

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB22-1061 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 16-8-105.5, amend
4 (4) and (5) as follows:

5 **16-8-105.5. Procedure after plea for offenses committed on or**
6 **after July 1, 1995.** (4) (a) (I) IF THE TRIER OF FACT FINDS THE
7 DEFENDANT NOT GUILTY BY REASON OF INSANITY, AT THE REQUEST OF THE
8 DEFENDANT, THE COURT MAY CONTINUE THE BOND PURSUANT TO SECTION
9 16-4-108 TO ALLOW THE DEFENDANT TO REMAIN AT LIBERTY OR SET A
10 HEARING TO MODIFY THE BOND PURSUANT TO SECTION 16-4-109 AND
11 DELAY FINAL DISPOSITION, FORMAL ENTRY OF THE FINDING OF NOT GUILTY
12 BY REASON OF INSANITY, AND STAY THE COMMITMENT OF THE DEFENDANT
13 TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO
14 SUBSECTION (4)(b) OF THIS SECTION UNTIL THE CONCLUSION OF THE
15 INITIAL RELEASE HEARING REQUIRED PURSUANT TO SECTION 16-8-115
16 (1)(a). IF THE DEFENDANT IS ON BOND, THE COURT SHALL ORDER THE
17 DEPARTMENT OF HUMAN SERVICES TO CONDUCT A RELEASE EXAMINATION
18 ON AN OUTPATIENT BASIS, AS WELL AS ANY OTHER APPROPRIATE
19 CONDITIONS OF RELEASE, INCLUDING PARTICIPATION IN OUTPATIENT
20 TREATMENT.

21 (II) IN DETERMINING WHETHER TO CONTINUE OR MODIFY THE
22 BOND, THE COURT SHALL CONSIDER THE CRITERIA DESCRIBED IN SECTION
23 16-4-103, AS WELL AS THAT THE DEFENDANT WAS FOUND NOT GUILTY BY
24 REASON OF INSANITY RATHER THAN CONVICTED, THE DEFENDANT'S
25 TREATMENT NEEDS, THE AVAILABILITY OF TREATMENT IN THE
26 COMMUNITY, THE ABILITY OF THE DEPARTMENT OF HUMAN SERVICES TO
27 CONDUCT A RELEASE EVALUATION IN THE COMMUNITY, WHETHER THE
28 DEPARTMENT OF HUMAN SERVICES CAN TIMELY ADMIT THE DEFENDANT,
29 AND THE USEFULNESS OF AN OBSERVATION PERIOD AS PART OF THE
30 RELEASE EVALUATION.

31 (III) (A) THE COURT SHALL NOT DELAY THE FINAL DISPOSITION
32 AND ENTRY OF FINDING OF NOT GUILTY BY REASON OF INSANITY UNLESS
33 THE DEFENDANT IS AT LIBERTY AND REQUESTS A DELAY, IN WHICH CASE
34 THE COURT MAY DELAY THE FINAL DISPOSITION TO ALLOW THE
35 DEFENDANT TO POST BOND FOR AN OUTPATIENT RELEASE EXAMINATION.

36 (B) IF THE DEFENDANT IS ON BOND, THE DISTRICT ATTORNEY OR
37 A BONDING COMMISSIONER MAY FILE WITH THE COURT A VERIFIED MOTION
38 TO REVOKE THE DEFENDANT'S BOND PURSUANT TO SECTION 16-4-109;
39 EXCEPT THAT, IF THE COURT FINDS THE DEFENDANT VIOLATED A BOND
40 CONDITION, THE COURT MAY REVOKE THE BOND AND ENTER THE FINAL

1 DISPOSITION OF NOT GUILTY BY REASON OF INSANITY AND ORDER THE
2 DEFENDANT COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES.

3 (IV) THIS SUBSECTION (4)(a) DOES NOT APPLY IF THE COURT FINDS
4 THAT THE CRIME FOR WHICH THE DEFENDANT IS FOUND NOT GUILTY BY
5 REASON OF INSANITY:

6 (A) IS A CLASS 1 OR CLASS 2 FELONY;

7 (B) RESULTED IN ANOTHER PERSON SUFFERING SERIOUS BODILY
8 INJURY OR DEATH;

9 (C) INVOLVED THE DEFENDANT USING A DEADLY WEAPON; OR

10 (D) INVOLVED FELONY UNLAWFUL SEXUAL BEHAVIOR PURSUANT
11 TO SECTION 16-22-102 (9).

12 (b) If the trier of fact finds the defendant not guilty by reason of
13 insanity, UNLESS DELAYED PURSUANT TO SUBSECTION (4)(a) OF THIS
14 SECTION, the court shall commit the defendant to the custody of the
15 department of human services until such time as the defendant is found
16 eligible for release. The executive director of the department of human
17 services shall designate the state facility at which the defendant ~~shall be~~
18 is held for care and psychiatric treatment and may transfer the defendant
19 from one facility to another if in the opinion of the director it is desirable
20 to do so in the interest of the proper care, custody, and treatment of the
21 defendant or the protection of the public or the personnel of the facilities
22 in question. ONCE AN ORDER OF COMMITMENT IS ENTERED BY THE COURT
23 AND RECEIVED BY THE DEPARTMENT OF HUMAN SERVICES, THE
24 DEPARTMENT OF HUMAN SERVICES SHALL ARRANGE TO TRANSPORT AND
25 ADMIT THE DEFENDANT TO AN APPROPRIATE FACILITY.

26 (5) This section ~~shall apply~~ APPLIES to offenses committed on or
27 after July 1, 1995; EXCEPT THAT SUBSECTION (4)(a) OF THIS SECTION
28 APPLIES TO INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY ON
29 OR AFTER SEPTEMBER 1, 2022.

30 **SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend** (1);
31 and **add** (2.5) as follows:

32 **16-8-115. Release from commitment after verdict of not guilty**
33 **by reason of insanity or not guilty by reason of impaired mental**
34 **condition.** (1) (a) (I) UPON AN INITIAL COMMITMENT FOLLOWING A
35 FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION
36 16-8-105.5 (4)(b), OR UPON DELAYING FINAL ENTRY OF THE FINDING OF
37 NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8.5-105.5
38 (4)(a), THE COURT SHALL SCHEDULE AN INITIAL RELEASE HEARING NO
39 LATER THAN ONE HUNDRED AND TWENTY DAYS FROM THE INITIAL
40 COMMITMENT. THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN
41 SERVICES TO COMPLETE A RELEASE EXAMINATION NO LATER THAN THIRTY
42 DAYS PRIOR TO THE INITIAL RELEASE HEARING. THE DEFENDANT MAY
43 REQUEST AN ADDITIONAL RELEASE EXAMINATION BY A MEDICAL EXPERT

1 IN MENTAL HEALTH DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT
2 TO SECTION 16-8-108. THE COURT MAY CONTINUE THE HEARING BEYOND
3 ONE HUNDRED AND TWENTY DAYS UPON A FINDING OF GOOD CAUSE OR IF
4 NECESSARY TO CONDUCT A SECOND EVALUATION OF THE DEFENDANT.

5 (II) THE COURT SHALL CONDUCT THE INITIAL RELEASE HEARING.
6 AT THE INITIAL RELEASE HEARING, IF ANY EVIDENCE IS INTRODUCED THAT
7 SHOWS THE DEFENDANT IS INELIGIBLE FOR CONDITIONAL RELEASE, THE
8 DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE
9 EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR
10 CONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT
11 FINDS THE DEFENDANT ELIGIBLE FOR CONDITIONAL RELEASE, THE COURT
12 MAY IMPOSE SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES
13 ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY. IF
14 THE COURT FINDS THE DEFENDANT INELIGIBLE FOR CONDITIONAL RELEASE,
15 THE COURT SHALL COMMIT OR CONTINUE THE PREVIOUS COMMITMENT OF
16 THE DEFENDANT TO THE PHYSICAL CUSTODY OF THE DEPARTMENT OF
17 HUMAN SERVICES.

18 (III) THIS SUBSECTION (1)(a) APPLIES TO INDIVIDUALS FOUND NOT
19 GUILTY BY REASON OF INSANITY ON OR AFTER SEPTEMBER 1, 2022.

20 (b) FOLLOWING THE INITIAL RELEASE HEARING PURSUANT TO
21 SUBSECTION (1)(a) OF THIS SECTION, the court may order a release hearing
22 at any time on its own motion, on motion of the prosecuting attorney, or
23 on motion of the defendant. The court shall order a release hearing upon
24 receipt of the report of the chief officer of the institution in which the
25 defendant is committed that the defendant no longer requires
26 hospitalization, as provided in section 16-8-116. ~~or upon motion of the~~
27 ~~defendant made after one hundred eighty-two days following the date of~~
28 ~~the initial commitment order.~~ Except for the first hearing following the
29 initial commitment order INITIAL RELEASE HEARING, unless the court for
30 good cause shown permits, the defendant is not entitled to a hearing
31 within one year subsequent to a previous hearing.

32 (c) BEGINNING SEPTEMBER 1, 2022, THE CHIEF OFFICER OF THE
33 INSTITUTION IN WHICH THE DEFENDANT IS COMMITTED SHALL ANNUALLY
34 SUBMIT A RELEASE EXAMINATION REPORT TO THE COURT CERTIFYING
35 WHETHER THE DEFENDANT CONTINUES TO MEET THE CRITERIA FOR
36 ONGOING INPATIENT HOSPITALIZATION OR MEETS THE APPLICABLE TEST
37 FOR RELEASE PURSUANT TO SECTION 16-8-120. THE REPORT MUST BE
38 SUBMITTED EACH YEAR BY THE DATE ON WHICH THE DEFENDANT WAS
39 INITIALLY COMMITTED FOR INPATIENT HOSPITALIZATION UNLESS ANOTHER
40 RELEASE EXAMINATION IS ORDERED WITHIN THE TWELVE MONTHS
41 PRECEDING SUCH DATE. THE RELEASE EXAMINATION REPORT MUST
42 INCLUDE THE INFORMATION REQUIRED FOR A RELEASE EXAMINATION
43 PURSUANT TO SUBSECTION (2.5) OF THIS SECTION. THE INSTITUTION SHALL
44 PROVIDE A COPY OF THE REPORT TO THE DEFENDANT, THE PROSECUTING

1 ATTORNEY, AND ANY OTHER ATTORNEY OF RECORD. UPON RECEIPT AND
2 AFTER REVIEW OF THE REPORT, THE COURT MAY ORDER A RELEASE
3 HEARING ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING
4 ATTORNEY, OR ON MOTION OF THE DEFENDANT.

5 (2.5) IN ADDITION TO ANY OTHER REQUIREMENT PURSUANT TO
6 THIS SECTION, THE RELEASE EXAMINATION REPORT MUST INCLUDE:

7 (a) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS
8 CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

9 (b) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE
10 DEFENDANT'S SYMPTOMS OF MENTAL DISEASE OR DEFECT ARE IN
11 REMISSION;

12 (c) INFORMATION ABOUT MEDICATIONS CURRENTLY PRESCRIBED
13 TO THE DEFENDANT AND WHETHER THE DEFENDANT IS COMPLIANT WITH
14 TAKING THE PRESCRIBED MEDICATIONS;

15 (d) A SUMMARY OF THE TREATMENT PROVIDED TO THE DEFENDANT
16 SINCE THE LAST RELEASE EXAMINATION, IF APPLICABLE;

17 (e) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF
18 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT
19 NEEDS BY UTILIZING EVIDENCE-BASED STANDARDS OF INDIVIDUALIZED
20 TREATMENT AND MANAGEMENT OF PEOPLE ACQUITTED BY REASON OF
21 INSANITY;

22 (f) A SUMMARY OF THE SPECIFIC TREATMENT OPTIONS AVAILABLE
23 TO THE DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT
24 THE DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE
25 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

26 (g) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD BE
27 MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

28 (h) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY
29 MEETS THE APPLICABLE TEST FOR RELEASE, AS DESCRIBED IN SECTION
30 16-8-120, CITING SPECIFIC FACTS AND EVIDENCE SUPPORTING THE
31 OPINION.

32 **SECTION 3. Act subject to petition - effective date.** This act
33 takes effect at 12:01 a.m. on the day following the expiration of the
34 ninety-day period after final adjournment of the general assembly; except
35 that, if a referendum petition is filed pursuant to section 1 (3) of article V
36 of the state constitution against this act or an item, section, or part of this
37 act within such period, then the act, item, section, or part will not take
38 effect unless approved by the people at the general election to be held in
39 November 2022 and, in such case, will take effect on the date of the
40 official declaration of the vote thereon by the governor."

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