

HOUSE COMMITTEE OF REFERENCE REPORT

Chair of Committee

Date

February 16, 2022

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB22-1061 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

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

3 "SECTION 1. In Colorado Revised Statutes, 16-8-105.5, amend
4 (4) and (5) as follows:

5 **16-8-105.5. Procedure after plea for offenses committed on or**
6 **after July 1, 1995.** (4) (a) (I) IF THE TRIER OF FACT FINDS THE
7 DEFENDANT NOT GUILTY BY REASON OF INSANITY, AT THE REQUEST OF THE
8 DEFENDANT, THE COURT MAY CONTINUE THE BOND PURSUANT TO SECTION
9 16-4-108 TO ALLOW THE DEFENDANT TO REMAIN AT LIBERTY OR SET A
10 HEARING TO MODIFY THE BOND PURSUANT TO SECTION 16-4-109 AND
11 DELAY FINAL DISPOSITION, DELAY FORMAL ENTRY OF THE FINDING OF NOT
12 GUILTY BY REASON OF INSANITY, AND STAY THE COMMITMENT OF THE
13 DEFENDANT TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES
14 PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION UNTIL THE CONCLUSION
15 OF THE INITIAL RELEASE HEARING REQUIRED PURSUANT TO SECTION
16 16-8-115 (1)(a). IF THE DEFENDANT IS ON BOND, THE COURT SHALL ORDER
17 THE DEPARTMENT OF HUMAN SERVICES TO CONDUCT A RELEASE
18 EXAMINATION ON AN OUTPATIENT BASIS, AS WELL AS ANY OTHER
19 APPROPRIATE CONDITIONS OF RELEASE, INCLUDING PARTICIPATION IN
20 OUTPATIENT TREATMENT.

21 (II) IN DETERMINING WHETHER TO CONTINUE OR MODIFY THE
22 BOND, THE COURT SHALL CONSIDER THE CRITERIA DESCRIBED IN SECTION
23 16-4-103, AS WELL AS THAT THE DEFENDANT WAS FOUND NOT GUILTY BY
24 REASON OF INSANITY RATHER THAN CONVICTED, THE DEFENDANT'S
25 TREATMENT NEEDS, THE AVAILABILITY OF TREATMENT IN THE
26 COMMUNITY, THE ABILITY OF THE DEPARTMENT OF HUMAN SERVICES TO
27 CONDUCT A RELEASE EVALUATION IN THE COMMUNITY, WHETHER THE

1 DEPARTMENT OF HUMAN SERVICES CAN TIMELY ADMIT THE DEFENDANT,
2 AND THE USEFULNESS OF AN OBSERVATION PERIOD AS PART OF THE
3 RELEASE EVALUATION.

4 (III) (A) THE COURT SHALL NOT DELAY THE FINAL DISPOSITION
5 AND ENTRY OF FINDING OF NOT GUILTY BY REASON OF INSANITY UNLESS
6 THE DEFENDANT IS AT LIBERTY AND REQUESTS A DELAY, IN WHICH CASE
7 THE COURT MAY DELAY THE FINAL DISPOSITION TO ALLOW THE
8 DEFENDANT TO POST BOND FOR AN OUTPATIENT RELEASE EXAMINATION.

9 (B) IF THE DEFENDANT IS ON BOND, THE DISTRICT ATTORNEY OR
10 A BONDING COMMISSIONER MAY FILE WITH THE COURT A VERIFIED MOTION
11 TO REVOKE THE DEFENDANT'S BOND PURSUANT TO SECTION 16-4-109;
12 EXCEPT THAT, IF THE COURT FINDS THE DEFENDANT VIOLATED A BOND
13 CONDITION, THE COURT MAY REVOKE THE BOND AND ENTER THE FINAL
14 DISPOSITION OF NOT GUILTY BY REASON OF INSANITY AND ORDER THE
15 DEFENDANT COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES.

16 (IV) THIS SUBSECTION (4)(a) DOES NOT APPLY IF THE COURT FINDS
17 THAT THE CRIME FOR WHICH THE DEFENDANT IS FOUND NOT GUILTY BY
18 REASON OF INSANITY:

19 (A) IS A CLASS 1 OR CLASS 2 FELONY;

20 (B) RESULTED IN ANOTHER PERSON SUFFERING SERIOUS BODILY
21 INJURY OR DEATH;

22 (C) INVOLVED THE DEFENDANT USING A DEADLY WEAPON; OR

23 (D) INVOLVED FELONY UNLAWFUL SEXUAL BEHAVIOR PURSUANT
24 TO SECTION 16-22-102 (9).

25 (b) If the trier of fact finds the defendant not guilty by reason of
26 insanity, UNLESS DELAYED PURSUANT TO SUBSECTION (4)(a) OF THIS
27 SECTION, the court shall commit the defendant to the custody of the
28 department of human services until such time as the defendant is found
29 eligible for release. The executive director of the department of human
30 services shall designate the state facility at which the defendant ~~shall be~~
31 is held for care and psychiatric treatment and may transfer the defendant
32 from one facility to another if in the opinion of the director it is desirable
33 to do so in the interest of the proper care, custody, and treatment of the
34 defendant or the protection of the public or the personnel of the facilities
35 in question.

36 (5) This section ~~shall apply~~ APPLIES to offenses committed on or
37 after July 1, 1995; EXCEPT THAT SUBSECTION (4)(a) OF THIS SECTION
38 APPLIES TO INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY ON
39 OR AFTER SEPTEMBER 1, 2022.

40 **SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend** (1);
41 and **add** (2.5) as follows:

42 **16-8-115. Release from commitment after verdict of not guilty**
43 **by reason of insanity or not guilty by reason of impaired mental**

1 **condition.** (1) (a) (I) UPON AN INITIAL COMMITMENT FOLLOWING A
2 FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION
3 16-8-105.5 (4)(b), OR UPON DELAYING FINAL ENTRY OF THE FINDING OF
4 NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8.5-105.5
5 (4)(a), THE COURT SHALL SCHEDULE AN INITIAL RELEASE HEARING NO
6 LATER THAN ONE HUNDRED AND TWENTY DAYS FROM THE INITIAL
7 COMMITMENT. THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN
8 SERVICES TO COMPLETE A RELEASE EXAMINATION NO LATER THAN THIRTY
9 DAYS PRIOR TO THE INITIAL RELEASE HEARING. THE DEFENDANT MAY
10 REQUEST AN ADDITIONAL RELEASE EXAMINATION BY A MEDICAL EXPERT
11 IN MENTAL HEALTH DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT
12 TO SECTION 16-8-108. THE COURT MAY CONTINUE THE HEARING BEYOND
13 ONE HUNDRED AND TWENTY DAYS UPON A FINDING OF GOOD CAUSE OR IF
14 NECESSARY TO CONDUCT A SECOND EVALUATION OF THE DEFENDANT.

15 (II) THE COURT SHALL CONDUCT THE INITIAL RELEASE HEARING.
16 AT THE INITIAL RELEASE HEARING, IF ANY EVIDENCE IS INTRODUCED THAT
17 SHOWS THE DEFENDANT IS INELIGIBLE FOR CONDITIONAL RELEASE, THE
18 DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE
19 EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR
20 CONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT
21 FINDS THE DEFENDANT ELIGIBLE FOR CONDITIONAL RELEASE, THE COURT
22 MAY IMPOSE SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES
23 ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY. IF
24 THE COURT FINDS THE DEFENDANT INELIGIBLE FOR CONDITIONAL RELEASE,
25 THE COURT SHALL COMMIT OR CONTINUE THE PREVIOUS COMMITMENT OF
26 THE DEFENDANT TO THE PHYSICAL CUSTODY OF THE DEPARTMENT OF
27 HUMAN SERVICES.

28 (III) THIS SUBSECTION (1)(a) APPLIES TO INDIVIDUALS FOUND NOT
29 GUILTY BY REASON OF INSANITY ON OR AFTER SEPTEMBER 1, 2022.

30 (b) FOLLOWING THE INITIAL RELEASE HEARING PURSUANT TO
31 SUBSECTION (1)(a) OF THIS SECTION, the court may order a release hearing
32 at any time on its own motion, on motion of the prosecuting attorney, or
33 on motion of the defendant. The court shall order a release hearing upon
34 receipt of the report of the chief officer of the institution in which the
35 defendant is committed that the defendant no longer requires
36 hospitalization, as provided in section 16-8-116. ~~or upon motion of the~~
37 ~~defendant made after one hundred eighty-two days following the date of~~
38 ~~the initial commitment order.~~ Except for the first hearing following the
39 ~~initial commitment order~~ INITIAL RELEASE HEARING, unless the court for
40 good cause shown permits, the defendant is not entitled to a hearing
41 within one year subsequent to a previous hearing.

42 (c) BEGINNING SEPTEMBER 1, 2022, THE CHIEF OFFICER OF THE
43 INSTITUTION IN WHICH THE DEFENDANT IS COMMITTED SHALL ANNUALLY

1 SUBMIT A RELEASE EXAMINATION REPORT TO THE COURT CERTIFYING
2 WHETHER THE DEFENDANT CONTINUES TO MEET THE CRITERIA FOR
3 ONGOING INPATIENT HOSPITALIZATION OR MEETS THE APPLICABLE TEST
4 FOR RELEASE PURSUANT TO SECTION 16-8-120. THE REPORT MUST BE
5 SUBMITTED EACH YEAR BY THE DATE ON WHICH THE DEFENDANT WAS
6 INITIALLY COMMITTED FOR INPATIENT HOSPITALIZATION UNLESS ANOTHER
7 RELEASE EXAMINATION IS ORDERED WITHIN THE TWELVE MONTHS
8 PRECEDING SUCH DATE. THE RELEASE EXAMINATION REPORT MUST
9 INCLUDE THE INFORMATION REQUIRED FOR A RELEASE EXAMINATION
10 PURSUANT TO SUBSECTION (2.5) OF THIS SECTION. THE INSTITUTION SHALL
11 PROVIDE A COPY OF THE REPORT TO THE DEFENDANT, THE PROSECUTING
12 ATTORNEY, AND ANY OTHER ATTORNEY OF RECORD. UPON RECEIPT AND
13 AFTER REVIEW OF THE REPORT, THE COURT MAY ORDER A RELEASE
14 HEARING ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING
15 ATTORNEY, OR ON MOTION OF THE DEFENDANT.

16 (2.5) IN ADDITION TO ANY OTHER REQUIREMENT PURSUANT TO
17 THIS SECTION, THE RELEASE EXAMINATION REPORT MUST INCLUDE:

18 (a) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS
19 CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

20 (b) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE
21 DEFENDANT'S SYMPTOMS OF MENTAL DISEASE OR DEFECT ARE IN
22 REMISSION;

23 (c) INFORMATION ABOUT MEDICATIONS CURRENTLY PRESCRIBED
24 TO THE DEFENDANT AND WHETHER THE DEFENDANT IS COMPLIANT WITH
25 TAKING THE PRESCRIBED MEDICATIONS;

26 (d) A SUMMARY OF THE TREATMENT PROVIDED TO THE DEFENDANT
27 SINCE THE LAST RELEASE EXAMINATION, IF APPLICABLE;

28 (e) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF
29 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT
30 NEEDS BY UTILIZING EVIDENCE-BASED STANDARDS OF INDIVIDUALIZED
31 TREATMENT AND MANAGEMENT OF PEOPLE ACQUITTED BY REASON OF
32 INSANITY;

33 (f) A SUMMARY OF THE SPECIFIC TREATMENT OPTIONS AVAILABLE
34 TO THE DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT
35 THE DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE
36 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

37 (g) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD BE
38 MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

39 (h) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY
40 MEETS THE APPLICABLE TEST FOR RELEASE, AS DESCRIBED IN SECTION
41 16-8-120, CITING SPECIFIC FACTS AND EVIDENCE SUPPORTING THE
42 OPINION.

43 **SECTION 3. Act subject to petition - effective date.** This act

1 takes effect at 12:01 a.m. on the day following the expiration of the
2 ninety-day period after final adjournment of the general assembly; except
3 that, if a referendum petition is filed pursuant to section 1 (3) of article V
4 of the state constitution against this act or an item, section, or part of this
5 act within such period, then the act, item, section, or part will not take
6 effect unless approved by the people at the general election to be held in
7 November 2022 and, in such case, will take effect on the date of the
8 official declaration of the vote thereon by the governor."

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