

**Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 24-0275.01 Shelby Ross x4510

HOUSE BILL 24-1034

HOUSE SPONSORSHIP

Amabile and Bradfield, English

SENATE SPONSORSHIP

Fields, Rodriguez

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

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

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems. The bill reforms and clarifies the criminal competency to proceed process. The bill provides necessary parties with access to information related to the defendant's claim of incompetency to proceed. The bill requires the department of human services to search prior competency evaluations in its possession when the court orders a competency evaluation or the court finds the defendant incompetent to

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

proceed and provide any evaluations to the court. The bill adds to the information that is included in a competency report. The bill delineates a court's options when it finds that a defendant is incompetent to proceed. The bill directs when competency services may be provided on an outpatient basis. The bill sets forth the circumstances when a court has to dismiss the defendant's case based on the highest level of charge against the defendant and how long the defendant has been waiting for restoration services.

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

2
3 **SECTION 1.** In Colorado Revised Statutes, 16-8.5-102, **amend**
4 (1), (2)(a), (2)(b), (2)(d), and (3) as follows:

5 **16-8.5-102. Competency to proceed - how and when raised.**

6 (1) While a defendant is incompetent to proceed, the defendant ~~shall~~
7 MUST not be tried or sentenced, nor shall the court consider or decide
8 pretrial matters that are not susceptible of fair determination without the
9 personal participation of the defendant. However, a determination that a
10 defendant is incompetent to proceed ~~shall~~ DOES not preclude the
11 furtherance of the proceedings by the court to consider and decide
12 matters, including a preliminary hearing and motions, that are susceptible
13 of fair determination prior to trial and without the personal participation
14 of the defendant. Those proceedings may be later reopened if, in the
15 discretion of the court, substantial new evidence is discovered after and
16 as a result of the DEFENDANT'S restoration to competency. ~~of the~~
17 ~~defendant.~~

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

20 (a) If the judge has reason to believe that the defendant is
21 incompetent to proceed, ~~it is the judge's duty to~~ THE JUDGE SHALL suspend

1 the proceeding and determine the competency or incompetency of the
2 defendant pursuant to section 16-8.5-103;

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

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

26 (3) Notwithstanding any provision of this ~~article~~ ARTICLE 8.5 to
27 the contrary, the question of whether a convicted person is mentally

1 incompetent to be executed ~~shall~~ MUST be raised and determined as
2 ~~provided in~~ PURSUANT TO part 14 of article 1.3 of title 18. ~~C.R.S.~~

3 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-103, **amend**
4 (1)(b) and (8) as follows:

5 **16-8.5-103. Determination of competency to proceed.**

6 (1) (b) On or before the date when a court orders that a defendant be
7 evaluated for competency, a BRIDGES court liaison for the district hired or
8 contracted pursuant to article 95 of title 13 may be assigned to the
9 defendant.

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 a court-ordered competency evaluation, the court may
14 declare a mistrial. Declaration of a mistrial under these circumstances
15 does not constitute jeopardy, nor does it prohibit the trial or sentencing of
16 the defendant for the same offense after ~~he or she~~ THE DEFENDANT has
17 been found restored to competency.

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

20 **16-8.5-104. Waiver of privilege.** (1) When a defendant raises the
21 issue of competency to proceed, or when the court determines that the
22 defendant is incompetent to proceed, ~~and orders that the defendant~~
23 ~~undergo restoration treatment~~ any claim by the defendant to
24 confidentiality or privilege is deemed waived ~~and~~ IN THE CASE IN WHICH
25 COMPETENCY IS RAISED AND FOR RECORDS OR INFORMATION FROM ANY
26 PRIOR CRIMINAL CASE IN WHICH THE DEFENDANT RAISED THE ISSUE OF
27 COMPETENCY OR IN WHICH THE COURT DETERMINED THAT THE

1 DEFENDANT WAS INCOMPETENT TO PROCEED. The district attorney, the
2 defense attorney, THE BRIDGES COURT LIAISON, and the court are granted
3 access, without written consent of the defendant or further order of the
4 court, to:

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

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

17 (4.5) THE COURT MAY, UPON THE REQUEST OF EITHER PARTY,
18 ISSUE AN ORDER TO ASSIST A PARTY IN ACCESSING, RECEIVING COPIES OF,
19 OR DISCUSSING WITH AN EVALUATOR OR TREATMENT PROVIDER
20 INFORMATION OR RECORDS WHICH THE PARTY HAS THE RIGHT TO ACCESS
21 PURSUANT TO THE DEFENDANT'S WAIVER OF PRIVILEGE. IF A PARTY
22 REQUESTS SUCH AN ORDER, THE COURT SHALL ALLOW THE OPPOSING
23 PARTY TO MAKE ANY LEGAL OBJECTION, INCLUDING WHETHER THE
24 REQUESTED INFORMATION IS WITHIN THE SCOPE OF THE DEFENDANT'S
25 WAIVER OF PRIVILEGE, AND CONSIDER ANY REQUESTS FOR PROTECTIVE
26 ORDERS PRIOR TO ISSUING THE COURT ORDER. THIS SECTION DOES NOT
27 LIMIT THE COURT'S ABILITY TO ORDER INFORMATION BE PROVIDED TO A

1 PARTY WITH THE WRITTEN CONSENT OF THE DEFENDANT.

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

5

6 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**
7 (1)(a)(I), (1)(a)(III), (1)(b.7), (1)(d), (5) introductory portion, (5)(d),
8 (5)(e), (5)(f), and (6); **amend as they will become effective July 1, 2024,**
9 (4) and (5)(h)(II); and **add** (1)(b.6) as follows:

10 **16-8.5-105. Evaluations, locations, time frames, and report.**

11 (1) (a) (I) The court shall order that the competency evaluation be
12 conducted on an outpatient basis or, if the defendant is unable to post the
13 monetary condition of bond or is ineligible to be released on bond, at the
14 place where the defendant is in-custody, except as provided in subsection
15 (1)(b) of this section. If the department conducts the evaluation on an
16 in-custody basis, the department shall begin the evaluation as soon as
17 practicable after the department's receipt of a court order directing the
18 evaluation. ~~After July 1, 2020,~~ If the evaluation is conducted on an
19 in-custody basis, the department shall complete the evaluation no later
20 than twenty-one days after receipt of the order and the collateral
21 materials. ~~On and after July 1, 2020,~~ If the evaluation is conducted on an
22 out-of-custody basis, the department shall complete the evaluation within
23 forty-two days after receipt of the order and collateral materials, unless
24 the court extends the time upon a showing of good cause.

25 (III) The court shall determine the type of bond and the conditions
26 of release after consideration of the presumptions and factors enumerated
27 in article 4 of this title 16, which include consideration of the information

1 received from any pretrial services program pursuant to the provisions of
2 section 16-4-106 and any information provided by the BRIDGES court
3 liaison hired or contracted pursuant to article 95 of title 13. As a condition
4 of any bond, the court shall require the defendant's cooperation with the
5 competency evaluation on an outpatient and out-of-custody basis. In
6 setting the bond, the court shall not consider the need for the defendant
7 to receive an evaluation pursuant to this article 8.5 as a factor in
8 determining any monetary condition of bond.

9 (b.6) IF THE EVALUATOR HAS CONCLUDED THAT THE DEFENDANT
10 IS INCOMPETENT TO PROCEED AND THAT INPATIENT RESTORATION
11 SERVICES ARE NOT CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL
12 DETAIL THE OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES
13 AVAILABLE TO THE DEFENDANT.

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

20 (d) If a defendant is in the department's custody for purposes of
21 the competency evaluation ordered pursuant to this article 8.5 and the
22 defendant has completed the competency evaluation and the evaluator has
23 concluded that the defendant is competent to proceed, the department may
24 return the defendant to a county jail or to the community, as determined
25 by the defendant's bond status. If the evaluator has concluded that the
26 defendant is incompetent to proceed and that inpatient restoration services
27 are not clinically appropriate, and outpatient restoration services are

1 available to the defendant in the community, the department shall notify
2 the court and the BRIDGES court liaison, and the department shall develop
3 a discharge plan and a plan for community-based restoration services in
4 coordination with the community restoration services provider. The court
5 shall hold a hearing within seven days after receiving the notice, at which
6 the department shall provide to the court the plan for community-based
7 restoration services, and the court may enter any appropriate orders
8 regarding the custody of the defendant and ~~his or her~~ the DEFENDANT'S
9 bond status. The department shall advise the defendant of the date and
10 time of the court hearing. If the department is returning the defendant to
11 a county jail, the county sheriff in the jurisdiction where the defendant
12 must return shall take custody of the defendant within seventy-two hours
13 after receiving notification from the department that the defendant's
14 evaluation is completed. At the time the department notifies the sheriff,
15 the department shall also notify the court and the BRIDGES court liaison
16 that the department is returning the defendant to the custody of the jail.

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

1 (5) ~~On and after July 1, 2020,~~ The competency evaluation and
2 report must include, but need not be limited to:

3 ■ ■

4 (d) An opinion as to whether the defendant CURRENTLY suffers
5 from a mental disability or developmental disability. IF THE OPINION OF
6 THE COMPETENCY EVALUATOR IS THAT THE DEFENDANT SUFFERS FROM A
7 MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY, THEN THE REPORT
8 MUST INCLUDE AN OPINION AS TO THE DIAGNOSIS AND THE PROGNOSIS OF
9 THE DEFENDANT'S MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY.

10 (e) An opinion as to whether the defendant is competent to
11 proceed OR INCOMPETENT TO PROCEED. If the opinion of the competency
12 evaluator is that the defendant is incompetent to proceed, then THE
13 REPORT MUST INCLUDE:

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

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

27 (C) (B) IF POSSIBLE, when the defendant is diagnosed with a

1 moderate to severe intellectual or developmental disability, acquired or
2 traumatic brain injury, or dementia, which either alone or together with
3 a co-occurring mental illness affects the defendant's ability to gain or
4 maintain competency, the evaluator shall provide an opinion as to
5 whether there is a substantial probability that the defendant with
6 restoration services will attain competency within the reasonably
7 foreseeable future. When the opinion is that there is a substantial
8 probability of attaining competency, the evaluator shall specifically state
9 whether the evaluator believes there are unique or different services
10 outside the standard competency restoration curriculum developed by the
11 department that the defendant may need in order to be restored to
12 competency within the reasonably foreseeable future.

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

22 (II) ~~A recommendation~~ AN OPINION as to whether inpatient
23 restoration services are clinically appropriate to restore the defendant to
24 competency. ~~If inpatient restoration services are not clinically appropriate,~~
25 ~~the department must detail the outpatient and out-of-custody restoration~~
26 ~~services available to the defendant. For evaluation reports filed on or after~~
27 ~~January 1, 2021, the recommendations must be based upon the restoration~~

1 placement guideline developed pursuant to section 16-8.5-121, prior to
2 its repeal.

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

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

16 (II) IF THE DEFENDANT HAS BEEN FOUND INCOMPETENT TO
17 PROCEED AFTER BEING FOUND COMPETENT TO PROCEED THREE OR MORE
18 TIMES WITHIN THE PREVIOUS FIVE YEARS, AN OPINION AS TO WHETHER,
19 EVEN IF RESTORED, THE DEFENDANT WILL MAINTAIN COMPETENCY
20 THROUGHOUT THE CURRENT CASE.

21 (h) The competency evaluator's opinion and the information and
22 factors considered in making determinations as to whether the defendant:

23 (II) Meets the criteria for a certification for short-term treatment
24 pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets
25 such criteria, whether the evaluator believes the defendant could be
26 treated on an outpatient basis pursuant to section 27-65-111. In assessing
27 whether the defendant with a pending criminal charge is a danger to self

1 or others or is gravely disabled, if the person is incarcerated, the
2 competency evaluator or professional person, as defined in section
3 27-65-102, and the court shall not rely on the fact that the defendant is
4 incarcerated or is an inpatient in a medical facility to establish that the
5 defendant is not a danger to self or others or is not gravely disabled. If it
6 is the evaluator's opinion that the defendant meets criteria for certification
7 for short-term treatment pursuant to section 27-65-108.5 or 27-65-109,
8 the evaluator is not required to request a petition for certification for
9 short-term treatment of the defendant in a court with jurisdiction pursuant
10 to ~~section 16-8.5-111(2)(a)~~ SECTION 16-8.5-111 (3).

11 (6) Whenever a competency evaluation is ordered upon the
12 request of either party, the court may notify the county attorney or district
13 attorney required to conduct proceedings pursuant to section 27-65-113
14 (6) for the county in which the charges are pending and the BRIDGES court
15 liaison hired or contracted pursuant to article 95 of title 13 of all court
16 dates for return of the report on competency to ensure that all parties are
17 on notice of the expected need for coordinated services and planning with
18 consideration of possible civil certification.

19 **SECTION 5.** In Colorado Revised Statutes, **amend** 16-8.5-107
20 as follows:

21 **16-8.5-107. Counsel and evaluators for indigent defendants.**
22 In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE
23 8.5, the court shall appoint A competency ~~evaluators or attorneys~~
24 EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S
25 expense upon motion of the defendant with proof that ~~he or she~~ THE
26 DEFENDANT is indigent and without ~~funds~~ MONEY to employ A
27 competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which

1 ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this article
2 ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a
3 second evaluation is requested by an indigent defendant. ~~it shall be paid~~
4 ~~for by the court.~~

5 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-108, **amend**
6 (1)(c) and (2) as follows:

7 **16-8.5-108. Evidence.** (1) (c) If the defendant testifies on ~~his or~~
8 ~~her~~ THE DEFENDANT'S own behalf upon the trial of the issues raised by the
9 plea of not guilty or, for offenses that occurred before July 1, 1995, a plea
10 of not guilty by reason of impaired mental condition, or at a sentencing
11 hearing held pursuant to section 18-1.3-1201 for an offense charged prior
12 to July 1, 2020, or pursuant to section 18-1.3-1302 for an offense charged
13 prior to July 1, 2020, or pursuant to section 18-1.4-102, ~~the provisions of~~
14 this section ~~shall~~ DOES not bar any evidence used to impeach or rebut the
15 defendant's testimony.

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

24 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-109, **amend**
25 (1), (2)(b), and (3) as follows:

26 **16-8.5-109. Advisement on matters to be determined.**

27 (1) When a determination is to be made as to a defendant's competency

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

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

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

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

14 **SECTION 8.** In Colorado Revised Statutes, **amend** 16-8.5-110
15 as follows:

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

25 **SECTION 9.** In Colorado Revised Statutes, **repeal and reenact,**
26 **with amendments,** 16-8.5-111 as follows:

27 **16-8.5-111. Procedure after determination of competency or**

1 **incompetency. (1) Competent to proceed.** IF THE FINAL
2 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
3 DEFENDANT IS COMPETENT TO PROCEED, THE JUDGE SHALL ORDER THAT
4 THE SUSPENDED PROCEEDING CONTINUE OR, IF A MISTRIAL WAS DECLARED,
5 SHALL RESET THE CASE FOR TRIAL AT THE EARLIEST POSSIBLE DATE.

6 (2) **Restoration services ordered.** IF THE FINAL DETERMINATION
7 MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
8 INCOMPETENT TO PROCEED AND THE COURT FINDS THERE IS SUBSTANTIAL
9 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
10 ATTAIN COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE, THE
11 COURT HAS THE FOLLOWING REQUIREMENTS AND OPTIONS:

12 (a) IF THE DEFENDANT IS OUT OF CUSTODY OR WILL BE RELEASED
13 SOON, THE COURT SHALL ORDER THE RESTORATION SERVICES TAKE PLACE
14 ON AN OUTPATIENT BASIS UNLESS THE RECOMMENDATION FROM THE
15 DEPARTMENT IS THAT INPATIENT RESTORATION SERVICES ARE CLINICALLY
16 APPROPRIATE AND:

17 (I) THE COURT SHALL ORDER THAT THE DEFENDANT PARTICIPATE
18 IN RESTORATION SERVICES AS A CONDITION OF ANY BOND;

19 (II) THE COURT MAY APPOINT A BRIDGES COURT LIAISON OR MAY
20 ORDER THAT THE DEFENDANT COOPERATE WITH PRETRIAL SERVICES, IF
21 AVAILABLE, AND THE COURT MAY ORDER PRETRIAL SERVICES OR A
22 BRIDGES COURT LIAISON, OR BOTH, TO WORK WITH THE DEFENDANT, THE
23 DEPARTMENT, AND THE RESTORATION SERVICES PROVIDER UNDER
24 CONTRACT WITH THE DEPARTMENT TO ASSIST IN SECURING APPROPRIATE
25 SUPPORT AND CARE MANAGEMENT SERVICES FOR THE DEFENDANT, WHICH
26 MAY INCLUDE HOUSING RESOURCES; AND

27 (III) THE COURT SHALL CONDUCT A NONAPPEARANCE REVIEW

1 FOURTEEN DAYS AFTER THE DEFENDANT'S RELEASE FROM CUSTODY TO
2 ENSURE THE DEFENDANT HAS BEEN RELEASED. IF THE DEFENDANT IS NOT
3 RELEASED BY THE DATE OF THE NONAPPEARANCE REVIEW, THE COURT
4 SHALL SET A HEARING TO DETERMINE WHETHER THE DEFENDANT WILL BE
5 RELEASED OR TO ENTER AN ORDER PURSUANT TO SUBSECTION (2)(c) OF
6 THIS SECTION.

7 (b) IF THE COURT DETERMINES THE DEFENDANT IS INCOMPETENT
8 TO PROCEED AND IS IN CUSTODY ON A MISDEMEANOR, PETTY OFFENSE, OR
9 TRAFFIC OFFENSE, THE COURT SHALL SET A HEARING ON BOND WITHIN
10 SEVEN DAYS AFTER THE COURT'S FINAL DETERMINATION THAT THE
11 DEFENDANT IS INCOMPETENT TO PROCEED. AT THE BOND HEARING, THERE
12 IS A PRESUMPTION THAT THE COURT SHALL ORDER A PERSONAL
13 RECOGNIZANCE BOND AND ENTER AN ORDER FOR RESTORATION SERVICES
14 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION. IN ORDER TO DENY THE
15 DEFENDANT A PERSONAL RECOGNIZANCE BOND AND ENTER AN ORDER TO
16 COMMIT THE DEFENDANT FOR INPATIENT RESTORATION SERVICES
17 PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION, THE COURT SHALL
18 MAKE FINDINGS OF FACT THAT EXTRAORDINARY CIRCUMSTANCES EXIST TO
19 OVERCOME THE PRESUMPTION OF RELEASE BY CLEAR AND CONVINCING
20 EVIDENCE. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE
21 COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FINDINGS THE
22 COURT MADE TO DENY THE PERSONAL RECOGNIZANCE BOND.

23 (c) IF THE COURT FINDS THAT THE DEFENDANT IS NOT ELIGIBLE FOR
24 RELEASE FROM CUSTODY OR NOT ABLE TO POST THE MONETARY
25 CONDITION OF BOND, OR THE COURT APPROVES A RECOMMENDATION FROM
26 THE DEPARTMENT THAT INPATIENT RESTORATION SERVICES ARE
27 CLINICALLY APPROPRIATE, THE COURT SHALL COMMIT THE DEFENDANT TO

1 THE CUSTODY OF THE DEPARTMENT AND ORDER INPATIENT RESTORATION
2 SERVICES.

3 (3) **Certification for short-term treatment.** (a) (I) IF THE FINAL
4 DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE
5 DEFENDANT IS INCOMPETENT TO PROCEED, REGARDLESS OF WHETHER THE
6 COURT FINDS THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE
7 DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY
8 WITHIN THE REASONABLY FORESEEABLE FUTURE, THE DISTRICT
9 ATTORNEY; A PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102;
10 A REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
11 DEPARTMENT; OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
12 FORENSIC MENTAL HEALTH MAY REQUEST TO INITIATE A PETITION FOR
13 CERTIFICATION FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A
14 COURT WITH JURISDICTION.

15 (II) THE COURT SHALL HEAR AND CONSIDER ANY OBJECTIONS
16 FROM THE DEFENDANT PRIOR TO ORDERING THE REQUESTING PARTY TO
17 INITIATE A PETITION FOR CERTIFICATION FOR SHORT-TERM TREATMENT
18 PURSUANT TO SUBSECTION (3)(a)(I) OF THIS SECTION.

19 (III) THE COURT MAY ORDER INITIATION OF CERTIFICATION FOR
20 SHORT-TERM TREATMENT ONLY:

21 (A) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT
22 THE DEFENDANT MEETS THE STANDARD FOR A CERTIFICATION FOR
23 SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR
24 27-65-109; AND

25 (B) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A PETTY
26 OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE, OR WITH THE
27 AGREEMENT OF THE PROSECUTING ATTORNEY, REGARDLESS OF THE

1 SEVERITY OF THE CHARGE.

2 (b) IF THE COURT REQUIRES THE REQUESTING PARTY TO INITIATE
3 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SUBSECTION
4 (3)(a) OF THIS SECTION:

5 (I) THE PROSECUTING ATTORNEY AND THE DEPARTMENT SHALL
6 TRANSMIT ANY NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS,
7 COMPETENCY EVALUATIONS, MATERIALS USED IN THE COMPETENCY
8 PROCESS, AND RESTORATION RECORDS, TO THE REQUESTING PARTY AND
9 SHALL COOPERATE WITH THE REQUESTING PARTY IN FILING A PETITION FOR
10 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
11 27-65-108.5 OR 27-65-109;

12 (II) THE REQUESTING PARTY SHALL FILE A NOTICE IN THE CRIMINAL
13 CASE WHEN THE PETITION FOR CERTIFICATION FOR SHORT-TERM
14 TREATMENT IS FILED PURSUANT TO SECTION 27-65-108.5 OR 27-65-109;

15 (III) THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
16 DEPARTMENT SHALL, DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE
17 COORDINATION SERVICES PURSUANT TO SECTION 27-65-108 AFTER THE
18 CERTIFICATION FOR SHORT-TERM TREATMENT IS FILED PURSUANT TO
19 SECTION 27-65-108.5 OR 27-65-109; AND

20 (IV) THE COURT MAY, UPON THE COURT'S OWN MOTION, FORGO AN
21 ORDER FOR RESTORATION SERVICES AND DISMISS THE CHARGES AGAINST
22 THE DEFENDANT WITHOUT PREJUDICE WHEN THE CERTIFICATION FOR
23 SHORT-TERM TREATMENT IS INITIATED IF THE HIGHEST CHARGED OFFENSE
24 IS A PETTY OFFENSE, TRAFFIC OFFENSE, OR MISDEMEANOR OFFENSE; OR

25 (V) THE COURT MAY, WITH THE AGREEMENT OF THE PROSECUTING
26 ATTORNEY AND DEFENDANT, STAY THE RESTORATION ORDER TO ALLOW
27 CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR

1 AND TO ALLOW THE DISTRICT ATTORNEY TO CONSIDER WHETHER
2 DISMISSAL OF THE CASE IS APPROPRIATE. IN DETERMINING WHETHER
3 DISMISSAL IS APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE
4 DEFENDANT, THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND
5 THE PROSECUTING ATTORNEY IN THE CRIMINAL MATTER HAVE ACCESS TO
6 LIMITED INFORMATION ABOUT ANY CIVIL PROCEEDINGS AGAINST THE
7 DEFENDANT PURSUANT TO SECTIONS 27-65-108.5, 27-65-109, 27-65-110,
8 AND 27-65-111. ANY INFORMATION OBTAINED MUST BE KEPT
9 CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW.
10 THE COURT SHALL NOT EXTEND THE DEFENDANT'S CRIMINAL CASE PAST
11 THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116.5. THE LIMITED
12 INFORMATION THAT THE DEFENDANT, DEFENDANT'S ATTORNEY, AND
13 PROSECUTING ATTORNEY MAY ACCESS INCLUDES:

- 14 (A) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;
15 (B) WHETHER THE DEFENDANT IS SUBJECT TO CERTIFICATION FOR
16 SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE DEFENDANT
17 IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;
18 (C) THE DATE AND TIME OF THE PROCEEDINGS, EVEN IF THE
19 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING
20 ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND
21 (D) THE FINAL DISPOSITION OF THE PROCEEDING.

22 (4) **Restoration hearing.** (a) IF THE FINAL DETERMINATION MADE
23 PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS
24 INCOMPETENT TO PROCEED AND THE EVALUATOR OPINES AT ANY TIME
25 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
26 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
27 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING

1 WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5). IF THE
2 COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO THIS
3 SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE COURT
4 SHALL SET THE HEARING IN LIEU OF ORDERING RESTORATION TREATMENT.

5 (b) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION
6 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND
7 THE EVALUATOR OPINES, PURSUANT TO SECTION 16-8.5-105 (5)(e)(I)(B),
8 OR ANOTHER QUALIFIED EXPERT OPINES THAT THE DEFENDANT'S
9 DIAGNOSIS LIKELY INCLUDES A MODERATE TO SEVERE INTELLECTUAL OR
10 DEVELOPMENTAL DISABILITY, ACQUIRED TRAUMATIC BRAIN INJURY, OR
11 DEMENTIA, WHICH EITHER ALONE OR TOGETHER WITH A CO-OCCURRING
12 MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR
13 MAINTAIN COMPETENCY, THE COURT SHALL SET A HEARING WITHIN THE
14 TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5) ON THE ISSUE OF
15 WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT
16 WILL BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE
17 FUTURE. IF THE COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO
18 THIS SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE
19 COURT SHALL SET A HEARING IN LIEU OF ORDERING RESTORATION
20 TREATMENT.

21 (c) AT ANY HEARING CONDUCTED PURSUANT TO SUBSECTION
22 (4)(a) OR (4)(b) OF THIS SECTION:

23 (I) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED
24 EXPERT OPINING THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND
25 THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT,
26 WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE
27 REASONABLY FORESEEABLE FUTURE IS PRIMA FACIE EVIDENCE THAT

1 CREATES A PRESUMPTION OF FACT. AN ADMITTED REPORT OR TESTIMONY
2 FROM A QUALIFIED EXPERT WHO OPINES THAT THE DEFENDANT'S
3 DIAGNOSIS LIKELY INCLUDES A NEUROCOGNITIVE OR
4 NEURODEVELOPMENTAL IMPAIRMENT THAT [REDACTED] EITHER ALONE OR
5 TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE
6 DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, IS PRIMA FACIE
7 EVIDENCE OF AND CREATES A PRESUMPTION THAT THE DEFENDANT IS
8 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
9 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
10 ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE.

11 (II) IF THE COURT HAS NOT YET ORDERED RESTORATION SERVICES
12 AND RESTORATION SERVICES HAVE NOT BEEN PROVIDED, A PARTY
13 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY A
14 PREPONDERANCE OF THE EVIDENCE THAT THERE IS A VIABLE RESTORATION
15 TREATMENT THAT WILL RESTORE THE DEFENDANT TO COMPETENCY AND
16 A SUBSTANTIAL PROBABILITY THAT RESTORATION EFFORTS WILL BE
17 SUCCESSFUL WITHIN THE REASONABLY FORESEEABLE FUTURE;

18 (III) IF THE DEFENDANT'S DIAGNOSIS INCLUDES A [REDACTED]
19 NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT, [REDACTED] WHETHER
20 OR NOT CO-OCCURRING WITH A MENTAL ILLNESS THAT SUBSTANTIALLY
21 AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY,
22 THE PARTY ATTEMPTING TO OVERCOME THE PRESUMPTION MUST SHOW BY
23 CLEAR AND CONVINCING EVIDENCE THAT THERE IS A VIABLE RESTORATION
24 TREATMENT THAT IS SUBSTANTIALLY LIKELY TO RESTORE THE DEFENDANT
25 TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE; AND

26 (IV) IF THE COURT HAS ORDERED RESTORATION SERVICES AND THE
27 COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED

1 AND THE DEFENDANT WAS NOT RESTORED TO COMPETENCY, A PARTY
2 ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY CLEAR
3 AND CONVINCING EVIDENCE THAT THE DEFENDANT, WITH CONTINUED
4 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
5 FORESEEABLE FUTURE AND THAT THE DEFENDANT CAN MAINTAIN
6 COMPETENCY THROUGH THE ADJUDICATION OF THE CASE.

7 (d) AT THE CONCLUSION OF ANY HEARING SET PURSUANT TO
8 SUBSECTION (4)(a) OR (4)(b) OF THIS SECTION:

9 (I) IF THE COURT DOES NOT FIND THAT THE PARTY ASSERTING THAT
10 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
11 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
12 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
13 SHALL DISMISS THE CASE PURSUANT TO SECTION 16-8.5-116.5 (1)(a);
14 EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF APPROPRIATE, AS
15 PROVIDED IN SECTION 16-8.5-116.5 (9); AND

16 (II) IF THE COURT FINDS THAT THE PARTY ASSERTING THAT THERE
17 IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH
18 RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY
19 FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT
20 SHALL ORDER APPROPRIATE RESTORATION SERVICES AND SET A REVIEW.

21 (5) **Dismissal of charges.** TO ENSURE COMPLIANCE WITH
22 RELEVANT CONSTITUTIONAL PRINCIPLES, IF THE COURT AT ANY POINT
23 DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
24 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
25 REASONABLY FORESEEABLE FUTURE, THE COURT SHALL, UPON MOTION OF
26 THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON ITS OWN MOTION,
27 DISMISS THE CRIMINAL PROCEEDINGS PURSUANT TO SECTION 16-8.5-116.5

1 (1)(a). SUBJECT TO THE PROVISIONS AND PRESUMPTIONS OF THIS SECTION
2 THAT MAY APPLY, A COURT SHALL NOT CONTINUE CRIMINAL PROCEEDINGS
3 AGAINST AN INCOMPETENT DEFENDANT, EXCEPT TO STAY A DISMISSAL
4 PURSUANT TO SECTION 16-8.5-116.5 (9), UNLESS, AFTER PROPER
5 EVALUATION, THE COURT FINDS IT MORE LIKELY THAN NOT THAT THE
6 DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY
7 FORESEEABLE FUTURE.

8 (6) **Defendant's volitional lack of cooperation or unwillingness**
9 **to participate - definition.** (a) NOTHING IN THIS ARTICLE 8.5 PROHIBITS
10 THE COURT FROM FINDING THAT THE DEFENDANT IS RESTORABLE TO
11 COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE BASED ON THE
12 DEFENDANT'S VOLITIONAL LACK OF COOPERATION OR UNWILLINGNESS TO
13 PARTICIPATE IN RESTORATION SERVICES AND TREATMENT IF THE
14 DEFENDANT COULD BE RESTORED TO COMPETENCY IN THE REASONABLY
15 FORESEEABLE FUTURE IF THE DEFENDANT COOPERATED AND PARTICIPATED
16 IN THE RESTORATION SERVICES AND TREATMENT.

17 (b) FOR THE PURPOSES OF THIS SUBSECTION (6), "VOLITIONAL LACK
18 OF COOPERATION OR UNWILLINGNESS TO PARTICIPATE" INCLUDES THE
19 DEFENDANT NOT ATTENDING RESTORATION SERVICES OR THE
20 DEFENDANT'S REFUSAL TO TAKE PRESCRIBED MEDICATIONS, ESPECIALLY
21 WHEN THE DEFENDANT INTENDS TO AVOID OR DELAY THE COURT CASE
22 FROM PROCEEDING. "VOLITIONAL LACK OF COOPERATION OR
23 UNWILLINGNESS TO PARTICIPATE" DOES NOT INCLUDE ACTS THAT RESULT
24 FROM THE BONA FIDE MEDICAL OR MENTAL HEALTH DISORDER FOR WHICH
25 THE DEFENDANT IS INCOMPETENT OR A DEFENDANT'S ATTEMPT TO RAISE
26 A BONA FIDE, GOOD FAITH CONCERN ABOUT MEDICATION SIDE EFFECTS
27 AND RISKS.

1 **(7) Outpatient restoration services.** IF THE DEFENDANT IS OUT
2 OF CUSTODY AND THE COURT HAS ORDERED RESTORATION SERVICES
3 PURSUANT TO SUBSECTION (2)(a) OF THIS SECTION:

4 (a) PURSUANT TO SECTION 27-60-105, THE DEPARTMENT IS THE
5 ENTITY RESPONSIBLE FOR THE COORDINATION OF ALL COMPETENCY
6 RESTORATION SERVICES, INCLUDING THE OVERSIGHT OF RESTORATION
7 EDUCATION;

8 (b) THE RESTORATION SERVICES PROVIDER UNDER CONTRACT WITH
9 THE DEPARTMENT SHALL NOTIFY THE COURT, THE DEPARTMENT, **THE**
10 **BRIDGES COURT LIAISON**, AND ANY OTHER DESIGNATED AGENCY WITHIN
11 TWENTY-ONE DAYS AFTER THE COURT'S ORDER IF RESTORATION SERVICES
12 HAVE NOT STARTED AND INCLUDE A DESCRIPTION OF THE EFFORTS THAT
13 HAVE BEEN MADE TO ENGAGE THE DEFENDANT IN SERVICES; AND

14 (c) IF THE DEPARTMENT DETERMINES THAT THE DEPARTMENT IS
15 UNABLE, WITHIN A REASONABLE TIME, TO PROVIDE RESTORATION
16 SERVICES ON AN OUTPATIENT BASIS, THE DEPARTMENT SHALL NOTIFY THE
17 COURT WITHIN FOURTEEN DAYS AFTER THE DEPARTMENT'S
18 DETERMINATION, AT WHICH POINT THE COURT SHALL REVIEW THE CASE
19 AND DETERMINE WHAT INTERIM MENTAL HEALTH SERVICES THE
20 DEPARTMENT OR A COMMUNITY PROVIDER CAN PROVIDE TO THE
21 DEFENDANT. IF A **BRIDGES** COURT LIAISON IS APPOINTED, THE
22 DEPARTMENT SHALL REPORT TO THE **BRIDGES** COURT LIAISON EVERY
23 TWENTY-EIGHT DAYS CONCERNING THE AVAILABILITY OF RESTORATION
24 SERVICES ON AN OUTPATIENT BASIS TO THE DEFENDANT.

25 **(8) Inpatient restoration services.** (a) IF THE COURT COMMITS
26 THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT AND ORDERS
27 INPATIENT RESTORATION SERVICES:

1 (I) THE EXECUTIVE DIRECTOR SHALL DESIGNATE A STATE FACILITY
2 OR FACILITIES WHERE THE DEFENDANT IS HELD FOR CARE AND
3 PSYCHIATRIC TREATMENT AND RECEIVES RESTORATION SERVICES, AND
4 MAY TRANSFER THE DEFENDANT FROM ONE FACILITY TO ANOTHER IF, IN
5 THE OPINION OF THE DIRECTOR, DOING SO IS IN THE BEST INTEREST OF
6 PROPER CARE, CUSTODY, AND TREATMENT OF THE DEFENDANT OR THE
7 PROTECTION OF THE PUBLIC OR THE PERSONNEL OF THE FACILITIES IN
8 QUESTION. THE DEPARTMENT SHALL PROVIDE RESTORATION SERVICES AT
9 AN APPROPRIATE INPATIENT PROGRAM. THE DEPARTMENT SHALL NOTIFY
10 THE COURT, THE BRIDGES COURT LIAISON, THE PROSECUTING ATTORNEY,
11 AND THE DEFENSE ATTORNEY WHEN THE DEFENDANT IS PLACED OR MOVED
12 TO A DIFFERENT PROGRAM.

13 (II) THE DEPARTMENT SHALL ADMIT TIER 1 DEFENDANTS FOR
14 RESTORATION SERVICES WITHIN SEVEN DAYS AFTER RECEIPT OF THE
15 COURT ORDER AND COLLATERAL MATERIALS;

16 (III) THE DEPARTMENT SHALL ADMIT TIER 2 DEFENDANTS FOR
17 RESTORATION SERVICES WITHIN TWENTY-EIGHT DAYS AFTER RECEIPT OF
18 THE COURT ORDER AND COLLATERAL MATERIALS AND SHALL ADVISE THE
19 COURT AND THE BRIDGES COURT LIAISON, IF APPLICABLE, EVERY
20 TWENTY-EIGHT DAYS AFTER THE INITIAL TWENTY-EIGHT-DAY PERIOD
21 REGARDING THE AVAILABILITY OF AN INPATIENT BED AND WHEN
22 ADMISSION WILL BE OFFERED TO THE DEFENDANT.

23 (b) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
24 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT:

25 (I) A LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY
26 APPROPRIATE, THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE
27 COURT AND CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1

1 OF TITLE 24, MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY
2 IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET
3 RESTORED TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO
4 COMPETENCY IN A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT
5 RELEASED FROM CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO
6 PROVIDE INPATIENT SERVICES AT A LOCATION DETERMINED BY THE
7 DEPARTMENT.

8 (II) OUTPATIENT RESTORATION SERVICES WOULD BE MORE
9 CLINICALLY APPROPRIATE, THE DEPARTMENT SHALL:

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

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

18 (c) IF THE DEFENDANT POSTS BOND OR THE COURT ORDERS
19 OUTPATIENT RESTORATION SERVICES IN LIEU OF CONTINUED INPATIENT
20 SERVICES, OR IF THE DEPARTMENT BELIEVES THAT THE DEFENDANT IS
21 RESTORED TO COMPETENCY AND THE DEFENDANT IS TO BE RELEASED TO
22 THE COMMUNITY RATHER THAN JAIL UPON DISCHARGE, THE DEPARTMENT
23 SHALL:

24 (I) ASSIST THE DEFENDANT WITH ANY NECESSARY
25 TRANSPORTATION;

26 (II) PROVIDE THE NECESSARY CASE AND MEDICATION
27 INFORMATION FOR THE DEFENDANT TO THE BRIDGES COURT LIAISON AND

1 THE COMMUNITY AGENCY THAT WILL PROVIDE CONTINUED RESTORATION,
2 IF APPLICABLE, OR SERVICES;

3 (III) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT
4 THE DEFENDANT WAS RELEASED AND THE DEFENDANT'S COMMUNITY BOND
5 STATUS; AND

6 (IV) COORDINATE WITH THE COURT; PRETRIAL SERVICES, IF
7 APPLICABLE; AND THE BRIDGES COURT LIAISON TO ENSURE THE
8 DEFENDANT RECEIVES WRITTEN NOTICE OF THE DEFENDANT'S NEXT COURT
9 APPEARANCE AND BOND CONDITIONS.

10 (d) IF THE DEFENDANT IS DISCHARGED FROM THE DEPARTMENT'S
11 CUSTODY AFTER RECEIVING INPATIENT RESTORATION SERVICES AND THE
12 DEFENDANT IS TO BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL,
13 THE DEPARTMENT SHALL:

14 (I) NOTIFY THE SHERIFF OF THE JURISDICTION WHERE THE
15 DEFENDANT IS TO BE RETURNED;

16 (II) NOTIFY THE COURT AND THE BRIDGES COURT LIAISON THAT
17 THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY OF THE
18 COUNTY JAIL; AND

19 (III) WORK WITH THE SHERIFF, THE BRIDGES COURT LIAISON, AND
20 ANY BEHAVIORAL HEALTH PROVIDERS IN THE COUNTY JAIL TO ENSURE
21 THAT THE COUNTY JAIL HAS THE NECESSARY INFORMATION TO PREVENT
22 ANY DECOMPENSATION BY THE DEFENDANT WHILE THE DEFENDANT IS IN
23 THE COUNTY JAIL, WHICH MUST INCLUDE MEDICATION INFORMATION WHEN
24 CLINICALLY APPROPRIATE.

25 (9) **Return to custody of county jail.** WHEN THE DEPARTMENT
26 SUBMITS A REPORT TO THE COURT THAT THE DEPARTMENT'S POSITION IS
27 THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE DEFENDANT

1 MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL. THE SHERIFF
2 SHALL RETURN THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL
3 WITHIN SEVENTY-TWO HOURS AFTER RECEIPT OF THE DEPARTMENT'S
4 NOTICE.

5 **SECTION 10.** In Colorado Revised Statutes, 16-8.5-112, **amend**
6 (1), (2), and (3) as follows:

7 **16-8.5-112. Venue for collateral hearings.** (1) If a defendant
8 committed to the custody of the department for evaluation or for
9 restoration treatment meets the constitutional requirements for the
10 administration of involuntary medication, the defendant's treating
11 physician may petition the court for an order requiring that the defendant
12 accept the treatment or, alternatively, that the medication be forcibly
13 administered to the defendant. The department shall, prior to the hearing
14 on the petition, deliver a copy of the petition to the court that committed
15 the defendant to the custody of the department, the prosecuting attorney,
16 and the defendant's legal representation in the criminal case, if such
17 representation exists, and to the defendant directly if ~~he or she~~ THE
18 DEFENDANT does not have legal representation. A physician shall assess
19 and document the defendant's mental status prior to the administration of
20 medication.

21 (2) A petition for involuntary treatment ~~shall~~ MUST be heard in the
22 court of the jurisdiction where the defendant is located. The department
23 shall promptly deliver a copy of the order granting or denying the petition
24 to the court that committed the defendant to the custody of the
25 department, the prosecuting attorney, and the defendant's legal
26 representation in the criminal case, if such representation exists, and to
27 the defendant directly if ~~he or she~~ THE DEFENDANT does not have legal

1 representation.

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

11 **SECTION 11.** In Colorado Revised Statutes, 16-8.5-113, **amend**
12 (1), (2), (5), and (6) as follows:

13 **16-8.5-113. Restoration to competency.** (1) The court may order
14 a restoration hearing at any time on its own motion, on motion of the
15 prosecuting attorney, or on motion of the defendant; EXCEPT THAT THE
16 COURT SHALL ORDER A RESTORATION HEARING WHEN REQUIRED
17 PURSUANT TO SECTION 16-8.5-111 (4)(a) OR (4)(b).

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

25 (5) If a party makes a timely request for a hearing, the hearing
26 ~~shall~~ MUST be held within thirty-five days after the request for a hearing
27 or, if applicable, within thirty-five days after the filing of the second

1 evaluation report, unless the time is extended by the court after a finding
2 of good cause.

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

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

13 **16-8.5-116. Certification - reviews - rules.** (1) ~~Subject to the~~
14 ~~time periods and legal standards set forth in this section, whichever is~~
15 ~~shortest, a defendant committed to the custody of the department or~~
16 ~~otherwise confined as a result of a determination of incompetency to~~
17 ~~proceed must not remain confined for a period in excess of the maximum~~
18 ~~term of confinement that could be imposed for only the single most~~
19 ~~serious offense with which the defendant is charged, less thirty percent~~
20 ~~for a misdemeanor offense and less fifty percent for a felony offense. At~~
21 ~~the end of such time period, the court shall dismiss the charges, and~~
22 ~~certification proceedings or provision of services, if any, are governed by~~
23 ~~article 65 or 10.5 of title 27.~~

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

27 (c) ~~Additionally, on and after July 1, 2020,~~ At least ten days

1 before each review, the department treating team shall provide to the
2 court an additional report that summarizes:

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

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

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

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

19 (4) ~~After the fourth review, the court shall review the competency~~
20 ~~of the defendant every ninety-one days until the defendant is restored to~~
21 ~~competency or the court determines, based on available evidence, that~~
22 ~~there is not a substantial probability that the defendant will be restored to~~
23 ~~competency in the reasonably foreseeable future. If the court determines~~
24 ~~based on available evidence there is not a substantial probability that the~~
25 ~~defendant will be restored to competency in the reasonably foreseeable~~
26 ~~future, the court shall dismiss the case subject to the provisions of~~
27 ~~subsection (10) of this section.~~

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

7 **SECTION 13.** In Colorado Revised Statutes, **add with amended**
8 **and relocated provisions** 16-8.5-116.5 as follows:

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

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

25 (b) **[Formerly 16-8.5-116 (6)(b) as it will become effective July**
26 **1, 2024]** ~~If the court finds reasonable grounds to believe the defendant~~
27 ~~meets criteria for a certification for short-term treatment pursuant to~~

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

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

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

24 (2) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
25 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
26 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
27 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION IF:

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

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

9 (3) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
10 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
11 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
12 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION IF:

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

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

21 (4) [Formerly 16-8.5-116 (7)] At any A review hearing held
22 concerning the defendant's competency to proceed, the court shall dismiss
23 the charges against the defendant and release the defendant from
24 confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO
25 SUBSECTION (9) of this section if:

26 (a) ~~The defendant:~~

27 ~~(1) Is charged with a misdemeanor, a misdemeanor drug offense,~~

1 a petty offense, or a traffic offense;

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

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

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

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

15 (5) [Formerly 16-8.5-116 (8)] At any A review hearing held
16 concerning the defendant's competency to proceed, the court shall dismiss
17 the charges against the defendant and release the defendant from
18 confinement subject to the provisions of subsection (10) PURSUANT TO
19 SUBSECTION (9) of this section if:

20 (a) The defendant:

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

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

27 ~~(III) Has received competency restoration services while~~

1 ~~committed or otherwise confined for an aggregate time of one year; and~~
2 THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 5 OR CLASS 6
3 ~~FELONY OR A LEVEL 3 DRUG FELONY AND THE~~ DEFENDANT HAS BEEN IN
4 THE DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS BEEN
5 CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING TRANSPORT
6 TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR AN
7 AGGREGATE PERIOD OF ONE YEAR; AND

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

10 (6) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S
11 COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES
12 AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM
13 CONFINEMENT PURSUANT TO SUBSECTION (9) OF THIS SECTION, IF:

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

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

22 (7) **[Formerly 16-8.5-116 (9)]** SUBSECTIONS (2), (3), (4), (5), AND
23 (6) OF THIS SECTION DO NOT APPLY if the defendant is charged with ~~any~~
24 ~~other felony offense except~~ a class 1, 2, or 3 felony offense; a sex offense
25 as defined in section 18-1.3-1003 (5); a crime of violence as defined in
26 section 18-1.3-406 (2); or a level 1 or level 2 drug felony. ~~and has been~~
27 ~~committed to the custody of the department or otherwise confined as a~~

1 result of a determination of incompetency to proceed the following
2 provisions apply:

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

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

21 (8) THE COURT SHALL DISMISS THE DEFENDANT'S CASE IF:

22 (a) THE DEFENDANT IS FOUND INCOMPETENT TO PROCEED;

23 (b) THE CHARGES AGAINST THE DEFENDANT HAVE NOT BEEN
24 DISMISSED PURSUANT TO THIS SECTION; AND

25 (c) THE DEFENDANT'S PRESENTENCE CONFINEMENT CREDIT,
26 INCLUDING ANY TIME PERIOD THE DEFENDANT WAS COMMITTED FOR
27 INPATIENT RESTORATION, OR CONFINED IN JAIL OR ANOTHER DETENTION

1 FACILITY AWAITING INPATIENT RESTORATION SERVICES, EXCEEDS THE
2 MAXIMUM SENTENCE FOR THE DEFENDANT'S HIGHEST CHARGED OFFENSE.

3 (9) [Formerly 16-8.5-116 (10) as it will become effective July 1,
4 2024] Prior to the dismissal of charges pursuant to ~~subsection (1), (4), (6),~~
5 ~~(7), (8), or (9)~~ of this section OR SECTION 16-8.5-111 (5), unless the court
6 has already ordered a person to initiate proceedings for a certification for
7 short-term treatment, the court shall make findings whether there are
8 reasonable grounds to believe the person meets the standard for a
9 certification for short-term treatment. If the court finds there are
10 reasonable grounds, the court may stay the dismissal for thirty-five days
11 and notify any professional person, as defined in section 27-65-102, a
12 representative of the behavioral health administration in the department,
13 or a representative of the office of civil and forensic mental health who
14 has recently treated or interacted with the defendant that there are
15 reasonable grounds for short-term treatment and afford the person an
16 opportunity to pursue certification proceedings or to arrange necessary
17 services.

18 (10) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO SECTION
19 16-8.5-111 (5), WHEN THE DEFENDANT'S DIAGNOSIS INCLUDES A
20 NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT, THE COURT
21 MAY STAY THE DISMISSAL FOR THIRTY-FIVE DAYS. IF THE COURT STAYS
22 THE DISMISSAL, THE COURT MAY ORDER THE BRIDGES COURT LIAISON TO
23 ASSIST WITH CASE PLANNING AND COORDINATING WITH SERVICES,
24 INCLUDING COORDINATING WITH GOVERNMENT ENTITIES OR
25 COMMUNITY-BASED ORGANIZATIONS THAT ARE CAPABLE OF PROVIDING
26 RESOURCES TO THE DEFENDANT UPON DISMISSAL OF CHARGES.

27 (11) [Formerly 16-8.5-116 (11)] In any circumstance ~~where~~ WHEN

1 the defendant's case was dismissed or the defendant was released from
2 confinement, the court shall enter a written decision explaining why the
3 court did or did not terminate the criminal proceeding or the commitment
4 or restoration order.

5 (12) [Formerly 16-8.5-116 (12)] If charges against a defendant are
6 dismissed pursuant to this section OR SECTION 16-8.5-111 (5), such
7 charges are not eligible for sealing pursuant to section 24-72-705.

8 (13) [Formerly 16-8.5-116 (13)] The department shall promulgate
9 such rules as necessary to consistently enforce the provisions of this
10 article 8.5.

11 (14) [Formerly 16-8.5-116 (14)] ~~On and after July 1, 2020,~~ The
12 court may, at any time ~~of~~ DURING the restoration process, order the
13 department OR THE BRIDGES COURT LIAISON to provide the court with an
14 appropriate release plan for the reintegration of the defendant into the
15 community with appropriate services.

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

21 (16) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES
22 NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111,
23 THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN
24 SUBSECTIONS (2), (3), (4), (5), AND (6) OF THIS SECTION AND, BASED UPON
25 THE BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE ADMITTED
26 TO AN INPATIENT FACILITY TO BEGIN RESTORATION WITHIN THE TIME
27 LIMITS DESCRIBED IN THE APPLICABLE SUBSECTION, THE COURT MAY

1 RELEASE THE DEFENDANT OR DISMISS THE CASE IN LIEU OF THE
2 DEFENDANT REMAINING IN CUSTODY ON A WAIT LIST FOR RESTORATION
3 SERVICES.

4 (17) WHEN A DEFENDANT IS IN CUSTODY AND IS FOUND
5 INCOMPETENT TO PROCEED, AT EVERY SUBSEQUENT REVIEW OF THE
6 DEFENDANT'S CASE, THE COURT SHALL MAKE A FINDING ON THE RECORD
7 REGARDING THE EXPIRATION OF APPLICABLE TIME LIMITS SET FORTH IN
8 THIS SECTION.

9 (18) IF A DEFENDANT FILES A MOTION ALLEGING THE COURT IS
10 REQUIRED TO DISMISS THE CASE BECAUSE A TIME LIMIT IN THIS SECTION
11 HAS EXPIRED, THE DEFENDANT IS ENTITLED TO A TIMELY HEARING AND
12 RULING ON THE MOTION.

13 **SECTION 14.** In Colorado Revised Statutes, **amend** 16-8.5-117
14 as follows:

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

27 **SECTION 15.** In Colorado Revised Statutes, **amend** 16-8.5-118

1 as follows:

2 **16-8.5-118. Temporary removal for treatment and**
3 **rehabilitation.** The chief officer of an institution ~~in which~~ WHERE a
4 defendant has been committed ~~under this article~~ PURSUANT TO THIS
5 ARTICLE 8.5 may authorize treatment and rehabilitation activities
6 involving temporary physical removal of the ~~person~~ DEFENDANT from the
7 institution ~~in which~~ WHERE the defendant has been placed ~~according to~~ IN
8 ACCORDANCE WITH the procedures and requirements of section 16-8-118.

9 **SECTION 16.** In Colorado Revised Statutes, 27-60-105, **amend**
10 (2) as follows:

11 **27-60-105. Outpatient restoration to competency services -**
12 **jail-based behavioral health services - responsible entity - duties -**
13 **report - legislative declaration.** (2) The state department serves as a
14 central organizing structure and responsible entity for the provision of
15 competency restoration education services and coordination of
16 competency restoration services ordered by the court pursuant to ~~section~~
17 ~~16-8.5-111 (2)(b) or 19-2.5-704 (2)~~ SECTION 16-8.5-111 (2) OR
18 19-2.5-704 (2), and the behavioral health administration serves as the
19 central organizing structure and responsible entity for jail-based
20 behavioral health services pursuant to section 27-60-106.

21 **SECTION 17.** In Colorado Revised Statutes, **repeal of relocated**
22 **provisions in this act,** 16-8.5-116 IP(6), (6)(a), (6)(c), (6)(d), (7), (8), (9),
23 (11), (12), (13), (14), and (15) and 16-8.5-116 (6)(b) and (10) as they will
24 become effective July 1, 2024.

25 **SECTION 18. Act subject to petition - effective date.** This act
26 takes effect at 12:01 a.m. on the day following the expiration of the
27 ninety-day period after final adjournment of the general assembly; except

1 that, if a referendum petition is filed pursuant to section 1 (3) of article V
2 of the state constitution against this act or an item, section, or part of this
3 act within such period, then the act, item, section, or part will not take
4 effect unless approved by the people at the general election to be held in
5 November 2024 and, in such case, will take effect on the date of the
6 official declaration of the vote thereon by the governor.