

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

PREAMENDED

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

LLS NO. 22-0141.01 Shelby Ross x4510

HOUSE BILL 22-1061

HOUSE SPONSORSHIP

Amabile and Benavidez,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MODIFICATIONS TO NOT GUILTY BY REASON OF**
102 **INSANITY.**

Bill Summary

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

Legislative Oversight Committee Concerning the Treatment of Persons with Mental Health Disorders in the Criminal and Juvenile Justice Systems. The bill requires the court to order an evaluation of a defendant found not guilty by reason of insanity to determine whether the defendant meets the criteria for inpatient hospitalization or if the defendant is eligible for conditional release in the community.

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

No later than 10 days after receiving the evaluation, the court shall hold a hearing to determine whether to order inpatient hospitalization or to authorize release of the defendant for community placement or conditional release on the grounds that the defendant does not have an abnormal mental condition that is likely to cause the defendant to be dangerous to the defendant's self, others, or the community in the reasonably foreseeable future; is capable of distinguishing right from wrong; and the defendant has substantial capacity to conform the defendant's conduct to the requirement of law.

The bill prohibits a defendant found not guilty by reason of insanity from remaining confined in inpatient hospitalization for a period in excess of the maximum term of confinement that could be imposed for only the single most serious offense with which the defendant is found not guilty by reason of insanity, less 30% for a misdemeanor offense and less 50% for a felony offense. This prohibition does not apply to defendants found not guilty by reason of insanity for a class 1 or class 2 felony.

Upon conclusion of the maximum period of confinement, the court may stay the termination for 21 days to identify whether the defendant meets the requirements for certification or the provision of services. Beginning January 1, 2024, if, after hearing all relevant evidence, the court finds the requirements for certification have been established by clear and convincing evidence, the court shall make an order of commitment to the office of behavioral health in the department of human services. The office of behavioral health has the right to delegate physical custody of the defendant to an appropriate, approved treatment facility on an outpatient or inpatient basis.

Current law requires the court to order a release examination of the defendant when a current examination has not already been furnished or when either the prosecution or defense moves for an examination of the defendant at a different institution or by different experts. The bill specifies what information the release examination must include.

The bill requires the medical professional treating the defendant to develop a report certifying whether the defendant continues to meet the criteria for ongoing inpatient hospitalization. The chief executive officer of the facility in which the defendant is confined shall submit the report to the court on an annual basis.

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8-105.5, **amend**

3 **(4) and (5) as follows:**

4 **16-8-105.5. Procedure after plea for offenses committed on or**

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

16 (II) IN DETERMINING WHETHER TO CONTINUE OR MODIFY THE
17 BOND, THE COURT SHALL CONSIDER THE CRITERIA DESCRIBED IN SECTION
18 16-4-103, AS WELL AS THAT THE DEFENDANT WAS FOUND NOT GUILTY BY
19 REASON OF INSANITY RATHER THAN CONVICTED, THE DEFENDANT'S
20 TREATMENT NEEDS, THE AVAILABILITY OF TREATMENT IN THE
21 COMMUNITY, THE ABILITY OF THE DEPARTMENT OF HUMAN SERVICES TO
22 CONDUCT A RELEASE EVALUATION IN THE COMMUNITY, WHETHER THE
23 DEPARTMENT OF HUMAN SERVICES CAN TIMELY ADMIT THE DEFENDANT,
24 AND THE USEFULNESS OF AN OBSERVATION PERIOD AS PART OF THE
25 RELEASE EVALUATION.

26 (III) (A) THE COURT SHALL NOT DELAY THE FINAL DISPOSITION
27 AND ENTRY OF FINDING OF NOT GUILTY BY REASON OF INSANITY UNLESS

1 THE DEFENDANT IS AT LIBERTY AND REQUESTS A DELAY, IN WHICH CASE
2 THE COURT MAY DELAY THE FINAL DISPOSITION TO ALLOW THE
3 DEFENDANT TO POST BOND FOR AN OUTPATIENT RELEASE EXAMINATION.

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

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

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

15 (B) RESULTED IN ANOTHER PERSON SUFFERING SERIOUS BODILY
16 INJURY OR DEATH;

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

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

20 (b) If the trier of fact finds the defendant not guilty by reason of
21 insanity, UNLESS DELAYED PURSUANT TO SUBSECTION (4)(a) OF THIS
22 SECTION, the court shall commit the defendant to the custody of the
23 department of human services until such time as the defendant is found
24 eligible for release. The executive director of the department of human
25 services shall designate the state facility at which the defendant shall be
26 IS held for care and psychiatric treatment and may transfer the defendant
27 from one facility to another if in the opinion of the director it is desirable

1 to do so in the interest of the proper care, custody, and treatment of the
2 defendant or the protection of the public or the personnel of the facilities
3 in question.

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

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

10 **16-8-115. Release from commitment after verdict of not guilty**
11 **by reason of insanity or not guilty by reason of impaired mental**
12 **condition.** (1) (a) (I) UPON AN INITIAL COMMITMENT FOLLOWING A
13 FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION
14 16-8-105.5 (4)(b), OR UPON DELAYING FINAL ENTRY OF THE FINDING OF
15 NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8.5-105.5
16 (4)(a), THE COURT SHALL SCHEDULE AN INITIAL RELEASE HEARING NO
17 LATER THAN ONE HUNDRED AND TWENTY DAYS FROM THE INITIAL
18 COMMITMENT. THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN
19 SERVICES TO COMPLETE A RELEASE EXAMINATION NO LATER THAN THIRTY
20 DAYS PRIOR TO THE INITIAL RELEASE HEARING. THE DEFENDANT MAY
21 REQUEST AN ADDITIONAL RELEASE EXAMINATION BY A MEDICAL EXPERT
22 IN MENTAL HEALTH DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT
23 TO SECTION 16-8-108. THE COURT MAY CONTINUE THE HEARING BEYOND
24 ONE HUNDRED AND TWENTY DAYS UPON A FINDING OF GOOD CAUSE OR IF
25 NECESSARY TO CONDUCT A SECOND EVALUATION OF THE DEFENDANT.

26 (II) THE COURT SHALL CONDUCT THE INITIAL RELEASE HEARING.
27 AT THE INITIAL RELEASE HEARING, IF ANY EVIDENCE IS INTRODUCED THAT

1 SHOWS THE DEFENDANT IS INELIGIBLE FOR CONDITIONAL RELEASE, THE
2 DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE
3 EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR
4 CONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT
5 FINDS THE DEFENDANT ELIGIBLE FOR CONDITIONAL RELEASE, THE COURT
6 MAY IMPOSE SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES
7 ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY. IF
8 THE COURT FINDS THE DEFENDANT INELIGIBLE FOR CONDITIONAL RELEASE,
9 THE COURT SHALL COMMIT OR CONTINUE THE PREVIOUS COMMITMENT OF
10 THE DEFENDANT TO THE PHYSICAL CUSTODY OF THE DEPARTMENT OF
11 HUMAN SERVICES.

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

14 (b) FOLLOWING THE INITIAL RELEASE HEARING PURSUANT TO
15 SUBSECTION (1)(a) OF THIS SECTION, the court may order a release hearing
16 at any time on its own motion, on motion of the prosecuting attorney, or
17 on motion of the defendant. The court shall order a release hearing upon
18 receipt of the report of the chief officer of the institution in which the
19 defendant is committed that the defendant no longer requires
20 hospitalization, as provided in section 16-8-116. ~~or upon motion of the~~
21 ~~defendant made after one hundred eighty-two days following the date of~~
22 ~~the initial commitment order.~~ Except for the first hearing following the
23 ~~initial commitment order~~ INITIAL RELEASE HEARING, unless the court for
24 good cause shown permits, the defendant is not entitled to a hearing
25 within one year subsequent to a previous hearing.

26 (c) BEGINNING SEPTEMBER 1, 2022, THE CHIEF OFFICER OF THE
27 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;

1 (e) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF
2 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT
3 NEEDS BY UTILIZING EVIDENCE-BASED STANDARDS OF INDIVIDUALIZED
4 TREATMENT AND MANAGEMENT OF PEOPLE ACQUITTED BY REASON OF
5 INSANITY;

6 (f) A SUMMARY OF THE SPECIFIC TREATMENT OPTIONS AVAILABLE
7 TO THE DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT
8 THE DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE
9 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

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

12 (h) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY
13 MEETS THE APPLICABLE TEST FOR RELEASE, AS DESCRIBED IN SECTION
14 16-8-120, CITING SPECIFIC FACTS AND EVIDENCE SUPPORTING THE
15 OPINION.

16 **SECTION 3. Act subject to petition - effective date.** This act
17 takes effect at 12:01 a.m. on the day following the expiration of the
18 ninety-day period after final adjournment of the general assembly; except
19 that, if a referendum petition is filed pursuant to section 1 (3) of article V
20 of the state constitution against this act or an item, section, or part of this
21 act within such period, then the act, item, section, or part will not take
22 effect unless approved by the people at the general election to be held in
23 November 2022 and, in such case, will take effect on the date of the
24 official declaration of the vote thereon by the governor.