

**NOTE: This bill has been prepared for the signatures of the appropriate legislative officers and the Governor. To determine whether the Governor has signed the bill or taken other action on it, please consult the legislative status sheet, the legislative history, or the Session Laws.**

# An Act

SENATE BILL 26-014

BY SENATOR(S) Amabile, Cutter, Gonzales J., Kipp, Snyder, Wallace, Coleman;  
also REPRESENTATIVE(S) Rydin and Soper, Bacon, Clifford, Hamrick, Jackson, McCluskie.

CONCERNING MODIFICATIONS TO THE AFFIRMATIVE DEFENSE OF NOT GUILTY  
BY REASON OF INSANITY.

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

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

**16-8-108. Examination at instance of defendant.**

(2) A copy of any report of examination of the defendant made at the instance of the defense ~~shall~~ **MUST** be furnished to THE COURT AND the prosecution IN a reasonable time in advance of trial. UPON RECEIPT OF THE REPORT OF EXAMINATION, THE COURT SHALL PROVIDE A COPY OF THE REPORT TO THE DEPARTMENT OF HUMAN SERVICES.

**SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend**

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

(1)(a)(I) and **add** (1)(b.5) as follows:

**16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition - definitions.**

(1) (a) (I) Upon an initial commitment following a finding of not guilty by reason of insanity pursuant to section 16-8-105.5 (4)(b), or upon delaying final entry of the finding of not guilty by reason of insanity pursuant to ~~section 16-8.5-105.5 (4)(a)~~ SECTION 16-8-105.5 (4)(a), the court shall schedule an initial release hearing no later than one hundred twenty days after the initial commitment. The court shall order the department of human services to complete a release examination no later than thirty days prior to the initial release hearing. The defendant may request an additional release examination by a medical expert in mental health disorders of the defendant's choosing pursuant to section 16-8-108. The court may continue the hearing beyond one hundred and twenty days upon a finding of good cause or if necessary to conduct a second evaluation of the defendant.

(b.5) AT ANY UNCONDITIONAL RELEASE HEARING FOR A DEFENDANT WHO IS ON ANY CONDITIONAL RELEASE, IF ANY EVIDENCE IS INTRODUCED THAT SHOWS THE DEFENDANT IS INELIGIBLE FOR UNCONDITIONAL RELEASE, THE DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR UNCONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT FINDS THE DEFENDANT ELIGIBLE FOR UNCONDITIONAL RELEASE, THE COURT SHALL ORDER THE UNCONDITIONAL RELEASE OF THE DEFENDANT. IF THE COURT FINDS THE DEFENDANT INELIGIBLE FOR UNCONDITIONAL RELEASE, THE COURT SHALL ORDER CONTINUED CONDITIONAL RELEASE AND MAY IMPOSE OR MODIFY SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY AND SHALL NOTIFY THE DISTRICT ATTORNEY OF THE ORDER.

**SECTION 3.** In Colorado Revised Statutes, **amend** 16-8-117 as follows:

**16-8-117. Advisement on matters to be determined.**

When a determination is ~~to be~~ made as to a defendant's eligibility for CONDITIONAL OR UNCONDITIONAL release, the court shall explain to the

defendant the nature and consequences of the proceeding and the rights of the defendant pursuant to this section, including the defendant's right to a jury trial upon the question of eligibility for CONDITIONAL OR UNCONDITIONAL release. The defendant ~~if the defendant wishes to contest the question,~~ may request a hearing that must 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 4.** In Colorado Revised Statutes, 16-8-118, **amend** (1) introductory portion, (1)(a), (2)(a) introductory portion, (2)(a.5), (2)(b), (2)(c), and (2)(d)(I) as follows:

**16-8-118. Temporary removal and community placement for treatment and rehabilitation.**

(1) The chief officer of the institution where a defendant has been committed ~~under~~ PURSUANT TO this article 8 or article 8.5 of this title 16, or the chief officer's designee, may authorize treatment and rehabilitation activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical removal of the defendant from the institution where the defendant has been placed, if prior to the authorization the following procedures are carried out:

(a) The chief officer, or the chief officer's designee, shall give written notice by certified mail, with return receipt requested, to the committing court and the district attorney that on or after thirty-five days from the date of mailing the notice, the chief officer, or the chief officer's designee, will authorize treatment and rehabilitation activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical removal of the defendant from the institution, unless THE CHIEF OFFICER, OR THE CHIEF OFFICER'S DESIGNEE, RECEIVES written objections to the authorization ~~are received by the chief officer, or the chief officer's designee,~~ within thirty-five days ~~from~~ AFTER the date of mailing the notice.

(2) (a) A court shall order ~~any~~ A defendant who receives treatment and rehabilitation activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction ~~in which~~ WHERE the defendant resides if the court finds that:

(a.5) A court may order ~~any~~ A defendant who receives treatment and rehabilitation activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical removal of the defendant from the institution to register with the local law enforcement agency of the jurisdiction where the defendant resides if the court finds that the chief officer of the institution where the defendant has been committed, or the chief officer's designee, recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(b) Prior to COMMUNITY PLACEMENT OR temporary physical removal from the institution of ~~any~~ A defendant who is required to register pursuant to this subsection (2), the department of human services shall obtain from the defendant the address where the defendant plans to reside and the department shall notify the local law enforcement agency of the jurisdiction where the defendant plans to reside and the Colorado bureau of investigation as provided in section 16-8-115 (4)(c).

(c) ~~Any~~ A defendant required to register pursuant to this subsection (2) shall register as provided in section 16-8-115 (4). The local law enforcement agency shall transmit any registrations received pursuant to this subsection (2) to the Colorado bureau of investigation within three business days ~~following~~ AFTER receipt. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110 and shall specify that the information applies to a defendant required to register as a condition of COMMUNITY PLACEMENT OR temporary physical removal from an institution. The forms completed by ~~defendants~~ A DEFENDANT required to register pursuant to this subsection (2) ~~shall be~~ ARE confidential and ~~shall not be~~ ARE NOT open to inspection except as otherwise provided in section 16-8-115 (3)(e) for information pertaining to persons granted conditional release and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(d) (I) ~~Any~~ A defendant required to register pursuant to this subsection (2), upon completion of a period of not less than twenty years ~~from~~ AFTER the date the defendant begins receiving treatment and rehabilitation activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical removal of the defendant from the institution, may petition the district court for an order that discontinues the requirement for ~~such~~ registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue ~~such~~ AN order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to ~~such~~ THE COMMUNITY PLACEMENT OR temporary removal and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

**SECTION 5.** In Colorado Revised Statutes, 16-8-120, **add** (5) as follows:

**16-8-120. Applicable tests for release.**

(5) AS TO A PERSON CHARGED WITH A CRIME ALLEGEDLY COMMITTED ON OR AFTER JULY 1, 2026:

(a) THE STANDARD FOR UNCONDITIONAL RELEASE FROM COMMITMENT IS: THE DEFENDANT HAS NO ABNORMAL MENTAL CONDITION THAT WOULD BE LIKELY TO CAUSE THE DEFENDANT TO BE DANGEROUS TO THE DEFENDANT'S SELF OR OTHERS OR TO THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE, AND THE DEFENDANT IS CAPABLE OF DISTINGUISHING RIGHT FROM WRONG AND HAS SUBSTANTIAL CAPACITY TO CONFORM THE DEFENDANT'S CONDUCT TO REQUIREMENTS OF LAW.

(b) THE STANDARD FOR CONDITIONAL RELEASE FROM COMMITMENT IS: WITHOUT THE IMPOSITION OF AND COMPLIANCE WITH CONDITIONS, THE DEFENDANT IS INELIGIBLE FOR RELEASE, BUT WITH THE IMPOSITION OF AND COMPLIANCE WITH CONDITIONS, THE DEFENDANT HAS NO ABNORMAL MENTAL CONDITION THAT WOULD BE LIKELY TO CAUSE THE DEFENDANT TO BE DANGEROUS TO THE DEFENDANT'S SELF OR OTHERS OR TO THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE, AND THE DEFENDANT IS CAPABLE OF DISTINGUISHING RIGHT FROM WRONG AND HAS SUBSTANTIAL CAPACITY TO CONFORM THE DEFENDANT'S CONDUCT TO THE

REQUIREMENTS OF LAW.

**SECTION 6. Safety clause.** The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

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James Rashad Coleman, Sr.  
PRESIDENT OF  
THE SENATE

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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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Esther van Mourik  
SECRETARY OF  
THE SENATE

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Vanessa Reilly  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

APPROVED \_\_\_\_\_  
(Date and Time)

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO