

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0940.01 Jerry Barry x4341

SENATE BILL 19-223

SENATE SPONSORSHIP

Lee and Gardner,

HOUSE SPONSORSHIP

Weissman and Landgraf,

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACTIONS RELATED TO COMPETENCY TO PROCEED, AND,**
102 **IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.**

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>.)

When a defendant's competency to proceed is raised, the bill:

- ! Changes the timing of various matters;
- ! Clarifies where restoration services are to be provided;
- ! Increases the role of the court liaisons;
- ! Expands the requirements for a competency evaluation report; and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

! Clarifies when defendants are to be released following an evaluation or restoration services.

The bill requires the department of human services to:

! Develop an electronic system to track the status of defendants for whom competency to proceed has been raised;

! Convene a group of experts to create a placement guideline for use in determining where restoration services should be provided; and

! Partner with an institution of higher education to develop and provide training in competency evaluations.

On and after January 1, 2020, competency evaluators are required to have attended training. District attorneys, public defenders, and alternate defense counsel are also to receive training on competency to proceed.

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

2 **SECTION 1.** In Colorado Revised Statutes, **amend** 16-8.5-101
3 as follows:

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

6 (1) "COLLATERAL MATERIALS" MEANS THE RELEVANT POLICE
7 INCIDENT REPORTS AND THE CHARGING DOCUMENTS, EITHER THE
8 CRIMINAL INFORMATION OR INDICTMENT.

9 ~~(1)~~ (2) "Competency evaluation" includes both court-ordered
10 competency evaluations and second evaluations.

11 ~~(2)~~ (3) "Competency evaluator" means a licensed physician who
12 is a psychiatrist or a licensed psychologist, each of whom is trained in
13 forensic competency assessments, or a psychiatrist who is in forensic
14 training and practicing under the supervision of a psychiatrist with
15 expertise in forensic psychiatry, or a psychologist who is in forensic
16 training and is practicing under the supervision of a licensed psychologist
17 with expertise in forensic psychology.

1 ~~(3)~~ (4) "Competency hearing" means a hearing to determine
2 whether a defendant is competent to proceed.

3 ~~(4)~~ (5) "Competent to proceed" means that the defendant does not
4 have a mental disability or developmental disability that prevents the
5 defendant from having sufficient present ability to consult with the
6 defendant's lawyer with a reasonable degree of rational understanding in
7 order to assist in the defense or prevents the defendant from having a
8 rational and factual understanding of the criminal proceedings.

9 ~~(5)~~ (6) "Court-ordered competency evaluation" means a
10 court-ordered examination of a defendant either before, during, or after
11 trial, directed to developing information relevant to a determination of the
12 defendant's competency to proceed at a particular stage of the criminal
13 proceeding, that is performed by a competency evaluator and includes
14 evaluations concerning restoration to competency.

15 ~~(6)~~ (7) "Court-ordered report" means a report of an evaluation,
16 conducted by or under the direction of the department, that is the statutory
17 obligation of the department to prepare when requested to do so by the
18 court.

19 ~~(7)~~ (8) "Criminal proceedings" means trial, sentencing,
20 satisfaction of the sentence, execution, and any pretrial matter that is not
21 susceptible of fair determination without the personal participation of the
22 defendant.

23 ~~(8)~~ (9) "Department" means the department of human services.

24 ~~(9)~~ (10) "Developmental disability" means a disability that has
25 manifested before the person reaches twenty-two years of age, that
26 constitutes a substantial disability to the affected individual, and is
27 attributable to ~~mental retardation~~ AN INTELLECTUAL DISABILITY or other

1 neurological conditions when such conditions result in impairment of
2 general intellectual functioning or adaptive behavior similar to that of a
3 person with ~~mental retardation~~ AN INTELLECTUAL DISABILITY. Unless
4 otherwise specifically stated, the federal definition of "developmental
5 disability", 42 U.S.C. sec. 15001 et seq., shall not apply.

6 ~~(10)~~ (11) "Executive director" means the executive director of the
7 department of human services.

8 ~~(11)~~ (12) "Incompetent to proceed" means that, as a result of a
9 mental disability or developmental disability, the defendant does not have
10 sufficient present ability to consult with the defendant's lawyer with a
11 reasonable degree of rational understanding in order to assist in the
12 defense, or that, as a result of a mental disability or developmental
13 disability, the defendant does not have a rational and factual
14 understanding of the criminal proceedings.

15 (13) "IN-CUSTODY" MEANS IN PRISON, IN A JAIL, OR IN ANY OTHER
16 LOCKED DETENTION FACILITY THAT DOES NOT MEET THE DEFINITION OF
17 INPATIENT.

18 (14) "INPATIENT" MEANS IN THE CUSTODY OF THE DEPARTMENT,
19 EITHER IN A HOSPITAL OR IN A FULL-TIME, JAIL-BASED RESTORATION
20 PROGRAM DEVELOPED BY THE DEPARTMENT.

21 ~~(12)~~ (15) "Mental disability" means a substantial disorder of
22 thought, mood, perception, or cognitive ability that results in marked
23 functional disability, significantly interfering with adaptive behavior.
24 "Mental disability" does not include acute intoxication from alcohol or
25 other substances, or any condition manifested only by antisocial behavior,
26 or any substance abuse impairment resulting from recent use or
27 withdrawal. However, substance abuse that results in a long-term,

1 substantial disorder of thought, mood, or cognitive ability may constitute
2 a mental disability.

3 (16) "OUTPATIENT" MEANS A LOCATION OUTSIDE OF THE CUSTODY
4 OF THE DEPARTMENT. "OUTPATIENT" DOES NOT INCLUDE A JAIL, PRISON,
5 OR OTHER DETENTION FACILITY WHERE THE DEFENDANT IS IN-CUSTODY.

6 ~~(13)~~ (17) "Restoration hearing" means a hearing to determine
7 whether a defendant who has previously been determined to be
8 incompetent to proceed has become competent to proceed.

9 ~~(14)~~ (18) "Second evaluation" means an evaluation requested by
10 the court, the district attorney, or the defendant that is performed by a
11 competency evaluator and that is not performed by or under the direction
12 of, or paid for by, the department.

13 (19) "TIER 1" MEANS A DEFENDANT:

14 (a) WHO HAS BEEN ORDERED TO RECEIVE INPATIENT RESTORATIVE
15 TREATMENT;

16 (b) FOR WHOM A COMPETENCY EVALUATOR HAS DETERMINED
17 EITHER THAT THE DEFENDANT:

18 (I) APPEARS TO HAVE A MENTAL HEALTH DISORDER AND, AS A
19 RESULT OF THE MENTAL HEALTH DISORDER, APPEARS TO BE A DANGER TO
20 OTHERS OR TO HIMSELF OR HERSELF OR APPEARS TO BE GRAVELY
21 DISABLED; OR

22 (II) HAS A MENTAL HEALTH DISORDER; AND

23 (c) AS A RESULT OF THE DETERMINATION MADE PURSUANT TO
24 SUBSECTION (19)(b) OF THIS SECTION, DELAYING INPATIENT
25 HOSPITALIZATION BEYOND SEVEN DAYS WOULD CAUSE HARM TO THE
26 DEFENDANT OR OTHERS.

27 (20) "TIER 2" MEANS A DEFENDANT WHO HAS BEEN ORDERED TO

1 RECEIVE INPATIENT RESTORATIVE TREATMENT AND WHO DOES NOT MEET
2 THE CRITERIA TO BE A TIER 1 DEFENDANT.

3 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-102, **amend**
4 (2) introductory portion and (2)(d); and **repeal** (2)(c) as follows:

5 **16-8.5-102. Mental incompetency to proceed - how and when**
6 **raised.** (2) The question of a defendant's competency to proceed ~~shall~~
7 MUST be raised in ONLY ONE OF the following ~~manner~~ MANNERS:

8 (c) ~~By the affidavit of any chief officer of an institution having~~
9 ~~custody of a defendant awaiting execution; or~~

10 (d) By the state board of parole when a board member has a
11 substantial and good-faith reason to believe that the offender is
12 incompetent to proceed, as defined in ~~section 16-8.5-101 (11)~~ SECTION
13 16-8.5-101 (12), at a parole hearing conducted pursuant to section
14 17-22.5-403.5.

15 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-103, **amend**
16 (1), (3), (4), and (8) as follows:

17 **16-8.5-103. Determination of competency to proceed.**

18 (1) (a) Whenever the question of a defendant's competency to proceed is
19 raised, by either party or on the court's own motion, the court may make
20 a preliminary finding of competency or incompetency TO PROCEED, which
21 ~~shall be~~ IS a final determination unless a party to the case objects within
22 ~~fourteen~~ SEVEN days after the court's preliminary finding.

23 (b) ON OR BEFORE THE DATE WHEN A COURT ORDERS THAT A
24 DEFENDANT BE EVALUATED FOR COMPETENCY, A COURT LIAISON FOR THE
25 DISTRICT HIRED PURSUANT TO PART 2 OF ARTICLE 11.9 OF THIS TITLE 16
26 MAY BE ASSIGNED TO THE DEFENDANT.

27 (3) Within ~~fourteen~~ SEVEN days after receipt of the court-ordered

1 report, either party may request a hearing or a second evaluation.

2 (4) If a party requests a second evaluation, any pending requests
3 for a hearing ~~shall~~ MUST be continued until the receipt of the second
4 evaluation report. The report of the expert conducting the second
5 evaluation ~~shall~~ MUST be completed and filed with the court within
6 ~~sixty-three~~ THIRTY-FIVE days after the court order allowing the second
7 evaluation, unless the time period is extended by the court for good cause.
8 If the second evaluation is requested by the court, it ~~shall~~ MUST be paid
9 for by the court.

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

18 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**
19 (1) and (5); and **add** (6) and (7) as follows:

20 **16-8.5-105. Evaluations, locations, time frames, and report.**

21 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
22 conducted on an outpatient basis or, if the defendant is ~~in-custody~~ UNABLE
23 TO POST THE MONETARY CONDITION OF BOND OR IS INELIGIBLE TO BE
24 RELEASED ON BOND, at the place where the defendant is ~~in-custody~~. ~~The~~
25 ~~defendant shall be released on bond if otherwise eligible for bond~~
26 IN-CUSTODY, EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION.
27 IF THE DEPARTMENT CONDUCTS THE EVALUATION ON AN IN-CUSTODY

1 BASIS, THE DEPARTMENT SHALL BEGIN THE EVALUATION AS SOON AS
2 PRACTICABLE AFTER THE DEPARTMENT'S RECEIPT OF A COURT ORDER
3 DIRECTING THE EVALUATION. AFTER JULY 1, 2020, IF THE EVALUATION IS
4 CONDUCTED ON AN IN-CUSTODY BASIS, THE DEPARTMENT SHALL
5 COMPLETE THE EVALUATION NO LATER THAN TWENTY-ONE DAYS AFTER
6 RECEIPT OF THE ORDER AND THE COLLATERAL MATERIALS. ON AND AFTER
7 JULY 1, 2020, IF THE EVALUATION IS CONDUCTED ON AN OUT-OF-CUSTODY
8 BASIS, THE DEPARTMENT SHALL COMPLETE THE EVALUATION WITHIN
9 FORTY-TWO DAYS AFTER RECEIPT OF THE ORDER AND COLLATERAL
10 MATERIALS, UNLESS THE COURT EXTENDS THE TIME UPON A SHOWING OF
11 GOOD CAUSE.

12 (II) AT THE TIME ANY EVALUATION IS ORDERED, THE COURT SHALL
13 ORDER THAT THE COLLATERAL MATERIALS BE TRANSMITTED TO THE
14 DEPARTMENT WITHIN TWENTY-FOUR HOURS AFTER THE ORDER BY THE
15 APPROPRIATE PARTY WITH A CERTIFICATE OF SERVICE OF THE MATERIALS
16 PROVIDED TO THE COURT AND OTHER NECESSARY PARTIES BY THE PARTY
17 ORDERED TO TRANSMIT THE COLLATERAL MATERIALS.

18 (III) THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE
19 CONDITIONS OF RELEASE AFTER CONSIDERATION OF THE PRESUMPTIONS
20 AND FACTORS ENUMERATED IN ARTICLE 4 OF THIS TITLE 16, WHICH
21 INCLUDE CONSIDERATION OF THE INFORMATION RECEIVED FROM ANY
22 PRETRIAL SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF SECTION
23 16-4-106 AND ANY INFORMATION PROVIDED BY THE COURT LIAISON HIRED
24 PURSUANT TO PART 2 OF ARTICLE 11.9 OF THIS TITLE 16. AS A CONDITION
25 OF ANY BOND, THE COURT SHALL REQUIRE THE DEFENDANT'S
26 COOPERATION WITH THE COMPETENCY EVALUATION ON AN OUTPATIENT
27 AND OUT-OF-CUSTODY BASIS. IN SETTING THE BOND, THE COURT SHALL

1 NOT CONSIDER THE NEED FOR THE DEFENDANT TO RECEIVE AN
2 EVALUATION PURSUANT TO THIS ARTICLE 8.5 AS A FACTOR IN
3 DETERMINING ANY MONETARY CONDITION OF BOND.

4 (IV) NOTHING IN THIS SUBSECTION (1)(a) LIMITS THE
5 AVAILABILITY OF A COURT-ORDERED EVALUATION FOR A PERSON WITH A
6 MENTAL HEALTH DISORDER PURSUANT TO SECTION 27-65-106 OR INVOKES
7 THE EMERGENCY PROCEDURE SET FORTH IN SECTION 27-65-105.

8 (b) Notwithstanding the provisions of ~~paragraph (a) of this~~
9 ~~subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION, the court may order
10 the defendant placed in the DEPARTMENT'S custody ~~of the Colorado~~
11 ~~mental health institute at Pueblo~~ for the time necessary to conduct the
12 INPATIENT COMPETENCY evaluation if:

13 (I) ~~The court finds the defendant may be a danger to self or others~~
14 ~~as defined in section 27-65-102, C.R.S.~~ THE DEPARTMENT PROVIDES A
15 RECOMMENDATION TO THE COURT, AFTER CONSULTATION WITH THE
16 DEFENDANT AND REVIEW OF ANY CLINICAL OR COLLATERAL MATERIALS,
17 THAT CONDUCTING THE COMPETENCY EVALUATION ON AN INPATIENT
18 BASIS IS CLINICALLY APPROPRIATE;

19 (II) ~~The court finds that an inadequate competency evaluation and~~
20 ~~report has been completed or two or more conflicting competency~~
21 ~~evaluations and reports have been completed~~ THE COURT FINDS THAT AN
22 INADEQUATE COMPETENCY EVALUATION AND REPORT HAS BEEN
23 COMPLETED OR THAT TWO OR MORE CONFLICTING COMPETENCY
24 EVALUATIONS AND REPORTS HAVE BEEN COMPLETED, AND THE COURT
25 FINDS THAT AN INPATIENT EVALUATION IS NECESSARY; OR

26 (III) ~~The court finds that an observation period is necessary to~~
27 ~~determine if the defendant is competent to stand trial;~~ EXTRAORDINARY

1 CIRCUMSTANCES RELATING TO THE CASE OR THE DEFENDANT MAKE
2 CONDUCTING THE COMPETENCY EVALUATION ON AN INPATIENT BASIS
3 NECESSARY AND APPROPRIATE.

4 ~~(IV) The court receives a recommendation from the Colorado~~
5 ~~mental health institute at Pueblo court services evaluator that conducting~~
6 ~~the evaluation at the Colorado mental health institute at Pueblo is~~
7 ~~appropriate because the evaluator conducting the evaluation for the~~
8 ~~Colorado mental health institute at Pueblo determines that the defendant~~
9 ~~has been uncooperative or the defendant has clinical needs that warrant~~
10 ~~transfer to the Colorado mental health institute at Pueblo; or~~

11 ~~(V) The court receives written approval for the evaluation to be~~
12 ~~conducted at the Colorado mental health institute at Pueblo from the~~
13 ~~executive director of the department of human services, or his or her~~
14 ~~designee.~~

15 (b.3) UPON ENTRY OF A COURT ORDER PURSUANT TO SUBSECTION
16 (1)(b) OF THIS SECTION, THE DEPARTMENT HAS THE SAME AUTHORITY
17 WITH RESPECT TO CUSTODY AS PROVIDED FOR IN SECTION 16-8-105.5 (4).

18 (b.5) WHEN THE COURT ORDERS AN INPATIENT EVALUATION, THE
19 COURT SHALL ADVISE THE DEFENDANT THAT RESTORATION SERVICES MAY
20 COMMENCE IMMEDIATELY IF THE EVALUATION CONCLUDES THAT THE
21 DEFENDANT IS INCOMPETENT TO PROCEED, UNLESS EITHER PARTY OBJECTS
22 AT THE TIME OF THE ADVISEMENT, OR WITHIN SEVENTY-TWO HOURS AFTER
23 THE RECEIPT OF THE WRITTEN EVALUATION SUBMITTED TO THE COURT.
24 THE COURT SHALL RECORD ANY OBJECTION TO THE ORDER OF
25 COMMITMENT TO THE DEPARTMENT.

26 (b.7) ON AND AFTER JULY 1, 2020, WHEN THE COURT ORDERS AN
27 INPATIENT EVALUATION, THE DEFENDANT MUST BE OFFERED ADMISSION

1 TO THE HOSPITAL OR OTHER INPATIENT PROGRAM WITHIN FOURTEEN DAYS
2 AFTER RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS. THE
3 COURT SHALL REVIEW THE CASE IN TWENTY-ONE DAYS TO DETERMINE IF
4 TRANSPORTATION TO THE HOSPITAL OR PROGRAM HAS BEEN COMPLETED
5 OR IF FURTHER ORDERS ARE NECESSARY.

6 (c) ~~The court, when setting bond pursuant to section 16-4-103, if~~
7 ~~the defendant is eligible for bond, and after receiving any information~~
8 ~~pursuant to section 16-4-106, shall not consider the need for the~~
9 ~~defendant to receive an evaluation pursuant to this article.~~

10 (d) If a defendant is in THE DEPARTMENT'S custody ~~at the Colorado~~
11 ~~mental health institute at Pueblo~~ for purposes of the COMPETENCY
12 evaluation ordered pursuant to this ~~article~~ ARTICLE 8.5 and the defendant
13 has completed the COMPETENCY evaluation and ~~must be returned~~ THE
14 EVALUATOR HAS CONCLUDED THAT THE DEFENDANT IS COMPETENT TO
15 PROCEED, THE DEPARTMENT MAY RETURN THE DEFENDANT TO a county
16 jail OR TO THE COMMUNITY, AS DETERMINED BY THE DEFENDANT'S BOND
17 STATUS. IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT IS
18 INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION SERVICES
19 ARE NOT CLINICALLY APPROPRIATE, AND OUTPATIENT RESTORATION
20 SERVICES ARE AVAILABLE TO THE DEFENDANT IN THE COMMUNITY, THE
21 DEPARTMENT SHALL NOTIFY THE COURT AND THE COURT LIAISON, AND
22 THE DEPARTMENT SHALL DEVELOP A DISCHARGE PLAN AND A PLAN FOR
23 COMMUNITY-BASED RESTORATION SERVICES IN COORDINATION WITH THE
24 COMMUNITY RESTORATION SERVICES PROVIDER. THE COURT SHALL HOLD
25 A HEARING WITHIN SEVEN DAYS AFTER RECEIVING THE NOTICE, AT WHICH
26 THE DEPARTMENT SHALL PROVIDE TO THE COURT THE PLAN FOR
27 COMMUNITY-BASED RESTORATION SERVICES, AND THE COURT MAY ENTER

1 ANY APPROPRIATE ORDERS REGARDING THE CUSTODY OF THE DEFENDANT
2 AND HIS OR HER BOND STATUS. THE DEPARTMENT SHALL ADVISE THE
3 DEFENDANT OF THE DATE AND TIME OF THE COURT HEARING. IF THE
4 DEPARTMENT IS RETURNING THE DEFENDANT TO A COUNTY JAIL, THE COUNTY
5 SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT MUST RETURN SHALL ~~make all~~
6 ~~reasonable efforts to~~ TAKE CUSTODY OF THE DEFENDANT ~~as soon as practicable~~
7 ~~once~~ WITHIN SEVENTY-TWO HOURS AFTER RECEIVING NOTIFICATION FROM
8 THE DEPARTMENT THAT THE DEFENDANT'S EVALUATION IS COMPLETED. AT THE
9 TIME THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL
10 ALSO NOTIFY THE COURT AND THE COURT LIAISON THAT THE DEPARTMENT
11 IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE JAIL.

12 (e) Nothing in this section ~~shall restrict~~ RESTRICTS the right of the
13 defendant to procure ~~an~~ A COMPETENCY evaluation as provided in ~~section~~
14 ~~16-8.5-107~~ SECTION 16-8.5-106.

15 (5) ON AND AFTER JULY 1, 2020, the report of evaluation shall
16 COMPETENCY EVALUATION AND REPORT MUST include but need not be
17 limited to:

18 (a) The name of each physician, psychologist, or other expert who
19 examined the defendant; ~~and~~

20 (b) A description of the nature, content, extent, and results of the
21 COMPETENCY evaluation and any tests conducted, ~~and~~ WHICH MUST
22 INCLUDE BUT NEED NOT BE LIMITED TO THE INFORMATION REVIEWED AND
23 RELIED UPON IN CONDUCTING THE COMPETENCY EVALUATION AND
24 SPECIFIC TESTS CONDUCTED BY THE COMPETENCY EVALUATOR;

25 (c) A diagnosis and prognosis of the defendant's mental disability
26 or developmental disability; ~~and~~

27 (d) An opinion as to whether the defendant suffers from a mental

1 disability or developmental disability; and

2 (e) An opinion as to whether the defendant is competent to
3 proceed. IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
4 DEFENDANT IS INCOMPETENT TO PROCEED, THEN:

5 (I) IF POSSIBLE, AN OPINION AS TO WHETHER THERE IS A
6 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION
7 SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY
8 FORESEEABLE FUTURE; AND

9 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
10 RESTORATION SERVICES ARE CLINICALLY APPROPRIATE TO RESTORE THE
11 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
12 NOT CLINICALLY APPROPRIATE, THE DEPARTMENT MUST DETAIL THE
13 OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES AVAILABLE
14 TO THE DEFENDANT. FOR EVALUATION REPORTS FILED ON OR AFTER
15 JANUARY 1, 2021, THE RECOMMENDATIONS MUST BE BASED UPON THE
16 RESTORATION PLACEMENT GUIDELINE DEVELOPED PURSUANT TO SECTION
17 16-8.5-121, PRIOR TO ITS REPEAL.

18 (f) IF AVAILABLE WITHIN THE RECORDS OF THE DEPARTMENT, A
19 DESCRIPTION OF ALL COMPETENCY EVALUATIONS OR RESTORATION
20 SERVICES THAT WERE PREVIOUSLY PROVIDED TO THE DEFENDANT,
21 INCLUDING A LIST OF RECENT VOLUNTARY OR INVOLUNTARY MEDICATIONS
22 ADMINISTERED OR ADMINISTERED THROUGH A FORCED MEDICATION
23 ORDER; _____

24 (g) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
25 DEFENDANT MEETS THE CRITERIA FOR A TIER I OR TIER II DESIGNATION,
26 AS DEFINED IN SECTION 16-8.5-101(19) AND (20); AND

27 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE

1 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
2 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
3 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
4 TITLE 27, INCLUDING THE FACTORS CONSIDERED IN MAKING EITHER
5 DETERMINATION.

6 (6) WHENEVER A COMPETENCY EVALUATION IS ORDERED UPON
7 THE REQUEST OF EITHER PARTY, THE COURT MAY NOTIFY THE COUNTY
8 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
9 PURSUANT TO SECTION 27-65-111 (6) FOR THE COUNTY IN WHICH THE
10 CHARGES ARE PENDING AND THE COURT LIAISON HIRED PURSUANT TO PART
11 2 OF ARTICLE 11.9 OF THIS TITLE 16 OF ALL COURT DATES FOR RETURN OF
12 THE REPORT ON COMPETENCY TO ENSURE THAT ALL PARTIES ARE ON
13 NOTICE OF THE EXPECTED NEED FOR COORDINATED SERVICES AND
14 PLANNING WITH CONSIDERATION OF POSSIBLE CIVIL COMMITMENT.

15 (7) A COMPETENCY EVALUATOR IS NOT LIABLE FOR DAMAGES IN
16 ANY CIVIL ACTION FOR FAILURE TO WARN OR PROTECT A SPECIFIC PERSON
17 OR PERSONS, INCLUDING THOSE IDENTIFIABLE BY THEIR ASSOCIATION WITH
18 A SPECIFIC LOCATION OR ENTITY, AGAINST THE VIOLENT BEHAVIOR OF A
19 DEFENDANT BEING EVALUATED BY THE COMPETENCY EVALUATOR, AND
20 ANY COMPETENCY EVALUATOR MUST NOT BE HELD CIVILLY LIABLE FOR
21 FAILURE TO PREDICT SUCH VIOLENT BEHAVIOR, EXCEPT WHERE THE
22 DEFENDANT HAS COMMUNICATED TO THE COMPETENCY EVALUATOR A
23 SERIOUS THREAT OF IMMINENT PHYSICAL VIOLENCE AGAINST A SPECIFIC
24 PERSON OR PERSONS, INCLUDING THOSE IDENTIFIABLE BY THEIR
25 ASSOCIATION WITH A SPECIFIC LOCATION OR ENTITY.

26 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-111, **amend**
27 (2); and **add** (3) as follows:

1 **16-8.5-111. Procedure after determination of competency or**
2 **incompetency.** (2) If the final determination made pursuant to section
3 16-8.5-103 is that the defendant is incompetent to proceed, the court has
4 the following options:

5 (a) IF THE DEFENDANT IS CHARGED WITH AN OFFENSE AS OUTLINED
6 IN SECTION 16-8.5-116 (7) OR (8), EXCEPT FOR AN OFFENSE ENUMERATED
7 IN SECTION 24-4.1-302 (1), AND THE COMPETENCY EVALUATION HAS
8 DETERMINED THAT THE DEFENDANT MEETS THE STANDARD FOR CIVIL
9 COMMITMENT PURSUANT TO ARTICLE 65 OF TITLE 27, THE COURT MAY
10 FORGO ANY ORDER OF RESTORATION AND IMMEDIATELY ORDER THAT
11 PROCEEDINGS BE INITIATED BY THE COUNTY ATTORNEY OR DISTRICT
12 ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS PURSUANT TO SECTION
13 27-65-111 (6) FOR THE CIVIL COMMITMENT OF THE DEFENDANT AND
14 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE
15 ONCE CIVIL COMMITMENT PROCEEDINGS HAVE BEEN INITIATED.

16 ~~(a)~~ (b) (I) If the defendant is on bond or summons, the court shall
17 ~~consider whether~~ ORDER THAT restoration to competency ~~should occur~~
18 TAKE PLACE on an outpatient ~~and out-of-custody~~ basis, UNLESS THE
19 DEPARTMENT RECOMMENDS INPATIENT RESTORATION SERVICES PURSUANT
20 TO SECTION 16-8.5-105 (5)(e)(II).

21 (II) If the defendant is in custody AND THE RECOMMENDATION IS
22 FOR OUT PATIENT RESTORATION SERVICES, the court ~~may~~ SHALL CONSIDER
23 THE release OF the defendant on bond ~~upon compliance with the standards~~
24 ~~and procedures for such release prescribed by statute and by~~ CONSISTENT
25 WITH ARTICLE 4 OF THIS TITLE 16 AND the Colorado rules of criminal
26 procedure. As a condition of bond, the court ~~may require the defendant~~
27 ~~to obtain any treatment or habilitation services that are available to the~~

1 ~~defendant, such as inpatient or outpatient treatment at a community~~
2 ~~mental health center or in any other appropriate treatment setting, as~~
3 ~~determined by the court. Nothing in this section authorizes the court to~~
4 ~~order community mental health centers or other providers to provide~~
5 ~~treatment for persons not otherwise eligible for these services. At any~~
6 ~~hearing to determine eligibility for release on bond, the court shall~~
7 ~~consider any effect the defendant's incompetency may have on the court's~~
8 ~~ability to ensure the defendant's presence for hearing or trial. There is a~~
9 ~~presumption that the defendant's incompetency will inhibit the defendant's~~
10 ~~ability to ensure his or her presence for trial~~ SHALL ORDER THAT THE
11 RESTORATION TAKE PLACE ON AN OUTPATIENT BASIS. Pursuant to section
12 27-60-105, the DEPARTMENT THROUGH THE office of behavioral health is
13 the entity responsible for the oversight of restoration education and
14 coordination of ~~services necessary to~~ ALL competency restoration
15 SERVICES. AS A CONDITION OF RELEASE FOR OUTPATIENT RESTORATION
16 SERVICES, THE COURT MAY REQUIRE PRETRIAL SERVICES, IF AVAILABLE,
17 TO WORK WITH THE DEPARTMENT AND THE RESTORATION SERVICES
18 PROVIDER UNDER CONTRACT WITH THE DEPARTMENT TO ASSIST IN
19 SECURING APPROPRIATE SUPPORT AND CARE MANAGEMENT SERVICES,
20 WHICH MAY INCLUDE HOUSING RESOURCES. THE INDIVIDUAL AGENCY
21 RESPONSIBLE FOR PROVIDING OUTPATIENT RESTORATION SERVICES FOR
22 THE DEFENDANT SHALL NOTIFY THE COURT OR OTHER DESIGNATED
23 AGENCY WITHIN TWENTY-ONE DAYS IF RESTORATION SERVICES HAVE NOT
24 COMMENCED.

25 (b) (c) If the court finds that the defendant is not eligible for
26 release from custody OR NOT ABLE TO POST THE MONETARY CONDITION OF
27 BOND, the court may commit the defendant to the custody of the

1 department, in which case the executive director has the same powers
2 with respect to commitment as the executive director has following a
3 commitment ~~under~~ PURSUANT TO section 16-8-105.5 (4). At such time as
4 the department recommends to the court that the defendant is restored to
5 competency, the defendant may be returned to custody of the county jail
6 or to previous bond status.

7 (d) IF THE COURT HAS ORDERED OUTPATIENT RESTORATION
8 SERVICES AND THE DEPARTMENT DETERMINES THAT IT IS UNABLE, WITHIN
9 A REASONABLE TIME, TO PROVIDE RESTORATION SERVICES ON AN
10 OUTPATIENT BASIS, THE DEPARTMENT SHALL NOTIFY THE COURT WITHIN
11 FOURTEEN DAYS AFTER ITS DETERMINATION, AT WHICH POINT THE COURT
12 SHALL REVIEW THE CASE AND DETERMINE WHAT INTERIM MENTAL HEALTH
13 SERVICES CAN BE PROVIDED WITHIN THE COMMUNITY BY THE
14 DEPARTMENT OR OTHER COMMUNITY PROVIDER. THE DEPARTMENT SHALL
15 REPORT TO THE COURT LIAISON EVERY TEN DAYS THEREAFTER
16 CONCERNING THE AVAILABILITY OF RESTORATION SERVICES ON AN
17 OUTPATIENT BASIS.

18 (e) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
19 THE DEPARTMENT, THE EXECUTIVE DIRECTOR HAS THE SAME POWERS WITH
20 RESPECT TO A COMMITMENT PROVIDED FOR IN SECTION 16-8-105.5 (4).

21 (f) (I) IF THE COURT HAS ORDERED INPATIENT RESTORATION
22 SERVICES, THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT
23 AN APPROPRIATE INPATIENT RESTORATION SERVICES PROGRAM. ON AND
24 AFTER JULY 1, 2019, THE DEPARTMENT SHALL OFFER TIER 1 DEFENDANTS
25 ADMISSION FOR RESTORATION SERVICES WITHIN SEVEN DAYS AFTER
26 RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS. ON AND
27 AFTER JULY 1, 2021, THE DEPARTMENT SHALL OFFER ADMISSION TO TIER

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

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

10 (A) REVIEW THE CASE FOR CONSIDERATION OF OUTPATIENT
11 RESTORATION SERVICES AND APPROPRIATE AND NECESSARY CASE
12 MANAGEMENT SERVICES COORDINATED WITH THE DEPARTMENT; THE
13 COURT LIAISON; AND PRETRIAL SERVICES, IF AVAILABLE; OR

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

16 (g) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
17 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
18 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
19 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, AND
20 CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,
21 HAS THE AUTHORITY TO MOVE THE DEFENDANT TO A LESS RESTRICTIVE
22 FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS
23 NOT YET RESTORED TO COMPETENCY BUT HE OR SHE COULD BE PROPERLY
24 RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY. IF THE
25 DEFENDANT IS NOT RELEASED FROM CUSTODY, THE COURT SHALL ORDER
26 THE DEPARTMENT TO PROVIDE INPATIENT SERVICES AT A LOCATION
27 DETERMINED BY THE DEPARTMENT.

1 (h) (I) IF THE DEFENDANT IS RECEIVING INPATIENT RESTORATION
2 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT
3 COMMUNITY-BASED RESTORATION SERVICES WOULD BE MORE CLINICALLY
4 APPROPRIATE, THE DEPARTMENT SHALL:

5 (A) NOTIFY THE COURT AND REQUEST THAT THE DEFENDANT BE
6 CONSIDERED FOR RELEASE ON A NONMONETARY BOND IF THE DEFENDANT
7 IS NOT CURRENTLY RELEASED ON BOND; AND

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

13 (II) THE COURT SHALL RULE ON THE REQUEST WITHIN FOURTEEN
14 DAYS AFTER RECEIPT OF THE REQUEST FROM THE DEPARTMENT.

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

1 DEFENDANT WHILE THE DEFENDANT IS IN JAIL, WHICH MUST INCLUDE
2 MEDICATION INFORMATION WHEN CLINICALLY APPROPRIATE. THE REPORT
3 TO THE COURT MUST ALSO INCLUDE A STATEMENT THAT THE DEPARTMENT
4 IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL. THE
5 SHERIFF, THE DEPARTMENT, AND ANY BEHAVIORAL HEALTH PROVIDERS IN
6 THE JAIL SHALL WORK TO ENSURE THAT THE DEFENDANT IS PROVIDED THE
7 CORRECT VOLUNTARY MEDICATION WHILE AT THE COUNTY JAIL.

8 (b) IF THE DEFENDANT WAS RELEASED ON BOND PRIOR TO THE
9 INPATIENT HOSPITALIZATION, THE DEFENDANT MUST BE RELEASED
10 PURSUANT TO THE BOND WITH THE CONDITIONS IMPOSED BY THE COURT.
11 THE DEPARTMENT SHALL ASSIST THE DEFENDANT WITH ANY AND ALL
12 NECESSARY TRANSPORTATION AND PROVIDE THE NECESSARY CASE AND
13 MEDICATION INFORMATION FOR THE DEFENDANT TO THE COMMUNITY
14 AGENCY THAT WILL PROVIDE ONGOING SERVICES AND MEDICATION
15 SUPPORT. THE DEPARTMENT SHALL NOTIFY THE COURT AND THE COURT
16 LIAISON THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE
17 COMMUNITY ON BOND STATUS. THE DEPARTMENT, THE COURT LIAISON,
18 AND THE COURT, INCLUDING PRETRIAL SERVICES, SHALL COORDINATE TO
19 ENSURE THAT THE DEFENDANT IS ADVISED OF HIS OR HER NEXT COURT
20 APPEARANCE AND ALL OF THE REQUIRED TERMS AND CONDITIONS OF THE
21 RELEASE ON BOND.

22 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-113, **amend**
23 (2) and (3) as follows:

24 **16-8.5-113. Restoration to competency.** (2) Within fourteen
25 days after receipt of a report from the department or other court-approved
26 provider of restoration services certifying that the defendant is competent
27 to proceed, either party may request a hearing or a second evaluation. The

1 court shall determine whether to allow the second evaluation or proceed
2 to a hearing on competency. If the second evaluation is requested by the
3 court or by an indigent defendant, it ~~shall~~ MUST be paid for by the court.

4 (3) If a second evaluation is allowed, any pending requests for a
5 hearing ~~shall~~ MUST be continued until receipt of the second evaluation
6 report. The report of the expert conducting the second evaluation report
7 ~~shall~~ MUST be completed and filed with the court within ~~sixty-three~~
8 THIRTY-FIVE days after the court order allowing the second evaluation,
9 unless the time period is extended by the court after a finding of good
10 cause.

11 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-114, **amend**
12 (2) as follows:

13 **16-8.5-114. Procedure after hearing concerning restoration to**
14 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
15 the court determines that the defendant remains incompetent to proceed,
16 the court may continue or modify any orders entered at the time of the
17 original determination of incompetency and may commit or recommit the
18 defendant or enter any new order necessary to facilitate the defendant's
19 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS
20 OF SECTION 16-8.5-111.

21 **SECTION 8.** In Colorado Revised Statutes, **repeal and reenact,**
22 **with amendments,** 16-8.5-116 as follows:

23 **16-8.5-116. Certification - reviews - termination of**
24 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS AND LEGAL
25 STANDARDS SET FORTH IN THIS SECTION, WHICHEVER IS SHORTEST, A
26 DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
27 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF

1 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
2 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
3 IMPOSED FOR ONLY THE SINGLE MOST SERIOUS OFFENSE WITH WHICH THE
4 DEFENDANT IS CHARGED, LESS FIFTY PERCENT. AT THE END OF SUCH TIME
5 PERIOD, THE COURT SHALL DISMISS THE CHARGES, AND CERTIFICATION
6 PROCEEDINGS OR PROVISION OF SERVICES, IF ANY, ARE GOVERNED BY
7 ARTICLE 65 OR 10.5 OF TITLE 27.

8 (2) (a) WITHIN NINETY-ONE DAYS AFTER THE ENTRY OF THE
9 COURT'S ORDER OF COMMITMENT, THE COURT SHALL REVIEW THE CASE OF
10 A DEFENDANT WHO HAS BEEN DETERMINED TO BE INCOMPETENT TO
11 PROCEED WITH REGARD TO THE PROBABILITY THAT THE DEFENDANT WILL
12 EVENTUALLY BE RESTORED TO COMPETENCY AND WITH REGARD TO THE
13 JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE REVIEW MAY BE
14 HELD IN CONJUNCTION WITH A RESTORATION HEARING HELD PURSUANT TO
15 SECTION 16-8.5-113. HOWEVER, IF AT THE REVIEW HEARING, THERE IS A
16 REQUEST BY THE DEFENDANT FOR A RESTORATION HEARING PURSUANT TO
17 SECTION 16-8.5-113, THE COURT SHALL SET THE RESTORATION HEARING
18 WITHIN THIRTY-FIVE DAYS AFTER THE REQUEST PURSUANT TO THE
19 PROVISIONS OF SECTION 16-8.5-113.

20 (b) ON AND AFTER JULY 1, 2020, AT LEAST TEN DAYS BEFORE EACH
21 REVIEW, THE INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL
22 PROVIDE THE COURT WITH A REPORT DESCRIBING:

- 23 (I) AN OPINION REGARDING THE DEFENDANT'S COMPETENCY;
24 (II) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
25 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
26 REASONABLY FORESEEABLE FUTURE;
27 (III) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE

1 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
2 PERIODS ESTABLISHED BY THIS SECTION;

3 (IV) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
4 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
5 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27;

6 (V) ANY AND ALL EFFORTS MADE FOR RESTORATION THROUGH
7 MEDICATION, THERAPY, EDUCATION, OR OTHER SERVICES AND THE
8 OUTCOME OF THOSE EFFORTS IN RELATION TO RESTORING THE DEFENDANT
9 TO COMPETENCY;

10 (VI) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
11 DEFENDANT WILL BE RESTORED TO COMPETENCY AND REMAIN COMPETENT
12 WITH THE USE OF MEDICATIONS OR WILL NOT REMAIN COMPETENT
13 WITHOUT THE USE OF FORCED MEDICATION;

14 (VII) IF THE DEFENDANT HAS FAILED TO COOPERATE WITH
15 TREATMENT, WHETHER THE INCOMPETENCY AND MENTAL OR
16 INTELLECTUAL AND DEVELOPMENTAL DISABILITY CONTRIBUTES TO THE
17 DEFENDANT'S REFUSAL OR INABILITY TO COOPERATE WITH RESTORATION
18 OR PREVENTS THE ABILITY OF THE DEFENDANT TO COOPERATE WITH
19 RESTORATION; AND

20 (VIII) A SUMMARY OF THE OBSERVATIONS OF THE DEFENDANT BY
21 THE TREATING STAFF AT THE FACILITY OR OTHER LOCATION WHERE
22 INPATIENT SERVICES WERE DELIVERED.

23 (c) ADDITIONALLY, ON AND AFTER JULY 1, 2020, AT LEAST TEN
24 DAYS BEFORE EACH REVIEW, THE DEPARTMENT TREATING TEAM SHALL
25 PROVIDE TO THE COURT AN ADDITIONAL REPORT THAT SUMMARIZES:

26 (I) WHAT RESTORATIVE EDUCATION HAS BEEN PROVIDED AND THE
27 FREQUENCY OF THAT EDUCATION;

1 (II) WHAT MEDICATION HAS BEEN ADMINISTERED, INCLUDING
2 VOLUNTARY OR INVOLUNTARY MEDICATIONS;

3 (III) WHAT RELEASE PLANS HAVE BEEN MADE FOR THE DEFENDANT
4 AFTER RELEASE, INCLUDING A DISCUSSION OF THE SUPPORT FROM FAMILY
5 MEMBERS;

6 (IV) WHETHER OR NOT THE DEFENDANT WOULD AGREE TO
7 VOLUNTARY ADMISSION TO THE HOSPITAL FOR CERTIFICATION PURSUANT
8 TO ARTICLE 65 OF TITLE 27;

9 (V) THE OPINION OF THE TREATING TEAM ON THE DEFENDANT'S
10 MENTAL HEALTH FUNCTIONING AND ABILITY TO FUNCTION ON AN
11 OUTPATIENT BASIS FOR RESTORATION SERVICES; AND

12 (VI) WHETHER THE DEFENDANT, BASED ON OBSERVATIONS OF THE
13 DEFENDANT'S BEHAVIOR IN THE FACILITY, PRESENTS A SUBSTANTIAL RISK
14 TO THE PHYSICAL SAFETY OF HIMSELF OR HERSELF, OF ANOTHER PERSON,
15 OR OF THE COMMUNITY IF RELEASED FOR COMMUNITY RESTORATION.

16 (3) AFTER THE INITIAL REVIEW PURSUANT TO SUBSECTION (2)(a)
17 OF THIS SECTION, THE COURT SHALL REVIEW THE CASE OF THE DEFENDANT
18 EVERY NINETY-ONE DAYS THEREAFTER UNTIL FOUR REVIEWS HAVE BEEN
19 CONDUCTED. AT LEAST TEN DAYS BEFORE EACH REVIEW, THE INDIVIDUAL
20 OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE COURT WITH
21 AN UPDATED REPORT AS DESCRIBED IN SUBSECTION (2)(b) OF THIS SECTION
22 AND THE TREATMENT STAFF SHALL PROVIDE AN UPDATED SUMMARY OF
23 OBSERVATIONS AS DESCRIBED IN SUBSECTION (2)(c) OF THIS SECTION.

24 (4) AFTER THE FOURTH REVIEW, THE COURT SHALL REVIEW THE
25 COMPETENCY OF THE DEFENDANT EVERY SIXTY-THREE DAYS UNTIL THE
26 DEFENDANT IS RESTORED TO COMPETENCY OR THE COURT DETERMINES,
27 BASED ON AVAILABLE EVIDENCE, THAT THERE IS NOT A SUBSTANTIAL

1 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
2 IN THE FORESEEABLE FUTURE AND IN THAT CASE, THE COURT SHALL
3 DISMISS THE CASE.

4 (5) THE COURT SHALL FORWARD A COPY OF EACH REPORT AND
5 SUMMARY RECEIVED PURSUANT TO SUBSECTIONS (2), (3), AND (4) OF THIS
6 SECTION TO THE COUNTY ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO
7 CONDUCT PROCEEDINGS PURSUANT TO SECTION 27-65-111 (6) FOR THE
8 COUNTY IN WHICH THE CASE IS PENDING AND TO THE COURT LIAISON.

9 (6) NOTWITHSTANDING THE TIME PERIODS PROVIDED IN
10 SUBSECTIONS (7), (8), AND (9) OF THIS SECTION AND TO ENSURE
11 COMPLIANCE WITH RELEVANT CONSTITUTIONAL PRINCIPLES, FOR ANY
12 OFFENSE FOR WHICH THE DEFENDANT REMAINS CONFINED AS A RESULT OF
13 A DETERMINATION OF INCOMPETENCY TO PROCEED IF THE COURT
14 DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THERE IS NOT A
15 SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO
16 COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE COURT
17 MAY ORDER THE DEFENDANT'S RELEASE FROM COMMITMENT PURSUANT TO
18 THIS ARTICLE 8.5 THROUGH ONE OR MORE OF THE FOLLOWING MEANS:

19 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
20 OR ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
21 PROCEEDINGS, THE COMMITMENT, OR THE RESTORATION SERVICES ORDER;

22 (b) THE COURT MAY, IN COORDINATION WITH THE COUNTY
23 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
24 PURSUANT TO SECTION 27-65-111 (6) FOR THE COUNTY IN WHICH THE
25 DEFENDANT IS CHARGED, ORDER THE COMMENCEMENT OF CERTIFICATION
26 PROCEEDINGS PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27
27 IF THE DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION

1 PURSUANT TO ARTICLE 65 OF TITLE 27;

2 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
3 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
4 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
5 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
6 PURSUANT TO ARTICLE 10.5 OF TITLE 27; OR

7 (d) ON AND AFTER JULY 1, 2020, THE DEPARTMENT SHALL ENSURE
8 THAT CASE MANAGEMENT SERVICES AND SUPPORT ARE MADE AVAILABLE
9 TO ANY DEFENDANT RELEASED FROM COMMITMENT PURSUANT TO THIS
10 ARTICLE 8.5 DUE TO THE SUBSTANTIAL PROBABILITY THAT THE
11 DEFENDANT WILL NOT BE RESTORED TO COMPETENCY IN THE REASONABLE
12 FORESEEABLE FUTURE.

13 (7) AT ANY REVIEW HEARING HELD CONCERNING THE
14 DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE
15 CHARGES AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
16 CONFINEMENT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
17 SECTION, IF:

18 (a) THE DEFENDANT:

19 (I) IS CHARGED WITH A MISDEMEANOR, A MISDEMEANOR DRUG
20 OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE OFFENSES
21 ENUMERATED IN SECTION 24-4.1-302 (1);

22 (II) HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT
23 OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
24 INCOMPETENCY TO PROCEED;

25 (III) HAS RECEIVED COMPETENCY RESTORATION SERVICES WHILE
26 COMMITTED OR OTHERWISE CONFINED FOR AN AGGREGATE TIME OF SIX
27 MONTHS; AND

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

3 (8) AT ANY REVIEW HEARING HELD CONCERNING THE
4 DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE
5 CHARGES AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
6 CONFINEMENT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
7 SECTION, IF:

8 (a) THE DEFENDANT:

9 (I) IS CHARGED WITH A CLASS 5 OR CLASS 6 FELONY, EXCEPT FOR
10 THOSE OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1); WITH A LEVEL
11 3 OR LEVEL 4 DRUG FELONY; OR WITH ANY MISDEMEANOR OFFENSE THAT
12 IS NOT INCLUDED IN SUBSECTION (7) OF THIS SECTION;

13 (II) HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT
14 OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
15 INCOMPETENCY TO PROCEED; AND

16 (III) HAS RECEIVED COMPETENCY RESTORATION SERVICES WHILE
17 COMMITTED OR OTHERWISE CONFINED FOR AN AGGREGATE TIME OF ONE
18 YEAR; AND

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

21 (9) IF THE DEFENDANT IS CHARGED WITH ANY OTHER FELONY
22 OFFENSE EXCEPT A CLASS 1, 2, OR 3 FELONY OFFENSE; A SEX OFFENSE AS
23 DEFINED IN SECTION 18-1.3-1003 (5); A CRIME OF VIOLENCE AS DEFINED
24 IN SECTION 18-1.3-406 (2); OR A LEVEL 1 OR LEVEL 2 DRUG FELONY, AND
25 HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
26 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
27 INCOMPETENCY TO PROCEED, THE FOLLOWING PROVISIONS APPLY:

1 (a) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
2 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
3 AGGREGATE TIME OF TWO YEARS AND THE COURT DETERMINES, BASED ON
4 AVAILABLE EVIDENCE, THAT THE DEFENDANT IS NOT RESTORED TO
5 COMPETENCY, THEN THE COURT SHALL DISMISS THE CHARGES AGAINST
6 THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (10) OF THIS
7 SECTION, UNLESS ANY PARTY OBJECTS TO DISMISSAL.

8 (b) IF A PARTY OBJECTS TO DISMISSAL OF CHARGES PURSUANT TO
9 SUBSECTION (9)(a) OF THIS SECTION, THE COURT SHALL SET THE MATTER
10 FOR A HEARING. UPON COMPLETION OF THE HEARING, THE COURT SHALL
11 DISMISS THE CHARGES UNLESS THE COURT DETERMINES THAT THE PARTY
12 OBJECTING TO THE DISMISSAL ESTABLISHES BY CLEAR AND CONVINCING
13 EVIDENCE THAT THERE IS A COMPELLING PUBLIC INTEREST IN CONTINUING
14 THE PROSECUTION AND THERE IS A SUBSTANTIAL PROBABILITY THAT THE
15 DEFENDANT WILL ATTAIN COMPETENCY IN THE FORESEEABLE FUTURE. IF
16 THE COURT DECLINES TO DISMISS THE CHARGES, THE COURT SHALL
17 ADDRESS THE APPROPRIATENESS OF CONTINUED CONFINEMENT AND MAY
18 ALTER OR REDUCE BOND IF APPROPRIATE PURSUANT TO ARTICLE 4 OF THIS
19 TITLE 16 OR THE DECISION TO COMMIT THE DEFENDANT TO THE
20 DEPARTMENT PURSUANT TO SECTION 16-8.5-111.

21 (10) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO
22 SUBSECTION (1), (6), (7), (8), OR (9) OF THIS SECTION, THE COURT SHALL
23 IDENTIFY WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
24 CERTIFICATION PURSUANT TO ARTICLE 65 OF TITLE 27 OR, FOR THE
25 PROVISION OF SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27, OR
26 WHETHER THE DEFENDANT WILL AGREE TO A VOLUNTARY COMMITMENT.
27 IF THE COURT FINDS THE REQUIREMENTS FOR CERTIFICATION OR PROVISION

1 OF SERVICES ARE MET OR THE DEFENDANT DOES NOT AGREE TO A
2 VOLUNTARY COMMITMENT, THE COURT MAY STAY THE DISMISSAL FOR
3 TWENTY-ONE DAYS AND NOTIFY THE DEPARTMENT AND COUNTY
4 ATTORNEY OR DISTRICT ATTORNEY REQUIRED TO CONDUCT PROCEEDINGS
5 PURSUANT TO SECTION 27-65-111 (6) IN THE RELEVANT JURISDICTION OF
6 THE PENDING DISMISSAL SO AS TO PROVIDE THE DEPARTMENT AND THE
7 COUNTY ATTORNEY OR DISTRICT ATTORNEY WITH THE OPPORTUNITY TO
8 PURSUE CERTIFICATION PROCEEDINGS OR THE PROVISION OF NECESSARY
9 SERVICES.

10 (11) IN ANY CIRCUMSTANCE WHERE THE DEFENDANT'S CASE WAS
11 DISMISSED OR THE DEFENDANT WAS RELEASED FROM CONFINEMENT, THE
12 COURT SHALL ENTER A WRITTEN DECISION EXPLAINING WHY THE COURT
13 DID OR DID NOT TERMINATE THE CRIMINAL PROCEEDING OR THE
14 COMMITMENT OR RESTORATION ORDER.

15 (12) IF CHARGES AGAINST A DEFENDANT ARE DISMISSED PURSUANT
16 TO THIS SECTION, SUCH CHARGES ARE NOT ELIGIBLE FOR SEALING
17 PURSUANT TO SECTION 24-72-702.5.

18 (13) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
19 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE
20 8.5.

21 (14) ON AND AFTER JULY 1, 2020, THE COURT MAY, AT ANY TIME
22 OF THE RESTORATION PROCESS, ORDER THE DEPARTMENT TO PROVIDE THE
23 COURT WITH AN APPROPRIATE RELEASE PLAN FOR THE REINTEGRATION OF
24 THE DEFENDANT INTO THE COMMUNITY WITH APPROPRIATE SERVICES.

25 **SECTION 9.** In Colorado Revised Statutes, **add** 16-8.5-120 as
26 follows:

27 **16-8.5-120. Competency evaluation monitoring system - users**

1 - **rules.** (1) THE DEPARTMENT, WITH ASSISTANCE FROM THE JUDICIAL
2 DEPARTMENT, SHALL DEVELOP AN ELECTRONIC SYSTEM TO TRACK THE
3 STATUS OF DEFENDANTS IN THE CRIMINAL JUSTICE SYSTEM FOR WHOM A
4 COMPETENCY EVALUATION OR COMPETENCY RESTORATION HAS BEEN
5 ORDERED. THE SYSTEM MUST CONTAIN INFORMATION ON THE FOLLOWING:

- 6 (a) THE DATE THE COURT ORDERED THE EVALUATION;
- 7 (b) THE DATES OF AND LOCATIONS WHERE THE EVALUATION WAS
8 STARTED AND COMPLETED;
- 9 (c) THE DATE OF AND LOCATION WHERE THE DEFENDANT ENTERED
10 RESTORATION SERVICES;
- 11 (d) THE DATES AND RESULTS OF COURT REVIEWS OF COMPETENCY;
- 12 (e) INPATIENT BED SPACE;
- 13 (f) COMMUNITY RESTORATION CAPACITY; AND
- 14 (g) FINANCIAL ESTIMATES OF COSTS OF EACH INPATIENT AND
15 OUTPATIENT PROGRAM TO IDENTIFY INEFFICIENCIES.

16 (2) THE DEPARTMENT SHALL ESTABLISH WHO HAS ACCESS TO
17 ENTER INFORMATION INTO THE ELECTRONIC SYSTEM AND WHO MAY HAVE
18 READ-ONLY ACCESS TO THE ELECTRONIC SYSTEM.

19 **SECTION 10.** In Colorado Revised Statutes, **add** 16-8.5-121 as
20 follows:

21 **16-8.5-121. Restoration services placement guideline -**
22 **committee - creation - repeal.** (1) BY JANUARY 1, 2020, THE
23 DEPARTMENT SHALL CREATE A COMMITTEE OF CLINICAL EXPERTS IN
24 FORENSIC SERVICES TO CREATE A PLACEMENT GUIDELINE TO BE USED BY
25 ALL COMPETENCY EVALUATORS WHEN DETERMINING THE CORRECT
26 CLINICAL LOCATION FOR COMPETENCY RESTORATION SERVICES TO OCCUR.
27 THE COMMITTEE CONSISTS OF THE FOLLOWING INDIVIDUALS:

1 (a) THREE STATE-LICENSED FORENSIC PSYCHOLOGISTS OR
2 PSYCHIATRISTS CURRENTLY ABLE TO PRACTICE MEDICINE IN THE STATE
3 WHO ARE NOT EMPLOYED BY THE DEPARTMENT;

4 (b) TWO STATE-LICENSED FORENSIC PSYCHOLOGISTS OR
5 PSYCHIATRISTS CURRENTLY ABLE TO PRACTICE MEDICINE IN THE STATE
6 WHO ARE EMPLOYED BY THE DEPARTMENT;

7 (c) TWO EXPERTS IN FORENSIC PSYCHIATRY REPRESENTING ONE OR
8 MORE INSTITUTIONS OF HIGHER EDUCATION;

9 (d) ONE MEMBER WHO IS CLINICALLY TRAINED REPRESENTING THE
10 DEPARTMENT;

11 (e) ONE MEMBER REPRESENTING THE JUDICIAL DEPARTMENT WHO
12 IS DIRECTLY INVOLVED IN ORDERING AND REVIEWING COMPETENCY
13 EVALUATIONS; AND

14 (f) ONE MEMBER WHO IS CLINICALLY TRAINED REPRESENTING
15 COMMUNITY MENTAL HEALTH PROVIDERS.

16 (2) THE MEMBERS OF THE COMMITTEE SHALL SERVE VOLUNTARILY
17 WITHOUT PAY OR REIMBURSEMENT FOR EXPENSES.

18 (3) THE PLACEMENT GUIDELINE MUST BE CREATED BY JULY 1,
19 2020, AND MUST BE USED BY ALL FORENSIC EVALUATORS ON AND AFTER
20 JANUARY 1, 2021, TO ENSURE CONSISTENCY IN EVALUATIONS ACROSS THE
21 STATE.

22 (4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2021.

23 **SECTION 11.** In Colorado Revised Statutes, **add** 16-8.5-122 as
24 follows:

25 **16-8.5-122. Forensic evaluator training.** BY FEBRUARY 1, 2020,
26 THE DEPARTMENT SHALL CREATE A PARTNERSHIP WITH AN ACCREDITED
27 INSTITUTION OF HIGHER EDUCATION IN THE STATE TO DEVELOP AND

1 PROVIDE RIGOROUS TRAINING IN FORENSIC EVALUATION. ON OR BEFORE
2 JANUARY 1, 2021, NEWLY HIRED COMPETENCY EVALUATORS MUST
3 COMPLETE A TRAINING THAT ADDRESSES COMPETENCY, SANITY, REPORT
4 WRITING, EXPERT TESTIMONY, AND OTHER SKILLS CRUCIAL FOR FORENSIC
5 EVALUATORS. THE STATE WILL MANAGE AN OVERSIGHT PROGRAM THAT
6 WILL PROVIDE SUPPORT AND ENSURE QUALITY OF FORENSIC EVALUATORS.

7 **SECTION 12.** In Colorado Revised Statutes, 27-60-105, **amend**
8 (4) introductory portion as follows:

9 **27-60-105. Outpatient restoration to competency services -**
10 **jail-based behavioral health services - responsible entity - duties -**
11 **report - legislative declaration.** (4) Beginning July 1, 2018 2019, the
12 office has the following duties and responsibilities, subject to available
13 appropriations:

14 ==

15 **SECTION 13.** In Colorado Revised Statutes, **repeal** 27-65-125
16 as follows:

17 **27-65-125. Criminal proceedings.** ~~Proceedings under section~~
18 ~~27-65-105, 27-65-106, or 27-65-107 shall not be initiated or carried out~~
19 ~~involving a person charged with a criminal offense unless or until the~~
20 ~~criminal offense has been tried or dismissed; except that the judge of the~~
21 ~~court wherein the criminal action is pending may request the district or~~
22 ~~probate court to authorize and permit such proceedings.~~

23 **SECTION 14.** In Colorado Revised Statutes, 13-1-137, **amend**
24 (1)(d) and (1)(e); and **add** (1)(f) as follows:

25 **13-1-137. Reporting of data concerning juvenile proceedings.**
26 (1) Notwithstanding section 24-1-136 (1)(a)(I), the judicial branch shall
27 report annually to the judiciary committees of the house of representatives

1 and senate, or to any successor committees, information concerning:

2 (d) The status of recommended reviews to juvenile court rules,
3 forms, and chief justice directives regarding the representation of children
4 in juvenile delinquency courts; ~~and~~

5 (e) The number of juvenile delinquency cases that involved a
6 detention hearing, the number of juveniles who were released after the
7 detention hearing, and the number of juveniles who remained in detention
8 after the detention hearing; AND

9 (f) THE PROCESS OF TRAINING JUDICIAL OFFICERS AND PRIVATE
10 DEFENSE ATTORNEYS CONCERNING DETERMINATIONS OF COMPETENCY TO
11 PROCEED FOR JUVENILES AND ADULTS, COMPETENCY EVALUATION
12 REPORTS, SERVICES TO RESTORE COMPETENCY, AND CERTIFICATION
13 PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

14 **SECTION 15.** In Colorado Revised Statutes, 20-1-111, **add**
15 (4)(c) as follows:

16 **20-1-111. District attorneys may cooperate on contract -**
17 **contents - appropriation.** (4) (c) THE GENERAL ASSEMBLY SHALL MAKE
18 AN APPROPRIATION TO THE DEPARTMENT OF LAW FOR STATE FISCAL YEAR
19 2019-20 FOR ALLOCATION TO THE STATEWIDE ORGANIZATION
20 REPRESENTING DISTRICT ATTORNEYS FOR THE PUBLIC PURPOSE OF
21 PROVIDING PROSECUTION TRAINING CONCERNING DETERMINATIONS OF
22 COMPETENCY TO PROCEED FOR JUVENILES AND ADULTS, COMPETENCY
23 EVALUATION REPORTS, SERVICES TO RESTORE COMPETENCY, AND
24 CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

25 **SECTION 16.** In Colorado Revised Statutes, 21-1-104, **amend**
26 (4)(d) and (4)(e); and **add** (4)(f) as follows:

27 **21-1-104. Duties of public defender - report.**

1 (4) Notwithstanding section 24-1-136 (11)(a)(I), pursuant to section
2 2-7-203, the state public defender shall report annually to the judiciary
3 committees of the house of representatives and senate, or to any successor
4 committees, information concerning:

5 (d) The average length of time attorneys are assigned to juvenile
6 court; ~~and~~

7 (e) The outcome of efforts to reduce juvenile court rotations and
8 increase opportunities for promotional advancement in salaries for
9 attorneys in juvenile court; AND

10 (f) THE PROCESS OF TRAINING ATTORNEYS AND OTHER EMPLOYEES
11 OF THE OFFICE CONCERNING DETERMINATIONS OF COMPETENCY TO
12 PROCEED FOR JUVENILES AND ADULTS, COMPETENCY EVALUATION
13 REPORTS, SERVICES TO RESTORE COMPETENCY, AND CERTIFICATION
14 PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

15 **SECTION 17.** In Colorado Revised Statutes, 21-2-104, **amend**
16 (3) introductory portion, (3)(d), and (3)(e); and **add** (3)(f) as follows:

17 **21-2-104. Duties of alternate defense counsel and contract**
18 **attorneys - report.** (3) NOTWITHSTANDING SECTION 24-1-136 (11)(a)(I),
19 pursuant to section 2-7-203, ~~C.R.S.~~, the office of alternate defense
20 counsel shall report annually to the judiciary committees of the house of
21 representatives and senate, or to any successor committees, information
22 concerning:

23 (d) The average length of time attorneys are assigned to juvenile
24 court; ~~and~~

25 (e) The outcome of efforts to reduce juvenile court rotations and
26 increase opportunities for promotional advancement in salaries for
27 attorneys in juvenile court; AND

1 (f) THE PROCESS OF TRAINING EMPLOYEES AND CONTRACTORS
2 CONCERNING DETERMINATIONS OF COMPETENCY TO PROCEED FOR
3 JUVENILES AND ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES
4 TO RESTORE COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED
5 BY ARTICLE 65 OF TITLE 27.

6 **SECTION 18.** In Colorado Revised Statutes, 17-1-102, **amend**
7 (7.5)(a)(IV) as follows:

8 **17-1-102. Definitions.** As used in this title 17, unless the context
9 otherwise requires:

10 (7.5) (a) "Special needs offender" means a person in the custody
11 of the department:

12 (IV) Who, as determined by a licensed health care provider who
13 is employed by or under contract with the department, on the basis of
14 available evidence, not including evidence resulting from a refusal of the
15 person to accept treatment, does not have a substantial probability of
16 being restored to competency for the completion of any sentence and is
17 not likely to pose a risk to public safety. As used in this subsection
18 (7.5)(a)(IV), "competency" has the same meaning as "competent to
19 proceed", as defined in ~~section 16-8.5-101(4)~~ SECTION 16-8.5-101 (5).

20 **SECTION 19.** In Colorado Revised Statutes, 17-22.5-403.5,
21 **amend** (4)(d) as follows:

22 **17-22.5-403.5. Special needs parole.** (4) (d) The state board of
23 parole shall make a determination of whether to grant special needs
24 parole within thirty days after receiving the referral from the department.
25 The board may delay the decision in order to request that the department
26 modify the special needs parole plan. If, prior to or during any parole
27 hearing, the board or any member of the board has a substantial and

1 good-faith reason to believe that the offender is incompetent to proceed,
2 as defined in ~~section 16-8.5-101 (11)~~ SECTION 16-8.5-101 (12), the board
3 shall suspend all proceedings and notify the trial court that imposed any
4 active sentence, and the court shall determine the competency or
5 incompetency of the defendant pursuant to section 16-8.5-103. The court
6 shall appoint counsel to represent the offender with respect to the
7 determination of competency of the offender, but the presence of the
8 offender is not required for any court proceedings unless good cause is
9 shown.

10 **SECTION 20.** In Colorado Revised Statutes, 27-60-105, **amend**
11 (2); and add (5) as follows:

12 **27-60-105. Outpatient restoration to competency services -**
13 **jail-based behavioral health services - responsible entity - duties -**
14 **report - legislative declaration.** (2) The office of behavioral health shall
15 serve as a central organizing structure and responsible entity for the
16 provision of competency restoration education services, coordination of
17 competency restoration services ordered by the court pursuant to ~~section~~
18 ~~19-2-1303 (2) or 16-8.5-111 (2)(a)~~ SECTION 16-8.5-111 (2)(b) OR
19 19-2-1303 (2), and jail-based behavioral health services pursuant to
20 section 27-60-106.

21 (5) IN ADDITION TO SUBSECTION (4) OF THIS SECTION AND SUBJECT
22 TO AVAILABLE APPROPRIATIONS, THE OFFICE SHALL REQUIRE ANY COUNTY
23 JAIL TO ASSIST IN THE PROVISION OF INTERIM MENTAL HEALTH SERVICES
24 FOR INDIVIDUALS WHO HAVE BEEN COURT-ORDERED FOR INPATIENT
25 COMPETENCY RESTORATION AND WHO ARE WAITING ADMISSION FOR AN
26 INPATIENT BED. THIS SECTION DOES NOT TOLL OR OTHERWISE MODIFY THE
27 TIME FRAMES FOR THE DEPARTMENT TO OFFER INPATIENT ADMISSION

1 PURSUANT TO THE PROVISIONS OF SECTION 16-8.5-111.

2 **SECTION 21. Appropriation.** (1) For the 2018-19 state fiscal
3 year, \$10,983,000 is appropriated to the department of human services for
4 use by the office of behavioral health. This appropriation is from the
5 general fund. To implement this act, the office may use this appropriation
6 as follows:

7 (a) \$10,483,000 for fines, liquidated damages, costs, or attorney
8 fees for non-compliance with the consent decree from the center for legal
9 advocacy v. Barnes case; and

10 (b) \$500,000 for compensation for the special master pursuant to
11 the consent decree from the center for legal advocacy v. Barnes case.

12 Any money appropriated in this section not expended prior to July
13 1, 2019, is further appropriated to the office for the 2019-20 state fiscal
14 year for the same purpose.

15 **SECTION 22. Appropriation.** (1) For the 2019-20 state fiscal
16 year, \$8,141,194 is appropriated to the department of human services.
17 This appropriation is from the general fund. To implement this act, the
18 department may use this appropriation as follows:

19	<u>Executive director's office</u>	
20	<u>Health, life, and dental</u>	<u>\$167,076</u>
21	<u>Short-term disability</u>	<u>\$2,441</u>
22	<u>S.B. 04-257 amortization equalization disbursement</u>	<u>\$64,225</u>
23	<u>S.B. 04-257 supplemental amortization equalization</u>	
24	<u>disbursement</u>	<u>\$64,225</u>
25	<u>Legal services</u>	<u>\$139,901</u>
26	<u>Office of information technology services</u>	
27	<u>Payments to OIT</u>	<u>\$454,539</u>

1	<u>Office of operations</u>	
2	<u>Leased space</u>	<u>\$72,500</u>
3	<u>Office of behavioral health, integrated</u>	
4	<u>behavioral health services</u>	
5	<u>Jail-based behavioral health services</u>	<u>\$2,250,400</u>
6	<u>Office of behavioral health, mental health</u>	
7	<u>institutes, forensic services</u>	
8	<u>Court services</u>	<u>\$1,559,148 (18.0 FTE)</u>
9	<u>Forensic community-based services</u>	<u>\$1,104,843 (1.0 FTE)</u>
10	<u>Outpatient competency restoration program</u>	<u>\$2,261,896</u>

11 (2) For the 2019-20 state fiscal year, \$139,901 is appropriated to
12 the department of law. This appropriation is from reappropriated funds
13 received from the department of human services under subsection (1) of
14 this section and is based on an assumption that the department of law will
15 require an additional 0.8 FTE. To implement this act, the department of
16 law may use this appropriation to provide legal services for the
17 department of human services.

18 (3) For the 2019-20 state fiscal year, \$50,000 is appropriated to
19 the department of law. This appropriation is from the general fund. To
20 implement this act, the department of law may use this appropriation to
21 allocate funds to the statewide organization representing district attorneys
22 for the public purpose of providing prosecution training pursuant to
23 section 20-1-111 (4)(c), C.R.S.

24 (4) For the 2019-20 state fiscal year, \$454,539 is appropriated to
25 the office of the governor for use by the office of information technology.
26 This appropriation is from reappropriated funds received from the
27 department of human services under subsection (1) of this section and is

1 based on an assumption that the office of information technology will
2 require an additional 0.9 FTE. To implement this act, the office may use
3 this appropriation to provide information technology services for the
4 department of human services.

5 (5) For the 2019-20 state fiscal year, \$750,570 is appropriated to
6 the judicial department. This appropriation is from the general fund. To
7 implement this act, the department may use this appropriation as follows:

8 **Courts administration, centrally-administered programs**

9 **Courthouse furnishings and infrastructure**

10 <u>maintenance</u>	<u>\$130,636</u>
11 <u>Judicial education and training</u>	<u>\$50,000</u>

12 **Trial courts**

13 <u>Trial court programs</u>	<u>\$499,934 (5.4 FTE)</u>
--------------------------------	----------------------------

14 **Office of the state public defender**

15 <u>Operating expenses</u>	<u>\$50,000</u>
------------------------------	-----------------

16 **Office of the alternate defense counsel**

17 <u>Training and conferences</u>	<u>\$20,000</u>
------------------------------------	-----------------

18 **SECTION 23. Effective date.** This act takes effect July 1, 2019.

19 **SECTION 24. Safety clause.** The general assembly hereby finds,
20 determines, and declares that this act is necessary for the immediate
21 preservation of the public peace, health, and safety.