

First Regular Session  
Seventy-fourth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 23-0179.02 Jane Ritter x4342

HOUSE BILL 23-1138

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HOUSE SPONSORSHIP

Amabile and Soper,

SENATE SPONSORSHIP

(None),

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House Committees  
Judiciary

Senate Committees

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A BILL FOR AN ACT

101 CONCERNING PROCEDURES RELATED TO ADULT COMPETENCY  
102 PROCEEDINGS.

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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>.)*

The bill removes the requirement that if a defendant is in jail or an inpatient setting, a finding that the defendant is an imminent danger to the defendant's self or others is required for the competency evaluation and report. If the competency evaluation determines that the defendant meets the criteria for civil certification and inpatient services, the behavioral health administration (BHA) shall, directly or through a contract, provide

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

care coordination services for the defendant. If the court orders, as a condition of bond, that restoration to competency take place on an outpatient basis, the department of human services is responsible for the oversight of restoration education and coordination of services.

Under specific conditions, the bill allows that upon petition of the district attorney, a professional person, a representative of the BHA, a representative of the office of civil and forensic mental health, or other responsible person (responsible party), a court may certify a respondent for short-term treatment in the custody of the BHA for not more than 3 months without requiring an emergency 72-hour hold. A court shall not accept a petition for certification for short-term treatment unless the respondent has a documented refusal to certified treatment.

Upon filing of the petition, the court shall immediately appoint an attorney to represent the respondent. The respondent's attorney may request a jury trial within 14 days after receipt of the petition. The respondent has the right to an attorney for all proceedings conducted related to the respondent's competency and certification for treatment and services.

The respondent may, at any time, file a written request to contest the petition, in which case the court shall set the hearing no later than 14 days after the petition was filed. If, after hearing all of the relevant evidence, the court finds grounds for certification have been established by clear and convincing evidence and that the BHA is able to provide adequate and appropriate treatment for the respondent that will likely be beneficial to the respondent's recovery, the court shall commit the respondent to the BHA's custody.

The act takes effect January 1, 2024.

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

**SECTION 1.** In Colorado Revised Statutes, 16-8.5-105, **amend** (4) and (5)(h) as follows:

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

(4) A written report of the evaluation ~~shall~~ **MUST** be prepared in triplicate and delivered to the clerk of the court that ordered it. The clerk shall provide a copy of the report both to the prosecuting attorney and the counsel for the defendant. **THE DEPARTMENT MAY UTILIZE THE E-FILING SYSTEM TO DELIVER THE REPORT TO THE COURT AND SERVE IT UPON THE PARTIES. WITHOUT REDUCING ANY OTHER TIMELINES SET FORTH IN THIS**

1 ARTICLE 8.5, THE COMPETENCY EVALUATOR SHALL PROVIDE THE WRITTEN  
2 REPORT TO THE COURT WITHIN FOURTEEN DAYS AFTER FINISHING MEETING  
3 OR ATTEMPTING TO MEET WITH THE RESPONDENT TO EVALUATE THE  
4 RESPONDENT'S COMPETENCY.

5 (5) On and after July 1, 2020, the competency evaluation and  
6 report must include, but need not be limited to:

7 (h) The competency evaluator's opinion AND THE INFORMATION  
8 AND FACTORS CONSIDERED IN MAKING DETERMINATIONS as to whether the  
9 defendant: ~~meets the criteria for certification pursuant to article 65 of title~~  
10 ~~27 or whether the defendant is eligible for services pursuant to article 10~~  
11 ~~of title 25.5 or article 10.5 of title 27, including the factors considered in~~  
12 ~~making either determination.~~

13 (I) MEETS THE CRITERIA FOR AN EMERGENCY MENTAL HEALTH  
14 HOLD PURSUANT TO SECTION 27-65-106;

15 (II) MEETS THE CRITERIA FOR A CERTIFICATION FOR SHORT-TERM  
16 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109 AND, IF THE  
17 DEFENDANT MEETS SUCH CRITERIA, WHETHER THE EVALUATOR BELIEVES  
18 THE DEFENDANT COULD BE TREATED ON AN OUTPATIENT BASIS PURSUANT  
19 TO SECTION 27-65-111. IN ASSESSING WHETHER THE DEFENDANT WITH A  
20 PENDING CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS  
21 GRAVELY DISABLED, IF THE PERSON IS INCARCERATED, THE COMPETENCY  
22 EVALUATOR OR PROFESSIONAL PERSON, AS DEFINED IN SECTION  
23 27-65-102, AND THE COURT SHALL NOT RELY ON THE FACT THAT THE  
24 DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY  
25 TO ESTABLISH THAT THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS  
26 OR IS NOT GRAVELY DISABLED.

27 (III) WHETHER THE DEFENDANT HAS AN INTELLECTUAL AND

1 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND  
2 IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE  
3 DEFENDANT IS ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT TO  
4 ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

5 **SECTION 2.** In Colorado Revised Statutes, 16-8.5-111, **amend**  
6 (2)(a) and (2)(b)(II)(B); and **add** (2)(a.2) and (2)(a.3) as follows:

7 **16-8.5-111. Procedure after determination of competency or**  
8 **incompetency.** (2) If the final determination made pursuant to section  
9 16-8.5-103 is that the defendant is incompetent to proceed, the court has  
10 the following options:

11 (a) UPON A REQUEST FROM THE DISTRICT ATTORNEY, A  
12 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A  
13 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE  
14 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND  
15 FORENSIC MENTAL HEALTH, if the defendant is charged with an offense as  
16 outlined in section 16-8.5-116 (7) and ~~the competency evaluation has~~  
17 ~~determined that the defendant meets the standard for civil certification~~  
18 ~~pursuant to article 65 of title 27, the court may forgo any order of~~  
19 ~~restoration and immediately order that proceedings be initiated by the~~  
20 ~~county attorney or district attorney required to conduct proceedings~~  
21 ~~pursuant to section 27-65-113 (6) for the civil certification of the~~  
22 ~~defendant and dismiss the charges without prejudice in the interest of~~  
23 ~~justice once civil certification proceedings have been initiated~~ THE  
24 PROSECUTING ATTORNEY AGREES, AND THE COURT FINDS REASONABLE  
25 GROUNDS TO BELIEVE THE DEFENDANT MEETS THE STANDARD FOR A  
26 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION  
27 27-65-108.5 OR 27-65-109, THE COURT MAY ORDER THAT, PURSUANT TO

1 THIS SUBSECTION (2) OR SECTION 16-8.5-116, THE REQUESTING PARTY  
2 INITIATE A PETITION FOR A CERTIFICATION FOR SHORT-TERM TREATMENT  
3 OF THE DEFENDANT IN A COURT WITH JURISDICTION. THE COURT SHALL  
4 HEAR AND CONSIDER ANY OBJECTIONS FROM THE DEFENDANT PRIOR TO  
5 ORDERING THE REFERRING PARTY TO INITIATE SUCH PROCEEDINGS. THE  
6 PROSECUTING ATTORNEY AND DEPARTMENT SHALL TRANSMIT ANY  
7 NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS, COMPETENCY  
8 EVALUATIONS, MATERIALS USED IN THE COMPETENCY PROCESS, AND  
9 RESTORATION RECORDS, AND COOPERATE WITH THE REQUESTING PARTY  
10 IN FILING A PETITION PURSUANT TO SECTION 27-65-108.5. WITH THE  
11 DEFENDANT'S CONSENT, THE DEFENSE ATTORNEY REPRESENTING THE  
12 DEFENDANT MAY TRANSMIT ANY INFORMATION AND COOPERATE IN THE  
13 SHORT-TERM CERTIFICATION PROCESS. THE REQUESTING PARTY SHALL  
14 FILE NOTICE IN THE CRIMINAL CASE WHEN THE CERTIFICATION FOR  
15 SHORT-TERM TREATMENT IS FILED. UPON THE FILING OF A CERTIFICATION  
16 FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5, THE  
17 BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT SHALL,  
18 DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE COORDINATION  
19 SERVICES PURSUANT TO SECTION 27-65-108.

20 (a.2) THE COURT MAY FORGO ANY ORDER OF RESTORATION AND  
21 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE  
22 WHEN A CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS IS  
23 INITIATED AND WHEN ALL OF THE DEFENDANT'S CHARGES ARE SUBJECT TO  
24 SECTION 16-8.5-116 (7).

25 (a.3) IF THE COURT ORDERS THE INITIATION OF CERTIFICATION FOR  
26 SHORT-TERM TREATMENT PROCEEDINGS AND ANY CHARGE AGAINST THE  
27 DEFENDANT IS NOT SUBJECT TO SECTION 16-8.5-116 (7) OR THE COURT

1 DOES NOT ORDER DISMISSAL OF THE CASE PURSUANT TO SUBSECTION (1)  
2 OF THIS SECTION, WITH AGREEMENT OF THE PARTIES, THE COURT MAY  
3 STAY THE RESTORATION ORDER TO ALLOW CERTIFICATION FOR  
4 SHORT-TERM TREATMENT PROCEEDINGS TO OCCUR AND TO ALLOW THE  
5 DISTRICT ATTORNEY TO CONSIDER WHETHER DISMISSAL OF THE CASE IS  
6 APPROPRIATE. TO ENABLE EVALUATION OF WHETHER DISMISSAL IS  
7 APPROPRIATE WHILE THE CRIMINAL MATTER IS PENDING, THE DEFENDANT,  
8 THE DEFENDANT'S ATTORNEY IN THE CRIMINAL MATTER, AND THE  
9 PROSECUTING ATTORNEY IN THE CRIMINAL MATTER IN WHICH  
10 COMPETENCY IS PENDING SHALL HAVE ACCESS TO THE FOLLOWING  
11 LIMITED INFORMATION ABOUT ANY PROCEEDINGS PURSUANT TO SECTION  
12 27-65-108.5, 27-65-109, 27-65-110, OR 27-65-111. THE INFORMATION  
13 MUST BE KEPT CONFIDENTIAL UNLESS DISCLOSURE IS OTHERWISE  
14 AUTHORIZED BY LAW. THE COURT SHALL NOT EXTEND THE CRIMINAL CASE  
15 PAST THE TIME LIMITS SET FORTH IN SECTION 16-8.5-116, AND  
16 INFORMATION MUST NOT BE SHARED PURSUANT TO THIS SUBSECTION  
17 (2)(a.3) AFTER DISMISSAL OF THE CRIMINAL CASE UNLESS OTHERWISE  
18 ALLOWED BY SECTION 27-65-123 OR OTHER LAW. THE LIMITED  
19 INFORMATION ALLOWED TO BE SHARED WITH THE DEFENDANT, THE  
20 DEFENDANT'S CRIMINAL ATTORNEY, OR THE PROSECUTING ATTORNEY  
21 PURSUANT TO THIS SUBSECTION (2)(a.3) INCLUDES:

- 22 (I) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;
- 23 (II) WHETHER THE DEFENDANT IS SUBJECT TO A CERTIFICATION  
24 FOR SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE  
25 DEFENDANT IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;
- 26 (III) WHEN PROCEEDINGS ARE OCCURRING, EVEN IF THE  
27 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING

1 ATTORNEY OR DEFENDANT'S CRIMINAL ATTORNEY; AND

2 (IV) THE ULTIMATE OUTCOME OF THE PROCEEDING.

3 (b) (II) (B) As a condition of bond, the court shall order that the  
4 restoration take place on an outpatient basis. Pursuant to section  
5 27-60-105, the ~~behavioral health administration in the~~ department is the  
6 entity responsible for the oversight of restoration education and  
7 coordination of all competency restoration services. As a condition of  
8 release for outpatient restoration services, the court may require pretrial  
9 services, if available, to work with the behavioral health administration  
10 IN THE DEPARTMENT and the restoration services provider under contract  
11 with the behavioral health administration to assist in securing appropriate  
12 support and care management services, which may include housing  
13 resources. The individual agency responsible for providing outpatient  
14 restoration services for the defendant shall notify the court or other  
15 designated agency within twenty-one days if restoration services have not  
16 commenced AND SHALL NOTIFY THE COURT OF EFFORTS THAT HAVE BEEN  
17 MADE TO ENGAGE THE DEFENDANT IN SERVICES.

18 **SECTION 3.** In Colorado Revised Statutes, 16-8.5-116, **amend**  
19 (2)(b)(IV), (6)(b), and (10); and **add** (2)(b)(IV.3) and (2)(b)(IV.5) as  
20 follows:

21 **16-8.5-116. Certification - reviews - termination of**  
22 **proceedings - rules.** (2) (b) On and after July 1, 2020, at least ten days  
23 before each review, the individual or entity evaluating the defendant  
24 shall provide the court with a report describing:

25 (IV) Whether the defendant ~~meets the requirements for~~  
26 ~~certification set forth in article 65 of title 27 or is eligible for services~~  
27 ~~pursuant to article 10.5 of title 27~~ MEETS THE CRITERIA FOR AN

1 EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106;  
2 (IV.3) WHETHER THE DEFENDANT MEETS THE CRITERIA FOR A  
3 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION  
4 27-65-108.5 OR 27-65-109 AND, IF THE DEFENDANT MEETS SUCH CRITERIA,  
5 WHETHER THE EVALUATOR BELIEVES THE DEFENDANT COULD BE TREATED  
6 ON AN OUTPATIENT BASIS PURSUANT TO SECTION 27-65-111. IN ASSESSING  
7 WHETHER A DEFENDANT WITH A PENDING CRIMINAL CHARGE IS A DANGER  
8 TO SELF OR OTHERS OR IS GRAVELY DISABLED, IF THE PERSON IS  
9 INCARCERATED, THE EVALUATOR SHALL NOT RELY ON THE FACT THAT THE  
10 DEFENDANT IS INCARCERATED OR IS AN INPATIENT IN A MEDICAL FACILITY  
11 TO ESTABLISH THE DEFENDANT IS NOT A DANGER TO SELF OR OTHERS OR  
12 IS NOT GRAVELY DISABLED.

13 (IV.5) WHETHER THE DEFENDANT HAS AN INTELLECTUAL AND  
14 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND  
15 IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE  
16 DEFENDANT IS ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT TO  
17 ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

18 (6) Notwithstanding the time periods provided in subsections (7),  
19 (8), and (9) of this section and to ensure compliance with relevant  
20 constitutional principles, for any offense for which the defendant is  
21 ordered to receive competency restoration services in an inpatient or  
22 outpatient setting, if the court determines, based on available evidence,  
23 that there is not a substantial probability that the defendant will be  
24 restored to competency within the reasonably foreseeable future, the court  
25 may order the defendant's release from commitment pursuant to this  
26 article 8.5 through one or more of the following means:

27 (b) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE



1 DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT-TERM  
2 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, the court  
3 may ~~in coordination with the county attorney or district attorney required~~  
4 ~~to conduct proceedings pursuant to section 27-65-113 (6) for the county~~  
5 ~~in which the defendant is charged, order the commencement of~~  
6 ~~certification proceedings pursuant to the provisions of article 65 of title~~  
7 ~~27 if the defendant meets the requirements for certification pursuant to~~  
8 ~~article 65 of title 27~~ ORDER THE DISTRICT ATTORNEY, OR UPON REQUEST  
9 FROM THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, AS DEFINED IN  
10 SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH  
11 ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE  
12 OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH TO INITIATE, IN A COURT  
13 WITH JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR  
14 SHORT-TERM TREATMENT OF THE DEFENDANT PURSUANT TO SECTION  
15 27-65-108.5 OR 27-65-109;

16 (10) Prior to the dismissal of charges pursuant to subsection (1),  
17 (4), (6), (7), (8), or (9) of this section, ~~the court shall identify whether the~~  
18 ~~defendant meets the requirements for certification pursuant to article 65~~  
19 ~~of title 27, or for the provision of services pursuant to article 10.5 of title~~  
20 ~~27, or whether the defendant will agree to a voluntary commitment~~  
21 UNLESS THE COURT HAS ALREADY ORDERED A PERSON TO INITIATE  
22 PROCEEDINGS FOR A CERTIFICATION FOR SHORT-TERM TREATMENT, THE  
23 COURT SHALL MAKE FINDINGS WHETHER THERE ARE REASONABLE  
24 GROUNDS TO BELIEVE THE PERSON MEETS THE STANDARD FOR A  
25 CERTIFICATION FOR SHORT-TERM TREATMENT. If the court finds ~~the~~  
26 ~~requirements for certification or provision of services are met or the~~  
27 ~~defendant does not agree to a voluntary commitment~~ THERE ARE

1 REASONABLE GROUNDS, the court may stay the dismissal for ~~twenty-one~~  
2 THIRTY-FIVE days and notify ~~the department and county attorney or~~  
3 ~~district attorney required to conduct proceedings pursuant to section~~  
4 ~~27-65-113 (6) in the relevant jurisdiction of the pending dismissal so as~~  
5 ~~to provide the department and the county attorney or district attorney with~~  
6 ~~the~~ ANY PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A  
7 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE  
8 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND  
9 FORENSIC MENTAL HEALTH WHO HAS RECENTLY TREATED OR INTERACTED  
10 WITH THE DEFENDANT THAT THERE ARE REASONABLE GROUNDS FOR  
11 SHORT-TERM TREATMENT AND AFFORD THE PERSON AN opportunity to  
12 pursue certification proceedings or ~~the provision of~~ TO ARRANGE  
13 necessary services.

14 **SECTION 4.** In Colorado Revised Statutes, 19-2.5-704, **amend**  
15 (2)(b) as follows:

16 **19-2.5-704. Procedure after determination of competency or**  
17 **incompetency.** (2) (b) Pursuant to section 27-60-105, the ~~behavioral~~  
18 ~~health administration in the department of human services~~ is the entity  
19 responsible for the oversight of restoration education and coordination of  
20 services necessary to competency restoration.

21 **SECTION 5.** In Colorado Revised Statutes, **add** 27-65-108.5 as  
22 follows:

23 **27-65-108.5. Court-ordered certification for short-term**  
24 **treatment for incompetent defendants in a criminal matter - contents**  
25 **of petition - procedure to contest petition - commitment to behavioral**  
26 **health administration - definition.** (1) UPON PETITION OF THE DISTRICT  
27 ATTORNEY, A PROFESSIONAL PERSON, A REPRESENTATIVE OF THE BHA, OR

1 A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL  
2 HEALTH, A COURT MAY CERTIFY A PERSON FOR SHORT-TERM TREATMENT  
3 FOR NOT MORE THAN THREE MONTHS UNDER THE FOLLOWING CONDITIONS:

4 (a) THE PERSON IS A RESPONDENT IN A CRIMINAL MATTER IN WHICH  
5 THE PERSON HAS BEEN FOUND INCOMPETENT TO PROCEED;

6 (b) THE COURT HEARING THE CRIMINAL MATTER REFERRED THE  
7 MATTER FOR FILING OF A PETITION PURSUANT TO SECTION 16-8.5-111 OR  
8 16-8.5-116;

9 (c) THE PERSON HAS BEEN ADVISED OF THE AVAILABILITY OF, BUT  
10 HAS NOT ACCEPTED, VOLUNTARY TREATMENT, OR, IF REASONABLE  
11 GROUNDS EXIST TO BELIEVE THAT THE PERSON WILL NOT REMAIN IN A  
12 VOLUNTARY TREATMENT PROGRAM, THE PERSON'S ACCEPTANCE OF  
13 VOLUNTARY TREATMENT DOES NOT PRECLUDE CERTIFICATION;

14 (d) THE FACILITY OR COMMUNITY PROVIDER THAT WILL PROVIDE  
15 SHORT-TERM TREATMENT HAS BEEN DESIGNATED OR APPROVED BY THE  
16 COMMISSIONER TO PROVIDE SUCH TREATMENT; AND

17 (e) THE PERSON, THE PERSON'S LEGAL GUARDIAN, AND THE  
18 PERSON'S LAY PERSON, IF APPLICABLE, HAVE BEEN ADVISED OF THE  
19 PERSON'S RIGHT TO AN ATTORNEY AND TO CONTEST THE CERTIFICATION  
20 FOR SHORT-TERM TREATMENT.

21 (2) THE PETITION FILED PURSUANT TO SUBSECTION (1) OF THIS  
22 SECTION MUST:

23 (a) STATE SUFFICIENT FACTS TO ESTABLISH REASONABLE GROUNDS  
24 THAT THE RESPONDENT HAS A MENTAL HEALTH DISORDER AND, AS A  
25 RESULT OF THE MENTAL HEALTH DISORDER, IS A DANGER TO THE  
26 RESPONDENT'S SELF OR OTHERS OR IS GRAVELY DISABLED;

27 (b) BE ACCOMPANIED BY A REPORT OF THE COMPETENCY

1 EVALUATOR OR PROFESSIONAL PERSON WHO HAS EVALUATED THE  
2 RESPONDENT WITHIN FIFTY-SIX DAYS BEFORE SUBMISSION OF THE  
3 PETITION, UNLESS THE RESPONDENT WHOSE CERTIFICATION IS SOUGHT HAS  
4 REFUSED TO SUBMIT TO AN EVALUATION OR THE RESPONDENT CANNOT BE  
5 EVALUATED DUE TO THE RESPONDENT'S CONDITION;

6 (c) BE FILED WITHIN FOURTEEN DAYS AFTER THE INITIATING PARTY  
7 RECEIVED THE COURT ORDER FROM THE CRIMINAL COURT INITIATING THE  
8 PROCESS;

9 (d) BE FILED WITH THE COURT IN THE COUNTY WHERE THE  
10 RESPONDENT RESIDED OR WAS PHYSICALLY PRESENT IMMEDIATELY PRIOR  
11 TO THE FILING OF THE PETITION; EXCEPT THAT IF THE PERSON WAS  
12 ARRESTED FOR THE PRIOR CASE AND HELD IN CUSTODY, THE PETITION MAY  
13 BE FILED IN THE COUNTY WHERE THE RESPONDENT RESIDED OR WAS  
14 PHYSICALLY PRESENT IMMEDIATELY PRIOR TO THE RESPONDENT'S ARREST;  
15 AND

16 (e) PROVIDE RECOMMENDATIONS IF ANY CERTIFICATION SHOULD  
17 OCCUR ON AN INPATIENT OR OUTPATIENT BASIS.

18 (3) WITHIN TWENTY-FOUR HOURS AFTER CERTIFICATION, COPIES  
19 OF THE CERTIFICATION MUST BE PERSONALLY DELIVERED TO THE  
20 RESPONDENT, THE BHA, OR THE OFFICE OF CIVIL AND FORENSIC MENTAL  
21 HEALTH. THE DEPARTMENT SHALL RETAIN A COPY AS PART OF THE  
22 RESPONDENT'S RECORD. IF THE CRIMINAL CASE IS PENDING, OR NOT YET  
23 DISMISSED, NOTICE OF THE FILING OF THE PETITION SHOULD BE GIVEN BY  
24 THE PETITIONING PARTY TO THE CRIMINAL COURT, WHICH SHALL PROVIDE  
25 SUCH NOTICE TO THE PROSECUTING AND DEFENSE ATTORNEYS IN THE  
26 CRIMINAL CASE AND ANY ATTORNEY APPOINTED PURSUANT TO SECTION  
27 27-65-113. THE COURT SHALL ASK THE RESPONDENT TO DESIGNATE ONE

1 OTHER PERSON WHOM THE RESPONDENT WANTS TO BE INFORMED  
2 REGARDING THE PETITION. IF THE RESPONDENT IS INCAPABLE OF MAKING  
3 SUCH A DESIGNATION AT THE TIME THE PETITION IS DELIVERED, THE COURT  
4 MAY ASK THE RESPONDENT TO DESIGNATE SUCH PERSON AS SOON AS THE  
5 RESPONDENT IS CAPABLE.

6 (4) WHENEVER A PETITION IS FILED PURSUANT TO THIS SECTION,  
7 THE COURT SHALL IMMEDIATELY APPOINT AN ATTORNEY TO REPRESENT  
8 THE RESPONDENT. THE COURT SHALL PROVIDE THE RESPONDENT WITH A  
9 WRITTEN NOTICE THAT THE RESPONDENT HAS A RIGHT TO A HEARING ON  
10 THE PETITION AND MAY MAKE A WRITTEN REQUEST FOR A JURY TRIAL. THE  
11 RESPONDENT HAS THE RIGHT TO AN ATTORNEY FOR ALL PROCEEDINGS  
12 CONDUCTED PURSUANT TO THIS SECTION, INCLUDING ANY APPEALS. THE  
13 ATTORNEY REPRESENTING THE RESPONDENT MUST BE PROVIDED WITH A  
14 COPY OF THE PETITION AND ANY SUPPORTING MATERIALS IMMEDIATELY  
15 UPON THE ATTORNEY'S APPOINTMENT. THE RESPONDENT MAY ONLY WAIVE  
16 COUNSEL WHEN THE RESPONDENT MAKES A KNOWING AND VOLUNTARY  
17 WAIVER IN FRONT OF THE COURT.

18 (5) UPON THE FILING OF THE PETITION PURSUANT TO THIS SECTION  
19 AND AFFORDING THE RESPONDENT A CHANCE TO CONTEST THE PETITION,  
20 THE COURT MAY GRANT OR DENY CERTIFICATION BASED ON THE FACTS  
21 ESTABLISHED IN THE PETITION, SUBJECT TO THE COURT'S FURTHER REVIEW  
22 OR A JURY TRIAL.

23 (6) WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE PETITION FILED  
24 PURSUANT TO THIS SECTION, THE RESPONDENT, OR THE RESPONDENT'S  
25 ATTORNEY, MAY REQUEST A JURY TRIAL BY FILING A WRITTEN MOTION  
26 WITH THE COURT.

27 (7) THE RESPONDENT MAY KNOWINGLY AND VOLUNTARILY

1 CONSENT IN WRITING TO THE PETITION.

2 (8) THE RESPONDENT OR THE RESPONDENT'S ATTORNEY MAY, AT  
3 ANY TIME, FILE A WRITTEN REQUEST FOR THE COURT TO REVIEW  
4 SHORT-TERM CERTIFICATION OR REQUEST THAT INPATIENT CERTIFICATION  
5 BE CHANGED TO OUTPATIENT TREATMENT. IF THE REVIEW IS REQUESTED,  
6 THE COURT SHALL HEAR THE MATTER WITHIN FOURTEEN DAYS AFTER THE  
7 REQUEST, AND THE COURT SHALL GIVE NOTICE TO THE RESPONDENT, THE  
8 RESPONDENT'S ATTORNEY, THE DEPARTMENT, AND THE COMMUNITY OR  
9 FACILITY PROVIDER WHO IS OR WILL PROVIDE TREATMENT. THE HEARING  
10 MUST BE HELD IN ACCORDANCE WITH SECTION 27-65-113. AT THE  
11 CONCLUSION OF THE HEARING, THE COURT MAY ENTER OR CONFIRM THE  
12 CERTIFICATION FOR SHORT-TERM TREATMENT, DISCHARGE THE  
13 RESPONDENT, OR ENTER ANY OTHER APPROPRIATE ORDER.

14 (9) SECTION 27-65-109 (7) TO (10) APPLIES TO PROCEEDINGS HELD  
15 PURSUANT TO THIS SECTION.

16 (10) IN ASSESSING WHETHER THE RESPONDENT WITH A PENDING  
17 CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY  
18 DISABLED, IF THE PERSON IS INCARCERATED, THE PROFESSIONAL PERSON  
19 AND COURT SHALL NOT RELY UPON THE FACT THAT THE PERSON IS  
20 INCARCERATED TO ESTABLISH THAT THE RESPONDENT IS NOT A DANGER  
21 TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED.

22 (11) AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO  
23 SECTION 27-65-106 IS NOT A PREREQUISITE TO A PROCEEDING PURSUANT  
24 TO THIS SECTION.

25 (12) FOR THE PURPOSES OF THIS SECTION ONLY, "RESPONDENT"  
26 MEANS THE DEFENDANT IN THE REFERRING CRIMINAL MATTER.

27 **SECTION 6.** In Colorado Revised Statutes, **amend as it will**

1 **become effective July 1, 2024, 27-65-108** as follows:

2 **27-65-108. Care coordination for persons certified or in need**  
3 **of ongoing treatment.** (1) A facility designated by the commissioner  
4 shall notify and engage the BHA prior to terminating or transferring a  
5 person certified pursuant to section **27-65-108.5**, 27-65-109, 27-65-110,  
6 or 27-65-111. The BHA may provide care coordination services to  
7 support a person whose certification is terminated but who is in need of  
8 ongoing treatment and services.

9 (2) The BHA shall, directly or through A contract, provide care  
10 coordination services to a person certified pursuant to section  
11 **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-111 and determined by the  
12 designated facility and the BHA to need care coordination services.

13 **SECTION 7.** In Colorado Revised Statutes, 27-65-111, **amend**  
14 **as it will become effective July 1, 2024**, (1) introductory portion and  
15 (5)(a)(I) as follows:

16 **27-65-111. Certification on an outpatient basis - short-term**  
17 **and long-term care.** (1) Any respondent certified pursuant to section  
18 **27-65-108.5**, 27-65-109, or 27-65-110 may be provided treatment on an  
19 outpatient basis. The outpatient treatment provider shall develop a  
20 treatment plan for the respondent receiving treatment on an outpatient  
21 basis with the goal of the respondent finding and sustaining recovery. The  
22 treatment plan must include measures to keep the respondent or others  
23 safe, as informed by the respondent's need for certification. The treatment  
24 plan may include, but is not limited to:

25 (5) (a) In addition to any other limitation on liability, a person  
26 providing care to a respondent placed on short-term or long-term  
27 certification on an outpatient basis is only liable for harm subsequently

1 caused by or to a respondent who:

2 (I) Has been terminated from certification despite meeting  
3 statutory criteria for certification pursuant to section **27-65-108.5**,  
4 27-65-109, or 27-65-110; or

5 **SECTION 8.** In Colorado Revised Statutes, 27-65-113, **amend**  
6 (1), (5)(a), and (5)(b) as follows:

7 **27-65-113. Hearing procedures - jurisdiction.** (1) Hearings  
8 before the court pursuant to section **27-65-108.5**, 27-65-109, or  
9 27-65-110 are conducted in the same manner as other civil proceedings  
10 before the court. The burden of proof is on the person or facility seeking  
11 to detain the respondent. The court or jury shall determine that the  
12 respondent is in need of care and treatment only if the court or jury finds  
13 by clear and convincing evidence that the respondent has a mental health  
14 disorder and, as a result of the mental health disorder, is a danger to the  
15 respondent's self or others or is gravely disabled.

16 (5) (a) In the event that a respondent or a person found not guilty  
17 by reason of impaired mental condition pursuant to section 16-8-103.5  
18 (5), or by reason of insanity pursuant to section 16-8-105 (4) or  
19 16-8-105.5, refuses to accept medication, the court having jurisdiction of  
20 the action pursuant to subsection (4) of this section, the court committing  
21 the person or defendant to the custody of the BHA pursuant to section  
22 16-8-103.5 (5), 16-8-105 (4), ~~or~~ 16-8-105.5, ~~OR~~ 27-65-108.5, or the court  
23 of the jurisdiction in which the designated facility treating the respondent  
24 or person is located has jurisdiction and venue to accept a petition by a  
25 treating physician and to enter an order requiring that the respondent or  
26 person accept such treatment or, in the alternative, that the medication be  
27 forcibly administered to the respondent or person. The court of the



1 jurisdiction in which the designated facility is located shall not exercise  
2 its jurisdiction without the permission of the court that committed the  
3 person to the custody of the BHA. Upon the filing of such a petition, the  
4 court shall appoint an attorney, if one has not been appointed, to represent  
5 the respondent or person and hear the matter within ten days.

6 (b) In any case brought pursuant to subsection (5)(a) of this  
7 section in a court for the county in which the treating facility is located,  
8 the county where the proceeding was initiated pursuant to subsection (4)  
9 of this section or the court committing the person to the custody of the  
10 BHA pursuant to section 16-8-103.5 (5), 16-8-105 (4), ~~or~~ 16-8-105.5 OR  
11 27-65-108.5 shall either reimburse the county in which the proceeding  
12 pursuant to this subsection (5) was filed and in which the proceeding was  
13 held for the reasonable costs incurred in conducting the proceeding or  
14 conduct the proceeding itself using its own personnel and resources,  
15 including its own district or county attorney, as the case may be.

16 **SECTION 9.** In Colorado Revised Statutes, 27-65-123, **add** (6)  
17 as follows:

18 **27-65-123. Records.** (6) NOTHING IN THIS SECTION PROHIBITS  
19 THE LIMITED DISCLOSURE OF NECESSARY INFORMATION TO THE  
20 PROSECUTING ATTORNEY AND CRIMINAL DEFENSE COUNSEL IF A CRIMINAL  
21 CASE IS STILL PENDING AGAINST THE PERSON.

22 **SECTION 10. Act subject to petition - effective date.** This act  
23 takes effect January 1, 2024; except that, if a referendum petition is filed  
24 pursuant to section 1 (3) of article V of the state constitution against this  
25 act or an item, section, or part of this act within such period, then the act,  
26 item, section, or part will not take effect unless approved by the people

1 at the general election to be held in November 2024 and, in such case,  
2 will take effect on the date of the official declaration of the vote thereon  
3 by the governor.