

SB252_L.001

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.SB18-252 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and
2 substitute:

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

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

7 (1) "AVAILABLE BED" MEANS AN INPATIENT BED THAT IS
8 UNOCCUPIED WHEN THE DEPARTMENT'S BEDS THAT ARE DEDICATED TO
9 RESTORATION SERVICES ARE LESS THAN NINETY PERCENT FILLED.

10 (2) "COLLATERAL MATERIALS" MEANS THE RELEVANT POLICE OR
11 OTHER INCIDENT REPORTS AND THE CHARGING DOCUMENTS, EITHER THE
12 CRIMINAL COMPLAINT OR INDICTMENT.

13 ~~(1)~~ (3) "Competency evaluation" includes both court-ordered
14 competency evaluations and second evaluations.

15 ~~(2)~~ (4) "Competency evaluator" means a licensed physician who
16 is a psychiatrist or a licensed psychologist, each of whom is trained in
17 forensic competency assessments, or a psychiatrist who is in forensic
18 training and practicing under the supervision of a psychiatrist with
19 expertise in forensic psychiatry, or a psychologist who is in forensic
20 training and is practicing under the supervision of a licensed psychologist
21 with expertise in forensic psychology.

22 ~~(3)~~ (5) "Competency hearing" means a hearing to determine
23 whether a defendant is competent to proceed.

24 ~~(4)~~ (6) "Competent to proceed" means that the defendant does not
25 have a mental disability or AN INTELLECTUAL AND developmental
26 disability that prevents the defendant from having sufficient present
27 ability to consult with ~~the defendant's~~ HIS OR HER lawyer with a
28 reasonable degree of rational understanding in order to assist in the
29 defense or prevents the defendant from having a rational and factual
30 understanding of the criminal proceedings.

31 ~~(5)~~ (7) "Court-ordered competency evaluation" means a
32 court-ordered examination of a defendant either before, during, or after
33 trial, directed to developing information relevant to a determination of the
34 defendant's competency to proceed at a particular stage of the criminal
35 proceeding, that is performed by a competency evaluator and includes
36 evaluations concerning restoration to competency.

37 ~~(6)~~ (8) "Court-ordered report" means a report of an evaluation,
38 conducted by or under the direction of the department, that is the statutory
39 obligation of the department to prepare when requested to do so by the
40 court.

41 ~~(7)~~ (9) "Criminal proceedings" means trial, sentencing, execution,

1 and any pretrial matter that is not susceptible of fair determination
2 without the personal participation of the defendant.

3 ~~(8)~~ (10) "Department" means the department of human services.

4 ~~(9)~~ "~~Developmental disability~~" means ~~a disability that has~~
5 ~~manifested before the person reaches twenty-two years of age, that~~
6 ~~constitutes a substantial disability to the affected individual, and is~~
7 ~~attributable to mental retardation or other neurological conditions when~~
8 ~~such conditions result in impairment of general intellectual functioning~~
9 ~~or adaptive behavior, similar to that of a person with mental retardation.~~
10 ~~Unless otherwise specifically stated, the federal definition of~~
11 ~~"developmental disability", 42 U.S.C. sec. 15001 et seq., shall DOES not~~
12 ~~apply.~~

13 ~~(10)~~ (11) "Executive director" means the executive director of the
14 department of human services.

15 ~~(11)~~ (12) "Incompetent to proceed" means that, as a result of a
16 mental disability or AN INTELLECTUAL AND developmental disability, the
17 defendant does not have sufficient present ability to consult with ~~the~~
18 ~~defendant's~~ HIS OR HER lawyer with a reasonable degree of rational
19 understanding in order to assist in the defense, or that, as a result of a
20 mental disability or AN INTELLECTUAL AND developmental disability, the
21 defendant does not have a rational and factual understanding of the
22 criminal proceedings.

23 (13) "INPATIENT" MEANS IN THE CUSTODY OF THE DEPARTMENT,
24 EITHER IN A MENTAL HEALTH HOSPITAL OR IN A FULL-TIME, JAIL-BASED
25 RESTORATION PROGRAM DEVELOPED BY THE DEPARTMENT.

26 (14) "INTELLECTUAL AND DEVELOPMENTAL DISABILITY" MEANS A
27 DISABILITY THAT HAS MANIFESTED BEFORE THE PERSON REACHES
28 TWENTY-TWO YEARS OF AGE, THAT CONSTITUTES A SUBSTANTIAL
29 DISABILITY TO THE AFFECTED INDIVIDUAL, AND THAT IS ATTRIBUTABLE TO
30 NEUROLOGICAL CONDITIONS WHEN SUCH CONDITIONS RESULT IN
31 IMPAIRMENT OF GENERAL INTELLECTUAL FUNCTIONING OR ADAPTIVE
32 BEHAVIOR. UNLESS OTHERWISE SPECIFICALLY STATED, THE FEDERAL
33 DEFINITION OF "DEVELOPMENTAL DISABILITY", 42 U.S.C. SEC. 15001 ET
34 SEQ., DOES NOT APPLY.

35 ~~(12)~~ (15) "Mental disability" means a substantial disorder of
36 thought, mood, perception, or cognitive ability that results in marked
37 functional disability, significantly interfering with adaptive behavior.
38 "Mental disability" does not include acute intoxication from alcohol or
39 other substances, or any condition manifested only by antisocial behavior,
40 or any substance abuse impairment resulting from recent use or
41 withdrawal. However, substance abuse that results in a long-term,
42 substantial disorder of thought, mood, or cognitive ability may constitute
43 a mental disability.

44 (16) "OUTPATIENT" MEANS ANY LOCATION OUTSIDE OF THE
45 CUSTODY OF THE DEPARTMENT WHERE THE DEFENDANT CAN ACCESS

1 COMPETENCY RESTORATION SERVICES. "OUTPATIENT" MAY INCLUDE A
2 JAIL OR OTHER DETENTION FACILITY WHERE THE DEFENDANT IS IN
3 CUSTODY OR ANY OTHER OUT-OF-CUSTODY RESTORATION LOCATION.

4 ~~(13)~~ (17) "Restoration hearing" means a hearing to determine
5 whether a defendant who has previously been determined to be
6 incompetent to proceed has become competent to proceed.

7 ~~(14)~~ (18) "Second evaluation" means an evaluation requested by
8 the court, the district attorney, or the defendant that is performed by a
9 competency evaluator and that is not performed by or under the direction
10 of, or paid for by, the department.

11 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-103, amend
12 (1), (3), and (4) as follows:

13 **16-8.5-103. Determination of competency to proceed.**

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

19 (3) Within ~~fourteen~~ SEVEN days after receipt of the court-ordered
20 report, either party may request a hearing or a second COMPETENCY
21 evaluation.

22 (4) If a party requests a second evaluation, any pending requests
23 for a hearing ~~shall~~ MUST be continued until the receipt of the second
24 evaluation report. The report of the expert conducting the second
25 evaluation ~~shall~~ MUST be completed and filed with the court within
26 ~~sixty-three~~ FORTY-TWO days after the court order allowing the second
27 evaluation, unless the time period is extended by the court for good cause.
28 If the second evaluation is requested by the court, it ~~shall~~ MUST be paid
29 for by the court.

30 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-105, amend
31 (1) and (5); and add (6) as follows:

32 **16-8.5-105. Competency evaluations and reports.**

33 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
34 conducted on an ~~outpatient~~ OUT-OF-CUSTODY basis or, if the defendant is
35 in custody, at the place where the defendant is in custody, EXCEPT AS
36 PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION. ~~The defendant shall be~~
37 ~~released on bond if otherwise eligible for bond.~~

38 (II) THE DEFENDANT MUST HAVE BOND SET UNLESS HE OR SHE IS
39 INELIGIBLE FOR BOND PURSUANT TO THE PROVISIONS OF SECTION
40 16-4-101. THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE
41 CONDITIONS OF RELEASE AFTER CONSIDERATION OF THE FACTORS
42 ENUMERATED IN ARTICLE 4 OF THIS TITLE 16, WHICH INCLUDE
43 CONSIDERATION OF THE INFORMATION RECEIVED FROM ANY PRETRIAL
44 SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF SECTION 16-4-106.
45 A REQUEST FOR A COMPETENCY EVALUATION IS NOT A BARRIER TO

1 RELEASE ON BOND, INCLUDING A PERSONAL RECOGNIZANCE BOND, WITH
2 APPROPRIATE AND LEAST RESTRICTIVE CONDITIONS. AS A CONDITION OF
3 ANY BOND, THE COURT SHALL INCLUDE A CONDITION REQUIRING THE
4 DEFENDANT'S COOPERATION WITH THE COMPETENCY EVALUATION ON AN
5 OUTPATIENT AND OUT-OF-CUSTODY BASIS.

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

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

15 ~~(I) The court finds the defendant may be a danger to self or others~~
16 ~~as defined in section 27-65-102, C.R.S.;~~

17 ~~(II) The court finds that an inadequate competency evaluation and~~
18 ~~report has been completed or two or more conflicting competency~~
19 ~~evaluations and reports have been completed;~~

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

22 ~~(IV) The court receives a recommendation from the Colorado~~
23 ~~mental health institute at Pueblo court services evaluator that conducting~~
24 ~~the evaluation at the Colorado mental health institute at Pueblo is~~
25 ~~appropriate because the evaluator conducting the evaluation for the~~
26 ~~Colorado mental health institute at Pueblo determines that the defendant~~
27 ~~has been uncooperative or the defendant has clinical needs that warrant~~
28 ~~transfer to the Colorado mental health institute at Pueblo; or~~

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

33 (I) THE DEPARTMENT PROVIDES A RECOMMENDATION TO THE
34 COURT, AFTER CONSULTATION WITH THE DEFENDANT, THAT CONDUCTING
35 THE COMPETENCY EVALUATION ON AN INPATIENT BASIS IS CLINICALLY
36 APPROPRIATE; OR

37 (II) EXTRAORDINARY CIRCUMSTANCES RELATING TO THE CASE OR
38 THE DEFENDANT MAKE CONDUCTING THE COMPETENCY EVALUATION ON
39 AN INPATIENT BASIS NECESSARY AND APPROPRIATE.

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

43 (b.5) WHEN THE COURT ORDERS AN INPATIENT EVALUATION, THE
44 COURT SHALL ADVISE THE DEFENDANT THAT RESTORATION SERVICES MAY
45 COMMENCE IMMEDIATELY IF THE EVALUATION CONCLUDES THE

.1 DEFENDANT IS INCOMPETENT TO PROCEED, UNLESS EITHER PARTY OBJECTS
2 AT THE TIME OF THE ADVISEMENT, OR WITHIN SEVENTY-TWO HOURS AFTER
3 THE RECEIPT OF THE WRITTEN EVALUATION SUBMITTED TO THE COURT.
4 THE COURT SHALL RECORD ANY OBJECTION TO THE ORDER OF
5 COMMITMENT TO THE DEPARTMENT.

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

10 (d) If a defendant is in THE DEPARTMENT'S custody at the Colorado
11 ~~mental health institute at Pueblo~~ for purposes of the COMPETENCY
12 evaluation ordered pursuant to this article ARTICLE 8.5 and the defendant
13 has completed the ~~evaluation and must be returned to~~ COMPETENCY
14 EVALUATION AND THE EVALUATOR HAS CONCLUDED THAT THE
15 DEFENDANT IS COMPETENT TO PROCEED, THE DEPARTMENT MAY RETURN
16 THE DEFENDANT TO A COUNTY JAIL OR TO THE COMMUNITY, AS DETERMINED
17 BY THE DEFENDANT'S BOND STATUS. IF THE EVALUATOR HAS CONCLUDED
18 THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THAT INPATIENT
19 RESTORATION SERVICES ARE NOT CLINICALLY APPROPRIATE, AND
20 OUTPATIENT RESTORATION SERVICES ARE AVAILABLE TO THE DEFENDANT
21 IN THE COUNTY JAIL OR IN THE COMMUNITY, THE DEPARTMENT MAY
22 RETURN THE DEFENDANT TO A COUNTY JAIL OR TO THE COMMUNITY. IF
23 THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE COUNTY JAIL, the
24 ~~county~~ sheriff in the jurisdiction where the defendant must return shall
25 ~~make all reasonable efforts to take custody of the defendant as soon as~~
26 ~~practicable once the defendant's evaluation is completed~~ TAKE CUSTODY
27 OF THE DEFENDANT WITHIN SEVENTY-TWO HOURS AFTER RECEIVING
28 NOTIFICATION FROM THE DEPARTMENT THAT THE DEFENDANT'S
29 COMPETENCY EVALUATION IS COMPLETE. AT THE TIME THE DEPARTMENT
30 NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO NOTIFY THE COURT
31 THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY
32 OF THE JAIL.

33 (e) Nothing in this section ~~shall restrict~~ RESTRICTS the right of the
34 defendant to procure ~~an~~ A COMPETENCY evaluation as provided in ~~section~~
35 ~~16-8.5-107~~ SECTION 16-8.5-106.

36 (5) The ~~report of evaluation shall~~ COMPETENCY EVALUATION
37 REPORT MUST include but need not be limited to:

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

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

45 (c) A diagnosis and prognosis of the defendant's mental disability

1 or INTELLECTUAL AND developmental disability; and
2 (d) An opinion as to whether the defendant suffers from a mental
3 disability or INTELLECTUAL AND developmental disability; and
4 (e) An opinion as to whether the defendant is competent to
5 proceed;
6 (f) IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
7 DEFENDANT IS INCOMPETENT TO PROCEED:
8 (I) AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL
9 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
10 ATTAIN COMPETENCY WITHIN THE TIME ALLOWED PURSUANT TO SECTION
11 16-8.5-116;
12 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
13 RESTORATION SERVICES ARE CLINICALLY APPROPRIATE TO RESTORE THE
14 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
15 NOT CLINICALLY APPROPRIATE, THE DEPARTMENT MUST DETAIL THE
16 OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES AVAILABLE
17 TO THE DEFENDANT.
18 (g) IF AVAILABLE, A DESCRIPTION OF ALL COMPETENCY
19 EVALUATIONS OR RESTORATION SERVICES THAT WERE PREVIOUSLY
20 PROVIDED TO THE DEFENDANT; AND
21 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
22 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
23 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
24 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
25 TITLE 27.
26 (6) (a) IF THE COMPETENCY EVALUATION CONCLUDES THAT THE
27 DEFENDANT IS INCOMPETENT TO PROCEED, THE DEPARTMENT MAY
28 INITIATE RESTORATION SERVICES UNLESS EITHER PARTY OBJECTS WITHIN
29 SEVENTY-TWO HOURS AFTER THE RECEIPT OF THE COMPETENCY
30 EVALUATION REPORT OR HAS OBJECTED AT THE TIME OF THE ORDER FOR
31 A COMPETENCY EVALUATION PURSUANT TO SUBSECTION (1)(b.5) OF THIS
32 SECTION. ANY OBJECTION MUST BE PROVIDED TO THE DEPARTMENT ON A
33 FORTHWITH BASIS.
34 (b) IF EITHER PARTY OBJECTS, RESTORATION SERVICES WILL NOT
35 COMMENCE AND THE DEPARTMENT MAY RETURN THE DEFENDANT TO THE
36 COUNTY JAIL OR TO THE COMMUNITY, DEPENDING UPON THE DEFENDANT'S
37 BOND STATUS. IF THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE
38 COUNTY JAIL, THE SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT
39 MUST RETURN SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN
40 SEVENTY-TWO HOURS AFTER RECEIVING NOTIFICATION FROM THE
41 DEPARTMENT. AT THE TIME THE DEPARTMENT NOTIFIES THE SHERIFF, THE
42 DEPARTMENT SHALL ALSO NOTIFY THE COURT THAT THE DEPARTMENT IS
43 RETURNING THE DEFENDANT TO THE CUSTODY OF THE JAIL.
44 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-111, **amend**
45 **(2); and add (3) as follows:**

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

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

10 (II) If the defendant is in custody, the court may release the
11 defendant on bond ~~upon compliance with the standards and procedures~~
12 ~~for such release prescribed by statute and by~~ CONSISTENT WITH ARTICLE
13 4 OF THIS TITLE 16 AND the Colorado rules of criminal procedure. As a
14 condition of SUCH bond, the court ~~may~~ SHALL ORDER THAT THE
15 RESTORATION TAKE PLACE ON AN OUTPATIENT AND OUT-OF-CUSTODY
16 BASIS. THE COURT MAY require the defendant to obtain any OUTPATIENT
17 treatment or habilitation services that are available to the defendant, such
18 as ~~inpatient or~~ outpatient treatment at a community mental health center
19 or in any other appropriate OUTPATIENT treatment setting, as determined
20 by the court. Nothing in this section authorizes the court to order
21 community mental health centers or other providers to provide treatment
22 for persons not otherwise eligible for these services. ~~At any hearing to~~
23 ~~determine eligibility for release on bond, the court shall consider any~~
24 ~~effect the defendant's incompetency may have on the court's ability to~~
25 ~~ensure the defendant's presence for hearing or trial. There is a~~
26 ~~presumption that the defendant's incompetency will inhibit the defendant's~~
27 ~~ability to ensure his or her presence for trial. Pursuant to section~~
28 ~~27-60-105, the office of behavioral health is the entity responsible for the~~
29 ~~oversight of restoration education and coordination of services necessary~~
30 ~~to competency restoration~~ THE INDIVIDUAL AGENCY RESPONSIBLE FOR
31 PROVIDING OUTPATIENT RESTORATION SERVICES FOR THE DEFENDANT
32 SHALL NOTIFY THE COURT WITHIN TWENTY-EIGHT DAYS AFTER BEGINNING
33 OR ATTEMPTING TO BEGIN RESTORATION SERVICES IF THE DEFENDANT IS
34 UNCOOPERATIVE WITH ACCEPTING RESTORATION SERVICES. PURSUANT TO
35 SECTION 27-60-105, THE DEPARTMENT IS THE ENTITY RESPONSIBLE FOR
36 THE DEVELOPMENT OF RESTORATION CURRICULA AND NECESSARY
37 TRAINING TO CREATE OUTPATIENT RESTORATION SERVICES IN ANY
38 SETTING.

39 (b) ~~If the court finds that the defendant is not eligible for release~~
40 ~~from custody, the court may commit the defendant to the custody of the~~
41 ~~department, in which case the executive director has the same powers~~
42 ~~with respect to commitment as the executive director has following a~~
43 ~~commitment under section 16-8-105.5 (4). At such time as the department~~
44 ~~recommends to the court that the defendant is restored to competency, the~~
45 ~~defendant may be returned to custody of the county jail or to previous~~

1 ~~bond status~~ IF THE DEFENDANT IS NOT RELEASED FROM CUSTODY, THE
2 COURT SHALL ORDER THE DEPARTMENT TO PROVIDE RESTORATION
3 SERVICES AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY, IF THE
4 DEPARTMENT HAS RECOMMENDED OUTPATIENT RESTORATION SERVICES
5 AND IF THE DEPARTMENT HAS NO AVAILABLE BEDS FOR INPATIENT
6 RESTORATION SERVICES. THE DEPARTMENT SHALL BEGIN INPATIENT
7 RESTORATION SERVICES AS SOON AS PRACTICABLE AFTER THE COURT'S
8 ORDER. A JAIL WHERE A DEFENDANT IS RECEIVING INPATIENT
9 RESTORATION SERVICES SHALL PROVIDE THE RESTORATION AGENCY WITH
10 FACE-TO-FACE ACCESS IN A PRIVATE SETTING TO FACILITATE RESTORATION
11 SERVICES.

12 (c) THE COURT MAY ORDER INPATIENT RESTORATION SERVICES
13 UNDER ONE OF THE FOLLOWING EXCEPTIONS:

14 (I) THE COURT MAY COMMIT THE DEFENDANT TO THE CUSTODY OF
15 THE DEPARTMENT IF THE DEPARTMENT HAS RECOMMENDED THAT
16 RESTORATION SERVICES BE PROVIDED ON AN INPATIENT BASIS PURSUANT
17 TO SECTION 16-8.5-105 (5)(f)(II); OR

18 (II) IF THE COURT HAS ORDERED OUTPATIENT RESTORATION
19 SERVICES AND THE DEPARTMENT REPORTS THAT IT IS UNABLE TO PROVIDE
20 RESTORATION SERVICES ON AN OUTPATIENT BASIS, THE COURT MAY
21 COMMIT THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT FOR
22 INPATIENT RESTORATION SERVICES UNTIL SUCH TIME AS THE DEPARTMENT
23 IS ABLE TO PROVIDE OUTPATIENT RESTORATION SERVICES, AT WHICH POINT
24 THE DEPARTMENT MAY DISCHARGE THE DEFENDANT AND BEGIN OR
25 RESUME PROVIDING SERVICES ON AN OUTPATIENT BASIS, SUBJECT TO THE
26 PROVISIONS OF SECTION 16-8.5-116.

27 (d) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
28 THE DEPARTMENT, THE EXECUTIVE DIRECTOR HAS THE SAME POWERS WITH
29 RESPECT TO A COMMITMENT PROVIDED FOR IN SECTION 16-8-105.5 (4).

30 (e) IF A COURT HAS ORDERED INPATIENT RESTORATION SERVICES
31 AND THE DEPARTMENT DOES NOT HAVE AN AVAILABLE BED FOR THE
32 DEFENDANT, AND THE DEPARTMENT SO ADVISES THE COURT, THE
33 DEPARTMENT SHALL PROVIDE RESTORATION SERVICES ON AN OUTPATIENT
34 BASIS AS SOON AS PRACTICABLE UNTIL THE DEPARTMENT CAN OFFER
35 ADMISSION TO THE DEFENDANT.

36 (f) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
37 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
38 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
39 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, AND
40 CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,
41 HAS THE AUTHORITY TO MOVE THE DEFENDANT TO A LESS RESTRICTIVE
42 FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS
43 NOT YET RESTORED TO COMPETENCY BUT HE OR SHE COULD BE PROPERLY
44 RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY.

45 (g) AT SUCH TIME AS THE DEPARTMENT RECOMMENDS TO THE

.1 COURT THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE
2 DEFENDANT MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, IF
3 THE DEFENDANT IS NOT ON BOND OR SUMMONS, OR TO PREVIOUS BOND
4 STATUS. IF THE RECOMMENDATION IS TO RETURN THE DEFENDANT TO THE
5 CUSTODY OF THE COUNTY JAIL, THE DEPARTMENT SHALL NOTIFY THE
6 SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT IS TO BE RETURNED,
7 AND THE SHERIFF SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN
8 SEVENTY-TWO HOURS AFTER RECEIVING SUCH NOTIFICATION. AT THE TIME
9 THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO
10 NOTIFY THE COURT THAT THE DEPARTMENT IS RETURNING THE DEFENDANT
11 TO THE CUSTODY OF THE JAIL.

12 (3) FOR A DEFENDANT WHO IS RECEIVING OUTPATIENT AND
13 IN-CUSTODY RESTORATION SERVICES, THE COURT SHALL REVIEW THE CASE
14 EVERY THIRTY DAYS TO ASSESS THE CLINICAL STATUS OF THE DEFENDANT
15 AND HIS OR HER PROGRESS TOWARD RESTORATION. AT THAT TIME, THE
16 COURT SHALL ALSO REVIEW THE INDIVIDUAL CIRCUMSTANCES OF THE
17 DEFENDANT TO DETERMINE IF HE OR SHE SHOULD BE RELEASED ON BOND
18 WITH APPROPRIATE CONDITIONS PURSUANT TO THE PROVISIONS OF THIS
19 SECTION AND SECTION 4 OF THIS ARTICLE 16.

20 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-113, **amend**
21 (2) and (3) as follows:

22 **16-8.5-113. Restoration to competency.** (2) Within fourteen
23 SEVEN days after receipt of a report from the department or other
24 court-approved provider of restoration services certifying that the
25 defendant is competent to proceed, either party may request a hearing or
26 a second evaluation. The court shall determine whether to allow the
27 second evaluation or proceed to a hearing on competency. If the second
28 evaluation is requested by the court or by an indigent defendant, it ~~shall~~
29 MUST be paid for by the court.

30 (3) If a second evaluation is allowed, any pending requests for a
31 hearing ~~shall~~ MUST be continued until receipt of the second evaluation
32 report. The report of the expert conducting the second evaluation report
33 ~~shall~~ MUST be completed and filed with the court within ~~sixty-three~~
34 FORTY-TWO days after the court order allowing the second evaluation,
35 unless the time period is extended by the court after a finding of good
36 cause.

37 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-114, **amend**
38 (2) as follows:

39 **16-8.5-114. Procedure after hearing concerning restoration to**
40 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
41 the court determines that the defendant remains incompetent to proceed,
42 the court may continue or modify any orders entered at the time of the
43 original determination of incompetency and may commit or recommit the
44 defendant or enter any new order necessary to facilitate the defendant's
45 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS

1 OF SECTION 16-8.5-111.

2 SECTION 7. In Colorado Revised Statutes, **repeal and reenact,**
3 **with amendments,** 16-8.5-116 as follows:

4 **16-8.5-116. Certification - reviews - termination of**
5 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS SET FORTH IN
6 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, WHICHEVER IS SHORTEST,
7 A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
8 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
9 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
10 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
11 IMPOSED FOR THE MOST SERIOUS OFFENSE WITH WHICH THE DEFENDANT
12 IS CHARGED, LESS ANY TIME CREDITS THE DEFENDANT WOULD BE
13 ENTITLED TO PURSUANT TO ARTICLE 22.5 OF TITLE 17 AND SECTION
14 17-26-109. AT THE END OF SUCH TIME PERIOD, THE COURT SHALL DISMISS
15 THE CHARGES, AND CERTIFICATION PROCEEDINGS OR PROVISION OF
16 SERVICES, IF ANY, MUST BE GOVERNED BY ARTICLE 65 OR 10.5 OF TITLE 27.

17 (2) AT LEAST EVERY THREE MONTHS, THE COURT SHALL REVIEW
18 THE CASE OF A DEFENDANT WHO HAS BEEN DETERMINED TO BE
19 INCOMPETENT TO PROCEED WITH REGARD TO THE PROBABILITY THAT THE
20 DEFENDANT WILL EVENTUALLY BE RESTORED TO COMPETENCY AND WITH
21 REGARD TO THE JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE
22 REVIEW MAY BE HELD IN CONJUNCTION WITH A RESTORATION HEARING
23 HELD PURSUANT TO SECTION 16-8.5-113. PRIOR TO EACH REVIEW, THE
24 INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE
25 COURT WITH A CURRENT REPORT REGARDING:

- 26 (a) THE DEFENDANT'S COMPETENCY;
27 (b) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
28 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
29 PERIODS SET FORTH IN THIS SECTION; AND
30 (c) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
31 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
32 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27.

33 (3) IF THE DEFENDANT IS CHARGED WITH A MISDEMEANOR, A
34 MISDEMEANOR DRUG OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE
35 OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1), AND HAS BEEN
36 COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR OTHERWISE
37 CONFINED AS A RESULT OF A DETERMINATION OF INCOMPETENCY TO
38 PROCEED, THE FOLLOWING PROVISIONS APPLY:

- 39 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY
40 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
41 AN AGGREGATE TIME OF THREE MONTHS, EXCLUDING TIME RESULTING
42 FROM A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR
43 TREATMENT, THE COURT SHALL HOLD A REVIEW HEARING. IF THE COURT
44 DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT
45 REMAINS INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL

1 PROBABILITY THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN
2 THE NEXT THREE MONTHS, THE COURT SHALL DISMISS THE CHARGES
3 AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (6)
4 OF THIS SECTION.

5 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
6 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
7 WITHIN THE NEXT THREE MONTHS, RESTORATION SERVICES MAY
8 CONTINUE, AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS
9 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION; OR

10 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
11 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
12 AGGREGATE TIME OF SIX MONTHS, EXCLUDING TIME RESULTING FROM A
13 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, AND
14 THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE
15 DEFENDANT IS NOT RESTORED TO COMPETENCY, THE COURT SHALL DISMISS
16 THE CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF
17 SUBSECTION (6) OF THIS SECTION.

18 (4) IF THE DEFENDANT IS CHARGED WITH A CLASS 5 OR CLASS 6
19 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION
20 24-4.1-302 (1); WITH A CLASS 3 OR CLASS 4 DRUG FELONY; OR WITH ANY
21 MISDEMEANOR OFFENSE THAT IS NOT INCLUDED IN SUBSECTION (3)(a) OF
22 THIS SECTION, AND HAS BEEN COMMITTED TO THE CUSTODY OF THE
23 DEPARTMENT OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION
24 OF INCOMPETENCY TO PROCEED, THE FOLLOWING PROVISIONS APPLY:

25 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY
26 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
27 AN AGGREGATE TIME OF ONE YEAR, EXCLUDING TIME RESULTING FROM A
28 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, THE
29 COURT SHALL HOLD A REVIEW HEARING. IF THE COURT DETERMINES,
30 BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT REMAINS
31 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
32 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
33 WITHIN THE NEXT SIX MONTHS, THEN THE COURT SHALL DISMISS THE
34 CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF
35 SUBSECTION (6) OF THIS SECTION.

36 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
37 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
38 WITHIN THE NEXT SIX MONTHS, RESTORATION SERVICES MAY CONTINUE
39 AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS PROVIDED FOR
40 IN SUBSECTION (2) OF THIS SECTION.

41 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
42 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
43 AGGREGATE TIME OF EIGHTEEN MONTHS, EXCLUDING TIME RESULTING
44 FROM A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR
45 TREATMENT, AND THE COURT DETERMINES, BASED ON AVAILABLE

1 EVIDENCE, THAT THE DEFENDANT IS NOT RESTORED TO COMPETENCY,
2 THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT,
3 SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION.

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

11 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY
12 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
13 AN AGGREGATE TIME OF THREE YEARS, EXCLUDING TIME RESULTING FROM
14 A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, THE
15 COURT SHALL HOLD A REVIEW HEARING. IF THE COURT DETERMINES,
16 BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT REMAINS
17 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
18 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
19 WITHIN THE NEXT YEAR, THEN THE COURT SHALL DISMISS THE CHARGES
20 AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (6)
21 OF THIS SECTION.

22 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
23 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
24 WITHIN THE NEXT YEAR, RESTORATION SERVICES MAY CONTINUE AND THE
25 COURT SHALL CONTINUE TO REVIEW THE CASE AS PROVIDED FOR IN
26 SUBSECTION (2) OF THIS SECTION.

27 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
28 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
29 AGGREGATE TIME OF FOUR YEARS, EXCLUDING TIME RESULTING FROM A
30 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, AND
31 THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE
32 DEFENDANT IS NOT RESTORED TO COMPETENCY, THEN THE COURT SHALL
33 DISMISS THE CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE
34 PROVISIONS OF SUBSECTION (6) OF THIS SECTION, UNLESS ANY PARTY
35 OBJECTS TO DISMISSAL.

36 (c) IF A PARTY OBJECTS TO DISMISSAL OF CHARGES PURSUANT TO
37 SUBSECTION (5)(b) OF THIS SECTION, THE COURT SHALL SET THE MATTER
38 FOR A HEARING. UPON COMPLETION OF THE HEARING, THE COURT SHALL
39 DISMISS THE CHARGES UNLESS THE COURT DETERMINES THAT THERE IS A
40 COMPELLING PUBLIC INTEREST IN CONTINUING THE PROSECUTION AND
41 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL ATTAIN
42 COMPETENCY IN THE FORESEEABLE FUTURE. IF THE COURT DECLINES TO
43 DISMISS THE CHARGES, THE COURT SHALL ADDRESS THE APPROPRIATENESS
44 OF CONTINUED CONFINEMENT AND MAY ALTER OR REDUCE BOND IF
45 APPROPRIATE PURSUANT TO ARTICLE 4 OF TITLE 16 OR THE DECISION TO

1 COMMIT THE DEFENDANT TO THE DEPARTMENT PURSUANT TO SECTION
2 16-8.5-111.

3 (6) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO
4 SUBSECTION (3), (4), OR (5) OF THIS SECTION, THE COURT SHALL IDENTIFY
5 WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION
6 PURSUANT TO ARTICLE 65 OF TITLE 27 OR FOR THE PROVISION OF SERVICES
7 PURSUANT TO ARTICLE 10.5 OF TITLE 27. IF THE COURT FINDS THE
8 REQUIREMENTS FOR EITHER ARE MET, THE COURT MAY STAY THE
9 DISMISSAL FOR TWENTY-ONE DAYS AND NOTIFY THE DEPARTMENT AND
10 COUNTY ATTORNEY IN THE RELEVANT JURISDICTION OF THE PENDING
11 DISMISSAL SO AS TO PROVIDE THE DEPARTMENT OR THE COUNTY
12 ATTORNEY, AS APPROPRIATE, WITH THE OPPORTUNITY TO PURSUE
13 CERTIFICATION PROCEEDINGS OR THE PROVISION OF SERVICES.

14 (7) NOTWITHSTANDING THE TIME PERIODS PROVIDED IN
15 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, FOR ANY OFFENSE FOR
16 WHICH THE DEFENDANT REMAINS CONFINED AS A RESULT OF A
17 DETERMINATION OF INCOMPETENCY TO PROCEED FOR A PERIOD OF TIME IN
18 EXCESS OF ONE YEAR, IF THE COURT DETERMINES, BASED ON AVAILABLE
19 EVIDENCE, THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
20 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
21 FORESEEABLE FUTURE, THE COURT MAY ORDER THE DEFENDANT'S
22 RELEASE FROM COMMITMENT PURSUANT TO THIS ARTICLE 8.5 THROUGH
23 ONE OR MORE OF THE FOLLOWING MEANS:

24 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
25 OR, ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
26 PROCEEDING, THE COMMITMENT, OR THE RESTORATION SERVICES ORDER;

27 (b) THE COURT MAY COMMENCE CERTIFICATION PROCEEDINGS
28 PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27 IF THE
29 DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO
30 SAID ARTICLE 65; OR

31 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
32 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
33 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
34 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
35 PURSUANT TO ARTICLE 10.5 OF TITLE 27.

36 (8) IN EACH CASE, THE COURT SHALL ENTER A WRITTEN DECISION
37 OUTLINING WHY THE COURT DID OR DID NOT TERMINATE THE CRIMINAL
38 PROCEEDING.

39 (9) IF CHARGES AGAINST A DEFENDANT ARE DISMISSED PURSUANT
40 TO THIS SECTION, SUCH CHARGES ARE NOT ELIGIBLE FOR SEALING
41 PURSUANT TO SECTION 24-73-702.5.

42 (10) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
43 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE
44 8.5.

45 **SECTION 8.** In Colorado Revised Statutes, 13-1-137, **amend**

1 (1)(d) and (1)(e); and add (1)(f) as follows:

2 **13-1-137. Reporting of data concerning juvenile proceedings**
3 **and determinations of competency to proceed.** (1) Notwithstanding
4 section 24-1-136 (11)(a)(I), the judicial branch shall report annually to the
5 judiciary committees of the house of representatives and senate, or to any
6 successor committees, information concerning:

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

10 (e) The number of juvenile delinquency cases that involved a
11 detention hearing, the number of juveniles who were released after the
12 detention hearing, and the number of juveniles who remained in detention
13 after the detention hearing; AND

14 (f) THE PROCESS OF TRAINING JUDICIAL OFFICERS CONCERNING
15 DETERMINATIONS OF COMPETENCY TO PROCEED FOR JUVENILES AND
16 ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES TO RESTORE
17 COMPETENCY; AND CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE
18 65 OF TITLE 27.

19 **SECTION 9.** In Colorado Revised Statutes, 20-1-111, add (4)(c)
20 as follows:

21 **20-1-111. District attorneys may cooperate or contract -**
22 **contents.** (4) (c) THE GENERAL ASSEMBLY SHALL MAKE AN
23 APPROPRIATION TO THE DEPARTMENT OF LAW FOR STATE FISCAL YEAR
24 2018-19 FOR ALLOCATION TO THE STATEWIDE ORGANIZATION
25 REPRESENTING DISTRICT ATTORNEYS, FOR THE PUBLIC PURPOSE OF
26 PROVIDING PROSECUTION TRAINING CONCERNING DETERMINATIONS OF
27 COMPETENCY TO PROCEED FOR JUVENILES AND ADULTS, COMPETENCY
28 EVALUATION REPORTS, SERVICES TO RESTORE COMPETENCY, AND
29 CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

30 **SECTION 10.** In Colorado Revised Statutes, 21-1-104, amend
31 (4)(d) and (4)(e); and add (4)(f) as follows:

32 **21-1-104. Duties of public defender.** (4) Notwithstanding
33 section 24-1-136 (11)(a)(I), pursuant to section 2-7-203, the state public
34 defender shall report annually to the judiciary committees of the house of
35 representatives and senate, or to any successor committees, information
36 concerning:

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

39 (e) The outcome of efforts to reduce juvenile court rotations and
40 increase opportunities for promotional advancement in salaries for
41 attorneys in juvenile court; AND

42 (f) THE PROCESS OF TRAINING JUDICIAL OFFICERS CONCERNING
43 DETERMINATIONS OF COMPETENCY TO PROCEED FOR JUVENILES AND
44 ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES TO RESTORE
45 COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE

1 65 OF TITLE 27.

2 **SECTION 11.** In Colorado Revised Statutes, 21-2-104, **amend**
3 (3)(d) and (3)(e); and **add** (3)(f) as follows:

4 **21-2-104. Duties of alternate defense counsel and contract**
5 **attorneys.**

6 (3) Pursuant to section 2-7-203, C.R.S., the office of alternate
7 defense counsel shall report annually to the judiciary committees of the
8 house of representatives and senate, or to any successor committees,
9 information concerning:

10 (d) The average length of time attorneys are assigned to juvenile
11 court; **and**

12 (e) The outcome of efforts to reduce juvenile court rotations and
13 increase opportunities for promotional advancement in salaries for
14 attorneys in juvenile court; **AND**

15 (f) **THE PROCESS OF TRAINING JUDICIAL OFFICERS CONCERNING**
16 **DETERMINATIONS OF COMPETENCY TO PROCEED FOR JUVENILES AND**
17 **ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES TO RESTORE**
18 **COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE**
19 **65 OF TITLE 27.**

20 **SECTION 12.** In Colorado Revised Statutes, 19-2-1301, **amend**
21 (2) as follows:

22 **19-2-1301. Mental incompetency to proceed - effect - how and**
23 **when raised.** (2) A juvenile shall not be tried or sentenced if the juvenile
24 is incompetent to proceed, as defined in section 16-8.5-101 ~~(11)~~, C.R.S.
25 (12), at that stage of the proceedings against him or her.

26 **SECTION 13.** In Colorado Revised Statutes, 19-2-1302, **amend**
27 (4)(c) as follows:

28 **19-2-1302. Determination of incompetency to proceed.**
29 (4) (c) The competency evaluation ~~shall~~ **MUST**, at a minimum, include an
30 opinion regarding whether the juvenile is competent to proceed as defined
31 in section 16-8.5-101 ~~(4)~~, C.R.S: (6). If the evaluation concludes the
32 juvenile is incompetent to proceed, the evaluation ~~shall~~ **MUST** include a
33 recommendation as to whether the juvenile may be restored to
34 competency and identify appropriate services to restore the juvenile to
35 competency.

36 **SECTION 14.** In Colorado Revised Statutes, 19-2-1304, **amend**
37 (1) as follows:

38 **19-2-1304. Restoration to competency.** (1) The court may order
39 a restoration hearing, as defined in section 16-8.5-101 ~~(13)~~, C.R.S: (17),
40 at any time on its own motion, on motion of the prosecuting attorney, or
41 on motion of the juvenile. The court shall order a hearing if a mental
42 health professional who has been treating the juvenile files a report
43 certifying that the juvenile is ~~mentally~~ **mentally** competent to proceed.

44 **SECTION 15. Effective date.** This act takes effect February 1,
45 2019.

1 **SECTION 16. Safety clause.** The general assembly hereby finds,
2 determines, and declares that this act is necessary for the immediate
3 preservation of the public peace, health, and safety."

4

** ** ** ** **