and (15) and 16-8.5-116 (6)(b) and (10) as they will  
4           become effective July 1, 2024.

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