

**First Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 23-0179.02 Jane Ritter x4342

HOUSE BILL 23-1138

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A BILL FOR AN ACT

101 **CONCERNING PROCEDURES RELATED TO ADULT COMPETENCY**
102 **PROCEEDINGS.**

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.*

SENATE
Amended 2nd Reading
May 2, 2023

HOUSE
3rd Reading Unamended
April 21, 2023

HOUSE
Amended 2nd Reading
April 18, 2023

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.

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. IF IT IS THE EVALUATOR'S OPINION THAT
27 THE DEFENDANT MEETS CRITERIA FOR CERTIFICATION FOR SHORT-TERM

1 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, THE
2 EVALUATOR IS NOT REQUIRED TO REQUEST A PETITION FOR CERTIFICATION
3 FOR SHORT-TERM TREATMENT OF THE DEFENDANT IN A COURT WITH
4 JURISDICTION PURSUANT TO SECTION 16-8.5-111 (2)(a).

5 (III) HAS AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, AS
6 DEFINED IN SECTION 25.5-10-202, AND IF THE DEFENDANT DOES HAVE
7 SUCH A DISABILITY, WHETHER THE DEFENDANT MAY BE ELIGIBLE FOR ANY
8 ADDITIONAL SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR
9 ARTICLE 10.5 OF TITLE 27.

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

12 **16-8.5-111. Procedure after determination of competency or**
13 **incompetency.** (2) If the final determination made pursuant to section
14 16-8.5-103 is that the defendant is incompetent to proceed, the court has
15 the following options:

16 (a) UPON A REQUEST FROM THE DISTRICT ATTORNEY, A
17 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A
18 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
19 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
20 FORENSIC MENTAL HEALTH, if the defendant is charged with an offense as
21 outlined in section 16-8.5-116 (7) and ~~the competency evaluation has~~
22 ~~determined that the defendant meets the standard for civil certification~~
23 ~~pursuant to article 65 of title 27, the court may forgo any order of~~
24 ~~restoration and immediately order that proceedings be initiated by the~~
25 ~~county attorney or district attorney required to conduct proceedings~~
26 ~~pursuant to section 27-65-113 (6) for the civil certification of the~~
27 ~~defendant and dismiss the charges without prejudice in the interest of~~

1 ~~justice once civil certification proceedings have been initiated~~ OR THE
2 PROSECUTING ATTORNEY AGREES, AND THE COURT FINDS REASONABLE
3 GROUNDS TO BELIEVE THE DEFENDANT MEETS THE STANDARD FOR A
4 CERTIFICATION FOR SHORT-TERM TREATMENT PURSUANT TO SECTION
5 27-65-108.5 OR 27-65-109, THE COURT MAY ORDER THAT, PURSUANT TO
6 THIS SUBSECTION (2) OR SECTION 16-8.5-116, THE REQUESTING PARTY
7 INITIATE A PETITION FOR A CERTIFICATION FOR SHORT-TERM TREATMENT
8 OF THE DEFENDANT IN A COURT WITH JURISDICTION. THE COURT SHALL
9 HEAR AND CONSIDER ANY OBJECTIONS FROM THE DEFENDANT PRIOR TO
10 ORDERING THE REFERRING PARTY TO INITIATE SUCH PROCEEDINGS. THE
11 PROSECUTING ATTORNEY AND DEPARTMENT SHALL TRANSMIT ANY
12 NECESSARY INFORMATION, INCLUDING MEDICAL RECORDS, COMPETENCY
13 EVALUATIONS, MATERIALS USED IN THE COMPETENCY PROCESS, AND
14 RESTORATION RECORDS, AND COOPERATE WITH THE REQUESTING PARTY
15 IN FILING A PETITION PURSUANT TO SECTION 27-65-108.5. WITH THE
16 DEFENDANT'S CONSENT, THE DEFENSE ATTORNEY REPRESENTING THE
17 DEFENDANT MAY TRANSMIT ANY INFORMATION AND COOPERATE IN THE
18 SHORT-TERM CERTIFICATION PROCESS. THE REQUESTING PARTY SHALL
19 FILE NOTICE IN THE CRIMINAL CASE WHEN THE CERTIFICATION FOR
20 SHORT-TERM TREATMENT IS FILED. UPON THE FILING OF A CERTIFICATION
21 FOR SHORT-TERM TREATMENT PURSUANT TO SECTION 27-65-108.5, THE
22 BEHAVIORAL HEALTH ADMINISTRATION IN THE DEPARTMENT SHALL,
23 DIRECTLY OR THROUGH A CONTRACT, PROVIDE CARE COORDINATION
24 SERVICES PURSUANT TO SECTION 27-65-108.

25 (a.2) THE COURT MAY FORGO ANY ORDER OF RESTORATION AND
26 DISMISS THE CHARGES WITHOUT PREJUDICE IN THE INTEREST OF JUSTICE
27 WHEN A CERTIFICATION FOR SHORT-TERM TREATMENT PROCEEDINGS IS

1 INITIATED AND WHEN ALL OF THE DEFENDANT'S CHARGES ARE SUBJECT TO
2 SECTION 16-8.5-116 (7).

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

27 (I) WHETHER CIVIL PROCEEDINGS ARE PENDING OR ONGOING;

1 (II) WHETHER THE DEFENDANT IS SUBJECT TO A CERTIFICATION
2 FOR SHORT-TERM OR LONG-TERM TREATMENT AND WHETHER THE
3 DEFENDANT IS BEING TREATED IN AN INPATIENT OR OUTPATIENT SETTING;

4 (III) WHEN PROCEEDINGS ARE OCCURRING, EVEN IF THE
5 PROCEEDINGS ARE CONFIDENTIAL OR CLOSED TO THE PROSECUTING
6 ATTORNEY OR DEFENDANT'S CRIMINAL ATTORNEY; AND

7 (IV) THE ULTIMATE OUTCOME OF THE PROCEEDING.

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

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

26 **16-8.5-116. Certification - reviews - termination of**
27 **proceedings - rules.** (2) (b) On and after July 1, 2020, at least ten days

1 before each review, the individual or entity evaluating the defendant
2 shall provide the court with a report describing:

3 (IV) Whether the defendant ~~meets the requirements for~~
4 ~~certification set forth in article 65 of title 27 or is eligible for services~~
5 ~~pursuant to article 10.5 of title 27~~ MEETS THE CRITERIA FOR AN
6 EMERGENCY MENTAL HEALTH HOLD PURSUANT TO SECTION 27-65-106;

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

18 (IV.5) WHETHER THE DEFENDANT HAS AN INTELLECTUAL AND
19 DEVELOPMENTAL DISABILITY, AS DEFINED IN SECTION 25.5-10-202, AND
20 IF THE DEFENDANT DOES HAVE SUCH A DISABILITY, WHETHER THE
21 DEFENDANT MAY BE ELIGIBLE FOR ANY ADDITIONAL SERVICES PURSUANT
22 TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF TITLE 27.

23 (6) Notwithstanding the time periods provided in subsections (7),
24 (8), and (9) of this section and to ensure compliance with relevant
25 constitutional principles, for any offense for which the defendant is
26 ordered to receive competency restoration services in an inpatient or
27 outpatient setting, if the court determines, based on available evidence,

1 that there is not a substantial probability that the defendant will be
2 restored to competency within the reasonably foreseeable future, the court
3 may order the defendant's release from commitment pursuant to this
4 article 8.5 through one or more of the following means:

5 (b) IF THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THE
6 DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT-TERM
7 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR 27-65-109, the court
8 may ~~in coordination with the county attorney or district attorney required~~
9 ~~to conduct proceedings pursuant to section 27-65-113 (6) for the county~~
10 ~~in which the defendant is charged, order the commencement of~~
11 ~~certification proceedings pursuant to the provisions of article 65 of title~~
12 ~~27 if the defendant meets the requirements for certification pursuant to~~
13 ~~article 65 of title 27~~ ORDER THE DISTRICT ATTORNEY, OR UPON REQUEST
14 FROM THE DISTRICT ATTORNEY, A PROFESSIONAL PERSON, AS DEFINED IN
15 SECTION 27-65-102, A REPRESENTATIVE OF THE BEHAVIORAL HEALTH
16 ADMINISTRATION IN THE DEPARTMENT, OR A REPRESENTATIVE OF THE
17 OFFICE OF CIVIL AND FORENSIC MENTAL HEALTH TO INITIATE, IN A COURT
18 WITH JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR
19 SHORT-TERM TREATMENT OF THE DEFENDANT PURSUANT TO SECTION
20 27-65-108.5 OR 27-65-109;

21 (10) Prior to the dismissal of charges pursuant to subsection (1),
22 (4), (6), (7), (8), or (9) of this section, ~~the court shall identify whether the~~
23 ~~defendant meets the requirements for certification pursuant to article 65~~
24 ~~of title 27, or for the provision of services pursuant to article 10.5 of title~~
25 ~~27, or whether the defendant will agree to a voluntary commitment~~
26 UNLESS THE COURT HAS ALREADY ORDERED A PERSON TO INITIATE
27 PROCEEDINGS FOR A CERTIFICATION FOR SHORT-TERM TREATMENT, THE

1 COURT SHALL MAKE FINDINGS WHETHER THERE ARE REASONABLE
2 GROUNDS TO BELIEVE THE PERSON MEETS THE STANDARD FOR A
3 CERTIFICATION FOR SHORT-TERM TREATMENT. If the court finds ~~the~~
4 ~~requirements for certification or provision of services are met or the~~
5 ~~defendant does not agree to a voluntary commitment~~ THERE ARE
6 REASONABLE GROUNDS, the court may stay the dismissal for ~~twenty-one~~
7 THIRTY-FIVE days and notify ~~the department and county attorney or~~
8 ~~district attorney required to conduct proceedings pursuant to section~~
9 ~~27-65-113 (6) in the relevant jurisdiction of the pending dismissal so as~~
10 ~~to provide the department and the county attorney or district attorney with~~
11 ~~the~~ ANY PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, A
12 REPRESENTATIVE OF THE BEHAVIORAL HEALTH ADMINISTRATION IN THE
13 DEPARTMENT, OR A REPRESENTATIVE OF THE OFFICE OF CIVIL AND
14 FORENSIC MENTAL HEALTH WHO HAS RECENTLY TREATED OR INTERACTED
15 WITH THE DEFENDANT THAT THERE ARE REASONABLE GROUNDS FOR
16 SHORT-TERM TREATMENT AND AFFORD THE PERSON AN opportunity to
17 pursue certification proceedings or ~~the provision of~~ TO ARRANGE
18 necessary services.

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

21 **19-2.5-704. Procedure after determination of competency or**
22 **incompetency.** (2) (b) Pursuant to section 27-60-105, the ~~behavioral~~
23 ~~health administration in the department of human services~~ is the entity
24 responsible for the oversight of restoration education and coordination of
25 services necessary to competency restoration.

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

1 **27-65-108.5. Court-ordered certification for short-term**
2 **treatment for incompetent defendants in a criminal matter - contents**
3 **of petition - procedure to contest petition - commitment to behavioral**
4 **health administration - definition.** (1) UPON PETITION OF THE DISTRICT

5 ATTORNEY, A PROFESSIONAL PERSON, A REPRESENTATIVE OF THE BHA, OR
6 A REPRESENTATIVE OF THE OFFICE OF CIVIL AND FORENSIC MENTAL
7 HEALTH, A COURT MAY CERTIFY A PERSON FOR SHORT-TERM TREATMENT
8 FOR NOT MORE THAN THREE MONTHS UNDER THE FOLLOWING CONDITIONS:

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

11 (b) THE COURT HEARING THE CRIMINAL MATTER REFERRED THE
12 MATTER FOR FILING OF A PETITION PURSUANT TO SECTION 16-8.5-111 OR
13 16-8.5-116;

14 (c) THE PERSON HAS BEEN ADVISED OF THE AVAILABILITY OF, BUT
15 HAS NOT ACCEPTED, VOLUNTARY TREATMENT, OR, IF REASONABLE
16 GROUNDS EXIST TO BELIEVE THAT THE PERSON WILL NOT REMAIN IN A
17 VOLUNTARY TREATMENT PROGRAM, THE PERSON'S ACCEPTANCE OF
18 VOLUNTARY TREATMENT DOES NOT PRECLUDE CERTIFICATION;

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

22 (e) THE PERSON, THE PERSON'S LEGAL GUARDIAN, AND THE
23 PERSON'S LAY PERSON, IF APPLICABLE, HAVE BEEN ADVISED OF THE
24 PERSON'S RIGHT TO AN ATTORNEY AND TO CONTEST THE CERTIFICATION
25 FOR SHORT-TERM TREATMENT.

26 (2) THE PETITION FILED PURSUANT TO SUBSECTION (1) OF THIS
27 SECTION MUST:

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

5 (b) BE ACCOMPANIED BY A REPORT OF THE COMPETENCY
6 EVALUATOR OR PROFESSIONAL PERSON WHO HAS EVALUATED THE
7 RESPONDENT WITHIN FIFTY-SIX DAYS BEFORE SUBMISSION OF THE
8 PETITION, UNLESS THE RESPONDENT WHOSE CERTIFICATION IS SOUGHT HAS
9 REFUSED TO SUBMIT TO AN EVALUATION OR THE RESPONDENT CANNOT BE
10 EVALUATED DUE TO THE RESPONDENT'S CONDITION;

11 (c) BE FILED WITHIN FOURTEEN DAYS AFTER THE INITIATING PARTY
12 RECEIVED THE COURT ORDER FROM THE CRIMINAL COURT INITIATING THE
13 PROCESS;

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

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

23 (3) WITHIN TWENTY-FOUR HOURS AFTER CERTIFICATION, COPIES
24 OF THE CERTIFICATION MUST BE PERSONALLY DELIVERED TO THE
25 RESPONDENT, THE BHA, OR THE OFFICE OF CIVIL AND FORENSIC MENTAL
26 HEALTH. THE DEPARTMENT SHALL RETAIN A COPY AS PART OF THE
27 RESPONDENT'S RECORD. IF THE CRIMINAL CASE IS PENDING, OR NOT YET

1 DISMISSED, NOTICE OF THE FILING OF THE PETITION SHOULD BE GIVEN BY
2 THE PETITIONING PARTY TO THE CRIMINAL COURT, WHICH SHALL PROVIDE
3 SUCH NOTICE TO THE PROSECUTING AND DEFENSE ATTORNEYS IN THE
4 CRIMINAL CASE AND ANY ATTORNEY APPOINTED PURSUANT TO SECTION
5 27-65-113. THE COURT SHALL ASK THE RESPONDENT TO DESIGNATE ONE
6 OTHER PERSON WHOM THE RESPONDENT WANTS TO BE INFORMED
7 REGARDING THE PETITION. IF THE RESPONDENT IS INCAPABLE OF MAKING
8 SUCH A DESIGNATION AT THE TIME THE PETITION IS DELIVERED, THE COURT
9 MAY ASK THE RESPONDENT TO DESIGNATE SUCH PERSON AS SOON AS THE
10 RESPONDENT IS CAPABLE.

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

23 (5) UPON THE FILING OF THE PETITION PURSUANT TO THIS SECTION
24 AND AFFORDING THE RESPONDENT A CHANCE TO CONTEST THE PETITION,
25 THE COURT MAY GRANT OR DENY CERTIFICATION BASED ON THE FACTS
26 ESTABLISHED IN THE PETITION, SUBJECT TO THE COURT'S FURTHER REVIEW
27 OR A JURY TRIAL.

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

5 (7) THE RESPONDENT MAY KNOWINGLY AND VOLUNTARILY
6 CONSENT IN WRITING TO THE PETITION.

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

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

21 (10) IN ASSESSING WHETHER THE RESPONDENT WITH A PENDING
22 CRIMINAL CHARGE IS A DANGER TO SELF OR OTHERS OR IS GRAVELY
23 DISABLED, IF THE PERSON IS INCARCERATED, THE PROFESSIONAL PERSON
24 AND COURT SHALL NOT RELY UPON THE FACT THAT THE PERSON IS
25 INCARCERATED TO ESTABLISH THAT THE RESPONDENT IS NOT A DANGER
26 TO SELF OR OTHERS OR IS NOT GRAVELY DISABLED.

27 (11) AN EMERGENCY MENTAL HEALTH HOLD PURSUANT TO

1 SECTION 27-65-106 IS NOT A PREREQUISITE TO A PROCEEDING PURSUANT
2 TO THIS SECTION.

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

5 **SECTION 6.** In Colorado Revised Statutes, 13-5-142, **amend**
6 (1)(c) as follows:

7 **13-5-142. National instant criminal background check system**
8 **- reporting.** (1) On and after March 20, 2013, the state court
9 administrator shall send electronically the following information to the
10 Colorado bureau of investigation created pursuant to section 24-33.5-401,
11 referred to in this section as the "bureau":

12 (c) The name of each person with respect to whom the court has
13 entered an order for involuntary certification for short-term treatment of
14 a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109,
15 for extended certification for treatment of a mental health disorder
16 pursuant to section 27-65-109 (10), or for long-term care and treatment
17 of a mental health disorder pursuant to section 27-65-110.

18 **SECTION 7.** In Colorado Revised Statutes, 13-5-142.5, **amend**
19 (2)(a)(III) as follows:

20 **13-5-142.5. National instant criminal background check**
21 **system - judicial process for awarding relief from federal**
22 **prohibitions - legislative declaration.** (2) **Eligibility.** A person may
23 petition for relief pursuant to this section if:

24 (a) (III) The court has entered an order for the person's involuntary
25 certification for short-term treatment of a mental health disorder pursuant
26 to section 27-65-108.5 OR 27-65-109, for extended certification for
27 treatment of a mental health disorder pursuant to section 27-65-109 (10),

1 or for long-term care and treatment of a mental health disorder pursuant
2 to section 27-65-110; and

3 **SECTION 8.** In Colorado Revised Statutes, **amend** 13-5-142.8
4 as follows:

5 **13-5-142.8. Notice by professional persons.** Under sections
6 13-9-123 (1), 13-9-124 (2), 13-5-142 (1), and 13-5-142.5 (2), an order for
7 involuntary certification for short-term treatment of a mental health
8 disorder pursuant to section 27-65-108.5 OR 27-65-109 must also include
9 a notice filed by a professional person pursuant to section 27-65-108.5 OR
10 27-65-109, and an order for extended certification for treatment of a
11 mental health disorder pursuant to section 27-65-109 (10) must also
12 include a notice filed by a professional person pursuant to section
13 27-65-109 (10).

14 **SECTION 9.** In Colorado Revised Statutes, 13-9-123, **amend**
15 (1)(c) as follows:

16 **13-9-123. National instant criminal background check system**
17 **- reporting.** (1) On and after March 20, 2013, the state court
18 administrator shall send electronically the following information to the
19 Colorado bureau of investigation created pursuant to section 24-33.5-401,
20 referred to in this section as the "bureau":

21 (c) The name of each person with respect to whom the court has
22 entered an order for involuntary certification for short-term treatment of
23 a mental health disorder pursuant to section 27-65-108.5 OR 27-65-109,
24 for extended certification for treatment of a mental health disorder
25 pursuant to section 27-65-109 (10), or for long-term care and treatment
26 of a mental health disorder pursuant to section 27-65-110.

27 **SECTION 10.** In Colorado Revised Statutes, 13-9-124, **amend**

1 (2)(a)(III) as follows:

2 **13-9-124. National instant criminal background check system**
3 **- judicial process for awarding relief from federal prohibitions -**
4 **legislative declaration. (2) Eligibility.** A person may petition for relief
5 pursuant to this section if:

6 (a) (III) The court has entered an order for the person's involuntary
7 certification for short-term treatment of a mental health disorder pursuant
8 to section 27-65-108.5 OR 27-65-109, for extended certification for
9 treatment of a mental health disorder pursuant to section 27-65-109 (10),
10 or for long-term care and treatment of a mental health disorder pursuant
11 to section 27-65-110; and

12 **SECTION 11.** In Colorado Revised Statutes, 25-3-102.1, **amend**
13 (1)(c) as follows:

14 **25-3-102.1. Deemed status for certain facilities.** (1) (c) Upon
15 submission of a completed application for license renewal, the department
16 of public health and environment shall accept proof of the accreditation
17 in lieu of licensing inspections or other requirements. Nothing in this
18 section exempts an accredited health facility from inspections or from
19 other forms of oversight by the department as necessary to ensure public
20 health and safety. Nothing in this section prevents the department of
21 public health and environment from conducting an inspection of a
22 hospital or other health facility described in section 25-3-101 to
23 investigate a complaint regarding the provisions of section 27-65-106,
24 27-65-107, **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-119 to the
25 extent the complaint is applicable to health facilities licensed by the
26 department of public health and environment.

27 **SECTION 12.** In Colorado Revised Statutes, 26-20-103, **amend**

1 (3) as follows:

2 **26-20-103. Basis for use of restraint or seclusion.** (3) In
3 addition to the circumstances described in subsection (1) of this section,
4 a facility, as defined in section 27-65-102, that is designated by the
5 commissioner of the behavioral health administration in the state
6 department to provide treatment pursuant to section 27-65-106,
7 27-65-108, **27-65-108.5**, 27-65-109, or 27-65-110 to an individual with
8 a mental health disorder, as defined in section 27-65-102, may use
9 seclusion to restrain an individual with a mental health disorder when the
10 seclusion is necessary to eliminate a continuous and serious disruption of
11 the treatment environment.

12 **SECTION 13.** In Colorado Revised Statutes, **amend as it will**
13 **become effective July 1, 2024**, 27-65-108 as follows:

14 **27-65-108. Care coordination for persons certified or in need**
15 **of ongoing treatment.** (1) A facility designated by the commissioner
16 shall notify and engage the BHA prior to terminating or transferring a
17 person certified pursuant to section **27-65-108.5**, 27-65-109, 27-65-110,
18 or 27-65-111. The BHA may provide care coordination services to
19 support a person whose certification is terminated but who is in need of
20 ongoing treatment and services.

21 (2) The BHA shall, directly or through A contract, provide care
22 coordination services to a person certified pursuant to section
23 **27-65-108.5**, 27-65-109, 27-65-110, or 27-65-111 and determined by the
24 designated facility and the BHA to need care coordination services.

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

1 **27-65-111. Certification on an outpatient basis - short-term**
2 **and long-term care.** (1) Any respondent certified pursuant to section
3 **27-65-108.5**, 27-65-109, or 27-65-110 may be provided treatment on an
4 outpatient basis. The outpatient treatment provider shall develop a
5 treatment plan for the respondent receiving treatment on an outpatient
6 basis with the goal of the respondent finding and sustaining recovery. The
7 treatment plan must include measures to keep the respondent or others
8 safe, as informed by the respondent's need for certification. The treatment
9 plan may include, but is not limited to:

10 (5) (a) In addition to any other limitation on liability, a person
11 providing care to a respondent placed on short-term or long-term
12 certification on an outpatient basis is only liable for harm subsequently
13 caused by or to a respondent who:

14 (I) Has been terminated from certification despite meeting
15 statutory criteria for certification pursuant to section **27-65-108.5**,
16 27-65-109, or 27-65-110; or

17 **SECTION 15.** In Colorado Revised Statutes, 27-65-112, **amend**
18 **as it will become effective July 1, 2024**, (1) as follows:

19 **27-65-112. Termination of certification for short-term and**
20 **long-term treatment.** (1) An original or extended certification for
21 short-term treatment issued pursuant to section 27-65-108.5 OR
22 27-65-109, or an order or extension for certification for long-term care
23 and treatment pursuant to section 27-65-110 terminates as soon as the
24 professional person in charge of treatment of the respondent and the BHA
25 determine the respondent has received sufficient benefit from the
26 treatment for the respondent to end involuntary treatment. Whenever a
27 certification or extended certification is terminated pursuant to this

1 section, the professional person in charge of providing treatment shall
2 notify the court in writing within five days after the termination.

3 **SECTION 16.** In Colorado Revised Statutes, 27-65-113, **amend**
4 (1), (5)(a), and (5)(b) as follows:

5 **27-65-113. Hearing procedures - jurisdiction.** (1) Hearings
6 before the court pursuant to section **27-65-108.5**, 27-65-109, or
7 27-65-110 are conducted in the same manner as other civil proceedings
8 before the court. The burden of proof is on the person or facility seeking
9 to detain the respondent. The court or jury shall determine that the
10 respondent is in need of care and treatment only if the court or jury finds
11 by clear and convincing evidence that the respondent has a mental health
12 disorder and, as a result of the mental health disorder, is a danger to the
13 respondent's self or others or is gravely disabled.

14 (5) (a) In the event that a respondent or a person found not guilty
15 by reason of impaired mental condition pursuant to section 16-8-103.5
16 (5), or by reason of insanity pursuant to section 16-8-105 (4) or
17 16-8-105.5, refuses to accept medication, the court having jurisdiction of
18 the action pursuant to subsection (4) of this section, the court committing
19 the person or defendant to the custody of the **BHA DEPARTMENT** pursuant
20 to section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, or the court of
21 the jurisdiction in which the designated facility treating the respondent or
22 person is located has jurisdiction and venue to accept a petition by a
23 treating physician and to enter an order requiring that the respondent or
24 person accept such treatment or, in the alternative, that the medication be
25 forcibly administered to the respondent or person. The court of the
26 jurisdiction in which the designated facility is located shall not exercise
27 its jurisdiction without the permission of the court that committed the

1 person to the custody of the **BHA DEPARTMENT**. Upon the filing of such
2 a petition, the court shall appoint an attorney, if one has not been
3 appointed, to represent the respondent or person and hear the matter
4 within ten days.

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

15 **SECTION 17.** In Colorado Revised Statutes, 27-65-119, **amend**
16 **as it will become effective July 1, 2023,** (1) introductory portion as
17 follows:

18 **27-65-119. Rights of respondents certified for short-term**
19 **treatment or long-term care and treatment.** (1) ~~Each~~ **EACH** respondent
20 certified for short-term treatment or long-term care and treatment on an
21 inpatient basis pursuant to sections **27-65-108.5, 27-65-109, and**
22 **27-65-110** has the following rights and shall be advised of such rights by
23 the facility:

24 **SECTION 18.** In Colorado Revised Statutes, 27-66.5-102,
25 **amend** (3)(a)(II) as follows:

26 **27-66.5-102. Definitions.** As used in this article 66.5, unless the
27 context otherwise requires:

1 (3) "High-risk individual" means a person who:

2 (a) Has a significant mental health or substance use disorder, as
3 evidenced by:

4 (II) A certification for short-term treatment or extended short-term
5 treatment pursuant to section 27-65-108.5 OR 27-65-109;

6 **SECTION 19.** In Colorado Revised Statutes, 27-80-303, **amend**
7 (3)(c) as follows:

8 **27-80-303. Office of ombudsman for behavioral health access**
9 **to care - creation - appointment of ombudsman - duties.** (3) The
10 ombudsman shall:

11 (c) Receive and assist consumers and providers in reporting
12 concerns and filing complaints with appropriate regulatory or oversight
13 agencies relating to inappropriate care, a procedure for an emergency
14 mental health hold pursuant to section 27-65-106, a certification for
15 short-term treatment pursuant to section 27-65-108.5 OR 27-65-109, or a
16 certification for long-term care and treatment pursuant to section
17 27-65-110;

18 **SECTION 20.** In Colorado Revised Statutes, 27-65-123, **add** (6)
19 as follows:

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

24 **SECTION 21. Act subject to petition - effective date.** This act
25 takes effect July 1, 2024; except that, if a referendum petition is filed
26 pursuant to section 1 (3) of article V of the state constitution against this
27 act or an item, section, or part of this act within the ninety-day period

1 after final adjournment of the general assembly, then the act, item,
2 section, or part will not take effect unless approved by the people at the
3 general election to be held in November 2024 and, in such case, will take
4 effect on the date of the official declaration of the vote thereon by the
5 governor.