

**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. 22-1024.01 Michael Dohr x4347

HOUSE BILL 22-1386

HOUSE SPONSORSHIP

Amabile and Soper,

SENATE SPONSORSHIP

Hansen and Gardner,

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES RELATED TO COMPETENCY TO PROCEED.**

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>.)

Under current law in a dispute over a defendant's competency, a party may request a second evaluation of the defendant. The bill requires that if a second evaluation is completed and restoration is ordered, the court shall make the second evaluation available to the department of human services (department).

The bill permits a defendant to be placed in the department's custody for an inpatient competency evaluation if the court finds the competency report provided by the department does not meet statutory

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.

requirements.

For a defendant whose highest charge is a misdemeanor, with some exceptions, the bill requires the court to order outpatient restoration services and grant the defendant a personal recognizance bond unless the defendant meets certification criteria or the court finds by clear and convincing evidence that extraordinary circumstances exist that make release inappropriate and that inpatient restoration services are appropriate.

If the defendant is in custody and the recommendation is that inpatient restoration services are not clinically appropriate to restore the defendant to competency, the bill directs the court to consider releasing the defendant on bond. The bill limits outpatient restoration services to a defendant or juvenile who is a resident of Colorado and requires the services be provided in Colorado.

The bill eliminates the requirement to opine on whether there is a substantial probability that the defendant will be restored to competency and remain competent with the use of medication or not remain competent without the use of forced medication.

After the court has conducted at least 4 competency reviews, the bill requires the court to conduct a competency review every 91 days. The bill requires the court to dismiss the defendant's case if there is not a substantial probability that the defendant will be restored to competency in the reasonably foreseeable future.

Under current law when a court determines that an adult defendant is incompetent to proceed and orders the defendant to undergo restoration treatment, any claim of privilege or confidentiality by the defendant is deemed waived. The bill creates the same waiver for a juvenile defendant who is determined to be incompetent to proceed and is ordered to undergo restoration treatment. A court may order a restoration progress review hearing for a juvenile defendant at any time on the motion of any party or the court. The bill requires that when a court orders a restoration to competency evaluation for a juvenile that the evaluation be completed by the department.

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

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

4 **16-8.5-103. Determination of competency to proceed.** (4) If a
5 party requests a second evaluation, any pending requests for a hearing
6 must be continued until the receipt of the second evaluation report. The

1 report of the expert conducting the second evaluation must be completed
2 and filed with the court within thirty-five days after the court order
3 allowing the second evaluation, unless the time period is extended by the
4 court for good cause. IF A SECOND EVALUATION IS COMPLETED AND
5 RESTORATION IS ULTIMATELY ORDERED, THEN THE COURT SHALL MAKE
6 THE SECONDEVALUATION AVAILABLE TO THE DEPARTMENT. If the second
7 evaluation is requested by the court, it must be paid for by the court.

8 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-105, **amend**
9 (1)(b)(II) as follows:

10 **16-8.5-105. Evaluations, locations, time frames, and report.**

11 (1) (b) Notwithstanding the provisions of subsection (1)(a) of this
12 section, the court may order the defendant placed in the department's
13 custody for the time necessary to conduct the inpatient competency
14 evaluation if:

15 (II) The court finds that ~~an inadequate~~ THE competency evaluation
16 and report ~~has been completed~~ PROVIDED BY THE DEPARTMENT IS
17 INSUFFICIENT BECAUSE IT DOES NOT MEET STATUTORY REQUIREMENTS
18 PURSUANT TO SUBSECTION (5) OF THIS SECTION or that two or more
19 conflicting competency evaluations and reports have been completed; ~~and~~
20 ~~the court finds that an inpatient evaluation is necessary; or~~

21 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-111, **amend**
22 (2)(b)(II)(C), (2)(d), (2)(f)(I), (2)(f)(II)(A), and (2)(h)(I)(B); and **add**
23 (2)(i) as follows:

24 **16-8.5-111. Procedure after determination of competency or**
25 **incompetency.** (2) If the final determination made pursuant to section
26 16-8.5-103 is that the defendant is incompetent to proceed, the court has
27 the following options:

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(b) (II) (C) When the defendant is in custody on a misdemeanor, petty offense, or traffic offense, the court, within seven days of the defendant being found incompetent to proceed, shall set a hearing on bond. At the bond hearing there is a presumption that the court shall order a personal recognizance bond AND OUTPATIENT RESTORATION SERVICES. If the court does not order a personal recognizance bond and the defendant is committed for inpatient restoration, the court ~~must~~ SHALL make findings of fact that extraordinary circumstances exist to overcome the presumption of a release and the clinical recommendation for outpatient treatment by clear and convincing evidence. IF THE COURT DENIES A PERSONAL RECOGNIZANCE BOND, THE COURT SHALL NOTIFY THE DEPARTMENT OF THE SPECIFIC FACTS AND FINDINGS WHICH IT RELIED UPON IN THE ORDER FOR RESTORATION TREATMENT.

(d) If the court has ordered outpatient restoration services and the department determines that it is unable, within a reasonable time, to provide restoration services on an outpatient basis, the department shall notify the court within fourteen days after its determination, at which point the court shall review the case and determine what interim mental health services can be provided within the community by the department or other community provider. IF A COURT LIAISON IS APPOINTED, the department shall report to the court liaison every ~~ten~~ TWENTY-EIGHT days thereafter concerning the availability of restoration services on an outpatient basis.

(f) (I) If the court has ordered inpatient restoration services, the department shall provide restoration services at an appropriate inpatient restoration services program. On and after July 1, 2019, the department

1 shall offer tier 1 defendants admission for restoration services within
2 seven days after receipt of the court order and collateral materials. On and
3 after July 1, 2021, the department shall offer admission to tier 2
4 defendants within twenty-eight days after receipt of the court order and
5 collateral materials. For tier 2 defendants, the department shall advise the
6 court and, IF A COURT LIAISON IS APPOINTED, the court liaison every ~~ten~~
7 TWENTY-EIGHT days after the initial twenty-eight day period regarding the
8 availability of a bed and when admission will be offered.

9 (II) If the defendant is not offered admission and transported to
10 the inpatient restoration services program within the time frames provided
11 or in accordance with other court orders, the court may:

12 (A) Review the case for consideration of outpatient restoration
13 services and appropriate and necessary case management services
14 coordinated with the department; IF A COURT LIAISON IS APPOINTED, the
15 court liaison; and pretrial services, if available; or

16 (h) (I) If the defendant is receiving inpatient restoration services
17 and the executive director concludes that community-based restoration
18 services would be more clinically appropriate, the department shall:

19 (B) Provide to the court information regarding the appropriate
20 outpatient restoration services, developed in conjunction with the court
21 liaison, WHEN ASSIGNED, and the reasons why the defendant could be
22 properly restored to competency on an outpatient basis.

23 (i) FOR A DEFENDANT ALLOWED TO RESIDE OUT OF THE STATE OF
24 COLORADO, THE DEPARTMENT MAY OFFER ASSISTANCE TO AN
25 OUT-OF-STATE PROVIDER PROVIDING RESTORATION SERVICES TO THE
26 DEFENDANT IN THE STATE WHERE THE DEFENDANT RESIDES.

27 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-116, **amend**

1 (2)(a), (4), (5), (6) introductory portion, (8)(a)(I), and (10); and **repeal**
2 (2)(b)(VI) as follows:

3 **16-8.5-116. Certification - reviews - termination of**
4 **proceedings - rules.** (2) (a) Within ninety-one days after the entry of the
5 court's order of commitment OR ORDER TO RECEIVE OUTPATIENT
6 RESTORATION, the court shall review the case of a defendant who has
7 been determined to be incompetent to proceed with regard to the
8 probability that the defendant will ~~eventually~~ be restored to competency
9 WITHIN THE REASONABLY FORESEEABLE FUTURE and with regard to the
10 justification for certification, ~~or~~ confinement, OR CONTINUED
11 RESTORATION TREATMENT. The review may be held in conjunction with
12 a restoration hearing held pursuant to section 16-8.5-113. However, if at
13 the review hearing, there is a request by the defendant for a restoration
14 hearing pursuant to section 16-8.5-113, the court shall set the restoration
15 hearing within thirty-five days after the request pursuant to the provisions
16 of section 16-8.5-113.

17 (b) On and after July 1, 2020, at least ten days before each review,
18 the individual or entity evaluating the defendant shall provide the court
19 with a report describing:

20 (VI) ~~Whether there is a substantial probability that the defendant~~
21 ~~will be restored to competency and remain competent with the use of~~
22 ~~medications or will not remain competent without the use of forced~~
23 ~~medication;~~

24 (4) After the fourth review, the court shall review the competency
25 of the defendant every ~~sixty-three~~ NINETY-ONE days until the defendant
26 is restored to competency or the court determines, based on available
27 evidence, that there is not a substantial probability that the defendant will

1 be restored to competency in the REASONABLY foreseeable future. ~~and in~~
2 ~~that case.~~ IF THE COURT DETERMINES BASED ON AVAILABLE EVIDENCE
3 THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL BE
4 RESTORED TO COMPETENCY IN THE REASONABLY FORESEEABLE FUTURE,
5 the court shall dismiss the case SUBJECT TO THE PROVISIONS OF
6 SUBSECTION (10) OF THIS SECTION.

7 (5) The court shall forward a copy of each report and summary
8 received pursuant to subsections (2), (3), and (4) of this section to the
9 county attorney or district attorney required to conduct proceedings
10 pursuant to section 27-65-111 (6) for the county in which the case is
11 pending and, WHEN A COURT LIAISON IS APPOINTED, to the court liaison.

12 (6) Notwithstanding the time periods provided in subsections (7),
13 (8), and (9) of this section and to ensure compliance with relevant
14 constitutional principles, for any offense for which the defendant ~~remains~~
15 ~~confined as a result of a determination of incompetency to proceed~~ IS
16 ORDERED TO RECEIVE COMPETENCY RESTORATION SERVICES IN AN
17 INPATIENT OR OUTPATIENT SETTING, if the court determines, based on
18 available evidence, that there is not a substantial probability that the
19 defendant will be restored to competency within the reasonably
20 foreseeable future, the court may order the defendant's release from
21 commitment pursuant to this article 8.5 through one or more of the
22 following means:

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24 (8) At any review hearing held concerning the defendant's
25 competency to proceed, the court shall dismiss the charges against the
26 defendant and release the defendant from confinement, subject to the
27 provisions of subsection (10) of this section, if:

1 (a) The defendant:

2 (I) Is charged with a class 5 or class 6 felony, except for those
3 offenses enumerated in section 24-4.1-302 (1), OR with a level 3 or level
4 4 drug felony; ~~or with any misdemeanor offense that is not included in~~
5 ~~subsection (7) of this section;~~

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7 (10) Prior to the dismissal of charges pursuant to subsection (1),
8 ~~(4)~~, (6), (7), (8), or (9) of this section, the court shall identify whether the
9 defendant meets the requirements for certification pursuant to article 65
10 of title 27, or for the provision of services pursuant to article 10.5 of title
11 27, or whether the defendant will agree to a voluntary commitment. If the
12 court finds the requirements for certification or provision of services are
13 met or the defendant does not agree to a voluntary commitment, the court
14 may stay the dismissal for twenty-one days and notify the department and
15 county attorney or district attorney required to conduct proceedings
16 pursuant to section 27-65-111 (6) in the relevant jurisdiction of the
17 pending dismissal so as to provide the department and the county attorney
18 or district attorney with the opportunity to pursue certification
19 proceedings or the provision of necessary services.

20 **SECTION 5.** In Colorado Revised Statutes, **add** 16-8.5-123 as
21 follows:

22 **16-8.5-123. Competency services - inpatient beds - funding -**
23 **repeal.** (1) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE
24 DEPARTMENT THIRTY MILLION DOLLARS FROM THE ECONOMIC RECOVERY
25 AND RELIEF CASH FUND CREATED IN SECTION 24-75-228 (2)(a) TO
26 CONTRACT FOR ADDITIONAL INPATIENT BEDS FOR COMPETENCY SERVICES
27 PROVIDED PURSUANT TO SECTION 16-8.5-111 OR FOR ADDITIONAL

1 INPATIENT BEDS FOR INDIVIDUALS RECEIVING MENTAL HEALTH CARE AND
2 TREATMENT PURSUANT TO ARTICLE 65 OF TITLE 27. IF ANY UNEXPENDED
3 OR UNENCUMBERED MONEY APPROPRIATED FOR A FISCAL YEAR REMAINS
4 AT THE END OF THAT FISCAL YEAR, THE DEPARTMENT MAY EXPEND THE
5 MONEY FOR THE SAME PURPOSES IN THE NEXT FISCAL YEAR WITHOUT
6 FURTHER APPROPRIATION.

7 (2) THE GENERAL ASSEMBLY SHALL APPROPRIATE TO THE
8 DEPARTMENT EIGHT HUNDRED THOUSAND DOLLARS FROM THE
9 BEHAVIORAL AND MENTAL HEALTH CASH FUND CREATED IN SECTION
10 24-75-230 (2)(a) TO CONTRACT FOR A FEASIBILITY STUDY OF RENOVATING
11 A FACILITY IN ADAMS COUNTY TO PROVIDE INPATIENT BEDS FOR
12 COMPETENCY SERVICES PROVIDED PURSUANT TO SECTION 16-8.5-111.

13 (3) THIS SECTION IS REPEALED, EFFECTIVE DECEMBER 31, 2024.

14 **SECTION 6. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly; except
17 that, if a referendum petition is filed pursuant to section 1 (3) of article V
18 of the state constitution against this act or an item, section, or part of this
19 act within such period, then the act, item, section, or part will not take
20 effect unless approved by the people at the general election to be held in
21 November 2022 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.

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