

CHAPTER 372

COURTS

HOUSE BILL 24-1034

BY REPRESENTATIVE(S) Amabile and Bradfield, English, Bacon, Bird, Boesenecker, Brown, Clifford, deGruy Kennedy, Duran, Epps, Froelich, Hernandez, Herod, Joseph, Lindsay, Mabrey, McCormick, McLachlan, Parenti, Ricks, Rutinel, Sirota, Weissman, Young, McCluskie, Daugherty, Kipp, Lieder, Marshall, Ortiz, Snyder, Titone, Valdez, Vigil; also SENATOR(S) Fields, Rodriguez, Gonzales, Michaelson Jenet, Zenzinger.

AN ACT**CONCERNING ADULT COMPETENCY TO STAND TRIAL.**

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

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

16-8.5-102. Competency to proceed - how and when raised. (1) While a defendant is incompetent to proceed, the defendant ~~shall~~ **MUST** not be tried or sentenced, nor shall the court consider or decide pretrial matters that are not susceptible of fair determination without the personal participation of the defendant. However, a determination that a defendant is incompetent to proceed ~~shall~~ **DOES** not preclude the furtherance of the proceedings by the court to consider and decide matters, including a preliminary hearing and motions, that are susceptible of fair determination prior to trial and without the personal participation of the defendant. Those proceedings may be later reopened if, in the discretion of the court, substantial new evidence is discovered after and as a result of the DEFENDANT'S restoration to competency. ~~of the defendant.~~

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

(a) If the judge has reason to believe that the defendant is incompetent to proceed, ~~it is the judge's duty to~~ **THE JUDGE SHALL** suspend the proceeding and determine the competency or incompetency of the defendant pursuant to section 16-8.5-103;

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

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

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

(3) Notwithstanding any provision of this ~~article~~ ARTICLE 8.5 to the contrary, the question of whether a convicted person is mentally incompetent to be executed ~~shall~~ MUST be raised and determined as provided in PURSUANT TO part 14 of article 1.3 of title 18. ~~C.R.S.~~

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

16-8.5-103. Determination of competency to proceed. (1) (b) On or before the date when a court orders that a defendant be evaluated for competency, a BRIDGES court liaison for the district hired or contracted pursuant to article 95 of title 13 may be assigned to the defendant.

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

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

16-8.5-104. Waiver of privilege. (1) When a defendant raises the issue of competency to proceed, or when the court determines that the defendant is incompetent to proceed, ~~and orders that the defendant undergo restoration treatment~~ any claim by the defendant to confidentiality or privilege is deemed waived ~~and~~ IN THE CASE IN WHICH COMPETENCY IS RAISED AND FOR RECORDS OR INFORMATION

FROM ANY PRIOR CRIMINAL CASE IN WHICH THE DEFENDANT RAISED THE ISSUE OF COMPETENCY OR IN WHICH THE COURT DETERMINED THAT THE DEFENDANT WAS INCOMPETENT TO PROCEED. The district attorney, the defense attorney, THE BRIDGES COURT LIAISON, and the court are granted access, without written consent of the defendant or further order of the court, to:

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

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

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

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

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

16-8.5-105. Evaluations, locations, time frames, and report. (1) (a) (I) The court shall order that the competency evaluation be conducted on an outpatient basis or, if the defendant is unable to post the monetary condition of bond or is ineligible to be released on bond, at the place where the defendant is in-custody, except as provided in subsection (1)(b) of this section. If the department conducts the evaluation on an in-custody basis, the department shall begin the evaluation as soon as practicable after the department's receipt of a court order directing the evaluation. ~~After July 1, 2020~~; If the evaluation is conducted on an in-custody basis, the department shall complete the evaluation no later than twenty-one days after receipt of the order and the collateral materials. ~~On and after July 1, 2020~~; If the evaluation is conducted on an out-of-custody basis, the department shall complete the evaluation within forty-two days after receipt of the order and collateral materials, unless the court extends the time upon a showing of good cause.

(III) The court shall determine the type of bond and the conditions of release after consideration of the presumptions and factors enumerated in article 4 of this title 16, which include consideration of the information received from any pretrial services program pursuant to ~~the provisions of~~ section 16-4-106 and any information provided by the BRIDGES court liaison hired or contracted pursuant to article 95 of title 13. As a condition of any bond, the court shall require the defendant's cooperation with the competency evaluation on an outpatient and out-of-custody basis. In setting the bond, the court shall not consider the need for the defendant to receive an evaluation pursuant to this article 8.5 as a factor in determining any monetary condition of bond.

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

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

(d) If a defendant is in the department's custody for purposes of the competency evaluation ordered pursuant to this article 8.5 and the defendant has completed the competency evaluation and the evaluator has concluded that the defendant is competent to proceed, the department may return the defendant to a county jail or to the community, as determined by the defendant's bond status. If the evaluator has concluded that the defendant is incompetent to proceed and that inpatient restoration services are not clinically appropriate, and outpatient restoration services are available to the defendant in the community, the department shall notify the court and the BRIDGES court liaison, and the department shall develop a discharge plan and a plan for community-based restoration services in coordination with the community restoration services provider. The court shall hold a hearing within seven days after receiving the notice, at which the department shall provide to the court the plan for community-based restoration services, and the court may enter any appropriate orders regarding the custody of the defendant and ~~his or her~~ the DEFENDANT'S bond status. The department shall advise the defendant of the date and time of the court hearing. If the department is returning the defendant to a county jail, the county sheriff in the jurisdiction where the defendant must return shall take custody of the defendant within seventy-two hours after receiving notification from the department that the defendant's evaluation is completed. At the time the department notifies the sheriff, the department shall also notify the court and the BRIDGES court liaison that the department is returning the defendant to the custody of the jail.

(4) A written report of the evaluation must be prepared ~~in triplicate and delivered~~ AND THE DEPARTMENT SHALL ELECTRONICALLY DELIVER THE REPORT to the COURT clerk ~~of the court~~ that ordered it. The clerk shall provide a copy of the report ~~both~~ to the prosecuting ~~attorney~~ ATTORNEY, THE BRIDGES COURT LIAISON, and the DEFENSE counsel for the defendant. ~~The department may utilize~~ USING the e-filing system. ~~to deliver the report to the court and serve it upon the parties.~~ Without

reducing any other timelines set forth in this article 8.5, the competency evaluator shall provide the written report to the court within fourteen days after finishing meeting or attempting to meet with the ~~respondent~~ DEFENDANT to evaluate the ~~respondent's~~ DEFENDANT'S competency.

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

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

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

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

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

~~(C)~~ (B) IF POSSIBLE, when the defendant is diagnosed with a moderate to severe intellectual or developmental disability, acquired or traumatic brain injury, or dementia, which either alone or together with a co-occurring mental illness affects the defendant's ability to gain or maintain competency, the evaluator shall provide an opinion as to whether there is a substantial probability that the defendant with restoration services will attain competency within the reasonably foreseeable future. When the opinion is that there is a substantial probability of attaining competency, the evaluator shall specifically state whether the evaluator believes there are unique or different services outside the standard competency restoration curriculum developed by the department that the defendant may need in order to be restored to competency within the reasonably foreseeable future.

~~(D) When the defendant has been found incompetent to proceed pursuant to section 16-8.5-103 three or more times over the previous three years in the current case or any other case, even if the defendant is later restored, the evaluator shall specifically identify those instances of findings of incompetency as a part of the review required pursuant to subsection (5)(f) of this section. The evaluator shall provide an opinion as to whether there is a substantial probability that the defendant~~

~~with restoration services will attain competency within the reasonably foreseeable future and maintain competency throughout the case.~~

~~(II) A recommendation~~ AN OPINION as to whether inpatient restoration services are clinically appropriate to restore the defendant to competency. ~~If inpatient restoration services are not clinically appropriate, the department must detail the outpatient and out-of-custody restoration services available to the defendant. For evaluation reports filed on or after January 1, 2021, the recommendations must be based upon the restoration placement guideline developed pursuant to section 16-8.5-121, prior to its repeal.~~

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

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

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

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

(II) Meets the criteria for a certification for short-term treatment pursuant to section 27-65-108.5 or 27-65-109 and, if the defendant meets such criteria, whether the evaluator believes the defendant could be treated on an outpatient basis pursuant to section 27-65-111. In assessing whether the defendant with a pending criminal charge is a danger to self or others or is gravely disabled, if the person is incarcerated, the competency evaluator or professional person, as defined in section 27-65-102, and the court shall not rely on the fact that the defendant is incarcerated or is an inpatient in a medical facility to establish that the defendant is not a danger to self or others or is not gravely disabled. If it is the evaluator's opinion that the defendant meets criteria for certification for short-term treatment pursuant to section 27-65-108.5 or 27-65-109, the evaluator is not required to request a petition for certification for short-term treatment of the defendant in a court with jurisdiction pursuant to ~~section 16-8.5-111(2)(a)~~ SECTION 16-8.5-111 (3).

(6) Whenever a competency evaluation is ordered upon the request of either party, the court may notify the county attorney or district attorney required to conduct proceedings pursuant to section 27-65-113 (6) for the county in which the charges are pending and the BRIDGES court liaison hired or contracted pursuant to

article 95 of title 13 of all court dates for return of the report on competency to ensure that all parties are on notice of the expected need for coordinated services and planning with consideration of possible civil certification.

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

16-8.5-107. Counsel and evaluators for indigent defendants. In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE 8.5, the court shall appoint a competency ~~evaluators or attorneys~~ EVALUATOR OR AN ATTORNEY for a THE defendant at ~~state~~ THE STATE'S expense upon motion of the defendant with proof that ~~he or she~~ THE DEFENDANT is indigent and without ~~funds~~ MONEY to employ a competency ~~evaluators or attorneys~~ EVALUATOR OR ATTORNEY to which ~~he or she~~ THE DEFENDANT is entitled ~~under~~ PURSUANT TO this ~~article~~ ARTICLE 8.5. THE COURT SHALL PAY FOR A SECOND EVALUATION if a second evaluation is requested by an indigent defendant. ~~it shall be paid for by the court.~~

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

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

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

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

16-8.5-109. Advisement on matters to be determined. (1) When a determination is to be made as to a defendant's competency to proceed, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant under this section. The defendant, if ~~he or she~~ THE DEFENDANT wishes to contest the question, may request a competency hearing that THE COURT shall ~~then be granted~~ GRANT as a matter of right.

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

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

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

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

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

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

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

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

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

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

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

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

(III) THE COURT SHALL CONDUCT A NONAPPEARANCE REVIEW FOURTEEN DAYS AFTER THE DEFENDANT'S RELEASE FROM CUSTODY TO ENSURE THE DEFENDANT HAS BEEN RELEASED. IF THE DEFENDANT IS NOT RELEASED BY THE DATE OF THE NONAPPEARANCE REVIEW, THE COURT SHALL SET A HEARING TO DETERMINE

WHETHER THE DEFENDANT WILL BE RELEASED OR TO ENTER AN ORDER PURSUANT TO SUBSECTION (2)(c) OF THIS SECTION.

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

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

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

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

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

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

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

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

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

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

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

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

(V) THE COURT MAY, WITH THE AGREEMENT OF THE PROSECUTING ATTORNEY AND DEFENDANT, STAY THE RESTORATION ORDER TO ALLOW CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR AND TO ALLOW THE DISTRICT ATTORNEY TO CONSIDER WHETHER DISMISSAL OF THE CASE IS APPROPRIATE. IN DETERMINING WHETHER DISMISSAL IS APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE DEFENDANT, THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND THE PROSECUTING ATTORNEY IN THE CRIMINAL MATTER HAVE ACCESS TO LIMITED INFORMATION ABOUT ANY CIVIL PROCEEDINGS AGAINST THE DEFENDANT PURSUANT TO SECTIONS 27-65-108.5, 27-65-109, 27-65-110, AND 27-65-111. ANY INFORMATION OBTAINED MUST BE KEPT CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE AUTHORIZED BY LAW. THE COURT SHALL NOT EXTEND THE DEFENDANT'S CRIMINAL CASE PAST THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116.5. THE LIMITED INFORMATION THAT THE DEFENDANT, DEFENDANT'S ATTORNEY, AND PROSECUTING ATTORNEY MAY ACCESS INCLUDES:

(A) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;

(B) WHETHER THE DEFENDANT IS SUBJECT TO CERTIFICATION FOR SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE DEFENDANT IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;

(C) THE DATE AND TIME OF THE PROCEEDINGS, EVEN IF THE PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING ATTORNEY OR THE DEFENDANT'S CRIMINAL ATTORNEY; AND

(D) THE FINAL DISPOSITION OF THE PROCEEDING.

(4) Restoration hearing. (a) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THE EVALUATOR OPINES AT ANY TIME THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE COURT SHALL SET A HEARING WITHIN THE TIME FRAME SET FORTH IN SECTION 16-8.5-113 (5). IF THE COURT RECEIVES THE EVALUATOR'S OPINION PURSUANT TO THIS SUBSECTION (4) PRIOR TO ENTERING A RESTORATION ORDER, THE COURT SHALL SET THE HEARING IN LIEU OF ORDERING RESTORATION TREATMENT.

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

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

(I) AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED EXPERT OPINING THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE IS PRIMA FACIE EVIDENCE THAT CREATES A PRESUMPTION OF FACT. AN ADMITTED REPORT OR TESTIMONY FROM A QUALIFIED EXPERT WHO OPINES THAT THE DEFENDANT'S DIAGNOSIS LIKELY INCLUDES A NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT THAT EITHER ALONE OR TOGETHER WITH A CO-OCCURRING MENTAL ILLNESS AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, IS PRIMA FACIE EVIDENCE OF AND CREATES A PRESUMPTION THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE.

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

(III) IF THE DEFENDANT'S DIAGNOSIS INCLUDES A NEUROCOGNITIVE OR NEURODEVELOPMENTAL IMPAIRMENT, WHETHER OR NOT CO-OCCURRING WITH A

MENTAL ILLNESS THAT SUBSTANTIALLY AFFECTS THE DEFENDANT'S ABILITY TO GAIN OR MAINTAIN COMPETENCY, THE PARTY ATTEMPTING TO OVERCOME THE PRESUMPTION MUST SHOW BY CLEAR AND CONVINCING EVIDENCE THAT THERE IS A VIABLE RESTORATION TREATMENT THAT IS SUBSTANTIALLY LIKELY TO RESTORE THE DEFENDANT TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE; AND

(IV) IF THE COURT HAS ORDERED RESTORATION SERVICES AND THE COURT FINDS RECENT RESTORATION SERVICES HAVE BEEN ATTEMPTED AND THE DEFENDANT WAS NOT RESTORED TO COMPETENCY, A PARTY ATTEMPTING TO OVERCOME THE PRESUMPTION MUST PROVE BY CLEAR AND CONVINCING EVIDENCE THAT THE DEFENDANT, WITH CONTINUED RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE AND THAT THE DEFENDANT CAN MAINTAIN COMPETENCY THROUGH THE ADJUDICATION OF THE CASE.

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

(I) IF THE COURT DOES NOT FIND THAT THE PARTY ASSERTING THAT THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL ATTAIN COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE HAS OVERCOME THE PRESUMPTION, THE COURT SHALL DISMISS THE CASE PURSUANT TO SECTION 16-8.5-116.5 (1)(a); EXCEPT THAT THE COURT MAY STAY THE DISMISSAL, IF APPROPRIATE, AS PROVIDED IN SECTION 16-8.5-116.5 (7); AND

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

(5) **Dismissal of charges.** TO ENSURE COMPLIANCE WITH RELEVANT CONSTITUTIONAL PRINCIPLES, IF THE COURT AT ANY POINT DETERMINES THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE REASONABLY FORESEEABLE FUTURE, THE COURT SHALL, UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT, OR ON ITS OWN MOTION, DISMISS THE CRIMINAL PROCEEDINGS PURSUANT TO SECTION 16-8.5-116.5 (1)(a). SUBJECT TO THE PROVISIONS AND PRESUMPTIONS OF THIS SECTION THAT MAY APPLY, A COURT SHALL NOT CONTINUE CRIMINAL PROCEEDINGS AGAINST AN INCOMPETENT DEFENDANT, EXCEPT TO STAY A DISMISSAL PURSUANT TO SECTION 16-8.5-116.5 (7), UNLESS, AFTER PROPER EVALUATION, THE COURT FINDS IT MORE LIKELY THAN NOT THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE.

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

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

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

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

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

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

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

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

(II) THE DEPARTMENT SHALL ADMIT TIER 1 DEFENDANTS FOR RESTORATION

SERVICES WITHIN SEVEN DAYS AFTER RECEIPT OF THE COURT ORDER AND COLLATERAL MATERIALS;

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

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

(I) A LESS-RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT AND CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24, MAY MOVE THE DEFENDANT TO A LESS-RESTRICTIVE FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS NOT YET RESTORED TO COMPETENCY BUT COULD BE PROPERLY RESTORED TO COMPETENCY IN A LESS-RESTRICTIVE FACILITY. IF THE DEFENDANT IS NOT RELEASED FROM CUSTODY, THE COURT SHALL ORDER THE DEPARTMENT TO PROVIDE INPATIENT SERVICES AT A LOCATION DETERMINED BY THE DEPARTMENT.

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

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

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

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

(I) ASSIST THE DEFENDANT WITH ANY NECESSARY TRANSPORTATION;

(II) PROVIDE THE NECESSARY CASE AND MEDICATION INFORMATION FOR THE DEFENDANT TO THE BRIDGES COURT LIAISON AND THE COMMUNITY AGENCY THAT WILL PROVIDE CONTINUED RESTORATION, IF APPLICABLE, OR SERVICES;

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

(IV) COORDINATE WITH THE COURT; PRETRIAL SERVICES, IF APPLICABLE; AND THE

BRIDGES COURT LIAISON TO ENSURE THE DEFENDANT RECEIVES WRITTEN NOTICE OF THE DEFENDANT'S NEXT COURT APPEARANCE AND BOND CONDITIONS.

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

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

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

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

(9) **Return to custody of county jail.** WHEN THE DEPARTMENT SUBMITS A REPORT TO THE COURT THAT THE DEPARTMENT'S POSITION IS THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE DEFENDANT MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL. THE SHERIFF SHALL RETURN THE DEFENDANT TO THE CUSTODY OF THE COUNTY JAIL WITHIN SEVENTY-TWO HOURS AFTER RECEIPT OF THE DEPARTMENT'S NOTICE.

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

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

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

(3) If the committing court elects to transfer venue for medication hearings to the

court of the jurisdiction ~~in which~~ WHERE the defendant is located, the committing county shall reimburse the county ~~in which~~ WHERE the proceeding is heard for the reasonable costs incurred in conducting the proceeding. Alternatively, the district attorney for the committing county, or in any county or any city and county having a population exceeding fifty thousand ~~persons~~ PEOPLE, the county attorney for the committing county, may prosecute the proceeding as the proponent of the physician's petition.

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

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

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

(5) If a party makes a timely request for a hearing, the hearing ~~shall~~ MUST be held within thirty-five days after the request for a hearing or, if applicable, within thirty-five days after the filing of the second evaluation report, unless the time is extended by the court after a finding of good cause.

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

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

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

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

(c) ~~Additionally, on and after July 1, 2020;~~ At least ten days before each review, the department treating team shall provide to the court an additional report that summarizes:

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

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

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

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

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

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

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

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

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

(b) ~~[Formerly 16-8.5-116 (6)(b) as it will become effective July 1, 2024] If the court finds reasonable grounds to believe the defendant meets criteria for a certification for short-term treatment pursuant to section 27-65-108.5 or 27-65-109, the court~~ May order the district attorney, or upon request from the district attorney, a professional person, as defined in section 27-65-102; a representative of the behavioral health administration in the department; or a representative of the office of civil and forensic mental health to initiate, in a court with jurisdiction, a proceeding for a certification for short-term treatment of the defendant pursuant to section 27-65-108.5 or 27-65-109 IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109;

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

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

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

(a) ~~The defendant:~~

~~(I) Is charged with a misdemeanor, a misdemeanor drug offense, a petty offense, or a traffic offense;~~

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

~~(III) Has received competency restoration services while committed or otherwise confined for an aggregate time of six months; and~~ THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 1 MISDEMEANOR OR IS A LEVEL 4 DRUG FELONY AND THE DEFENDANT HAS BEEN IN THE DEPARTMENT'S CUSTODY FOR RESTORATION SERVICES OR HAS BEEN CONFINED IN A JAIL OR OTHER DETENTION FACILITY AWAITING TRANSPORT TO THE DEPARTMENT FOR COURT-ORDERED RESTORATION FOR AN AGGREGATE TIME OF SIX MONTHS; AND

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

(3) **[Formerly 16-8.5-116 (8)]** At ~~any~~ A review hearing held concerning the defendant's competency to proceed, the court shall dismiss the charges against the defendant and release the defendant from confinement ~~subject to the provisions of subsection (10)~~ PURSUANT TO SUBSECTION (7) of this section if:

(a) ~~The defendant:~~

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

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

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

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

(4) AT A REVIEW HEARING HELD CONCERNING THE DEFENDANT'S COMPETENCY TO PROCEED, THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT AND RELEASE THE DEFENDANT FROM CONFINEMENT PURSUANT TO SUBSECTION (7) OF THIS SECTION, IF:

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

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

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

~~(a) If the defendant has received competency restoration services while committed or otherwise confined for an aggregate time of two years and the court~~

~~determines, based on available evidence, that the defendant is not restored to competency, then the court shall dismiss the charges against the defendant, subject to the provisions of subsection (10) of this section, unless any party objects to dismissal.~~

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

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

(a) THE DEFENDANT IS FOUND INCOMPETENT TO PROCEED;

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

(c) THE DEFENDANT'S PRESENTENCE CONFINEMENT CREDIT, INCLUDING ANY TIME PERIOD THE DEFENDANT WAS COMMITTED FOR INPATIENT RESTORATION, OR CONFINED IN JAIL OR ANOTHER DETENTION FACILITY AWAITING INPATIENT RESTORATION SERVICES, EXCEEDS THE MAXIMUM SENTENCE FOR THE DEFENDANT'S HIGHEST CHARGED OFFENSE.

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

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

(9) **[Formerly 16-8.5-116 (11)]** In any circumstance ~~where~~ WHEN the defendant's case was dismissed or the defendant was released from confinement, the court shall enter a written decision explaining why the court did or did not terminate the criminal proceeding or the commitment or restoration order.

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

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

(12) **[Formerly 16-8.5-116 (14)]** ~~On and after July 1, 2020, The court may, at any time of~~ SHALL, AT AN APPROPRIATE TIME IN the restoration process, order the department OR THE APPOINTED BRIDGES COURT LIAISON, AS DEFINED IN SECTION 13-95-102, to provide the court with an appropriate INDIVIDUALIZED release plan DEVELOPED IN CONJUNCTION WITH ANY NECESSARY COMMUNITY PROVIDERS OR RESOURCES for the reintegration of the defendant into the community with appropriate services.

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

(14) IF A DEFENDANT IS IN CUSTODY AND THE DEPARTMENT DOES NOT COMPLY WITH THE TIME LIMITS SET FORTH IN SECTION 16-8.5-111, THE DEFENDANT IS SUBJECT TO THE TIME LIMITS SET FORTH IN SUBSECTIONS (2), (3), AND (4) OF THIS SECTION AND, BASED UPON THE BEST AVAILABLE EVIDENCE, THE DEFENDANT WILL NOT BE ADMITTED TO AN INPATIENT FACILITY TO BEGIN RESTORATION WITHIN THE TIME LIMITS DESCRIBED IN THE APPLICABLE SUBSECTION, THE COURT MAY RELEASE THE DEFENDANT OR DISMISS THE CASE IN LIEU OF THE DEFENDANT REMAINING IN CUSTODY ON A WAIT LIST FOR RESTORATION SERVICES.

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

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

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

16-8.5-117. Escape - return to institution. If a defendant committed to the custody of the executive director for a competency evaluation or for restoration to competency escapes from the institution or hospital, ~~it is the duty of~~ the chief officer of the institution or hospital ~~to~~ SHALL apply to the district court for the county in which the institution or hospital is located for a warrant of arrest directed to the sheriff of the county, commanding ~~him or her~~ THE SHERIFF to take all necessary

legal action to effect the arrest of the defendant and to return the defendant promptly to the institution or hospital. The fact of an escape becomes a part of the official record of the defendant and ~~shall~~ MUST be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release on bond or from custody.

SECTION 15. In Colorado Revised Statutes, **amend** 16-8.5-118 as follows:

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

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

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

SECTION 17. In Colorado Revised Statutes, 27-65-108.5, **amend** (1)(b) as follows:

27-65-108.5. Court-ordered certification for short-term treatment for incompetent defendants in a criminal matter - contents of petition - procedure to contest petition - commitment to behavioral health administration - definition. (1) Upon petition of the district attorney, a professional person, a representative of the BHA, or a representative of the office of civil and forensic mental health, a court may certify a person for short-term treatment for not more than three months under the following conditions:

(b) The court hearing the criminal matter referred the matter for filing of a petition pursuant to section 16-8.5-111 or ~~16-8.5-116~~ **16-8.5-116.5**;

SECTION 18. In Colorado Revised Statutes, **repeal of relocated provisions in this act**, 16-8.5-116 IP(6), (6)(a), (6)(c), (6)(d), (7), (8), (9), (11), (12), (13), (14), and (15) and 16-8.5-116 (6)(b) and (10) as they will become effective July 1, 2024.

SECTION 19. Effective date. Section 9 of this act takes effect July 1, 2024.

SECTION 20. Safety clause. The general assembly finds, determines, and declares that this act is necessary for the immediate preservation of the public peace,

health, or safety or for appropriations for the support and maintenance of the departments of the state and state institutions.

Approved: June 4, 2024