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HOUSE BILL 25-1058

BY REPRESENTATIVE(S) Bradfield and English, Brown, Clifford, Duran, Joseph, Mabrey, Rydin, Zokaie, McCluskie;  
also SENATOR(S) Michaelson Jenet and Amabile, Cutter, Ball, Gonzales J., Jodeh, Kipp, Marchman, Rodriguez, Weissman, Coleman.

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

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

**SECTION 1.** In Colorado Revised Statutes, 16-8-101, **amend** (3);  
and **repeal** (2) as follows:

**16-8-101. Insanity defined - offenses committed before July 1, 1995.** (2) ~~The term "diseased or defective in mind", as used in subsection (1) of this section, does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct.~~

(3) This section ~~shall apply~~ **APPLIES** to offenses committed before July 1, 1995.

**SECTION 2.** In Colorado Revised Statutes, 16-8-101.5, **amend** (3);

*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.*

and **repeal** (2) as follows:

**16-8-101.5. Insanity defined - offenses committed on and after July 1, 1995.** (2) ~~As used in this section:~~

~~(a) "Diseased or defective in mind" does not refer to an abnormality manifested only by repeated criminal or otherwise antisocial conduct. Evidence of knowledge or awareness of the victim's actual or perceived gender, gender identity, gender expression, or sexual orientation shall not constitute inability to distinguish right from wrong.~~

~~(b) "Gender identity" and "gender expression" have the same meaning as in section 18-1-901 (3)(h.5).~~

~~(c) "Mental disease or defect" includes only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance but does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.~~

~~(d) "Sexual orientation" has the same meaning as in section 18-9-121 (5)(b).~~

(3) This section ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

**SECTION 3.** In Colorado Revised Statutes, **amend** 16-8-102 as follows:

**16-8-102. Definitions.** As used in this ~~article~~ ARTICLE 8, unless the context otherwise requires:

~~(1) and (2) Repealed.~~

(1) "DISEASED OR DEFECTIVE IN MIND" DOES NOT REFER TO AN ABNORMALITY MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT. EVIDENCE OF KNOWLEDGE OR AWARENESS OF THE VICTIM'S ACTUAL OR PERCEIVED GENDER, GENDER IDENTITY, GENDER EXPRESSION, OR SEXUAL ORIENTATION DOES NOT CONSTITUTE AN INABILITY

TO DISTINGUISH RIGHT FROM WRONG.

~~(2.5)~~(2) "Forensic psychologist" means a licensed psychologist who is board certified in forensic psychology by the American board of professional psychology or who has completed a fellowship in forensic psychology meeting criteria established by the American board of forensic psychology.

(3) "GENDER IDENTITY" AND "GENDER EXPRESSION" HAVE THE SAME MEANING AS SET FORTH IN SECTION 18-1-901.

~~(2.7)~~(4)(a) "Impaired mental condition" means a condition of mind, caused by mental disease or defect that prevents the person from forming the culpable mental state that is an essential element of any crime charged. ~~For the purposes of this subsection (2.7), "mental disease or defect" includes only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance, except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.~~

(b) ~~This subsection (2.7) shall apply only~~ SUBSECTION (4) APPLIES to offenses committed before July 1, 1995.

~~(3) Repealed.~~

~~(4)~~(5) "Ineligible for release" means the defendant is suffering from a mental disease or defect which is likely to cause ~~him~~ THE DEFENDANT to be dangerous to ~~himself~~ THE DEFENDANT'S SELF, to others, or to the community, in the reasonably foreseeable future, if ~~he~~ THE DEFENDANT is permitted to remain at liberty.

~~(4.5)~~(6) "Ineligible to remain on conditional release" means the defendant has violated one or more conditions in ~~his~~ THE DEFENDANT'S release, or the defendant is suffering from a mental disease or defect which is likely to cause ~~him~~ THE DEFENDANT to be dangerous to ~~himself~~ THE DEFENDANT'S SELF, to others, or to the community in the reasonably foreseeable future, if ~~he~~ THE DEFENDANT is permitted to remain on conditional release.

~~(4.7)~~ (7) "Mental disease or defect" means only those severely abnormal mental conditions that grossly and demonstrably impair a person's perception or understanding of reality and that are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

~~(5)~~ (8) "Release examination" means a court-ordered examination of a defendant directed to developing evidence relevant to determining whether ~~he~~ THE DEFENDANT is eligible for release.

~~(6)~~ (9) "Release hearing" means a hearing for the purpose of determining whether a defendant previously committed to the department of human services, following a verdict of not guilty by reason of insanity, has become eligible for release.

~~(7) Repealed.~~

~~(8)~~ (10) "Sanity examination" means a court-ordered examination of a defendant who has entered a plea of not guilty by reason of insanity, directed to developing information relevant to determining the sanity or insanity of the defendant at the time of the commission of the act with which ~~he~~ THE DEFENDANT is charged and ~~also his~~ THE DEFENDANT'S competency to proceed.

(11) "SEXUAL ORIENTATION" HAS THE SAME MEANING AS SET FORTH IN SECTION 18-9-121.

**SECTION 4.** In Colorado Revised Statutes, **amend** 16-8-103 as follows:

**16-8-103. Pleading insanity as a defense.** (1) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea ~~shall be~~ IS: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. A defendant who does not raise the defense as provided in this section ~~shall~~ IS not ~~be~~ permitted to rely upon insanity as a defense to the crime charged but, when charged with a crime requiring a specific intent as an element thereof, may introduce evidence of

the defendant's mental condition as bearing upon ~~his or her~~ THE DEFENDANT'S capacity to form the required specific intent. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1) ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

(1.5) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea ~~shall be~~ IS: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by the defendant's counsel. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) This subsection (1.5) ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

(2) If counsel for the defendant believes that a plea of not guilty by reason of insanity should be entered on behalf of the defendant but the defendant refuses to permit the entry of the plea, counsel may ~~so~~ inform the court. The court shall then conduct ~~such~~ AN investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and advising the court. After its investigation, the court shall conduct a hearing to determine whether the plea should be entered. If the court finds that the entry of a plea of not guilty by reason of insanity is necessary for a just determination of the charge against the defendant, ~~it~~ THE COURT shall enter the plea on behalf of the defendant, and the plea ~~so~~ entered ~~shall have~~ HAS the same effect as though it had been voluntarily entered by the defendant. ~~himself or herself.~~

(3) If ~~there has been no~~ A grand jury indictment or preliminary hearing HAS NOT BEEN HELD prior to the entry of the plea of not guilty by reason of insanity, the court shall hold a preliminary hearing prior to the trial of the insanity issue. If probable cause is not established, the case ~~shall~~ MUST be dismissed, but the court may order the district attorney to institute civil proceedings pursuant to article 65 of title 27 C.R.S., if it appears that the protection of the public or the accused requires ~~it~~ A CIVIL PROCEEDING.

(4) Before accepting a plea of not guilty by reason of insanity, the court shall advise the defendant of the effect and consequences of the plea.

**SECTION 5.** In Colorado Revised Statutes, **amend** 16-8-103.5 as follows:

**16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent.** (1) If the defendant intends to assert the affirmative defense of impaired mental condition, ~~he~~ THE DEFENDANT shall indicate that intention to the court and to the prosecution at the time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and the prosecution of ~~his~~ THE DEFENDANT'S intention to assert the affirmative defense of impaired mental condition at any time prior to trial.

(2) If counsel for the defendant believes that an assertion of the affirmative defense of impaired mental condition should be entered on behalf of the defendant but the defendant refuses to permit counsel to offer such evidence, counsel may ~~so~~ inform the court. The court shall then conduct ~~such~~ AN investigation as it deems proper, which may include the appointment of psychiatrists or forensic psychologists to assist in examining the defendant and advising the court. After its investigation, the court shall conduct a hearing to determine whether evidence of impaired mental condition should be offered at trial. If the court finds that ~~such a~~ THE defense OF IMPAIRED MENTAL CONDITION is necessary for a just determination of the charge against the defendant, ~~it~~ THE COURT shall inform the prosecution that ~~such~~ THE defense ~~shall~~ MUST be asserted at trial by the defendant and shall order the defendant's counsel to present evidence at trial on the defense of impaired mental condition.

(3) At the time ~~at which~~ WHEN the defendant announces ~~his~~ THE DEFENDANT'S intention to assert the affirmative defense of impaired mental condition, the court shall advise the defendant of the effect and consequences of asserting the defense.

(4) When the defendant indicates ~~his~~ THE DEFENDANT'S intention to assert the defense of impaired mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of persons, other than medical experts subject to the provisions of section 16-8-103.6, whom the parties intend to call as witnesses with regard to the affirmative defense of impaired mental condition.

(5) If the trier of fact finds the defendant not guilty by reason of impaired mental condition, pursuant to section 18-1-803 (3), ~~C.R.S.~~, the court shall commit the defendant to the custody of the department of human services until such time as ~~he~~ THE DEFENDANT is found eligible for release, pursuant to the standards set forth in sections 16-8-115 and 16-8-120. The executive director of the department of human services shall designate the state facility ~~at which~~ WHERE the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one institution to another if, in the opinion of the EXECUTIVE director, ~~it~~ TRANSFERRING THE DEFENDANT is desirable to do so in the interest of the DEFENDANT'S proper care, custody, and treatment ~~of the defendant~~ or the protection of the public or the personnel of the facilities in question.

(6) It is the intent of the general assembly that the assertion of the affirmative defense of impaired mental condition not be made in ~~such a fashion~~ A MANNER that it is used to circumvent the requirements of disclosure specified in rule 16 of the Colorado rules of criminal procedure.

(7) A defendant may raise impaired mental condition only through an assertion of affirmative defense.

(8) This section ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

**SECTION 6.** In Colorado Revised Statutes, **amend** 16-8-103.6 as follows:

**16-8-103.6. Waiver of privilege.** (1) (a) A defendant who places ~~his or her~~ THE DEFENDANT'S mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, or asserting the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, or disclosing witnesses who may provide evidence concerning the defendant's mental condition during 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, waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted 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. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for the mental condition.

(b) This subsection (1) ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

(2) (a) A defendant who places ~~his or her~~ THE DEFENDANT'S mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103 or disclosing witnesses who may provide evidence concerning the defendant's mental condition during a sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102; or, for offenses committed on or after July 1, 1999, by seeking to introduce evidence concerning ~~his or her~~ THE DEFENDANT'S mental condition pursuant to section 16-8-107 (3) waives any claim of confidentiality or privilege as to communications made by the defendant to a physician or psychologist in the course of an examination or treatment for the mental condition for the purpose of any trial or hearing on the issue of the mental condition, or sentencing hearing conducted pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for the mental condition.

(b) This subsection (2) ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

**SECTION 7.** In Colorado Revised Statutes, **amend** 16-8-103.7 as follows:

**16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition.** (1) (a) When, at the time of arraignment, the defense of insanity is raised pursuant to section 16-8-103, and the defendant asserts ~~his or her~~ THE DEFENDANT'S intention to raise the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, the court shall order one examination of the defendant with regard to both defenses pursuant to section 16-8-106.



(b) This subsection (1) ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

(2) (a) When, at the time of arraignment, the defense of insanity is raised pursuant to section 16-8-103, the court shall order an examination of the defendant with regard to the insanity defense pursuant to section 16-8-106.

(b) This subsection (2) ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

(3) (a) When the defendant gives notice pursuant to section 16-8-107 (3) that ~~he or she~~ THE DEFENDANT intends to introduce evidence in the nature of expert opinion concerning ~~his or her~~ THE DEFENDANT'S mental condition, the court shall order an examination of the defendant pursuant to section 16-8-106.

(b) ~~The provisions of~~ This subsection (3) ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1999.

**SECTION 8.** In Colorado Revised Statutes, **amend** 16-8-104 as follows:

**16-8-104. Separate trial of issues.** The issues raised by the plea of not guilty by reason of insanity ~~shall~~ MUST be tried separately to different juries, and the sanity of the defendant ~~shall~~ MUST be tried first. This section ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

**SECTION 9.** In Colorado Revised Statutes, **amend** 16-8-104.5 as follows:

**16-8-104.5. Single trial of issues.** (1) The issues raised by the plea of not guilty by reason of insanity ~~shall~~ MUST be treated as an affirmative defense and ~~shall~~ MUST be tried at the same proceeding and before the same trier of fact as the charges to which not guilty by reason of insanity is offered as a defense.

(2) This section ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

**SECTION 10.** In Colorado Revised Statutes, 16-8-105, **amend** (1), (4), and (5) as follows:

**16-8-105. Procedure after plea for offenses committed before July 1, 1995.** (1) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith ~~commit~~ ORDER the defendant ~~for~~ TO UNDERGO a sanity examination, specifying the place ~~and period of~~ ~~commitment~~ WHERE THE EXAMINATION MUST BE CONDUCTED.

(4) If the trier of fact finds the defendant not guilty by reason of insanity, the court shall commit the defendant to the custody of the department of human services until such time as ~~he~~ THE DEFENDANT is found eligible for release. The executive director of the department of human services shall designate the state facility at which the defendant shall be held for care and psychiatric treatment and may transfer the defendant from one institution to another if, in the opinion of the EXECUTIVE director, it is desirable to do so in the interest of the DEFENDANT'S proper care, custody, and treatment ~~of the defendant~~ or the protection of the public or the personnel of the facilities in question.

(5) This section ~~shall apply~~ APPLIES to offenses committed before July 1, 1995.

**SECTION 11.** In Colorado Revised Statutes, 16-8-105.5, **amend** (1), (2), and (3) as follows:

**16-8-105.5. Procedure after plea for offenses committed on or after July 1, 1995.** (1) (a) When a plea of not guilty by reason of insanity is accepted, the court shall forthwith ~~commit~~ ORDER the defendant ~~for~~ TO UNDERGO a sanity examination, specifying ~~the place and period of~~ ~~commitment~~ WHERE THE EXAMINATION MUST BE CONDUCTED. THE COURT, IN CONSULTATION WITH THE DEPARTMENT OF HUMAN SERVICES AND THE PARTIES, SHALL DETERMINE WHETHER THE EXAMINATION REQUIRES THE DEFENDANT TO STAY OVERNIGHT FOR AN EXTENDED EXAMINATION AND THE NUMBER OF DAYS OF THE EXTENDED EXAMINATION.

(b) (I) IF THE DEFENDANT IS IN CUSTODY, THE EXAMINATION MAY BE CONDUCTED AT THE JAIL OR PLACE OF CONFINEMENT OR AT A FACILITY OPERATED BY OR UNDER CONTRACT WITH THE DEPARTMENT OF HUMAN SERVICES. IF THE DEFENDANT IS IN CUSTODY AND THE COURT DETERMINES

THE EXAMINATION MUST BE CONDUCTED AT A FACILITY OPERATED BY OR UNDER CONTRACT WITH THE DEPARTMENT OF HUMAN SERVICES, THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN SERVICES TO TAKE CUSTODY OF THE DEFENDANT TO CONDUCT THE EXAMINATION AND RETURN THE DEFENDANT TO THE ORIGINAL PLACE OF CUSTODY AFTER THE EXAMINATION IS COMPLETE.

(II) IF THE DEFENDANT IS AT LIBERTY ON SUMMONS OR ON BOND, THE EXAMINATION MAY BE CONDUCTED AT A FACILITY OPERATED BY OR CONTRACTED WITH THE DEPARTMENT OF HUMAN SERVICES OR AT AN OUT-OF-CUSTODY LOCATION THAT THE COURT AND DEPARTMENT OF HUMAN SERVICES DETERMINE IS APPROPRIATE.

(2) Upon receiving the report of the sanity examination, the court shall immediately set the case for trial. Every person is presumed to be sane; but, once any evidence of insanity is introduced, the ~~people have~~ PROSECUTION HAS the burden of proving sanity beyond a reasonable doubt.

(3) When the affirmative defense of not guilty by reason of insanity has been raised, the jury ~~shall~~ MUST be given special verdict forms containing interrogatories. The trier of fact shall decide first the question of guilt as to felony charges that are before the court. If the trier of fact concludes that guilt has been proven beyond a reasonable doubt as to one or more of the felony charges submitted for consideration, the special interrogatories ~~shall~~ MUST not be answered. Upon completion of its deliberations on the felony charges as previously set forth in this subsection (3), the trier of fact shall consider any other charges before the court in a similar manner; except that ~~it~~ THE TRIER OF FACT shall not answer the special interrogatories regarding ~~such~~ THE charges if ~~it~~ THE TRIER OF FACT has previously found guilt beyond a reasonable doubt with respect to one or more felony charges. The interrogatories ~~shall~~ MUST provide for specific findings of the jury with respect to the affirmative defense of not guilty by reason of insanity. When the court sits as the trier of fact, ~~it~~ THE COURT shall enter appropriate specific findings with respect to the affirmative defense of not guilty by reason of insanity.

**SECTION 12.** In Colorado Revised Statutes, 16-8-106, **amend** (1)(a), (1)(b), (2)(a), (2)(b), (3), and (7) introductory portion as follows:

**16-8-106. Examinations and report.** (1) (a) All examinations

ordered by the court in criminal cases ~~shall~~ MUST be accomplished by the entry of an order of the court specifying the place where ~~such~~ THE examination is to be conducted and the period of time allocated for ~~such~~ THE examination. The defendant may be committed for ~~such~~ THE examination to ~~the Colorado psychiatric hospital in Denver, the Colorado mental health institute at Pueblo~~ A STATE-RUN MENTAL HEALTH HOSPITAL, the place where ~~he or she~~ THE DEFENDANT is in custody, or ~~such~~ ANY other public institution designated by the court. In determining the place where ~~such~~ THE examination is to be conducted, the court shall give priority to the place where the defendant is in custody, unless the nature and circumstances of the examination require designation of a different facility. ONE OR MORE PSYCHIATRISTS OR FORENSIC PSYCHOLOGISTS SHALL OBSERVE the defendant ~~shall be observed and examined by one or more psychiatrists or forensic psychologists~~ during ~~such~~ A period as the court directs. For good cause shown, upon motion of the prosecution or defendant, or upon the court's own motion, the court may order ~~such~~ ANY further or other examination as is advisable under the circumstances. ~~Nothing in~~ This section ~~shall~~ DOES NOT abridge the right of the defendant to procure an examination as provided in section 16-8-108.

(b) (I) An interview conducted PURSUANT TO THIS SECTION in any case that includes a class 1 or class 2 felony charge or a felony sex offense charge described in section 18-3-402, 18-3-404, 18-3-405, or 18-3-405.5 C.R.S., ~~pursuant to this section~~ must be video and audio recorded and preserved, EXCEPT AS PROVIDED IN SUBSECTION (1)(c) OF THIS SECTION. The court shall advise the defendant that any examination with a psychiatrist or forensic psychologist may be video and audio recorded. A copy of the recording must be provided to all parties and the court with the examination report. Any jail or other facility where the court orders the examination to take place ~~must~~ SHALL permit the recording to occur and ~~must~~ SHALL provide the space and equipment necessary for ~~such~~ THE recording. If space and equipment are not available, the sheriff or facility director shall attempt to coordinate a location and the availability of equipment with the court, ~~which~~ AND THE COURT may consult with the district attorney and defense counsel for an agreed-upon location. If ~~no~~ AN agreement is NOT reached, and upon the request of either the defense counsel or district attorney, the court shall order the location of the examination, which may include ~~the Colorado mental health institute at Pueblo~~ A STATE-RUN MENTAL HEALTH HOSPITAL.

(II) IN ORDER TO PROTECT THE PRESUMPTION OF INNOCENCE, IF THE EXAMINATION IS RECORDED, THE DEFENDANT MUST NOT BE DRESSED IN PRISON OR JAIL CLOTHING. THIS SUBSECTION (1)(b)(II) DOES NOT REQUIRE OR PROHIBIT THE USE OF RESTRAINTS, AND THE EXAMINATION MAY BE STOPPED OR PAUSED IN ORDER TO APPLY RESTRAINTS ON THE DEFENDANT TO ENSURE THE SAFETY OF THE EVALUATOR, THE DEFENDANT, OR OTHERS, AS LONG AS THE RESTRAINTS ARE NOT VISIBLE ON THE RECORDING.

(2) (a) The defendant ~~shall have~~ HAS a privilege against self-incrimination during the course of an examination ~~under~~ CONDUCTED PURSUANT TO this section. The fact of the defendant's noncooperation with psychiatrists, forensic psychologists, and other personnel conducting the examination may be admissible in the defendant's trial on the issue of insanity or impaired mental condition and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302. ~~C.R.S. This paragraph (a) shall apply only~~ SUBSECTION (2)(a) APPLIES to offenses committed before July 1, 1995.

(b) The defendant ~~shall have~~ HAS a privilege against self-incrimination during the course of an examination ~~under~~ CONDUCTED PURSUANT TO this section. The fact of the defendant's noncooperation with psychiatrists, forensic psychologists, and other personnel conducting the examination may be admissible in the defendant's trial on the issue of insanity and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102. ~~C.R.S. This paragraph (b) shall apply~~ SUBSECTION (2)(b) APPLIES to offenses committed on or after July 1, 1995, but prior to July 1, 1999.

(3) (a) To aid in forming an opinion ~~as to~~ REGARDING the DEFENDANT'S mental condition, ~~of the defendant~~, it is permissible in the course of an examination ~~under~~ CONDUCTED PURSUANT TO this section to use THE DEFENDANT'S confessions and admissions ~~of the defendant~~ and any other evidence of the circumstances surrounding the commission of the offense, as well as the DEFENDANT'S medical and social history ~~of the defendant~~, in questioning the defendant. When the defendant is noncooperative with psychiatrists, forensic psychologists, and other personnel conducting the examination, an opinion of the DEFENDANT'S mental condition ~~of the defendant~~ may be rendered by ~~such~~ THE psychiatrists, forensic psychologists, or other personnel based upon ~~such~~ THE DEFENDANT'S confessions AND admissions and any other evidence of

the circumstances surrounding the commission of the offense, as well as the DEFENDANT'S known medical and social history, ~~of the defendant~~, and such THE opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S. ~~It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, or impaired mental condition, and in any sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302, C.R.S., the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This paragraph (a) shall apply only~~ THIS SUBSECTION (3)(a) APPLIES to offenses committed before July 1, 1995.

(b) To aid in forming an opinion ~~as to~~ REGARDING the DEFENDANT'S mental condition, ~~of the defendant~~, it is permissible in the course of an examination ~~under~~ CONDUCTED PURSUANT TO this section to use THE DEFENDANT'S confessions and admissions ~~of the defendant~~ and any other evidence of the circumstances surrounding the commission of the offense, as well as the DEFENDANT'S medical and social history ~~of the defendant~~, in questioning the defendant. When the defendant is noncooperative with psychiatrists, forensic psychologists, and other personnel conducting the examination, an opinion of the DEFENDANT'S mental condition ~~of the defendant~~ may be rendered by ~~such~~ THE psychiatrists, forensic psychologists, or other personnel based upon ~~such~~ THE DEFENDANT'S confessions AND admissions and any other evidence of the circumstances surrounding the commission of the offense, as well as the DEFENDANT'S known medical and social history, ~~of the defendant~~, and ~~such~~ THE opinion may be admissible into evidence at trial and in any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102. ~~It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity or eligibility for release, and in any sentencing hearing held pursuant to section 18-1.3-1201 for an offense charged prior to July 1, 2020, or pursuant to section 18-1.4-102, the physicians and other personnel conducting the examination~~

~~may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. This subsection (3)(b) applies to offenses committed on or after July 1, 1995.~~

(c) For offenses committed on or after July 1, 1999, when a defendant undergoes an examination pursuant to ~~the provisions of paragraph (b) of this subsection (3)~~ SUBSECTION (3)(b) OF THIS SECTION because the defendant has given notice pursuant to section 16-8-107 (3) that ~~he or she~~ THE DEFENDANT intends to introduce expert opinion evidence concerning ~~his or her~~ THE DEFENDANT'S mental condition, the physicians, forensic psychologists, and other personnel conducting the examination may testify to the results of any ~~such~~ procedures and the DEFENDANT'S statements and reactions ~~of the defendant insofar as such~~ IF THE statements and reactions entered into the formation of ~~their~~ THE EXPERTS' opinions ~~as to~~ REGARDING the DEFENDANT'S mental condition. ~~of the defendant.~~

(7) With respect to offenses committed on or after July 1, 1999, when a defendant has undergone an examination pursuant to ~~the provisions of this section~~ because the defendant has given notice pursuant to section 16-8-107 (3) that ~~he or she~~ THE DEFENDANT intends to introduce expert opinion evidence concerning ~~his or her~~ THE DEFENDANT'S mental condition, the ~~report of~~ examination ~~shall~~ REPORT MUST include, but is not limited to, the items described in subsections (5)(a), (5)(b), and (5)(c) of this section, and:

**SECTION 13.** In Colorado Revised Statutes, 16-8-107, **amend** (1)(a), (1)(c), (1.5)(a), (1.5)(c), (3)(b), and (3)(c) as follows:

**16-8-107. Evidence.** (1) (a) Except as provided in this subsection (1), ~~no~~ evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination ~~under~~ PURSUANT TO section 16-8-106 or acquired pursuant to section 16-8-103.6 is NOT admissible against the defendant on the issues raised by a plea of not guilty, if the defendant is put to trial on those issues, except to rebut evidence of ~~his or her~~ THE DEFENDANT'S mental condition introduced by the defendant to show incapacity to form a culpable mental state; and, in such case, that evidence may be considered by the trier of fact only as bearing upon the question of

capacity to form a culpable mental state, and the jury, at the request of either party, ~~shall~~ MUST be so instructed.

(c) If the defendant testifies ~~in his or her~~ ON THE DEFENDANT'S own behalf upon the trial of the issues raised by the plea of not guilty, 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.

(1.5) (a) Except as otherwise provided in this subsection (1.5), evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a court-ordered examination pursuant to section 16-8-106 or acquired pursuant to section 16-8-103.6 is admissible only as to the issues raised by the defendant's plea of not guilty by reason of insanity, and the jury, at the request of either party, ~~shall~~ MUST be so instructed; except that, for offenses committed on or after July 1, 1999, ~~such~~ THE evidence ~~shall~~ IS also ~~be~~ admissible as to the defendant's mental condition if the defendant undergoes the examination because the defendant has given notice pursuant to subsection (3) of this section that ~~he or she~~ THE DEFENDANT intends to introduce expert opinion evidence concerning ~~his or her~~ THE DEFENDANT'S mental condition.

(c) If the defendant testifies ~~in his or her~~ ON THE DEFENDANT'S own behalf, ~~the provisions of this section shall~~ DOES not bar any evidence used to impeach or rebut the defendant's testimony. This subsection (1.5) ~~shall~~ apply APPLIES to offenses committed on or after July 1, 1995.

(3) (b) Regardless of whether a defendant enters a plea of not guilty by reason of insanity pursuant to section 16-8-103, the defendant ~~shall not be~~ IS NOT permitted to introduce evidence in the nature of expert opinion concerning ~~his or her~~ THE DEFENDANT'S mental condition without having first given notice to the court and the prosecution of ~~his or her~~ THE DEFENDANT'S intent to introduce ~~such~~ THE evidence and without having undergone a court-ordered examination pursuant to section 16-8-106. A defendant who places ~~his or her~~ THE DEFENDANT'S mental condition at issue by giving such notice waives any claim of confidentiality or privilege as provided in section 16-8-103.6. ~~Such~~ THE notice ~~shall~~ MUST be given at the



time of arraignment; except that the court, for good cause shown, shall permit the defendant to inform the court and prosecution of the intent to introduce such evidence at any time prior to trial. Any period of delay caused by the examination and report provided for in section 16-8-106 shall ~~shall~~ **MUST** be excluded, as provided in section 18-1-405 (6)(a), ~~C.R.S.~~, from the time within which the defendant must be brought to trial.

(c) ~~The provisions of This subsection (3) shall apply~~ **APPLIES** to offenses committed on or after July 1, 1999.

**SECTION 14.** In Colorado Revised Statutes, 16-8-108, **amend** (1)(a) as follows:

**16-8-108. Examination at instance of defendant.** (1) (a) If the defendant wishes to be examined by a psychiatrist, psychologist, or other expert of ~~his~~ **THE DEFENDANT'S** own choice in connection with any proceeding under this ~~article~~ **ARTICLE 8**, the court, upon timely motion, shall order that the examiner chosen by the defendant be given reasonable opportunity to conduct the examination. An interview conducted pursuant to a court order under this section must be video and audio recorded and preserved, **EXCEPT AS PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION**. The court shall advise the defendant that any examination with a psychiatrist or forensic psychologist may be audio and video recorded. A copy of the recording must be provided to the prosecution with the examination report. Any jail or other facility where the court orders the examination to take place ~~must~~ **SHALL** permit the recording to occur and ~~must~~ **SHALL** provide the space and equipment necessary for ~~such~~ **THE** recording, if available. If space and equipment are not available, the sheriff or facility director shall attempt to coordinate a location and the availability of equipment with the court, ~~which~~ **AND THE COURT** may consult with the district attorney and defense counsel for an agreed-upon location. If ~~no~~ **AN** agreement is **NOT** reached, and upon the request of either the defense counsel or district attorney, the court shall order the location of the examination, which may include ~~the Colorado mental health institute at Pueblo~~ **A STATE-RUN MENTAL HEALTH HOSPITAL**.

**SECTION 15.** In Colorado Revised Statutes, **amend** 16-8-109 as follows:

**16-8-109. Testimony of lay witnesses.** In any trial or hearing in

which THE DEFENDANT'S mental condition ~~of the defendant~~ is an issue, ~~witnesses~~ A WITNESS not specially trained in psychiatry or psychology may testify as to ~~their~~ THE WITNESS'S observation of the defendant's actions and conduct, and as to conversations ~~which they have~~ THAT THE WITNESS HAS had with ~~him~~ THE DEFENDANT bearing upon ~~his~~ THE DEFENDANT'S mental condition, and ~~they shall~~ THE WITNESS MUST be permitted to give ~~their~~ opinions or conclusions concerning THE DEFENDANT'S mental condition. ~~of the defendant.~~

**SECTION 16.** In Colorado Revised Statutes, 16-8-114, **amend** (3) as follows:

**16-8-114. Evidence concerning competency - inadmissibility.**

(3) (a) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity or the affirmative defense of impaired mental condition. This ~~paragraph (a) shall apply only~~ SUBSECTION (3)(a) APPLIES to offenses committed before July 1, 1995.

(b) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity. This ~~paragraph (b) shall apply~~ SUBSECTION (3)(b) APPLIES to offenses committed on or after July 1, 1995.

**SECTION 17.** In Colorado Revised Statutes, 16-8-115, **amend** (1)(b), (1)(c), (1.5), (2), (3)(b), (3)(c), (4)(a.5), (4)(f), (4)(g)(XXI), and (4)(i)(I) as follows:

**16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition - definitions.** (1) (b) Following the initial release hearing pursuant to subsection (1)(a) of this section, the court may order a release hearing at any time on its own motion, on motion of the prosecuting attorney, or on motion of the defendant. The court shall order a release hearing upon receipt of the report of the chief officer of the ~~institution in which~~ HOSPITAL WHERE the defendant is committed, OR THE CHIEF OFFICER'S DESIGNEE, that the defendant no longer requires hospitalization, as provided in section 16-8-116. Except for the initial release hearing, unless the court for good cause shown permits, the defendant is not entitled to a hearing within one year subsequent to a previous hearing.

(c) Beginning September 1, 2022, the chief officer of the ~~institution~~ ~~in which~~ HOSPITAL WHERE the defendant is committed, OR THE CHIEF OFFICER'S DESIGNEE, shall annually submit a release examination report to the court certifying whether the defendant continues to meet the criteria for ongoing inpatient hospitalization or meets the applicable test for release pursuant to section 16-8-120. The report must be submitted each year by the date on which the defendant was initially committed for inpatient hospitalization unless another release examination is ordered within the twelve months preceding ~~such~~ THE date. The release examination report must include the information required for a release examination pursuant to subsection (2.5) of this section. The ~~institution~~ HOSPITAL shall provide a copy of the report to the defendant, the prosecuting attorney, and any other attorney of record. Upon receipt and after review of the report, the court may order a release hearing on its own motion, on motion of the prosecuting attorney, or on motion of the defendant.

(1.5) (a) Any victim of any crime or any member of ~~such~~ THE victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity or not guilty by reason of impaired mental condition, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if ~~such~~ THE victim or family member can reasonably be located. This ~~paragraph (a) shall apply only~~ SUBSECTION (1.5)(a) APPLIES to offenses committed before July 1, 1995.

(b) Any victim of any crime or any member of ~~such~~ THE victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if ~~such~~ THE victim or family member can reasonably be located. This ~~paragraph (b) shall apply~~ SUBSECTION (1.5)(b) APPLIES to offenses committed on or after July 1, 1995.

(2) (a) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different ~~institution~~ HOSPITAL or by different experts. The court may order any additional or supplemental examination, investigation, or study that ~~it~~ THE COURT deems necessary to a proper consideration and determination of

the question of eligibility for release. The court shall set the matter for release hearing after ~~it~~ THE COURT has received all of the reports that ~~it~~ THE COURT has ordered ~~under~~ PURSUANT TO this section. When none of ~~said~~ THE reports indicates that the defendant is eligible for release, the defendant's request for A release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed ~~under the provisions of~~ PURSUANT TO article 240 of title 12, a psychologist licensed ~~under the provisions of~~ PURSUANT TO article 245 of title 12, a psychiatric technician licensed ~~under the provisions of~~ PURSUANT TO article 295 of title 12, a registered professional nurse, as defined in section 12-255-104 (11), who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed ~~under the provisions of~~ PURSUANT TO part 4 of article 245 of title 12. The release hearing shall be to the court or, on demand by the defendant, to a jury ~~of not to exceed~~ COMPOSED OF NOT MORE THAN six persons. At the release hearing, if any evidence of insanity is introduced, the defendant has the burden of proving restoration of sanity by a preponderance of the evidence; if any evidence of ineligibility for release by reason of impaired mental condition is introduced, the defendant has the burden of proving, by a preponderance of the evidence, that the defendant is eligible for release by no longer having an impaired mental condition. This subsection (2)(a) ~~shall apply only~~ APPLIES to offenses committed before July 1, 1995.

(b) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different ~~institution~~ HOSPITAL or by different experts. The court may order any additional or supplemental examination, investigation, or study that ~~it~~ THE COURT deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after ~~it~~ THE COURT has received all of the reports that ~~it has~~ THE COURT ordered ~~under~~ PURSUANT TO this section. When none of the reports indicates that the defendant is eligible for release, THE COURT SHALL DENY the defendant's request for A release hearing ~~shall be denied by the court~~ if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that

the defendant is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed ~~under the provisions of~~ PURSUANT TO article 240 of title 12, a psychologist licensed ~~under the provisions of~~ PURSUANT TO article 245 of title 12, a psychiatric technician licensed ~~under the provisions of~~ PURSUANT TO article 295 of title 12, a registered professional nurse as, defined in section 12-255-104 (11), who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker licensed ~~under the provisions of~~ PURSUANT TO part 4 of article 245 of title 12. The release hearing shall be to the court or, on demand by the defendant, to a jury composed of not more than six persons. At the release hearing, if any evidence that the defendant does not meet the release criteria is introduced, the defendant has the burden of proving by a preponderance of the evidence that the defendant ~~has no~~ DOES NOT HAVE AN abnormal mental condition that would be likely to cause the defendant to be dangerous either to ~~himself or herself~~ THE DEFENDANT'S SELF or to others or to the community in the reasonably foreseeable future. This subsection (2)(b) ~~shall apply~~ APPLIES to offenses committed on or after July 1, 1995.

(3) (b) When a defendant is conditionally released, the chief officer of the ~~institution in which~~ HOSPITAL WHERE the defendant is committed, OR THE CHIEF OFFICER'S DESIGNEE, shall forthwith give written notice of the terms and conditions of ~~such~~ THE release to the executive director of the department of human services and to the director of any behavioral health safety net provider that may be charged with THE DEFENDANT'S continued treatment. ~~of the defendant.~~ The director of ~~such~~ THE behavioral health safety net provider shall make written reports every three months to the executive director of the department of human services and to the district attorney for the judicial district where the defendant was committed and to the district attorney for any judicial district where the defendant may be required to receive treatment concerning the DEFENDANT'S treatment and status. ~~of the defendant. Such~~ THE reports ~~shall~~ MUST include all known violations of the terms and conditions of the defendant's release and any changes in the defendant's mental status that would indicate that the defendant has become ineligible to remain on conditional release. ~~as defined in section 16-8-102 (4.5).~~

(c) A defendant who has been conditionally released remains under the supervision of the department of human services until the committing

court enters a final order of unconditional release. When a defendant fails to comply with any conditions of ~~his~~ THE DEFENDANT'S release requiring ~~him~~ THE DEFENDANT to establish, maintain, and reside at a specific residence and ~~his~~ THE DEFENDANT'S whereabouts have ~~therefore~~ become unknown to the authorities charged with ~~his~~ THE DEFENDANT'S supervision or when the defendant leaves the state of Colorado without the consent of the committing court, the defendant's absence from supervision ~~shall constitute~~ CONSTITUTES unauthorized absence, as defined in section 18-8-208.2. Such offense occurs in the county in which the defendant is authorized to reside.

(4) (a.5) In addition to any terms and conditions of release imposed pursuant to subsection (3) of this section, a court may order a defendant, as a condition of release, to register with the local law enforcement agency of the jurisdiction in which the defendant resides if the court finds that the chief officer of the ~~institution in which~~ HOSPITAL WHERE the defendant has been committed, OR THE CHIEF OFFICER'S DESIGNEE, recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

(f) The local law enforcement agency shall transmit any registrations received pursuant to ~~paragraph (e) of this subsection (4)~~ SUBSECTION (4)(e) OF THIS SECTION to the Colorado bureau of investigation within three business days following receipt OF THE REGISTRATION. The Colorado bureau of investigation shall include any registration information received pursuant to this section in the central registry established pursuant to section 16-22-110 and shall specify that the information applies to a defendant required to register as a condition of release pursuant to this section. The forms completed by ~~defendants~~ A DEFENDANT required to register as a condition of release pursuant to this subsection (4) ~~shall be~~ ARE confidential and ~~shall~~ MUST not be open to inspection except as provided in ~~paragraph (e) of subsection (3)~~ SUBSECTION (3)(e) of this section and except as provided for release of information to the public pursuant to sections 16-22-110 (6) and 16-22-112.

(g) As used in this subsection (4), "an offense involving unlawful sexual behavior" means any of the following offenses:

(XXI) Criminal attempt, conspiracy, or solicitation to commit any

of the offenses specified in this ~~paragraph (g)~~ SUBSECTION (4)(g).

(i) (I) Any defendant required to register as a condition of release pursuant to this subsection (4), upon completion of a period of not less than twenty years from the date the defendant is placed on conditional release, may petition the district court for an order that discontinues the requirement for ~~such~~ registration and removes the defendant's name from the central registry established pursuant to section 16-22-110. The court may issue ~~such~~ AN order only if the court makes written findings of fact that the defendant has neither been convicted nor found not guilty by reason of insanity of an offense involving unlawful sexual behavior subsequent to ~~his or her~~ THE DEFENDANT'S conditional release and that the defendant would not pose an undue threat to the community if allowed to live in the community without registration.

**SECTION 18.** In Colorado Revised Statutes, 16-8-115.5, **amend** (3), (4), (5), (6)(a), (6)(b), and (8) as follows:

**16-8-115.5. Enforcement and revocation of conditional release from commitment.** (3) Whenever the ~~superintendent of the Colorado mental health institute at Pueblo~~ DIRECTOR OF FORENSIC SERVICES IN THE DEPARTMENT OF HUMAN SERVICES, OR THE DIRECTOR'S DESIGNEE, has probable cause to believe that ~~such~~ THE defendant has become ineligible to remain on conditional release, ~~as defined in section 16-8-102 (4.5), said superintendent~~ THE DIRECTOR, OR THE DIRECTOR'S DESIGNEE, shall notify the district attorney for the judicial district where the defendant was committed. The ~~superintendent~~ DIRECTOR, OR THE DIRECTOR'S DESIGNEE, or the district attorney shall apply for a warrant to be directed to the sheriff or a peace officer in the jurisdiction ~~in which~~ WHERE the defendant resides or may be found, commanding ~~such~~ THE sheriff or peace officer to take custody of the defendant. The application ~~shall~~ MUST include the order conditionally releasing the defendant pursuant to section 16-8-115 (3) and supporting documentation showing that THE defendant has become ineligible to remain on conditional release. ~~as defined in section 16-8-102(4.5)~~. The committing court and the district court for the tenth judicial district are authorized to issue ~~such~~ a warrant pursuant to ~~the provisions of~~ section 16-1-106. The ~~superintendent~~ DIRECTOR, OR THE DIRECTOR'S DESIGNEE, shall mail a copy of the application to the committing court and the district attorney in the committing jurisdiction.

(4) The sheriff or peace officer to whom the warrant is directed pursuant to subsection (3) of this section shall take all necessary legal action to take custody of the defendant. A sheriff shall deliver the defendant immediately to the ~~Colorado mental health institute at Pueblo, which~~ HOSPITAL WHERE THE DEFENDANT WAS COMMITTED, AND THE HOSPITAL shall provide care and security for the defendant. If any other peace officer takes custody of the defendant, ~~such~~ THE peace officer shall deliver the defendant to the custody of the sheriff of the jurisdiction ~~in which~~ WHERE the defendant was found, and ~~such~~ THE sheriff shall comply with ~~the provisions of~~ this subsection (4).

(5) The ~~Colorado mental health institute at Pueblo~~ HOSPITAL WHERE THE DEFENDANT WAS COMMITTED shall examine the defendant to evaluate the defendant's ability to remain on conditional release. The examination ~~shall~~ MUST be consistent with the procedure provided in section 16-8-106. If the defendant refuses to submit to and cooperate with the examination, the committing court shall revoke the conditional release. The examination ~~shall~~ MUST be completed within twenty-one days after the defendant has been delivered to the ~~institute~~ HOSPITAL as a result of the defendant's arrest. The ~~institute~~ HOSPITAL shall mail or deliver a written report of the examination to the committing court and the district attorney in the committing jurisdiction promptly after the examination is completed. The defendant may request an examination as provided in section 16-8-108.

(6) (a) The district attorney for the judicial district where the defendant was committed may file in the committing court a petition for the revocation of the defendant's conditional release. The petition ~~shall~~ MUST set forth the name of the defendant, an allegation that the defendant has become ineligible to remain on conditional release, ~~as defined in section 16-8-102(4.5)~~, and the substance of the evidence sustaining the allegation.

(b) If the district attorney for the committing judicial district does not file a petition for revocation, as provided in ~~paragraph (a) of this subsection (6)~~ SUBSECTION (6)(a) OF THIS SECTION, within ten days after the defendant is delivered to the ~~Colorado mental health institute at Pueblo~~ HOSPITAL WHERE THE DEFENDANT WAS COMMITTED, the defendant ~~shall~~ MUST be immediately released from custody; except that, upon a showing of good cause by the district attorney, the court may grant a reasonable extension of time to file the petition for revocation.



(8) Within thirty-five days after the defendant is delivered to the ~~Colorado mental health institute in Pueblo~~ HOSPITAL WHERE THE DEFENDANT WAS COMMITTED pursuant to subsection (4) of this section, and if the defendant is not released from custody pursuant to ~~paragraph (b) of subsection (6)~~ SUBSECTION (6)(b) of this section, the committing court shall hold a hearing on the petition for revocation of conditional release. At ~~such~~ THE hearing, any evidence having probative value ~~shall be~~ IS admissible, but the defendant ~~shall be~~ IS permitted to offer testimony and to call, confront, and cross-examine witnesses. If the court finds by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release, ~~as defined in section 16-8-102 (4.5), it shall~~ THE COURT MUST enter an order revoking the defendant's conditional release and recommitting the defendant. At any time thereafter, the defendant may be afforded a release hearing as provided in section 16-8-115. If the court does not find by a preponderance of the evidence that the defendant has become ineligible to remain on conditional release, ~~as defined in section 16-8-102 (4.5), it~~ THE COURT shall dismiss the petition and reinstate or modify the original order of conditional release.

**SECTION 19.** In Colorado Revised Statutes, **amend** 16-8-116 as follows:

**16-8-116. Release by department of human services authority.**

(1) AFTER A FINDING OF NOT GUILTY BY REASON OF INSANITY, when the chief officer of the ~~institution in which~~ HOSPITAL WHERE a defendant has been committed, ~~after a finding of not guilty by reason of insanity~~ OR THE CHIEF OFFICER'S DESIGNEE, OR THE DIRECTOR OF FORENSIC SERVICES IN THE DEPARTMENT OF HUMAN SERVICES, OR THE DIRECTOR'S DESIGNEE, WHO HAS BEEN SUPERVISING THE DEFENDANT'S CONDITIONAL RELEASE, **determines** that the defendant no longer requires hospitalization OR SUPERVISION because ~~he~~ THE DEFENDANT no longer suffers from a mental disease or defect ~~which~~ THAT is likely to cause ~~him~~ THE DEFENDANT to be **dangerous to himself** A DANGER TO THE DEFENDANT'S SELF, to others, or to the community in the reasonably foreseeable future, ~~such~~ THE chief officer OR THE CHIEF OFFICER'S DESIGNEE, OR THE DIRECTOR OR THE DIRECTOR'S DESIGNEE, shall report ~~this~~ THE determination to the court that committed the defendant and the prosecuting attorney, including in the report a report of examination equivalent to a release examination. The clerk of the court shall forthwith furnish a copy of the report to counsel for the defendant.

(2) Within thirty-five days after receiving the report of the chief officer ~~of the institution having custody of the defendant~~ OR THE CHIEF OFFICER'S DESIGNEE, OR THE DIRECTOR OR THE DIRECTOR'S DESIGNEE, the court shall set a hearing on the discharge of the defendant in accordance with section 16-8-115, whether or not ~~such~~ THE report is contested.

(3) Repealed.

**SECTION 20.** In Colorado Revised Statutes, **amend** 16-8-117 as follows:

**16-8-117. Advisement on matters to be determined.** When a determination is to be made as to a defendant's eligibility for release, the court shall explain to the defendant the nature and consequences of the proceeding and the rights of the defendant ~~under~~ PURSUANT TO this section, including ~~his or her~~ THE DEFENDANT'S right to a jury trial upon the question of eligibility for release. The defendant, if ~~he or she~~ THE DEFENDANT wishes to contest the question, may request a hearing ~~which shall then~~ THAT MUST be granted as a matter of right. At the hearing, the defendant and the prosecuting attorney are entitled to be present in person, to examine any reports of examination or other matter to be considered by the court as bearing upon the determination, to introduce evidence, summon witnesses, cross-examine witnesses for the other side or the court, and to make opening and closing statements and argument. The court may examine or cross-examine any witness called by the defendant or prosecuting attorney and may summon and examine witnesses on its own motion.

**SECTION 21.** In Colorado Revised Statutes, 16-8-118, **amend** (1), (1.5), (2)(a.5), and (2)(b) as follows:

**16-8-118. Temporary removal for treatment and rehabilitation.**  
(1) The chief officer of the institution ~~in which~~ WHERE a defendant has been committed under this ~~article~~ ARTICLE 8 or article 8.5 of this ~~title~~ TITLE 16, OR THE CHIEF OFFICER'S DESIGNEE, may authorize treatment and rehabilitation activities involving temporary physical removal of ~~such person~~ THE DEFENDANT from the institution ~~in which~~ WHERE the defendant has been placed, if prior to ~~such~~ THE authorization the following procedures are carried out:

(a) ~~Such~~ THE chief officer, OR THE CHIEF OFFICER'S DESIGNEE, shall

give written notice by certified mail, with return receipt requested, to the committing court and the district attorney that on or after thirty-five days from the date of mailing ~~such~~ THE notice, ~~he or she~~ THE CHIEF OFFICER, OR THE CHIEF OFFICER'S DESIGNEE, will authorize treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution, unless written objections to ~~such~~ THE authorization are received by ~~him or her~~ THE CHIEF OFFICER, OR THE CHIEF OFFICER'S DESIGNEE, within thirty-five days from the date of mailing ~~such~~ THE notice.

(b) The clerk of the committing court shall deliver a copy of the notice ~~mentioned in paragraph (a) of this subsection (1)~~ DESCRIBED IN SUBSECTION (1)(a) OF THIS SECTION to the attorney of record for the defendant. The district attorney or the attorney of record for the defendant may file objections with the clerk of the committing court to the proposed action of the chief officer of the institution ~~in which such~~ WHERE THE defendant is held, OR THE CHIEF OFFICER'S DESIGNEE. THE PARTY MAKING THE OBJECTIONS SHALL DELIVER a copy of ~~any such~~ THE objections, ~~shall be delivered by the party making such objections~~, either by mail or by personal service, to ~~such~~ THE chief officer, OR THE CHIEF OFFICER'S DESIGNEE, prior to the expiration of thirty-five days from the mailing of the notice by the chief officer of the institution, OR THE CHIEF OFFICER'S DESIGNEE.

(c) In the event that objections are filed and served as provided in ~~paragraphs (a) and (b) of this subsection (1)~~ SUBSECTIONS (1)(a) AND (1)(b) OF THIS SECTION, the committing court shall fix a time for a hearing upon the objections, and no removal of the defendant from the institution ~~in which he~~ WHERE THE DEFENDANT is held ~~shall be~~ IS authorized unless and until approval ~~thereof~~ is given by the committing court following ~~such~~ THE hearing.

(1.5) The chief officer of the institution, OR THE CHIEF OFFICER'S DESIGNEE, is authorized to allow a defendant, without court authorization as ~~set forth~~ DESCRIBED in subsection (1) of this section, to leave the physical premises of the treatment or habilitation facility for needed medical treatment at a hospital, clinic, or other health-care facility, so long as the defendant is accompanied by staff from the facility.

(2) (a.5) A court may order any defendant who receives treatment and rehabilitation activities involving temporary physical removal of the defendant from the institution to register with the local law enforcement

agency of the jurisdiction ~~in which~~ WHERE the defendant resides if the court finds that the chief officer of the institution ~~in which~~ WHERE the defendant has been committed, OR THE CHIEF OFFICER'S DESIGNEE, recommends registration based on information obtained from the defendant during the course of treatment that indicates the defendant has committed an offense involving unlawful sexual behavior.

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

**SECTION 22.** In Colorado Revised Statutes, **amend** 16-8-119 as follows:

**16-8-119. Counsel and physicians for indigent defendants.** In all proceedings ~~under this article~~ BROUGHT PURSUANT TO THIS ARTICLE 8, upon motion of the defendant and proof that ~~he~~ THE DEFENDANT is indigent and without funds to employ physicians, psychologists, or attorneys to which ~~he~~ THE DEFENDANT is entitled under this ~~article~~ ARTICLE 8, the court shall appoint ~~such~~ THE physicians, psychologists, or attorneys for ~~him~~ THE DEFENDANT at state expense.

**SECTION 23.** In Colorado Revised Statutes, **amend** 16-8-120 as follows:

**16-8-120. Applicable tests for release.** (1) As to any person charged with any crime allegedly committed on or after June 2, 1965, the test for determination of a defendant's sanity for release from commitment, or ~~his~~ THE DEFENDANT'S eligibility for conditional release, ~~shall be~~ IS: "That the defendant has no abnormal mental condition which would be likely to cause ~~him~~ THE DEFENDANT to be dangerous either to ~~himself~~ THE DEFENDANT'S SELF or to others or to the community in the reasonably foreseeable future".

(2) As to any person charged with any crime allegedly committed prior to June 2, 1965, the test for determination of a defendant's sanity for

release from commitment, or ~~his~~ THE DEFENDANT'S eligibility for conditional release, ~~shall be~~ IS the test provided by law at the time of the alleged crime to determine the sanity or insanity of ~~such~~ THE defendant.

(3) As to any person charged with any crime allegedly committed on or after July 1, 1983, the test for determination of a defendant's sanity for release from commitment, or ~~his~~ THE DEFENDANT'S eligibility for conditional release, ~~shall be~~ IS: "That the defendant has no abnormal mental condition ~~which~~ THAT would be likely to cause ~~him~~ THE DEFENDANT to be dangerous either to ~~himself~~ THE DEFENDANT'S SELF or others or to the community in the reasonably foreseeable future, and is capable of distinguishing right from wrong and has substantial capacity to conform ~~his~~ THE DEFENDANT'S conduct to requirements of law".

(4) As to any person charged with any crime allegedly committed on or after July 1, 1983, but before July 1, 1995, resulting in commitment by reason of impaired mental condition, the test for determination of a defendant's mental condition for release from commitment, or a defendant's eligibility for conditional release, ~~shall be~~ IS: "That the defendant has no abnormal mental condition ~~which~~ THAT would be likely to cause the defendant to be dangerous either to ~~himself or herself~~ THE DEFENDANT'S SELF or to others or to the community in the reasonably foreseeable future".

**SECTION 24.** In Colorado Revised Statutes, **amend** 16-8-121 as follows:

**16-8-121. Escape - return to institution.** (1) If any defendant, confined in an institution for the care and treatment of persons with behavioral or mental health disorders or intellectual and developmental disabilities under the supervision of the executive director of the department of human services, escapes from ~~such~~ THE institution, it is the duty of the chief officer to apply forthwith to the district court for the county in which the ~~hospital or~~ institution is located for a warrant of arrest directed to the sheriff of the county, commanding ~~him or her~~ THE SHERIFF forthwith to take all necessary legal action to effect the arrest of the defendant and to return ~~him or her~~ THE DEFENDANT promptly to the institution. The fact of an escape becomes a part of the official record of a defendant and must be certified to the committing court as part of the record in any proceeding to determine whether the defendant is eligible for release from commitment or eligible for conditional release.

(2) If any defendant committed to the custody of the executive director of the department of human services and placed in an institution under ~~his or her~~ THE EXECUTIVE DIRECTOR'S supervision has escaped from an institution for the care and treatment of persons with behavioral, mental health, or substance use disorders in another state, the chief officer is authorized to return the defendant to the institution from which ~~he or she~~ THE DEFENDANT escaped. The chief officer is further authorized to effect the return at the expense of the state of Colorado and under such terms and conditions as the chief officer deems suitable.

**SECTION 25.** In Colorado Revised Statutes, 18-1-803, **amend** (1) as follows:

**18-1-803. Impaired mental condition.** (1) Evidence of an impaired mental condition, as defined in section 16-8-102 ~~(2.7)~~, C.R.S. (4), though not legal insanity may be offered in a proper case as bearing upon the capacity of the accused to form the culpable mental state which is an element of the offense charged.

**SECTION 26.** In Colorado Revised Statutes, 25.5-10-237, **amend** (1) as follows:

**25.5-10-237. Terminology.** (1) Whenever the terms "insane", "insanity", "mentally or mental incompetent", "mental incompetency", or "of unsound mind" are used in the laws of the state of Colorado, they ~~shall be deemed to~~ refer to the insane, as defined in ~~section 16-8-101~~, C.R.S. SECTIONS 16-8-101 AND 16-8-101.5, or to a person with an intellectual and developmental disability, as defined in section 25.5-10-202, as the context of the particular law requires.

**SECTION 27.** In Colorado Revised Statutes, 27-65-127, **amend** (1)(a) as follows:

**27-65-127. Imposition of legal disability - deprivation of legal right - restoration - repeal.** (1) (a) When an interested person wishes to obtain a determination as to the imposition of a legal disability or the deprivation of a legal right for a person who has a mental health disorder and who is a danger to the person's self or others, is gravely disabled, or is insane, as defined in ~~section 16-8-101~~ SECTIONS 16-8-101 AND 16-8-101.5, and who is not then subject to proceedings pursuant to this article 65 or part

3 or part 4 of article 14 of title 15, the interested person may petition the court for a specific finding as to the legal disability or deprivation of a legal right. Actions commenced pursuant to this subsection (1) may include but are not limited to actions to determine contractual rights and rights with regard to the operation of motor vehicles.

**SECTION 28. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly; except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect

unless approved by the people at the general election to be held in November 2026 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

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Julie McCluskie  
SPEAKER OF THE HOUSE  
OF REPRESENTATIVES

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James Rashad Coleman, Sr.  
PRESIDENT OF  
THE SENATE

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Vanessa Reilly  
CHIEF CLERK OF THE HOUSE  
OF REPRESENTATIVES

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Esther van Mourik  
SECRETARY OF  
THE SENATE

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

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Jared S. Polis  
GOVERNOR OF THE STATE OF COLORADO