

CHAPTER 389

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 08-1392

BY REPRESENTATIVE(S) McGihon, Carroll M., Carroll T., Frangas, Labuda, Levy, McFadyen, and Todd;
also SENATOR(S) Tapia, and Boyd.

AN ACT**CONCERNING COMPETENCY TO PROCEED IN ADULT CRIMINAL CASES.**

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

SECTION 1. Legislative declaration. (1) The general assembly hereby finds and declares:

(a) It is in the best interest of the state to promote streamlined, effective and contemporary practices for evaluating competency to stand trial and for assisting defendants in restoration to competency;

(b) The number of defendants requiring competency evaluation and restoration services to establish competency to stand trial has more than doubled since 2001;

(c) This increase in demand for inpatient competency evaluations and restoration services has generated a significant backlog in county jails of defendants awaiting inpatient competency evaluation or restoration, resulting in a waiting list to receive these services; and

(d) The backlog and waiting list have adversely affected the court system, district attorneys, defendants, defense attorneys, county sheriffs and jails, and have resulted in litigation against the state.

(2) In order to address these issues, the general assembly finds the following legislation is necessary to encourage prompt judicial determination for persons undergoing competency evaluation or treatment, improve the health of defendants, avoid delays in criminal cases, and conserve state resources by eliminating unnecessary hospitalizations.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

SECTION 2. Title 16, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW ARTICLE to read:

ARTICLE 8.5
Competency To Proceed

16-8.5-101. Definitions. AS USED IN THIS ARTICLE, UNLESS THE CONTEXT OTHERWISE REQUIRES:

(1) "COMPETENCY EVALUATION" INCLUDES BOTH COURT-ORDERED COMPETENCY EVALUATIONS AND SECOND EVALUATIONS.

(2) "COMPETENCY EVALUATOR" MEANS A LICENSED PHYSICIAN WHO IS A PSYCHIATRIST OR A LICENSED PSYCHOLOGIST, EACH OF WHOM IS TRAINED IN FORENSIC COMPETENCY ASSESSMENTS, OR A PSYCHIATRIST WHO IS IN FORENSIC TRAINING AND PRACTICING UNDER THE SUPERVISION OF A PSYCHIATRIST WITH EXPERTISE IN FORENSIC PSYCHIATRY, OR A PSYCHOLOGIST WHO IS IN FORENSIC TRAINING AND IS PRACTICING UNDER THE SUPERVISION OF A LICENSED PSYCHOLOGIST WITH EXPERTISE IN FORENSIC PSYCHOLOGY.

(3) "COMPETENCY HEARING" MEANS A HEARING TO DETERMINE WHETHER A DEFENDANT IS COMPETENT TO PROCEED.

(4) "COMPETENT TO PROCEED" MEANS THAT THE DEFENDANT DOES NOT HAVE A MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY THAT PREVENTS THE DEFENDANT FROM HAVING SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE DEFENDANT'S LAWYER WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST IN THE DEFENSE, OR PREVENTS THE DEFENDANT FROM HAVING A RATIONAL AND FACTUAL UNDERSTANDING OF THE CRIMINAL PROCEEDINGS.

(5) "COURT-ORDERED COMPETENCY EVALUATION" MEANS A COURT-ORDERED EXAMINATION OF A DEFENDANT EITHER BEFORE, DURING, OR AFTER TRIAL, DIRECTED TO DEVELOPING INFORMATION RELEVANT TO A DETERMINATION OF THE DEFENDANT'S COMPETENCY TO PROCEED AT A PARTICULAR STAGE OF THE CRIMINAL PROCEEDING, THAT IS PERFORMED BY A COMPETENCY EVALUATOR, AND INCLUDES EVALUATIONS CONCERNING RESTORATION TO COMPETENCY.

(6) "COURT-ORDERED REPORT" MEANS A REPORT OF AN EVALUATION, CONDUCTED BY OR UNDER THE DIRECTION OF THE DEPARTMENT, THAT IS THE STATUTORY OBLIGATION OF THE DEPARTMENT TO PREPARE WHEN REQUESTED TO DO SO BY THE COURT.

(7) "CRIMINAL PROCEEDINGS" MEANS TRIAL, SENTENCING, EXECUTION, AND ANY PRETRIAL MATTER THAT IS NOT SUSCEPTIBLE OF FAIR DETERMINATION WITHOUT THE PERSONAL PARTICIPATION OF THE DEFENDANT.

(8) "DEPARTMENT" MEANS THE DEPARTMENT OF HUMAN SERVICES.

(9) "DEVELOPMENTAL DISABILITY" MEANS A DISABILITY THAT HAS MANIFESTED BEFORE THE PERSON REACHES TWENTY-TWO YEARS OF AGE, THAT CONSTITUTES A SUBSTANTIAL DISABILITY TO THE AFFECTED INDIVIDUAL, AND IS ATTRIBUTABLE TO

MENTAL RETARDATION OR OTHER NEUROLOGICAL CONDITIONS WHEN SUCH CONDITIONS RESULT IN IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE BEHAVIOR SIMILAR TO THAT OF A PERSON WITH MENTAL RETARDATION. UNLESS OTHERWISE SPECIFICALLY STATED, THE FEDERAL DEFINITION OF "DEVELOPMENTAL DISABILITY", 42 U.S.C. SEC. 15001 ET SEQ., SHALL NOT APPLY.

(10) "EXECUTIVE DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES.

(11) "INCOMPETENT TO PROCEED" MEANS THAT, AS A RESULT OF A MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THE DEFENDANT DOES NOT HAVE SUFFICIENT PRESENT ABILITY TO CONSULT WITH THE DEFENDANT'S LAWYER WITH A REASONABLE DEGREE OF RATIONAL UNDERSTANDING IN ORDER TO ASSIST IN THE DEFENSE, OR THAT, AS A RESULT OF A MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THE DEFENDANT DOES NOT HAVE A RATIONAL AND FACTUAL UNDERSTANDING OF THE CRIMINAL PROCEEDINGS.

(12) "MENTAL DISABILITY" MEANS A SUBSTANTIAL DISORDER OF THOUGHT, MOOD, PERCEPTION, OR COGNITIVE ABILITY THAT RESULTS IN MARKED FUNCTIONAL DISABILITY, SIGNIFICANTLY INTERFERING WITH ADAPTIVE BEHAVIOR. "MENTAL DISABILITY" DOES NOT INCLUDE ACUTE INTOXICATION FROM ALCOHOL OR OTHER SUBSTANCES, OR ANY CONDITION MANIFESTED ONLY BY ANTISOCIAL BEHAVIOR, OR ANY SUBSTANCE ABUSE IMPAIRMENT RESULTING FROM RECENT USE OR WITHDRAWAL. HOWEVER, SUBSTANCE ABUSE THAT RESULTS IN A LONG-TERM, SUBSTANTIAL DISORDER OF THOUGHT, MOOD, OR COGNITIVE ABILITY MAY CONSTITUTE A MENTAL DISABILITY.

(13) "RESTORATION HEARING" MEANS A HEARING TO DETERMINE WHETHER A DEFENDANT WHO HAS PREVIOUSLY BEEN DETERMINED TO BE INCOMPETENT TO PROCEED HAS BECOME COMPETENT TO PROCEED.

(14) "SECONDEVALUATION" MEANS AN EVALUATION REQUESTED BY THE COURT, THE DISTRICT ATTORNEY, OR THE DEFENDANT THAT IS PERFORMED BY A COMPETENCY EVALUATOR AND THAT IS NOT PERFORMED BY OR UNDER THE DIRECTION OF, OR PAID FOR BY, THE DEPARTMENT.

16-8.5-102. Mental incompetency to proceed - how and when raised.

(1) WHILE A DEFENDANT IS INCOMPETENT TO PROCEED, THE DEFENDANT SHALL NOT BE TRIED OR SENTENCED, NOR SHALL THE COURT CONSIDER OR DECIDE PRETRIAL MATTERS THAT ARE NOT SUSCEPTIBLE OF FAIR DETERMINATION WITHOUT THE PERSONAL PARTICIPATION OF THE DEFENDANT. HOWEVER, A DETERMINATION THAT A DEFENDANT IS INCOMPETENT TO PROCEED SHALL NOT PRECLUDE THE FURTHERANCE OF THE PROCEEDINGS BY THE COURT TO CONSIDER AND DECIDE MATTERS, INCLUDING A PRELIMINARY HEARING AND MOTIONS, THAT ARE SUSCEPTIBLE OF FAIR DETERMINATION PRIOR TO TRIAL AND WITHOUT THE PERSONAL PARTICIPATION OF THE DEFENDANT. THOSE PROCEEDINGS MAY BE LATER REOPENED IF, IN THE DISCRETION OF THE COURT, SUBSTANTIAL NEW EVIDENCE IS DISCOVERED AFTER AND AS A RESULT OF THE RESTORATION TO COMPETENCY OF THE DEFENDANT.

(2) THE QUESTION OF A DEFENDANT'S COMPETENCY TO PROCEED SHALL BE RAISED IN THE FOLLOWING MANNER:

(a) IF THE JUDGE HAS REASON TO BELIEVE THAT THE DEFENDANT IS INCOMPETENT TO PROCEED, IT IS THE JUDGE'S DUTY TO SUSPEND THE PROCEEDING AND DETERMINE THE COMPETENCY OR INCOMPETENCY OF THE DEFENDANT PURSUANT TO SECTION 16-8.5-103.

(b) IF EITHER THE DEFENSE OR THE PROSECUTION HAS REASON TO BELIEVE THAT THE DEFENDANT IS INCOMPETENT TO PROCEED, EITHER PARTY MAY FILE A MOTION IN ADVANCE OF THE COMMENCEMENT OF THE PARTICULAR PROCEEDING. A MOTION TO DETERMINE COMPETENCY SHALL BE IN WRITING AND CONTAIN A CERTIFICATE OF COUNSEL STATING THAT THE MOTION IS BASED ON A GOOD FAITH DOUBT THAT THE DEFENDANT IS COMPETENT TO PROCEED. THE MOTION SHALL SET FORTH THE SPECIFIC FACTS THAT HAVE FORMED THE BASIS FOR THE MOTION. THE MOTION SHALL BE SEALED BY THE COURT. IF THE MOTION IS MADE BY THE PROSECUTION, THE PROSECUTION SHALL PROVIDE TO THE DEFENSE A COPY OF THE MOTION. IF THE MOTION IS MADE BY THE DEFENSE, THE DEFENSE SHALL PROVIDE TO THE PROSECUTION NOTICE OF THE FILING OF THE MOTION AT THE TIME OF FILING, AND IF THE DEFENSE REQUESTS A HEARING, THE DEFENSE SHALL PROVIDE THE MOTION TO THE PROSECUTION AT THE TIME THE HEARING IS REQUESTED. THE MOTION MAY BE FILED AFTER THE COMMENCEMENT OF THE PROCEEDING IF, FOR GOOD CAUSE SHOWN, THE MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY OF THE DEFENDANT WAS NOT KNOWN OR APPARENT BEFORE THE COMMENCEMENT OF THE PROCEEDING.

(c) BY THE AFFIDAVIT OF ANY CHIEF OFFICER OF AN INSTITUTION HAVING CUSTODY OF A DEFENDANT AWAITING EXECUTION.

(3) NOTWITHSTANDING ANY PROVISION OF THIS ARTICLE TO THE CONTRARY, THE QUESTION OF WHETHER A CONVICTED PERSON IS MENTALLY INCOMPETENT TO BE EXECUTED SHALL BE RAISED AND DETERMINED AS PROVIDED IN PART 14 OF ARTICLE 1.3 OF TITLE 18, C.R.S.

16-8.5-103. Determination of incompetency to proceed. (1) WHENEVER THE QUESTION OF A DEFENDANT'S COMPETENCY TO PROCEED IS RAISED, BY EITHER PARTY OR ON THE COURT'S OWN MOTION, THE COURT MAY MAKE A PRELIMINARY FINDING OF COMPETENCY OR INCOMPETENCY, WHICH SHALL BE A FINAL DETERMINATION UNLESS A PARTY TO THE CASE OBJECTS WITHIN TEN DAYS AFTER THE COURT'S PRELIMINARY FINDING.

(2) IF EITHER PARTY OBJECTS TO THE COURT'S PRELIMINARY FINDING, OR IF THE COURT DETERMINES THAT IT HAS INSUFFICIENT INFORMATION TO MAKE A PRELIMINARY FINDING, THE COURT SHALL ORDER THAT THE DEFENDANT BE EVALUATED FOR COMPETENCY BY THE DEPARTMENT AND THAT THE DEPARTMENT PREPARE A COURT-ORDERED REPORT.

(3) WITHIN TEN DAYS AFTER RECEIPT OF THE COURT-ORDERED REPORT, EITHER PARTY MAY REQUEST A HEARING OR A SECOND EVALUATION.

(4) IF A PARTY REQUESTS A SECOND EVALUATION, ANY PENDING REQUESTS FOR A HEARING SHALL BE CONTINUED UNTIL THE RECEIPT OF THE SECOND EVALUATION REPORT. THE REPORT OF THE EXPERT CONDUCTING THE SECOND EVALUATION SHALL BE COMPLETED AND FILED WITH THE COURT WITHIN SIXTY DAYS AFTER THE COURT ORDER ALLOWING THE SECOND EVALUATION, UNLESS THE TIME PERIOD IS EXTENDED

BY THE COURT FOR GOOD CAUSE. IF THE SECOND EVALUATION IS REQUESTED BY THE COURT, IT SHALL BE PAID FOR BY THE COURT.

(5) IF NEITHER PARTY REQUESTS A HEARING OR A SECOND EVALUATION WITHIN THE APPLICABLE TIME FRAME, THE COURT SHALL ENTER A FINAL DETERMINATION, BASED ON THE INFORMATION THEN AVAILABLE TO THE COURT, WHETHER THE DEFENDANT IS OR IS NOT COMPETENT TO PROCEED.

(6) IF A PARTY MAKES A TIMELY REQUEST FOR A HEARING, THE HEARING SHALL BE HELD WITHIN THIRTY DAYS AFTER THE REQUEST FOR A HEARING OR, IF APPLICABLE, WITHIN THIRTY DAYS AFTER THE FILING OF THE SECOND EVALUATION REPORT, UNLESS THE TIME IS EXTENDED BY THE COURT AFTER A FINDING OF GOOD CAUSE.

(7) AT ANY HEARING HELD PURSUANT TO THIS SECTION, THE PARTY ASSERTING THE INCOMPETENCY OF THE DEFENDANT SHALL HAVE THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE.

(8) IF THE QUESTION OF THE DEFENDANT'S INCOMPETENCY TO PROCEED IS RAISED AFTER A JURY IS IMPANELED TO TRY THE ISSUES RAISED BY A PLEA OF NOT GUILTY AND THE COURT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO PROCEED OR ORDERS THE DEFENDANT COMMITTED FOR A COURT-ORDERED COMPETENCY EVALUATION, THE COURT MAY DECLARE A MISTRIAL. DECLARATION OF A MISTRIAL UNDER THESE CIRCUMSTANCES DOES NOT CONSTITUTE JEOPARDY, NOR DOES IT PROHIBIT THE TRIAL, SENTENCING, OR EXECUTION OF THE DEFENDANT FOR THE SAME OFFENSE AFTER HE OR SHE HAS BEEN FOUND RESTORED TO COMPETENCY.

16-8.5-104. Waiver of privilege. (1) WHEN A DEFENDANT RAISES THE ISSUE OF COMPETENCY TO PROCEED, OR WHEN THE COURT DETERMINES THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND ORDERS THAT THE DEFENDANT UNDERGO RESTORATION TREATMENT, ANY CLAIM BY THE DEFENDANT TO CONFIDENTIALITY OR PRIVILEGE IS DEEMED WAIVED, AND THE DISTRICT ATTORNEY, THE DEFENSE ATTORNEY, AND THE COURT ARE GRANTED ACCESS, WITHOUT WRITTEN CONSENT OF THE DEFENDANT OR FURTHER ORDER OF THE COURT, TO:

(a) REPORTS OF COMPETENCY EVALUATIONS, INCLUDING SECOND EVALUATIONS;

(b) INFORMATION AND DOCUMENTS RELATING TO THE COMPETENCY EVALUATION THAT ARE CREATED BY, OBTAINED BY, REVIEWED BY, OR RELIED ON BY AN EVALUATOR PERFORMING A COURT-ORDERED EVALUATION; AND

(c) THE EVALUATOR, FOR THE PURPOSE OF DISCUSSING THE COMPETENCY EVALUATION.

(2) UPON A REQUEST BY EITHER PARTY OR THE COURT FOR THE INFORMATION DESCRIBED IN SUBSECTION (1) OF THIS SECTION, THE EVALUATOR OR TREATMENT PROVIDER SHALL PROVIDE THE INFORMATION FOR USE IN PREPARING FOR A HEARING ON COMPETENCY OR RESTORATION AND FOR USE DURING SUCH A HEARING.

(3) AN EVALUATOR OR A FACILITY PROVIDING COMPETENCY EVALUATION OR RESTORATION TREATMENT SERVICES PURSUANT TO A COURT ORDER ISSUED

PURSUANT TO THIS ARTICLE IS AUTHORIZED TO PROVIDE, AND SHALL PROVIDE, PROCEDURAL INFORMATION TO THE COURT, DISTRICT ATTORNEY, OR DEFENSE COUNSEL, CONCERNING THE DEFENDANT'S LOCATION, THE DEFENDANT'S HOSPITAL OR FACILITY ADMISSION STATUS, THE STATUS OF EVALUATION PROCEDURES, AND OTHER PROCEDURAL INFORMATION RELEVANT TO THE CASE.

(4) NOTHING IN THIS SECTION LIMITS THE COURT'S ABILITY TO ORDER THAT INFORMATION IN ADDITION TO THAT SET FORTH IN SUBSECTIONS (1) AND (3) OF THIS SECTION BE PROVIDED TO THE EVALUATOR, OR TO EITHER PARTY TO THE CASE, NOR DOES IT LIMIT THE INFORMATION THAT IS AVAILABLE AFTER THE WRITTEN CONSENT OF THE DEFENDANT.

(5) THE COURT SHALL ORDER BOTH THE PROSECUTOR AND THE DEFENDANT OR THE DEFENDANT'S COUNSEL TO EXCHANGE THE NAMES, ADDRESSES, REPORTS, AND STATEMENTS OF EACH PHYSICIAN OR PSYCHOLOGIST WHO HAS EXAMINED OR TREATED THE DEFENDANT FOR COMPETENCY.

(6) STATEMENTS MADE BY THE DEFENDANT IN THE COURSE OF ANY EVALUATION SHALL BE PROTECTED AS PROVIDED IN SECTION 16-8.5-108.

16-8.5-105. Evaluations and report. (1) (a) THE LOCATION FOR COMPETENCY EVALUATIONS SHALL BE DETERMINED BY THE COURT. THE DEFENDANT MAY BE RELEASED ON BOND, IF OTHERWISE ELIGIBLE FOR BOND, OR REFERRED OR COMMITTED FOR A COURT-ORDERED COMPETENCY EVALUATION TO THE DEPARTMENT, OR THE COURT MAY DIRECT THAT THE EVALUATION BE DONE AT THE PLACE WHERE THE DEFENDANT IS RESIDING OR IS IN CUSTODY. IN DETERMINING THE PLACE WHERE THE EVALUATION IS TO BE CONDUCTED, THE COURT SHALL GIVE PRIORITY TO THE PLACE WHERE THE DEFENDANT IS IN CUSTODY, UNLESS THE NATURE AND CIRCUMSTANCES OF THE EVALUATION REQUIRE DESIGNATION OF A DIFFERENT FACILITY.

(b) NOTHING IN THIS SECTION SHALL RESTRICT THE RIGHT OF THE DEFENDANT TO PROCURE AN EVALUATION AS PROVIDED IN SECTION 16-8.5-107.

(2) THE DEFENDANT SHALL COOPERATE WITH THE COMPETENCY EVALUATOR AND WITH OTHER PERSONNEL PROVIDING ANCILLARY SERVICES, SUCH AS TESTING AND RADIOLOGICAL SERVICES. STATEMENTS MADE BY THE DEFENDANT IN THE COURSE OF THE EVALUATION SHALL BE PROTECTED AS PROVIDED IN SECTION 16-8.5-108. IF THE DEFENDANT DOES NOT COOPERATE WITH THE COMPETENCY EVALUATOR AND OTHER PERSONNEL PROVIDING ANCILLARY SERVICES, AND THE LACK OF COOPERATION IS NOT THE RESULT OF A DEVELOPMENTAL DISABILITY OR A MENTAL DISABILITY, THE FACT OF THE DEFENDANT'S NONCOOPERATION WITH THE COMPETENCY EVALUATOR AND OTHER PERSONNEL PROVIDING ANCILLARY SERVICES, MAY BE ADMISSIBLE IN THE DEFENDANT'S COMPETENCY OR RESTORATION HEARING TO REBUT ANY EVIDENCE INTRODUCED BY THE DEFENDANT WITH REGARD TO THE DEFENDANT'S COMPETENCY.

(3) TO AID IN FORMING AN OPINION AS TO THE COMPETENCY OF THE DEFENDANT, IT IS PERMISSIBLE IN THE COURSE OF AN EVALUATION UNDER THIS SECTION TO USE CONFESSIONS AND ADMISSIONS OF THE DEFENDANT AND ANY OTHER EVIDENCE OF THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE, AS WELL AS

THE MEDICAL AND SOCIAL HISTORY OF THE DEFENDANT, IN QUESTIONING THE DEFENDANT. WHEN THE DEFENDANT IS NONCOOPERATIVE WITH THE COMPETENCY EVALUATOR OR PERSONNEL PROVIDING ANCILLARY SERVICES, AN OPINION OF THE COMPETENCY OF THE DEFENDANT MAY BE RENDERED BY THE COMPETENCY EVALUATOR BASED UPON CONFESSIONS, ADMISSIONS, AND ANY OTHER EVIDENCE OF THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE, AS WELL AS THE KNOWN MEDICAL AND SOCIAL HISTORY OF THE DEFENDANT, AND THE OPINION MAY BE ADMISSIBLE INTO EVIDENCE AT THE DEFENDANT'S COMPETENCY OR RESTORATION HEARING.

(4) A WRITTEN REPORT OF THE EVALUATION SHALL BE PREPARED IN TRIPPLICATE AND DELIVERED TO THE CLERK OF THE COURT THAT ORDERED IT. THE CLERK SHALL PROVIDE A COPY OF THE REPORT BOTH TO THE PROSECUTING ATTORNEY AND THE COUNSEL FOR THE DEFENDANT.

(5) THE REPORT OF EVALUATION SHALL INCLUDE BUT NEED NOT BE LIMITED TO:

(a) THE NAME OF EACH PHYSICIAN, PSYCHOLOGIST, OR OTHER EXPERT WHO EXAMINED THE DEFENDANT; AND

(b) A DESCRIPTION OF THE NATURE, CONTENT, EXTENT, AND RESULTS OF THE EVALUATION AND ANY TESTS CONDUCTED; AND

(c) A DIAGNOSIS AND PROGNOSIS OF THE DEFENDANT'S MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY; AND

(d) AN OPINION AS TO WHETHER THE DEFENDANT SUFFERS FROM A MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY; AND

(e) AN OPINION AS TO WHETHER THE DEFENDANT IS COMPETENT TO PROCEED.

16-8.5-106. Evaluation at request of defendant. (1) IF A DEFENDANT WISHES TO BE EXAMINED BY A COMPETENCY EVALUATOR OF HIS OR HER OWN CHOICE IN CONNECTION WITH ANY PROCEEDING UNDER THIS ARTICLE, THE COURT, UPON TIMELY MOTION, SHALL ORDER THAT THE COMPETENCY EVALUATOR CHOSEN BY THE DEFENDANT BE GIVEN REASONABLE OPPORTUNITY TO CONDUCT THE SECOND EVALUATION, IN ACCORDANCE WITH SECTIONS 16-8.5-103 AND 16-8.5-111.

(2) A COPY OF THE SECOND EVALUATION SHALL BE FURNISHED TO THE PROSECUTION IN A REASONABLE AMOUNT OF TIME IN ADVANCE OF THE COMPETENCY OR RESTORATION HEARING.

16-8.5-107. Counsel and evaluators for indigent defendants. IN ALL PROCEEDINGS UNDER THIS ARTICLE, THE COURT SHALL APPOINT COMPETENCY EVALUATORS, OR ATTORNEYS FOR A DEFENDANT AT STATE EXPENSE UPON MOTION OF THE DEFENDANT WITH PROOF THAT HE OR SHE IS INDIGENT AND WITHOUT FUNDS TO EMPLOY COMPETENCY EVALUATORS, OR ATTORNEYS TO WHICH HE OR SHE IS ENTITLED UNDER THIS ARTICLE. IF A SECOND EVALUATION IS REQUESTED BY AN INDIGENT DEFENDANT, IT SHALL BE PAID FOR BY THE COURT.

16-8.5-108. Evidence. (1) (a) EXCEPT AS OTHERWISE PROVIDED IN THIS

SUBSECTION (1), EVIDENCE ACQUIRED DIRECTLY OR INDIRECTLY FOR THE FIRST TIME FROM A COMMUNICATION DERIVED FROM THE DEFENDANT'S MENTAL PROCESSES DURING THE COURSE OF A COMPETENCY EVALUATION IS NOT ADMISSIBLE AGAINST THE DEFENDANT ON THE ISSUES RAISED BY A PLEA OF NOT GUILTY, OR, IF THE OFFENSE OCCURRED BEFORE JULY 1, 1995, A PLEA OF NOT GUILTY BY REASON OF IMPAIRED MENTAL CONDITION. SUCH EVIDENCE MAY BE ADMISSIBLE AT TRIAL TO REBUT EVIDENCE INTRODUCED BY THE DEFENDANT OF THE DEFENDANT'S MENTAL CONDITION TO SHOW INCAPACITY OF THE DEFENDANT TO FORM A CULPABLE MENTAL STATE; AND, IN SUCH CASE, THE EVIDENCE MAY ONLY BE CONSIDERED BY THE TRIER OF FACT AS BEARING UPON THE QUESTION OF CAPACITY TO FORM A CULPABLE MENTAL STATE, AND THE JURY SHALL BE SO INSTRUCTED AT THE REQUEST OF EITHER PARTY.

(b) EVIDENCE ACQUIRED DIRECTLY OR INDIRECTLY FOR THE FIRST TIME FROM A COMMUNICATION DERIVED FROM THE DEFENDANT'S MENTAL PROCESSES DURING THE COURSE OF A COMPETENCY EVALUATION IS ADMISSIBLE AT ANY SENTENCING HEARING HELD PURSUANT TO SECTION 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., ONLY TO PROVE THE EXISTENCE OR ABSENCE OF ANY MITIGATING FACTOR.

(c) IF THE DEFENDANT TESTIFIES ON HIS OR HER OWN BEHALF UPON THE TRIAL OF THE ISSUES RAISED BY THE PLEA OF NOT GUILTY OR, FOR OFFENSES THAT OCCURRED BEFORE JULY 1, 1995, A PLEA OF NOT GUILTY BY REASON OF IMPAIRED MENTAL CONDITION, OR AT A SENTENCING HEARING HELD PURSUANT TO SECTION 18-1.3-1201, 18-1.3-1302, OR 18-1.4-102, C.R.S., THE PROVISIONS OF THIS SECTION SHALL NOT BAR ANY EVIDENCE USED TO IMPEACH OR REBUT THE DEFENDANT'S TESTIMONY.

(2) IN ANY HEARING CONCERNING COMPETENCY TO PROCEED OR RESTORATION TO COMPETENCY, COMPETENCY EVALUATORS AND OTHER EXPERTS MAY TESTIFY AS TO THEIR CONCLUSIONS REACHED FROM THEIR EXAMINATION OF HOSPITAL RECORDS, LABORATORY REPORTS, X RAYS, ELECTROENCEPHALOGRAMS, AND PSYCHOLOGICAL TEST RESULTS IF THE MATERIAL THAT THEY EXAMINED IN REACHING THEIR CONCLUSIONS IS PRODUCED AT THE TIME OF THE HEARING. NOTHING IN THIS SECTION PREVENTS THE PARTIES FROM OBTAINING THE INFORMATION AUTHORIZED BY SECTION 16-8.5-104 PRIOR TO THE HEARING.

16-8.5-109. Advisement on matters to be determined. (1) WHEN A DETERMINATION IS TO BE MADE AS TO A DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL EXPLAIN TO THE DEFENDANT THE NATURE AND CONSEQUENCES OF THE PROCEEDING AND THE RIGHTS OF THE DEFENDANT UNDER THIS SECTION. THE DEFENDANT, IF HE OR SHE WISHES TO CONTEST THE QUESTION, MAY REQUEST A COMPETENCY HEARING THAT SHALL THEN BE GRANTED AS A MATTER OF RIGHT.

(2) AT A COMPETENCY HEARING, THE DEFENDANT AND THE PROSECUTING ATTORNEY ARE ENTITLED:

(a) TO BE PRESENT IN PERSON;

(b) TO EXAMINE ANY REPORTS OF THE EVALUATION OR OTHER MATTER TO BE CONSIDERED BY THE COURT AS BEARING UPON THE DETERMINATION;

(c) TO INTRODUCE EVIDENCE, SUMMON WITNESSES, CROSS-EXAMINE OPPOSING WITNESSES OR WITNESSES CALLED BY THE COURT; AND

(d) TO MAKE OPENING AND CLOSING STATEMENTS AND ARGUMENT.

(3) THE COURT MAY EXAMINE OR CROSS-EXAMINE ANY WITNESS CALLED BY THE DEFENDANT OR PROSECUTING ATTORNEY AT A COMPETENCY HEARING AND MAY SUMMON AND EXAMINE WITNESSES ON ITS OWN MOTION.

16-8.5-110. Testimony of lay witnesses. IN ANY HEARING AT WHICH THE COMPETENCY OF THE DEFENDANT IS AN ISSUE, WITNESSES NOT SPECIALLY TRAINED IN PSYCHIATRY OR PSYCHOLOGY AND NOT TESTIFYING AS EXPERT WITNESSES MAY TESTIFY AS TO THEIR OBSERVATION OF THE DEFENDANT'S ACTIONS AND CONDUCT AND AS TO CONVERSATIONS THAT THEY HAVE HAD WITH THE DEFENDANT BEARING UPON THE DEFENDANT'S MENTAL CONDITION. ANY SUCH WITNESSES, AS PART OF THEIR TESTIMONY, SHALL BE PERMITTED TO GIVE THEIR OPINIONS OR CONCLUSIONS CONCERNING THE COMPETENCY OF THE DEFENDANT.

16-8.5-111. Procedure after determination of competency or incompetency.

(1) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS COMPETENT TO PROCEED, THE JUDGE SHALL ORDER THAT THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL HAS BEEN DECLARED, SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

(2) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED, THE COURT HAS THE FOLLOWING OPTIONS:

(a) IF THE DEFENDANT IS IN CUSTODY, THE COURT MAY RELEASE THE DEFENDANT ON BOND UPON COMPLIANCE WITH THE STANDARDS AND PROCEDURES FOR SUCH RELEASE PRESCRIBED BY STATUTE AND BY THE COLORADO RULES OF CRIMINAL PROCEDURE. AS A CONDITION OF BOND, THE COURT MAY REQUIRE THE DEFENDANT TO OBTAIN ANY TREATMENT OR HABILITATION SERVICES THAT ARE AVAILABLE TO THE DEFENDANT, SUCH AS INPATIENT OR OUTPATIENT TREATMENT AT A COMMUNITY MENTAL HEALTH CENTER OR IN ANY OTHER APPROPRIATE TREATMENT SETTING, AS DETERMINED BY THE COURT. NOTHING IN THIS SECTION AUTHORIZES THE COURT TO ORDER COMMUNITY MENTAL HEALTH CENTERS OR OTHER PROVIDERS TO PROVIDE TREATMENT FOR PERSONS NOT OTHERWISE ELIGIBLE FOR THESE SERVICES. AT ANY HEARING TO DETERMINE ELIGIBILITY FOR RELEASE ON BOND, THE COURT SHALL CONSIDER ANY EFFECT THE DEFENDANT'S INCOMPETENCY MAY HAVE ON THE COURT'S ABILITY TO ENSURE THE DEFENDANT'S PRESENCE FOR HEARING OR TRIAL. THERE SHALL BE A PRESUMPTION THAT THE INCOMPETENCY OF THE DEFENDANT WILL INHIBIT THE ABILITY OF THE DEFENDANT TO ENSURE HIS OR HER PRESENCE FOR TRIAL.

(b) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR RELEASE FROM CUSTODY, THE COURT MAY COMMIT THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT, IN WHICH CASE THE EXECUTIVE DIRECTOR HAS THE SAME POWERS WITH RESPECT TO COMMITMENT AS THE EXECUTIVE DIRECTOR HAS FOLLOWING A COMMITMENT UNDER SECTION 16-8-105.5 (4). AT SUCH TIME AS THE DEPARTMENT RECOMMENDS TO THE COURT THAT THE DEFENDANT IS RESTORED TO COMPETENCY,

THE DEFENDANT MAY BE RETURNED TO CUSTODY OF THE COUNTY JAIL OR TO PREVIOUS BOND STATUS.

16-8.5-112. Venue for collateral hearings. (1) IF A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT FOR EVALUATION OR FOR RESTORATION TREATMENT MEETS THE CONSTITUTIONAL REQUIREMENTS FOR THE ADMINISTRATION OF INVOLUNTARY MEDICATION, THE DEFENDANT'S TREATING PHYSICIAN MAY PETITION THE COURT FOR AN ORDER REQUIRING THAT THE DEFENDANT ACCEPT THE TREATMENT OR, ALTERNATIVELY, THAT THE MEDICATION BE FORCIBLY ADMINISTERED TO THE DEFENDANT.

(2) THIS PETITION MAY BE HEARD IN THE COURT THAT COMMITTED THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OR IN THE COURT OF THE JURISDICTION IN WHICH THE DEFENDANT IS LOCATED. THE COURT OF THE JURISDICTION IN WHICH THE DEFENDANT IS LOCATED SHALL NOT EXERCISE ITS JURISDICTION WITHOUT THE PERMISSION OF THE COURT THAT COMMITTED THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT.

(3) IF THE COMMITTING COURT ELECTS TO TRANSFER VENUE FOR MEDICATION HEARINGS TO THE COURT OF THE JURISDICTION IN WHICH THE DEFENDANT IS LOCATED, THE COMMITTING COUNTY SHALL REIMBURSE THE COUNTY IN WHICH THE PROCEEDING IS HEARD FOR THE REASONABLE COSTS INCURRED IN CONDUCTING THE PROCEEDING. ALTERNATIVELY, THE DISTRICT ATTORNEY FOR THE COMMITTING COUNTY, OR IN ANY COUNTY OR ANY CITY AND COUNTY HAVING A POPULATION EXCEEDING FIFTY THOUSAND PERSONS THE COUNTY ATTORNEY FOR THE COMMITTING COUNTY, MAY PROSECUTE THE PROCEEDING AS THE PROPONENT OF THE PHYSICIAN'S PETITION.

16-8.5-113. Restoration to competency. (1) THE COURT MAY ORDER A RESTORATION HEARING AT ANY TIME ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING ATTORNEY, OR ON MOTION OF THE DEFENDANT.

(2) WITHIN TEN DAYS AFTER RECEIPT OF A REPORT FROM THE DEPARTMENT OR OTHER COURT-APPROVED PROVIDER OF RESTORATION SERVICES CERTIFYING THAT THE DEFENDANT IS COMPETENT TO PROCEED, EITHER PARTY MAY REQUEST A HEARING OR A SECOND EVALUATION. THE COURT SHALL DETERMINE WHETHER TO ALLOW THE SECOND EVALUATION OR PROCEED TO A HEARING ON COMPETENCY. IF THE SECOND EVALUATION IS REQUESTED BY THE COURT OR BY AN INDIGENT DEFENDANT, IT SHALL BE PAID FOR BY THE COURT.

(3) IF A SECOND EVALUATION IS ALLOWED, ANY PENDING REQUESTS FOR A HEARING SHALL BE CONTINUED UNTIL RECEIPT OF THE SECOND EVALUATION REPORT. THE REPORT OF THE EXPERT CONDUCTING THE SECOND EVALUATION REPORT SHALL BE COMPLETED AND FILED WITH THE COURT WITHIN SIXTY DAYS AFTER THE COURT ORDER ALLOWING THE SECOND EVALUATION, UNLESS THE TIME PERIOD IS EXTENDED BY THE COURT AFTER A FINDING OF GOOD CAUSE.

(4) IF NEITHER PARTY REQUESTS A HEARING OR SECOND EVALUATION WITHIN THE TIME FRAME SET FORTH IN SUBSECTION (2) OF THIS SECTION, THE COURT SHALL ENTER A FINAL DETERMINATION, BASED ON THE INFORMATION THEN AVAILABLE TO THE COURT, WHETHER THE DEFENDANT IS OR IS NOT COMPETENT TO PROCEED.

(5) IF A PARTY MAKES A TIMELY REQUEST FOR A HEARING, THE HEARING SHALL BE HELD WITHIN THIRTY DAYS AFTER THE REQUEST FOR A HEARING OR, IF APPLICABLE, WITHIN THIRTY DAYS AFTER THE FILING OF THE SECOND EVALUATION REPORT, UNLESS THE TIME IS EXTENDED BY THE COURT AFTER A FINDING OF GOOD CAUSE.

(6) AT THE HEARING, THE BURDEN OF SUBMITTING EVIDENCE AND THE BURDEN OF PROOF BY A PREPONDERANCE OF THE EVIDENCE SHALL BE UPON THE PARTY ASSERTING THAT THE DEFENDANT IS COMPETENT. AT THE HEARING, THE COURT SHALL DETERMINE WHETHER THE DEFENDANT IS RESTORED TO COMPETENCY.

16-8.5-114. Procedure after hearing concerning restoration to competency.

(1) IF A DEFENDANT IS FOUND TO BE RESTORED TO COMPETENCY AFTER THE HEARING HELD PURSUANT TO SECTION 16-8.5-113, THE COURT SHALL RESUME THE CRIMINAL PROCEEDINGS OR ORDER THE SENTENCE CARRIED OUT. THE COURT SHALL CREDIT ANY TIME THE DEFENDANT SPENT IN CONFINEMENT WHILE COMMITTED PURSUANT TO SECTION 16-8.5-111 AGAINST ANY TERM OF IMPRISONMENT IMPOSED AFTER RESTORATION TO COMPETENCY.

(2) IF, AFTER THE HEARING HELD PURSUANT TO SECTION 16-8.5-113, THE COURT DETERMINES THAT THE DEFENDANT REMAINS INCOMPETENT TO PROCEED, THE COURT MAY CONTINUE OR MODIFY ANY ORDERS ENTERED AT THE TIME OF THE ORIGINAL DETERMINATION OF INCOMPETENCY AND MAY COMMIT OR RECOMMIT THE DEFENDANT OR ENTER ANY NEW ORDER NECESSARY TO FACILITATE THE DEFENDANT'S RESTORATION TO MENTAL COMPETENCY.

(3) EVIDENCE OF ANY DETERMINATION AS TO THE DEFENDANT'S COMPETENCY OR INCOMPETENCY IS NOT ADMISSIBLE ON THE ISSUES RAISED BY A PLEA OF NOT GUILTY, NOT GUILTY BY REASON OF INSANITY, OR, FOR OFFENSES THAT OCCURRED BEFORE JULY 1, 1995, THE AFFIRMATIVE DEFENSE OF IMPAIRED MENTAL CONDITION.

16-8.5-115. Commitment and observation. UPON THE TERMINATION OF THE PERIOD OF OBSERVATION OF A DEFENDANT COMMITTED UNDER SECTION 16-8.5-105, THE AUTHORITIES SHALL PRESENT TO THE COURT AN ACCOUNTING OF THE COST, EVIDENCED BY A STATEMENT THEREOF BASED UPON THE ESTABLISHED PER DIEM RATE OF THE PLACE OF CONFINEMENT. IF APPROVED BY THE COURT, THE ACCOUNT SHALL BE PAID BY THE STATE PURSUANT TO SECTION 13-3-104, C.R.S.

16-8.5-116. Commitment - termination of proceedings. (1) A DEFENDANT COMMITTED TO THE DEPARTMENT OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF INCOMPETENCY TO PROCEED SHALL NOT REMAIN CONFINED FOR A PERIOD IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE IMPOSED FOR THE OFFENSES WITH WHICH THE DEFENDANT IS CHARGED, LESS ANY EARNED TIME TO WHICH THE DEFENDANT WOULD BE ENTITLED UNDER ARTICLE 22.5 OF TITLE 17, C.R.S.

(2) THE COURT SHALL REVIEW THE CASE OF A DEFENDANT COMMITTED OR CONFINED AS INCOMPETENT TO PROCEED AT LEAST EVERY THREE MONTHS WITH REGARD TO THE PROBABILITY THAT THE DEFENDANT WILL EVENTUALLY BE RESTORED TO COMPETENCY AND WITH REGARD TO THE JUSTIFICATION FOR CONTINUED COMMITMENT OR CONFINEMENT. THE REVIEW MAY BE HELD IN

CONJUNCTION WITH A RESTORATION HEARING UNDER SECTION 16-8.5-113. PRIOR TO EACH REVIEW, THE INSTITUTION TREATING THE DEFENDANT SHALL PROVIDE THE COURT WITH A REPORT REGARDING THE COMPETENCY OF THE DEFENDANT. IF, ON THE BASIS OF THE AVAILABLE EVIDENCE, NOT INCLUDING EVIDENCE RESULTING FROM A REFUSAL BY THE DEFENDANT TO ACCEPT TREATMENT, THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL NOT BE RESTORED TO COMPETENCY WITHIN THE FORESEEABLE FUTURE, THE COURT MAY ORDER THE RELEASE OF THE DEFENDANT FROM COMMITMENT UNDER THIS ARTICLE THROUGH ONE OR MORE OF THE FOLLOWING MEANS:

(a) UPON MOTION OF THE DISTRICT ATTORNEY OR THE DEFENDANT, THE COURT MAY TERMINATE THE CRIMINAL PROCEEDING AND TERMINATE THE COMMITMENT OR TREATMENT ORDER;

(b) THE COURT MAY ORDER THE RELEASE OF THE DEFENDANT ON BOND, WITH SUCH CONDITIONS AS THE COURT DEEMS ADVISABLE;

(c) THE COURT OR A PARTY MAY COMMENCE CIVIL PROCEEDINGS UNDER THE PROVISIONS OF ARTICLE 10 OF TITLE 27, C.R.S., IF THE DEFENDANT MEETS THE REQUIREMENTS FOR COMMITMENT PURSUANT TO SAID ARTICLE 10; OR

(d) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE FOR SERVICES UNDER ARTICLE 10.5 OF TITLE 27, C.R.S., DUE TO A DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT UNDER ARTICLE 10.5 OF TITLE 27, C.R.S.

(3) IN EACH CASE, THE COURT SHALL ENTER A WRITTEN DECISION OUTLINING WHY THE COURT TERMINATED THE CRIMINAL PROCEEDING OR DID NOT TERMINATE THE CRIMINAL PROCEEDING.

16-8.5-117. Escape - return to institution. IF A DEFENDANT COMMITTED TO THE CUSTODY OF THE EXECUTIVE DIRECTOR FOR A COMPETENCY EVALUATION OR FOR RESTORATION TO COMPETENCY ESCAPES FROM THE INSTITUTION OR HOSPITAL, IT IS THE DUTY OF THE CHIEF OFFICER OF THE INSTITUTION OR HOSPITAL TO APPLY TO THE DISTRICT COURT FOR THE COUNTY IN WHICH THE INSTITUTION OR HOSPITAL IS LOCATED FOR A WARRANT OF ARREST DIRECTED TO THE SHERIFF OF THE COUNTY, COMMANDING HIM OR HER TO TAKE ALL NECESSARY LEGAL ACTION TO EFFECT THE ARREST OF THE DEFENDANT AND TO RETURN THE DEFENDANT PROMPTLY TO THE INSTITUTION OR HOSPITAL. THE FACT OF AN ESCAPE BECOMES A PART OF THE OFFICIAL RECORD OF THE DEFENDANT AND SHALL BE CERTIFIED TO THE COMMITTING COURT AS PART OF THE RECORD IN ANY PROCEEDING TO DETERMINE WHETHER THE DEFENDANT IS ELIGIBLE FOR RELEASE ON BOND OR FROM CUSTODY.

16-8.5-118. Temporary removal for treatment and rehabilitation. (1) THE CHIEF OFFICER OF AN INSTITUTION IN WHICH A DEFENDANT HAS BEEN COMMITTED UNDER THIS ARTICLE MAY AUTHORIZE TREATMENT AND REHABILITATION ACTIVITIES INVOLVING TEMPORARY PHYSICAL REMOVAL OF THE PERSON FROM THE INSTITUTION IN WHICH THE DEFENDANT HAS BEEN PLACED, ACCORDING TO THE PROCEDURES AND REQUIREMENTS OF SECTION 16-8-118.

16-8.5-119. Competency evaluation advisory board - creation - membership

- duties - rules - repeal. (1) THERE IS HEREBY CREATED THE COMPETENCY EVALUATION ADVISORY BOARD, REFERRED TO IN THIS SECTION AS THE "ADVISORY BOARD", IN THE DEPARTMENT THAT SHALL STUDY AND RECOMMEND STANDARDS TO THE STATE BOARD OF HUMAN SERVICES REGARDING THE LEVEL OF TRAINING, EDUCATION, AND EXPERIENCE THAT A PSYCHIATRIST OR PSYCHOLOGIST SHALL HAVE TO BE CONSIDERED QUALIFIED TO PERFORM COMPETENCY EVALUATIONS IN CRIMINAL CASES PURSUANT TO SECTION 16-8-106 AND THIS ARTICLE. THE ADVISORY BOARD SHALL ADDITIONALLY MAKE RECOMMENDATIONS TO THE STATE BOARD OF HUMAN SERVICES CONCERNING STANDARDS FOR CONDUCTING AND REPORTING THE COMPETENCY EVALUATIONS.

(2) THE EXECUTIVE DIRECTOR OF THE DEPARTMENT, OR HIS OR HER DESIGNEE, SHALL SERVE AS CHAIR OF THE ADVISORY BOARD AND SHALL APPOINT THE REMAINING MEMBERS OF THE ADVISORY BOARD. THE ADVISORY BOARD SHALL CONSIST OF UP TO FOURTEEN MEMBERS, INCLUDING BUT NOT LIMITED TO:

- (a) A PSYCHIATRIST WHO IS TRAINED IN FORENSIC COMPETENCY ASSESSMENTS;
- (b) A LICENSED PSYCHOLOGIST WHO IS TRAINED IN FORENSIC COMPETENCY ASSESSMENTS;
- (c) A LICENSED CLINICAL SOCIAL WORKER WHO IS TRAINED IN FORENSIC COMPETENCY ASSESSMENTS;
- (d) A LICENSED PROFESSIONAL COUNSELOR WHO IS TRAINED IN FORENSIC COMPETENCY ASSESSMENTS;
- (e) A REPRESENTATIVE OF THE UNIT WITHIN THE DEPARTMENT THAT IS RESPONSIBLE FOR MENTAL HEALTH SERVICES;
- (f) A PERSON WHO REPRESENTS DISTRICT ATTORNEYS WITHIN THE STATE;
- (g) A PERSON WHO REPRESENTS DEFENSE ATTORNEYS WITHIN THE STATE;
- (h) A REPRESENTATIVE FROM THE TASK FORCE ESTABLISHED PURSUANT TO SECTION 18-1.9-104, C.R.S.;
- (i) A FAMILY MEMBER OF A PERSON WHO HAD BEEN SUBJECT TO THE COMPETENCY EVALUATION PROCESS AT SOME TIME;
- (j) A REPRESENTATIVE OF THE JUDICIAL DEPARTMENT; AND
- (k) A REPRESENTATIVE OF THE COLORADO MENTAL HEALTH INSTITUTE AT PUEBLO.

(3) THE ADVISORY BOARD SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE DEPARTMENT NO LATER THAN JANUARY 30, 2008, AND NO LATER THAN JANUARY 30 EACH YEAR THEREAFTER.

(4) BASED ON THE RECOMMENDATIONS OF THE ADVISORY BOARD, THE STATE BOARD OF HUMAN SERVICES SHALL PROMULGATE RULES AND ADOPT PROCEDURES

TO ESTABLISH AND IMPLEMENT THE STANDARDS IDENTIFIED IN SUBSECTION (1) OF THIS SECTION.

(5) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2010.

SECTION 3. Repeal. 16-8-102 (1), (2), (3), and (7), Colorado Revised Statutes, are repealed as follows:

16-8-102. Other definitions. As used in this article, unless the context otherwise requires:

(1) ~~"Competency examination" means a court-ordered examination of a defendant either before, during, or after trial, directed to developing information relevant to a determination of his competency to proceed at a particular stage of the criminal proceeding.~~

(2) ~~"Competency hearing" means a hearing to determine whether a defendant is competent to proceed.~~

(3) ~~"Incompetent to proceed" means the defendant is suffering from a mental disease or defect which renders him incapable of understanding the nature and course of the proceedings against him or of participating or assisting in his defense or cooperating with his defense counsel.~~

(7) ~~"Restoration hearing" means a hearing to determine whether a defendant who has previously been determined to be incompetent to proceed has become competent to proceed.~~

SECTION 4. 16-8-103.6 (1) (a) and (2) (a), Colorado Revised Statutes, are amended to read:

16-8-103.6. Waiver of privilege. (1) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, asserting the affirmative defense of impaired mental condition pursuant to section 16-8-103.5 ~~raising the question of incompetency to proceed pursuant to section 16-8-110;~~ or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

(2) (a) A defendant who places his or her mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103 ~~raising the question of incompetency to proceed pursuant to section 16-8-110;~~ or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., or,

for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning his or her mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial, hearing on the issue of such mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

SECTION 5. 16-8-105 (3), Colorado Revised Statutes, is amended to read:

16-8-105. Procedure after plea for offenses committed before July 1, 1995.

(3) If the trier of fact finds the defendant was sane at the time of commission of the offense, the court, unless it has reason to believe that the defendant is incompetent to proceed or the question is otherwise raised as provided in section ~~16-8-110~~ 16-8.5-102, shall immediately set the case for trial on the issues raised by the plea of not guilty. If the question of whether the defendant is incompetent to proceed is raised, the court shall follow the procedure set forth in section ~~16-8-111~~ 16-8.5-103.

SECTION 6. 16-8-106 (1), (2), (3), (5) (d) (II), (6) (b), and (7) (b), Colorado Revised Statutes, are amended to read:

16-8-106. Examinations and report. (1) All examinations ordered by the court in criminal cases shall be accomplished by the entry of an order of the court specifying the place where such examination is to be conducted and the period of time allocated for such examination. The defendant may be committed for such examination to the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo, the place where he or she is in custody, or such other public institution designated by the court. In determining the place where such examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. The defendant shall be observed and examined by one or more psychiatrists during such period as the court directs. ~~except that, if the examination is for the purpose of determining the defendant's competency to proceed, then the competency evaluation shall be conducted by a licensed psychiatrist or a licensed psychologist who is trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and practicing under the supervision of a licensed psychiatrist with expertise in forensic psychiatry or a licensed psychologist with expertise in forensic psychology.~~ For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order such further or other examination, including services of psychologists, as is advisable under the circumstances. Nothing in this section shall abridge the right of the defendant to procure a psychiatric examination as provided in section 16-8-108.

(2) (a) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the ~~issues~~ ISSUE of insanity ~~competency~~; or impaired mental condition and in any sentencing hearing held

pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the ~~issues~~ ISSUE of insanity ~~or competency~~ and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. This paragraph (b) shall apply to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(c) The defendant shall cooperate with psychiatrists and other personnel conducting any examination ordered by the court pursuant to this section. Statements made by the defendant in the course of such examination shall be protected as provided in section 16-8-107. If the defendant does not cooperate with psychiatrists and other personnel conducting the examination, the court shall not allow the defendant to call any psychiatrist or other expert witness to provide evidence at the defendant's trial concerning the defendant's mental condition including, but not limited to, providing evidence on the ~~issues~~ ISSUE of insanity ~~or competency~~ or at any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. In addition, the fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial to rebut any evidence introduced by the defendant with regard to the defendant's mental condition including, but not limited to, the ~~issues~~ ISSUE of insanity ~~and competency~~ and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. This paragraph (c) shall apply to offenses committed on or after July 1, 1999.

(3) (a) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, OR impaired mental condition, ~~or competency to proceed~~ and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity or eligibility for release ~~or competency to proceed~~ and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

(c) For offenses committed on or after July 1, 1999, when a defendant undergoes an examination pursuant to the provisions of paragraph (b) of this subsection (3) because the defendant has given notice pursuant to section 16-8-107 (3) that he or she intends to introduce expert opinion evidence concerning his or her mental condition, the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as such statements and reactions entered into the formation of their opinions as to the mental condition of the defendant. ~~both at the time of the commission of the alleged offense and at the present time.~~

(5) With respect to offenses committed before July 1, 1995, the report of examination shall include, but is not limited to:

(d) (II) Separate opinions as to whether the defendant was insane or had an impaired mental condition at the time of the commission of the act ~~is incompetent to proceed~~, or is ineligible for release, as those terms are defined in this article, and, in any class 1 felony case, an opinion as to how the mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

(6) With respect to offenses committed on or after July 1, 1995, the report of examination shall include, but is not limited to, the items described in paragraphs (a) to (c) of subsection (5) of this section, and:

(b) Separate opinions as to whether the defendant was insane ~~is incompetent to proceed~~, or is ineligible for release, as those terms are defined in this article, and, in any class 1 felony case, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor.

The nature of the opinions required depends upon the type of examination ordered by the court.

(7) With respect to offenses committed on or after July 1, 1999, when a defendant has undergone an examination pursuant to the provisions of this section because the defendant has given notice pursuant to section 16-8-107 (3) that he or she intends to introduce expert opinion evidence concerning his or her mental condition, the report of examination shall include, but is not limited to, the items described in paragraphs (a) to (c) of subsection (5) of this section and:

(b) Separate opinions as to the defendant's mental condition including, but not limited to, whether the defendant was insane ~~is incompetent to proceed~~; or is ineligible for release, as those terms are defined in this article, and, in any class 1 felony case, an opinion as to how the mental disease or defect or the condition of mind caused by mental disease or defect affects any mitigating factor. The nature of the opinions required depends upon the type of examination ordered by the court.

SECTION 7. Repeal. 16-8-106.5, Colorado Revised Statutes, is repealed as follows:

16-8-106.5. Competency evaluation advisory board - creation - membership - duties - rules - repeal. ~~(1) There is hereby created the competency evaluation advisory board, referred to in this section as the "advisory board", in the department of human services that shall study and recommend standards to the state board of human services regarding the level of training, education, and experience that a psychiatrist or psychologist shall have to be considered qualified to perform competency evaluations in criminal cases pursuant to sections 16-8-106 and 16-8-111. The advisory board shall additionally make recommendations to the state board of human services concerning standards for conducting and reporting the competency evaluations.~~

~~(2) The executive director of the department of human services, or his or her designee, shall serve as chair of the advisory board and shall appoint the remaining members of the advisory board. The advisory board shall consist of up to fourteen members, including but not limited to:~~

~~(a) A psychiatrist who is trained in forensic competency assessments;~~

~~(b) A licensed psychologist who is trained in forensic competency assessments;~~

~~(c) A licensed clinical social worker who is trained in forensic competency assessments;~~

~~(d) A licensed professional counselor who is trained in forensic competency assessments;~~

~~(e) A representative of the unit within the department of human services that is responsible for mental health services;~~

~~(f) A person who represents district attorneys within the state;~~

~~(g) A person who represents defense attorneys within the state;~~

~~(h) A representative from the task force established pursuant to section 18-1.9-104, C.R.S.;~~

~~(i) A family member of a person who had been subject to the competency evaluation process at some time;~~

~~(j) A representative of the judicial department; and~~

~~(k) A representative of the Colorado mental health institute at Pueblo.~~

~~(3) The advisory board shall report its findings and recommendations to the department of human services no later than January 30, 2008, and no later than January 30 each year thereafter.~~

~~(4) Based on the recommendations of the advisory board, the state board of human services shall promulgate rules and adopt procedures to establish and implement the standards identified in subsection (1) of this section.~~

~~(5) This section is repealed, effective July 1, 2010.~~

SECTION 8. Repeal. 16-8-110, Colorado Revised Statutes, is repealed as follows:

16-8-110. Mental incompetency to proceed - effect - how and when raised.

~~(1) (a) No person shall be tried, sentenced, or executed if such person is incompetent to proceed at that stage of the proceedings against him or her. This paragraph (a) shall apply only to offenses committed before July 1, 1995.~~

~~(b) No person shall be tried, sentenced, or executed if such person is incompetent to proceed at that stage of the proceedings against him or her. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.~~

~~(2) The question of the defendant's competency to proceed shall be raised in the following manner:~~

~~(a) If the judge has reason to believe that the defendant is incompetent to proceed, it is his duty to suspend the proceeding and determine the competency or incompetency of the defendant as provided in section 16-8-111.~~

~~(b) By motion of either the prosecution or defense made in advance of the commencement of the particular proceeding. The motion may be filed after the commencement of the proceeding if, for good cause shown, the mental condition of the defendant was not known or apparent before the commencement of the proceeding.~~

~~(c) By the affidavit of any chief officer of an institution having custody of a defendant awaiting execution.~~

~~(3) Notwithstanding any provision of this part 1 or part 2 of this article to the~~

contrary, the question of whether a convicted person is mentally incompetent to be executed shall be raised and determined as provided in part 14 of article 1.3 of title 18, C.R.S.

SECTION 9. Repeal. 16-8-111, Colorado Revised Statutes, is repealed as follows:

16-8-111. Determination of incompetency to proceed. ~~(1) Whenever the question of a defendant's incompetency to proceed is raised, the court shall make a preliminary finding that the defendant is or is not competent to proceed. If the court feels that the information available to it is inadequate for making such finding, it may order a competency examination or such other investigation as it deems advisable.~~

~~(2) The court shall immediately notify the prosecuting attorney and defense counsel of the preliminary finding. If neither the prosecuting attorney nor defense counsel requests, in writing, a hearing within a time limit set by the court, the preliminary finding becomes a final determination. Upon the timely written request of either the prosecuting attorney or defense counsel, the court shall hold a hearing and may commit the defendant for a competency examination prior to the hearing if adequate psychiatric information is not already available. At the conclusion of the hearing, the court shall make a final determination. Upon the request of either party, the judge shall set the matter for hearing before another judge. At any hearing held pursuant to this subsection (2), the burden of submitting evidence and the burden of proof by a preponderance of the evidence are upon the party asserting the incompetency of the defendant.~~

~~(3) If the question of defendant's incompetency to proceed was raised after a jury was impaneled to try the issues raised by a plea of not guilty and the court determines that the defendant is incompetent to proceed or orders the defendant committed for a competency examination, the court may declare a mistrial. Declaration of a mistrial under these circumstances does not constitute jeopardy, nor does it prohibit the trial, sentencing, or execution of the defendant for the same offense after he has been found restored to competency.~~

~~(3.5) A competency examination shall be conducted by a licensed psychiatrist or a licensed psychologist who is trained in forensic competency assessments, or a psychiatrist or psychologist who is in forensic training and practicing under the supervision of a licensed psychiatrist with expertise in forensic psychiatry or a licensed psychologist with expertise in forensic psychology.~~

~~(4) Notwithstanding any provision of this part 1 or part 2 of this article to the contrary, the question of whether a convicted person is mentally incompetent to be executed shall be raised and determined as provided in part 14 of article 1.3 of title 18, C.R.S.~~

SECTION 10. Repeal. 16-8-112, Colorado Revised Statutes, is repealed as follows:

16-8-112. Procedure after determination of competency or incompetency. ~~(1) If the final determination made pursuant to section 16-8-111 is that the~~

~~defendant is competent to proceed, the judge shall order that the suspended proceeding continue or, if a mistrial has been declared, shall reset the case for trial at the earliest possible date.~~

~~(2) If the final determination is that the defendant is incompetent to proceed, the court shall commit the defendant to the custody of the department of human services, in which case the executive director has the same powers with respect to such commitment as he has following a commitment under section 16-8-105 (4). However, in the case of a defendant who is charged with an offense which does not involve violent behavior and who is subject to treatment on an outpatient basis as determined by the examination conducted pursuant to section 16-8-111 (2) or on the basis of adequate psychiatric information already available, the court may order the defendant to undergo treatment at or under the supervision of a facility, as defined in section 27-10-102 (4.5), C.R.S., if a facility exists in the judicial district which is able to provide treatment appropriate to the defendant. Such commitment or treatment shall continue until the defendant is found competent to proceed or until otherwise terminated under the provisions of section 16-8-114.5.~~

~~(3) A determination under subsection (2) of this section that a defendant is incompetent to proceed shall not preclude the court from considering the release of the defendant on bail upon compliance with the standards and procedures for such release prescribed by statute and by the Colorado rules of criminal procedure. At any hearing to determine eligibility for release on bail, the court may consider any effect the defendant's incompetency may have on his ability to insure his presence for trial. In the case of an incompetent defendant who is not subject to treatment on an outpatient basis as determined by the examination conducted pursuant to section 16-8-111 (2) or on the basis of adequate psychiatric information already available, there shall be a presumption that the incompetency of the defendant will inhibit the ability of the defendant to insure his presence for trial.~~

~~(4) A determination under subsection (2) of this section that a defendant is incompetent to proceed shall not preclude a continuation of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, which are susceptible of fair determination prior to trial and without the personal participation of the defendant. Proceedings thus continued may be later reopened if, in the discretion of the court, substantial new evidence is discovered after and as a result of the restoration to competency of the defendant.~~

SECTION 11. 16-8-114, Colorado Revised Statutes, is amended to read:

16-8-114. Evidence concerning competency - inadmissibility. (1) ~~If a defendant is found to be restored to competency after hearing as provided in section 16-8-113, the court shall resume or recommence the trial or sentencing proceedings or order the sentence carried out. The court shall credit any time the defendant spent in confinement while committed pursuant to section 16-8-112 against any term of imprisonment imposed after restoration to competency.~~

(2) ~~If the court determines that the defendant remains mentally incompetent to proceed, the court may continue or modify any orders entered at the time of the original determination of incompetency and may commit or recommit the defendant or enter any new order necessary to facilitate the defendant's restoration to mental~~

competency.

(3) (a) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity or the affirmative defense of impaired mental condition. This paragraph (a) shall apply only to offenses committed before July 1, 1995.

(b) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity. This paragraph (b) shall apply to offenses committed on or after July 1, 1995.

SECTION 12. Repeal. 16-8-114.5, Colorado Revised Statutes, is repealed as follows:

16-8-114.5. Commitment - termination of proceedings. ~~(1) A defendant committed to the department of human services or otherwise confined as a result of a determination of incompetency to proceed shall not remain confined for a period in excess of the maximum term of confinement which could be imposed for the offenses with which he is charged less earned time to which he would be entitled under article 22.5 of title 17, C.R.S.~~

~~(2) The court shall review the case of a defendant committed or confined as incompetent to proceed at least every six months with regard to the probability that the defendant will eventually be restored to competency and with regard to the justification for continued commitment or confinement. Such review may be held in conjunction with a restoration hearing under section 16-8-113. Prior to each such review, the institution treating the defendant shall provide the court with a report regarding the competency of the defendant. If, on the basis of the available evidence, not including evidence resulting from a refusal by the defendant to accept treatment, there is a substantial probability that the defendant will not be restored to competency within the foreseeable future, upon motion of the district attorney or the defendant, the court may terminate the criminal proceeding and the commitment or treatment order under section 16-8-112 (2) and may either order the release of the defendant or the commencement of civil proceedings under the provisions of article 10 of title 27, C.R.S. In each such case the court shall enter a written decision outlining why the court terminated the criminal proceeding or did not terminate such proceeding.~~

SECTION 13. 16-8-117, Colorado Revised Statutes, is amended to read:

16-8-117. Advisement on matters to be determined. When a determination is to be made as to a defendant's competency to proceed or eligibility for release, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant under this section, including his OR HER right to a jury trial upon the question of eligibility for release. The defendant, if he OR SHE wishes to contest the question, may request a hearing which shall then be granted as a matter of right. At the hearing, the defendant and the prosecuting attorney are entitled to be present in person, to examine any reports of examination or other matter to be considered by the court as bearing upon the determination, to introduce evidence, summon witnesses, cross-examine witnesses for the other side or the

court, and to make opening and closing statements and argument. The court may examine or cross-examine any witness called by the defendant or prosecuting attorney and may summon and examine witnesses on its own motion.

SECTION 14. The introductory portion to 16-8-118 (1), Colorado Revised Statutes, is amended, and the said 16-8-118 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8-118. Temporary removal for treatment and rehabilitation. (1) The chief officer of the institution in which a defendant has been committed under this article OR ARTICLE 8.5 OF THIS TITLE 16 may authorize treatment and rehabilitation activities involving temporary physical removal of such person from the institution in which the defendant has been placed, if prior to such authorization the following procedures are carried out:

(1.5) THE CHIEF OFFICER OF THE INSTITUTION IS AUTHORIZED TO ALLOW A DEFENDANT, WITHOUT COURT AUTHORIZATION AS SET FORTH IN SUBSECTION (1) OF THIS SECTION, TO LEAVE THE PHYSICAL PREMISES OF THE TREATMENT OR HABILITATION FACILITY FOR NEEDED MEDICAL TREATMENT AT A HOSPITAL, CLINIC, OR OTHER HEALTH CARE FACILITY, SO LONG AS THE DEFENDANT IS ACCOMPANIED BY STAFF FROM THE FACILITY.

SECTION 15. 19-2-1301 (2), Colorado Revised Statutes, is amended to read:

19-2-1301. Mental incompetency to proceed - effect - how and when raised. (2) A juvenile shall not be tried or sentenced if the juvenile is incompetent to proceed, as defined in section ~~16-8-102 (3)~~ 16-8.5-101 (8), C.R.S., at that stage of the proceedings against him or her.

SECTION 16. 19-2-1302 (4) (c), Colorado Revised Statutes, is amended to read:

19-2-1302. Determination of incompetency to proceed. (4) (c) The competency evaluation shall, at a minimum, include an opinion regarding whether the juvenile is competent to proceed as defined in section ~~16-8-102 (3)~~ 16-8.5-101 (3), C.R.S. If the evaluation concludes the juvenile is incompetent to proceed, the evaluation shall include a recommendation as to whether the juvenile may be restored to competency and identify appropriate services to restore the juvenile to competency.

SECTION 17. 19-2-1304 (1), Colorado Revised Statutes, is amended to read:

19-2-1304. Restoration to competency. (1) The court may order a restoration hearing, as defined in section ~~16-8-102 (7)~~ 16-8.5-101 (10), C.R.S., at any time on its own motion, on motion of the prosecuting attorney, or on motion of the juvenile. The court shall order a hearing if a mental health professional who has been treating the juvenile files a report certifying that the juvenile is mentally competent to proceed.

SECTION 18. 26-1-107 (6) (h), Colorado Revised Statutes, is amended to read:

26-1-107. State board of human services - rules. (6) The state board shall:

(h) Adopt rules concerning standards for the level of training, education, and experience that a psychiatrist or psychologist shall have to be qualified to perform competency evaluations in criminal cases pursuant to ~~sections~~ SECTION 16-8-106 and ~~16-8-111~~ ARTICLE 8.5 OF TITLE 16, C.R.S., and standards for conducting and reporting competency evaluations in criminal cases. Prior to adopting the rules, the state board shall consider recommendations from the competency evaluation advisory board created in section ~~16-8-106.5~~ 16-8.5-119, C.R.S.

SECTION 19. 27-10-111 (4.5), Colorado Revised Statutes, is amended to read:

27-10-111. Hearing procedures - jurisdiction. (4.5) (a) In the event that a respondent, a person found not guilty by reason of impaired mental condition pursuant to section 16-8-103.5 (5), C.R.S., or by reason of insanity pursuant to section 16-8-105 (4), C.R.S., or a defendant found incompetent to proceed pursuant to section ~~16-8-112(2)~~ 16-8.5-103, C.R.S., refuses to accept medication, the court having jurisdiction of the action pursuant to subsection (4) of this section, the court committing the person or defendant to the custody of the department of human services pursuant to section 16-8-103.5 (5), 16-8-105 (4), or ~~16-8-112(2)~~ 16-8.5-111 (2) (b) C.R.S., or the court of the jurisdiction in which the designated facility treating the respondent, person, or defendant is located shall have jurisdiction and venue to accept a petition by a treating physician and to enter an order requiring that the respondent, person, or defendant accept such treatment or, in the alternative, that the medication be forcibly administered to him or her. The court of the jurisdiction in which the designated facility is located shall not exercise its jurisdiction without the permission of the court that committed the person or defendant to the custody of the department of human services. Upon the filing of such a petition, the court shall appoint an attorney, if one has not been appointed, to represent such respondent, person, or defendant and hear the matter within ten days.

(b) In any case brought under paragraph (a) of this subsection (4.5) in a court for the county in which the treating facility is located, the county where the proceeding was initiated pursuant to subsection (4) of this section or the court committing the person or defendant to the custody of the department of human services pursuant to section 16-8-103.5 (5), 16-8-105 (4), or ~~16-8-112(2)~~ 16-8.5-111 (2) (b), C.R.S., shall either reimburse the county in which the proceeding pursuant to this subsection (4.5) was filed and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be.

SECTION 20. Effective date - applicability. This act shall take effect July 1, 2008, and shall apply to offenses committed on or after said date.

SECTION 21. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 2008