

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 18-1250.01 Jane Ritter x4342

SENATE BILL 18-252

SENATE SPONSORSHIP

Gardner and Lambert, Jahn, Lundberg, Moreno

HOUSE SPONSORSHIP

Lee and Young, Hamner, Rankin, Singer

Senate Committees

Judiciary
Appropriations

House Committees

A BILL FOR AN ACT

101 **CONCERNING ACTIONS RELATED TO DETERMINATIONS OF**
102 **COMPETENCY TO PROCEED, AND, IN CONNECTION THEREWITH,**
103 **MAKING AN APPROPRIATION.**

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 makes numerous changes to statutes related to the process of determination of competency to proceed in a criminal case.

Sections 1 and 2 of the bill updates the definitions section that uses outdated terminology of a "developmental disability" to now reference "intellectual and developmental disability".

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.

SENATE
3rd Reading Unamended
May 3, 2018

SENATE
Amended 2nd Reading
May 2, 2018

Section 3 of the bill makes changes in the regulation of a second competency evaluation (evaluation) requested by the court, including reducing the time frame that the prosecution or defense may request a second evaluation from 14 days to 7 days and clarifying that the department of human services (department) is not responsible for conducting a second evaluation.

Section 4 of the bill concerns changes to competency evaluations and reports, including that:

- ! If a defendant is eligible for bond, they must be released on bond on condition that he or she cooperate with an evaluation on an outpatient and out-of-custody (outpatient) basis;
- ! For misdemeanors, petty offenses, and traffic offenses, excluding crimes considered victim's rights crimes, the court shall grant bond without a monetary condition, on the condition the defendant cooperates with the evaluation process on an outpatient basis;
- ! Bond must not be granted if the court determines the defendant is likely to willfully fail to appear or is likely to be a danger to himself or herself or others in the reasonably foreseeable future. In such case, the evaluation must be conducted at the place at which the defendant is in custody.
- ! If the defendant is in the custody of the department and the department recommends an inpatient evaluation, the court may so order such evaluation. A sheriff in the jurisdiction where the defendant is to return after the evaluation shall pick up the defendant within 72 hours after receiving notice that the evaluation is complete.
- ! The competency evaluation report (report) must include:
 - ! If the defendant is determined to be incompetent to proceed, whether or not there is a substantial probability that he or she can be restored to competency within the allowable time frame and whether inpatient or outpatient restoration services are recommended;
 - ! If available, information on previous evaluations or restoration services provided to the defendant; and
 - ! If the defendant meets the criteria for civil certification.

Sections 5 and 6 of the bill outline procedures to follow after a determination of competency or incompetency to proceed, including that:

- ! If the defendant is released on bond, a determination of whether restoration services are to be provided on an outpatient or inpatient basis. If the defendant is ordered to outpatient restoration services and he or she is

uncooperative or fails to begin services, the individual agency responsible for providing restoration services shall notify the court within 45 days;

- ! If the defendant remains in custody, a determination of the most suitable location to provide restoration services;
- ! If outpatient restoration services have been ordered, the court shall review the case every 30 days to assess the defendant's progress toward restoration to competency;
- ! If outpatient restoration services have been ordered and the department is unable to provide such services, the court may commit the defendant to the department's custody until outpatient services are available; and
- ! If inpatient restoration services have been ordered, the most clinically appropriate setting must be used.

Section 7 of the bill outlines the options for reviews, civil certification (certification), provision of services for persons with intellectual and developmental disabilities (provision of services), and termination of proceedings (termination), including that:

- ! Time periods for review and final determinations related to certification, provision of services, and termination are established for different levels of offenses;
- ! In no instance may confinement exceed the maximum sentence for the crime charged, and time is calculated to include aggregate time spent in custody;
- ! At the end of any maximum amount of time, the court shall dismiss the charges with prejudice;
- ! The court is required to review the case of a defendant determined to be incompetent to proceed at least every 3 months, using a report from the individual or entity responsible for evaluating the defendant. The court shall review the defendant's competency, whether there is a substantial probability he or she will be restored to competency within the allowable time frame, and if the defendant meets the criteria for certification or the provision of services.
- ! Based on the level of the crime involved (misdemeanor, petty offense, traffic offense, excluding victim's rights offenses; class 5 or class 6 felony, excluding victim's rights offenses; or any other felony offenses, excluding class 1 or class 2 felonies, any sex offenses, and crimes of violence), the court shall determine, at the appropriate review time and as applicable, whether:
 - ! The charges must be dismissed;
 - ! The defendant meets the criteria for certification;
 - ! The defendant meets the criteria for provision of

- ! services; or
- ! The defendant presents a substantial and unacceptable risk to the safety of himself or herself or of the community and should remain in the custody of the department.
- ! In all cases except those involving class 1 or class 2 felonies, sex offenses, and crimes of violence, if, after 3 years in confinement, the defendant has not been restored to competency, the charges against the defendant must be dismissed;
- ! Certification proceedings may be brought against a defendant at any time; and
- ! The party contesting a defendant's release bears the burden of proving, by clear and convincing evidence, that the defendant continues to present a substantial and unacceptable risk to the safety of himself or herself or of the community in the reasonably foreseeable future.

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

2 **SECTION 1. In Colorado Revised Statutes, amend 16-8.5-101**
3 *as follows:*

4 **16-8.5-101. Definitions.** As used in this article ARTICLE 8.5,
5 *unless the context otherwise requires:*

6 **(1) "AVAILABLE BED"** MEANS AN INPATIENT BED THAT IS
7 *UNOCCUPIED WHEN THE DEPARTMENT'S BEDS THAT ARE DEDICATED TO*
8 *RESTORATION SERVICES ARE LESS THAN NINETY PERCENT FILLED.*

9 **(2) "COLLATERAL MATERIALS"** MEANS THE RELEVANT POLICE OR
10 *OTHER INCIDENT REPORTS AND THE CHARGING DOCUMENTS, EITHER THE*
11 *CRIMINAL COMPLAINT OR INDICTMENT.*

12 **(3) "Competency evaluation"** includes both court-ordered
13 *competency evaluations and second evaluations.*

14 **(4) "Competency evaluator"** means a licensed physician who
15 *is a psychiatrist or a licensed psychologist, each of whom is trained in*
16 *forensic competency assessments, or a psychiatrist who is in forensic*

1 training and practicing under the supervision of a psychiatrist with
2 expertise in forensic psychiatry, or a psychologist who is in forensic
3 training and is practicing under the supervision of a licensed psychologist
4 with expertise in forensic psychology.

5 (3) (5) "Competency hearing" means a hearing to determine
6 whether a defendant is competent to proceed.

7 (4) (6) "Competent to proceed" means that the defendant does not
8 have a mental disability or developmental disability that prevents the
9 defendant from having sufficient present ability to consult with the
10 defendant's HIS OR HER lawyer with a reasonable degree of rational
11 understanding in order to assist in the defense or prevents the defendant
12 from having a rational and factual understanding of the criminal
13 proceedings.

14 (5) (7) "Court-ordered competency evaluation" means a
15 court-ordered examination of a defendant either before, during, or after
16 trial, directed to developing information relevant to a determination of the
17 defendant's competency to proceed at a particular stage of the criminal
18 proceeding, that is performed by a competency evaluator and includes
19 evaluations concerning restoration to competency.

20 (6) (8) "Court-ordered report" means a report of an evaluation,
21 conducted by or under the direction of the department, that is the statutory
22 obligation of the department to prepare when requested to do so by the
23 court.

24 (7) (9) "Criminal proceedings" means trial, sentencing, execution,
25 and any pretrial matter that is not susceptible of fair determination
26 without the personal participation of the defendant.

27 (8) (10) "Department" means the department of human services.

1 (9) (11) "Developmental disability" means a disability that has
2 manifested before the person reaches twenty-two years of age, that
3 constitutes a substantial disability to the affected individual, and is
4 attributable to mental retardation AN INTELLECTUAL DISABILITY or other
5 neurological conditions when such conditions result in impairment of
6 general intellectual functioning or adaptive behavior similar to that of a
7 person with mental retardation AN INTELLECTUAL DISABILITY. Unless
8 otherwise specifically stated, the federal definition of "developmental
9 disability", 42 U.S.C. sec. 15001 et seq., shall DOES not apply.

10 (10) (12) "Executive director" means the executive director of the
11 department of human services.

12 (11) (13) "Incompetent to proceed" means that, as a result of a
13 mental disability or developmental disability, the defendant does not have
14 sufficient present ability to consult with the defendant's HIS OR HER lawyer
15 with a reasonable degree of rational understanding in order to assist in the
16 defense, or that, as a result of a mental disability or developmental
17 disability, the defendant does not have a rational and factual
18 understanding of the criminal proceedings.

19 (14) "INPATIENT" MEANS IN THE CUSTODY OF THE DEPARTMENT,
20 EITHER IN A MENTAL HEALTH HOSPITAL OR IN A FULL-TIME, JAIL-BASED
21 RESTORATION PROGRAM DEVELOPED BY THE DEPARTMENT.

22 (12) (15) "Mental disability" means a substantial disorder of
23 thought, mood, perception, or cognitive ability that results in marked
24 functional disability, significantly interfering with adaptive behavior.
25 "Mental disability" does not include acute intoxication from alcohol or
26 other substances, or any condition manifested only by antisocial behavior,
27 or any substance abuse impairment resulting from recent use or

1 withdrawal. However, substance abuse that results in a long-term,
2 substantial disorder of thought, mood, or cognitive ability may constitute
3 a mental disability.

4 (16) "OUTPATIENT" MEANS ANY LOCATION OUTSIDE OF THE
5 CUSTODY OF THE DEPARTMENT WHERE THE DEFENDANT CAN ACCESS
6 RESTORATION SERVICES. "OUTPATIENT" MAY INCLUDE A JAIL OR OTHER
7 DETENTION FACILITY WHERE THE DEFENDANT IS IN CUSTODY OR ANY
8 OTHER OUT-OF-CUSTODY RESTORATION LOCATION.

9 (13) (17) "Restoration hearing" means a hearing to determine
10 whether a defendant who has previously been determined to be
11 incompetent to proceed has become competent to proceed.

12 (14) (18) "Second evaluation" means an evaluation requested by
13 the court, the district attorney, or the defendant that is performed by a
14 competency evaluator and that is not performed by or under the direction
15 of, or paid for by, the department.

16 **SECTION 2. In Colorado Revised Statutes, 16-8.5-103, amend**
17 **(1), (3), and (4) as follows:**

18 **16-8.5-103. Determination of competency to proceed.**
19 (1) Whenever the question of a defendant's competency to proceed is
20 raised, by either party or on the court's own motion, the court may make
21 a preliminary finding of competency or incompetency TO PROCEED, which
22 shall be IS a final determination unless a party to the case objects within
23 fourteen SEVEN days after the court's preliminary finding.

24 (3) Within fourteen SEVEN days after receipt of the court-ordered
25 report, either party may request a hearing or a second evaluation.

26 (4) If a party requests a second evaluation, any pending requests
27 for a hearing shall MUST be continued until the receipt of the second

1 evaluation report. The report of the expert conducting the second
2 evaluation shall ~~MUST~~ be completed and filed with the court within
3 sixty-three ~~forty-two~~ days after the court order allowing the second
4 evaluation, unless the time period is extended by the court for good cause.
5 If the second evaluation is requested by the court, it shall ~~MUST~~ be paid
6 for by the court.

7 **SECTION 3. In Colorado Revised Statutes, 16-8.5-105, amend**
8 (1) and (5); and add (6) as follows:

9 **16-8.5-105. Competency evaluations and reports.**
10 (1) (a) (I) The court shall order that the COMPETENCY evaluation be
11 conducted on an outpatient OUT-OF-CUSTODY basis or, if the defendant is
12 in custody, at the place where the defendant is in custody. The defendant
13 shall be released on bond if otherwise eligible for bond EXCEPT AS
14 PROVIDED IN SUBSECTION (1)(b) OF THIS SECTION. IF THE DEPARTMENT
15 CONDUCTS THE EVALUATION ON AN IN-CUSTODY BASIS, THE DEPARTMENT
16 SHALL BEGIN THE EVALUATION NO LATER THAN SEVEN DAYS AFTER THE
17 DEPARTMENT'S RECEIPT OF A COURT ORDER DIRECTING THE EVALUATION
18 AND THE RECEIPT OF COLLATERAL MATERIALS. THE DEPARTMENT SHALL
19 COMPLETE THE IN-CUSTODY EVALUATION NO LATER THAN FORTY-FIVE
20 DAYS AFTER THE RECEIPT OF SUCH DOCUMENTS, UNLESS THE COURT
21 EXTENDS THE TIMELINE FOR GOOD CAUSE SHOWN.

22 (II) THE DEFENDANT MUST HAVE BOND SET UNLESS HE OR SHE IS
23 INELIGIBLE FOR BOND PURSUANT TO THE PROVISIONS OF SECTION
24 16-4-101. THE COURT SHALL DETERMINE THE TYPE OF BOND AND THE
25 CONDITIONS OF RELEASE AFTER CONSIDERATION OF THE FACTORS
26 ENUMERATED IN ARTICLE 4 OF THIS TITLE 16, WHICH INCLUDE
27 CONSIDERATION OF THE INFORMATION RECEIVED FROM ANY PRETRIAL

1 SERVICES PROGRAM PURSUANT TO THE PROVISIONS OF SECTION 16-4-106.
2 A REQUEST FOR A COMPETENCY EVALUATION IS NOT A BARRIER TO
3 RELEASE ON BOND, INCLUDING A PERSONAL RECOGNIZANCE BOND, WITH
4 APPROPRIATE AND LEAST RESTRICTIVE CONDITIONS. AS A CONDITION OF
5 ANY BOND, THE COURT SHALL INCLUDE A CONDITION REQUIRING THE
6 DEFENDANT'S COOPERATION WITH THE COMPETENCY EVALUATION ON AN
7 OUTPATIENT AND OUT-OF-CUSTODY BASIS.

8 (III) NOTHING IN THIS SUBSECTION (1)(a) LIMITS THE
9 AVAILABILITY OF A COURT-ORDERED EVALUATION FOR A PERSON WITH A
10 MENTAL HEALTH DISORDER PURSUANT TO SECTION 27-65-106 OR INVOKES
11 THE EMERGENCY PROCEDURE SET FORTH IN SECTION 27-65-105.

12 (b) Notwithstanding the provisions of paragraph (a) of this
13 subsection (1) SUBSECTION (1)(a) OF THIS SECTION, the court may order
14 the defendant placed in the DEPARTMENT'S custody of the Colorado
15 mental health institute at Pueblo for the time necessary to conduct the
16 INPATIENT COMPETENCY evaluation if:

17 (I) The court finds the defendant may be a danger to self or others
18 as defined in section 27-65-102, C.R.S.;

19 (II) The court finds that an inadequate competency evaluation and
20 report has been completed or two or more conflicting competency
21 evaluations and reports have been completed;

22 (III) The court finds that an observation period is necessary to
23 determine if the defendant is competent to stand trial;

24 (IV) The court receives a recommendation from the Colorado
25 mental health institute at Pueblo court services evaluator that conducting
26 the evaluation at the Colorado mental health institute at Pueblo is
27 appropriate because the evaluator conducting the evaluation for the

1 Colorado mental health institute at Pueblo determines that the defendant
2 has been uncooperative or the defendant has clinical needs that warrant
3 transfer to the Colorado mental health institute at Pueblo; or

4 (V) The court receives written approval for the evaluation to be
5 conducted at the Colorado mental health institute at Pueblo from the
6 executive director of the department of human services, or his or her
7 designee.

8 (I) THE DEPARTMENT PROVIDES A RECOMMENDATION TO THE
9 COURT, AFTER CONSULTATION WITH THE DEFENDANT, THAT CONDUCTING
10 THE COMPETENCY EVALUATION ON AN INPATIENT BASIS IS CLINICALLY
11 APPROPRIATE; OR

12 (II) EXTRAORDINARY CIRCUMSTANCES RELATING TO THE CASE OR
13 THE DEFENDANT MAKE CONDUCTING THE COMPETENCY EVALUATION ON
14 AN INPATIENT BASIS NECESSARY AND APPROPRIATE.

15 (b.3) UPON ENTRY OF A COURT ORDER PURSUANT TO SUBSECTION
16 (1)(b) OF THIS SECTION, THE DEPARTMENT HAS THE SAME AUTHORITY
17 WITH RESPECT TO CUSTODY AS PROVIDED FOR IN SECTION 16-8-105.5(4).

18 (b.5) WHEN THE COURT ORDERS AN INPATIENT EVALUATION, THE
19 COURT SHALL ADVISE THE DEFENDANT THAT RESTORATION SERVICES MAY
20 COMMENCE IMMEDIATELY IF THE EVALUATION CONCLUDES THE
21 DEFENDANT IS INCOMPETENT TO PROCEED, UNLESS EITHER PARTY OBJECTS
22 AT THE TIME OF THE ADVISEMENT, OR WITHIN SEVENTY-TWO HOURS AFTER
23 THE RECEIPT OF THE WRITTEN EVALUATION SUBMITTED TO THE COURT.
24 THE COURT SHALL RECORD ANY OBJECTION TO THE ORDER OF
25 COMMITMENT TO THE DEPARTMENT.

26 (c) The court, when setting bond pursuant to section 16-4-103, if
27 the defendant is eligible for bond, and after receiving any information

1 pursuant to section 16-4-106, shall not consider the need for the
2 defendant to receive an evaluation pursuant to this article.

3 (d) If a defendant is in THE DEPARTMENT'S custody at the Colorado
4 mental health institute at Pueblo for purposes of the COMPETENCY
5 evaluation ordered pursuant to this article ARTICLE 8.5 and the defendant
6 has completed the evaluation and must be returned to COMPETENCY
7 EVALUATION AND THE EVALUATOR HAS CONCLUDED THAT THE
8 DEFENDANT IS COMPETENT TO PROCEED, THE DEPARTMENT MAY RETURN
9 THE DEFENDANT TO a county jail OR TO THE COMMUNITY, AS DETERMINED
10 BY THE DEFENDANT'S BOND STATUS. IF THE EVALUATOR HAS CONCLUDED
11 THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND THAT INPATIENT
12 RESTORATION SERVICES ARE NOT CLINICALLY APPROPRIATE, AND
13 OUTPATIENT RESTORATION SERVICES ARE AVAILABLE TO THE DEFENDANT
14 IN THE COUNTY JAIL OR IN THE COMMUNITY, THE DEPARTMENT MAY
15 RETURN THE DEFENDANT TO A COUNTY JAIL OR TO THE COMMUNITY. IF
16 THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE COUNTY JAIL, the
17 county sheriff in the jurisdiction where the defendant must return shall
18 make all reasonable efforts to take custody of the defendant as soon as
19 practicable once the defendant's evaluation is completed TAKE CUSTODY
20 OF THE DEFENDANT WITHIN SEVENTY-TWO HOURS AFTER RECEIVING
21 NOTIFICATION FROM THE DEPARTMENT THAT THE DEFENDANT'S
22 COMPETENCY EVALUATION IS COMPLETE. AT THE TIME THE DEPARTMENT
23 NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO NOTIFY THE COURT
24 THAT THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE CUSTODY
25 OF THE JAIL.

26 (e) Nothing in this section shall restrict RESTRICTS the right of the
27 defendant to procure an A COMPETENCY evaluation as provided in section

1 16-8.5-107 SECTION 16-8.5-106.

2 (5) The report of evaluation shall COMPETENCY EVALUATION

3 REPORT MUST include but need not be limited to:

4 (a) The name of each physician, psychologist, or other expert who
5 examined the defendant; and

6 (b) A description of the nature, content, extent, and results of the
7 COMPETENCY evaluation and any tests conducted, and WHICH MUST
8 INCLUDE, BUT NEED NOT BE LIMITED TO, THE INFORMATION REVIEWED AND
9 RELIED UPON IN CONDUCTING THE COMPETENCY EVALUATION AND
10 SPECIFIC TESTS CONDUCTED BY THE COMPETENCY EVALUATOR;

11 (c) A diagnosis and prognosis of the defendant's mental disability
12 or developmental disability; and

13 (d) An opinion as to whether the defendant suffers from a mental
14 disability or developmental disability; and

15 (e) An opinion as to whether the defendant is competent to
16 proceed;

17 (f) IF THE OPINION OF THE COMPETENCY EVALUATOR IS THAT THE
18 DEFENDANT IS INCOMPETENT TO PROCEED:

19 (I) AN OPINION AS TO WHETHER THERE IS A SUBSTANTIAL
20 PROBABILITY THAT THE DEFENDANT, WITH RESTORATION SERVICES, WILL
21 ATTAIN COMPETENCY WITHIN THE TIME ALLOWED PURSUANT TO SECTION
22 16-8.5-116;

23 (II) A RECOMMENDATION AS TO WHETHER INPATIENT
24 RESTORATION SERVICES ARE CLINICALLY APPROPRIATE TO RESTORE THE
25 DEFENDANT TO COMPETENCY. IF INPATIENT RESTORATION SERVICES ARE
26 NOT CLINICALLY APPROPRIATE, THE DEPARTMENT MUST DETAIL THE
27 OUTPATIENT AND OUT-OF-CUSTODY RESTORATION SERVICES AVAILABLE

1 TO THE DEFENDANT.

2 (g) IF AVAILABLE, A DESCRIPTION OF ALL COMPETENCY
3 EVALUATIONS OR RESTORATION SERVICES THAT WERE PREVIOUSLY
4 PROVIDED TO THE DEFENDANT; AND

5 (h) THE COMPETENCY EVALUATOR'S OPINION AS TO WHETHER THE
6 DEFENDANT MEETS THE CRITERIA FOR CERTIFICATION PURSUANT TO
7 ARTICLE 65 OF TITLE 27 OR WHETHER THE DEFENDANT IS ELIGIBLE FOR
8 SERVICES PURSUANT TO ARTICLE 10 OF TITLE 25.5 OR ARTICLE 10.5 OF
9 TITLE 27.

10 (6) (a) IF THE COMPETENCY EVALUATION CONCLUDES THAT THE
11 DEFENDANT IS INCOMPETENT TO PROCEED, THE DEPARTMENT MAY
12 INITIATE RESTORATION SERVICES UNLESS EITHER PARTY OBJECTS WITHIN
13 SEVENTY-TWO HOURS AFTER THE RECEIPT OF THE COMPETENCY
14 EVALUATION REPORT OR HAS OBJECTED AT THE TIME OF THE ORDER FOR
15 A COMPETENCY EVALUATION PURSUANT TO SUBSECTION (1)(b.5) OF THIS
16 SECTION. ANY OBJECTION MUST BE PROVIDED TO THE DEPARTMENT ON A
17 FORTHWITH BASIS.

18 (b) IF EITHER PARTY OBJECTS, RESTORATION SERVICES WILL NOT
19 COMMENCE AND THE DEPARTMENT MAY RETURN THE DEFENDANT TO THE
20 COUNTY JAIL OR TO THE COMMUNITY, DEPENDING UPON THE DEFENDANT'S
21 BOND STATUS. IF THE DEPARTMENT IS RETURNING THE DEFENDANT TO THE
22 COUNTY JAIL, THE SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT
23 MUST RETURN SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN
24 SEVENTY-TWO HOURS AFTER RECEIVING NOTIFICATION FROM THE
25 DEPARTMENT. AT THE TIME THE DEPARTMENT NOTIFIES THE SHERIFF, THE
26 DEPARTMENT SHALL ALSO NOTIFY THE COURT THAT THE DEPARTMENT IS
27 RETURNING THE DEFENDANT TO THE CUSTODY OF THE JAIL.

1 **SECTION 4. In Colorado Revised Statutes, 16-8.5-111, amend**
2 **(2); and add (3) as follows:**

3 **16-8.5-111. Procedure after determination of competency or**
4 **incompetency.** (2) If the final determination made pursuant to section
5 16-8.5-103 is that the defendant is incompetent to proceed, the court has
6 **the following options:**

7 (a) (I) If the defendant is on bond or summons, the court shall
8 **consider whether ORDER THAT** restoration to competency **should occur**
9 **TAKE PLACE** on an outpatient and out-of-custody basis, UNLESS THE
10 **DEPARTMENT RECOMMENDS INPATIENT RESTORATION SERVICES PURSUANT**
11 **TO SECTION 16-8.5-105 (5)(f)(II).**

12 (II) If the defendant is in custody, the court may release the
13 **defendant on bond upon compliance with the standards and procedures**
14 **for such release prescribed by statute and by** CONSISTENT WITH ARTICLE
15 4 OF THIS TITLE 16 AND the Colorado rules of criminal procedure. As a
16 **condition of such bond, the court may** SHALL ORDER THAT THE
17 **RESTORATION TAKE PLACE ON AN OUTPATIENT AND OUT-OF-CUSTODY**
18 **BASIS.** THE COURT MAY require the defendant to obtain any OUTPATIENT
19 **treatment or habilitation services that are available to the defendant, such**
20 **as inpatient or outpatient treatment at a community mental health center**
21 **or in any other appropriate OUTPATIENT treatment setting, as determined**
22 **by the court.** Nothing in this section authorizes the court to order
23 **community mental health centers or other providers to provide treatment**
24 **for persons not otherwise eligible for these services.** At any hearing to
25 **determine eligibility for release on bond, the court shall consider any**
26 **effect the defendant's incompetency may have on the court's ability to**
27 **ensure the defendant's presence for hearing or trial.** There is a

1 presumption that the defendant's incompetency will inhibit the defendant's
2 ability to ensure his or her presence for trial. Pursuant to section
3 27-60-105, the office of behavioral health is the entity responsible for the
4 oversight of restoration education and coordination of services necessary
5 to competency restoration THE INDIVIDUAL AGENCY RESPONSIBLE FOR
6 PROVIDING OUTPATIENT RESTORATION SERVICES FOR THE DEFENDANT
7 SHALL NOTIFY THE COURT WITHIN TWENTY-EIGHT DAYS AFTER BEGINNING
8 OR ATTEMPTING TO BEGIN RESTORATION SERVICES IF THE DEFENDANT IS
9 UNCOOPERATIVE WITH ACCEPTING RESTORATION SERVICES. PURSUANT TO
10 SECTION 27-60-105, THE DEPARTMENT IS THE ENTITY RESPONSIBLE FOR
11 THE DEVELOPMENT OF RESTORATION CURRICULA AND NECESSARY
12 TRAINING TO CREATE OUTPATIENT RESTORATION SERVICES IN ANY
13 SETTING.

14 (b) If the court finds that the defendant is not eligible for release
15 from custody, the court may commit the defendant to the custody of the
16 department, in which case the executive director has the same powers
17 with respect to commitment as the executive director has following a
18 commitment under section 16-8-105.5(4). At such time as the department
19 recommends to the court that the defendant is restored to competency, the
20 defendant may be returned to custody of the county jail or to previous
21 bond status IF THE DEFENDANT IS NOT RELEASED FROM CUSTODY, THE
22 COURT SHALL ORDER THE DEPARTMENT TO PROVIDE RESTORATION
23 SERVICES AT THE PLACE WHERE THE DEFENDANT IS IN CUSTODY, IF THE
24 DEPARTMENT HAS RECOMMENDED OUTPATIENT RESTORATION SERVICES
25 AND IF THE DEPARTMENT HAS NO AVAILABLE BEDS FOR INPATIENT
26 RESTORATION SERVICES. THE DEPARTMENT SHALL BEGIN OUTPATIENT
27 RESTORATION SERVICES AS SOON AS PRACTICABLE AFTER THE COURT'S

1 ORDER. A JAIL WHERE A DEFENDANT IS RECEIVING OUTPATIENT
2 RESTORATION SERVICES SHALL PROVIDE THE RESTORATION AGENCY WITH
3 FACE-TO-FACE ACCESS IN A PRIVATE SETTING TO FACILITATE RESTORATION
4 SERVICES.

5 (c) THE COURT MAY ORDER INPATIENT RESTORATION SERVICES
6 UNDER ONE OF THE FOLLOWING EXCEPTIONS:

7 (I) THE COURT MAY COMMIT THE DEFENDANT TO THE CUSTODY OF
8 THE DEPARTMENT IF THE DEPARTMENT HAS RECOMMENDED THAT
9 RESTORATION SERVICES BE PROVIDED ON AN INPATIENT BASIS PURSUANT
10 TO SECTION 16-8.5-105 (5)(f)(II); OR

11 (II) IF THE COURT HAS ORDERED OUTPATIENT RESTORATION
12 SERVICES AND THE DEPARTMENT REPORTS THAT IT IS UNABLE TO PROVIDE
13 RESTORATION SERVICES ON AN OUTPATIENT BASIS, THE COURT MAY
14 COMMIT THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT FOR
15 INPATIENT RESTORATION SERVICES UNTIL SUCH TIME AS THE DEPARTMENT
16 IS ABLE TO PROVIDE OUTPATIENT RESTORATION SERVICES, AT WHICH POINT
17 THE DEPARTMENT MAY DISCHARGE THE DEFENDANT AND BEGIN OR
18 RESUME PROVIDING SERVICES ON AN OUTPATIENT BASIS, SUBJECT TO THE
19 PROVISIONS OF SECTION 16-8.5-116.

20 (III) THE COURT SHALL COMMIT THE DEFENDANT TO THE CUSTODY
21 OF THE DEPARTMENT FOR INPATIENT RESTORATION SERVICES IF THE
22 DEFENDANT HAS BEEN RECEIVING OUTPATIENT AND IN-CUSTODY
23 RESTORATION SERVICES AND HAS NOT BEEN RESTORED TO COMPETENCY
24 IN ONE HUNDRED AND FIFTY DAYS, UNLESS THE COURT EXTENDS THE
25 TIMELINE FOR GOOD CAUSE SHOWN. THE TIMELINE MUST EXCLUDE TIME
26 DURING WHICH THE DEFENDANT REFUSES TO ACCEPT SERVICES OR
27 TREATMENT, PROVIDED THAT SUCH REFUSAL IS NOT THE RESULT OF A

1 DEVELOPMENTAL DISABILITY OR MENTAL DISABILITY.

2 (d) IF THE COURT COMMITS THE DEFENDANT TO THE CUSTODY OF
3 THE DEPARTMENT, THE EXECUTIVE DIRECTOR HAS THE SAME POWERS WITH
4 RESPECT TO A COMMITMENT PROVIDED FOR IN SECTION 16-8-105.5 (4).

5 (e) IF A COURT HAS ORDERED INPATIENT RESTORATION SERVICES
6 AND THE DEPARTMENT DOES NOT HAVE AN AVAILABLE BED FOR THE
7 DEFENDANT, AND THE DEPARTMENT SO ADVISES THE COURT, THE
8 DEPARTMENT SHALL PROVIDE RESTORATION SERVICES ON AN OUTPATIENT
9 BASIS AS SOON AS PRACTICABLE UNTIL THE DEPARTMENT CAN OFFER
10 ADMISSION TO THE DEFENDANT.

11 (f) IF A DEFENDANT IS RECEIVING INPATIENT RESTORATION
12 SERVICES AND THE EXECUTIVE DIRECTOR CONCLUDES THAT A LESS
13 RESTRICTIVE FACILITY WOULD BE MORE CLINICALLY APPROPRIATE, THE
14 EXECUTIVE DIRECTOR, WITH PROPER NOTICE TO THE COURT, AND
15 CONSISTENT WITH THE PROVISIONS OF PART 3 OF ARTICLE 4.1 OF TITLE 24,
16 HAS THE AUTHORITY TO MOVE THE DEFENDANT TO A LESS RESTRICTIVE
17 FACILITY IF, IN THE EXECUTIVE DIRECTOR'S OPINION, THE DEFENDANT IS
18 NOT YET RESTORED TO COMPETENCY BUT HE OR SHE COULD BE PROPERLY
19 RESTORED TO COMPETENCY IN A LESS RESTRICTIVE FACILITY.

20 (g) AT SUCH TIME AS THE DEPARTMENT RECOMMENDS TO THE
21 COURT THAT THE DEFENDANT IS RESTORED TO COMPETENCY, THE
22 DEFENDANT MAY BE RETURNED TO THE CUSTODY OF THE COUNTY JAIL, IF
23 THE DEFENDANT IS NOT ON BOND OR SUMMONS, OR TO PREVIOUS BOND
24 STATUS. IF THE RECOMMENDATION IS TO RETURN THE DEFENDANT TO THE
25 CUSTODY OF THE COUNTY JAIL, THE DEPARTMENT SHALL NOTIFY THE
26 SHERIFF IN THE JURISDICTION WHERE THE DEFENDANT IS TO BE RETURNED,
27 AND THE SHERIFF SHALL TAKE CUSTODY OF THE DEFENDANT WITHIN

1 SEVENTY-TWO HOURS AFTER RECEIVING SUCH NOTIFICATION. AT THE TIME
2 THE DEPARTMENT NOTIFIES THE SHERIFF, THE DEPARTMENT SHALL ALSO
3 NOTIFY THE COURT THAT THE DEPARTMENT IS RETURNING THE DEFENDANT
4 TO THE CUSTODY OF THE JAIL.

5 (3) FOR A DEFENDANT WHO IS RECEIVING OUTPATIENT AND
6 IN-CUSTODY RESTORATION SERVICES, THE COURT SHALL REVIEW THE CASE
7 EVERY THIRTY DAYS TO ASSESS THE CLINICAL STATUS OF THE DEFENDANT
8 AND HIS OR HER PROGRESS TOWARD RESTORATION. AT THAT TIME, THE
9 COURT SHALL ALSO REVIEW THE INDIVIDUAL CIRCUMSTANCES OF THE
10 DEFENDANT TO DETERMINE IF HE OR SHE SHOULD BE RELEASED ON BOND
11 WITH APPROPRIATE CONDITIONS PURSUANT TO THE PROVISIONS OF THIS
12 SECTION AND SECTION 4 OF THIS ARTICLE 16.

13 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-113, **amend**
14 **(2) and (3) as follows:**

15 **16-8.5-113. Restoration to competency.** **(2) Within fourteen**
16 **SEVEN days after receipt of a report from the department or other**
17 **court-approved provider of restoration services certifying that the**
18 **defendant is competent to proceed, either party may request a hearing or**
19 **a second evaluation. The court shall determine whether to allow the**
20 **second evaluation or proceed to a hearing on competency. If the second**
21 **evaluation is requested by the court or by an indigent defendant, it shall**
22 **MUST be paid for by the court.**

23 **(3) If a second evaluation is allowed, any pending requests for a**
24 **hearing shall MUST be continued until receipt of the second evaluation**
25 **report. The report of the expert conducting the second evaluation report**
26 **shall MUST be completed and filed with the court within sixty-three**
27 **FORTY-TWO days after the court order allowing the second evaluation,**

1 unless the time period is extended by the court after a finding of good
2 cause.

3 **SECTION 6. In Colorado Revised Statutes, 16-8.5-114, amend**
4 **(2) as follows:**

5 **16-8.5-114. Procedure after hearing concerning restoration to**
6 **competency.** (2) If, after the hearing held pursuant to section 16-8.5-113,
7 the court determines that the defendant remains incompetent to proceed,
8 the court may continue or modify any orders entered at the time of the
9 original determination of incompetency and may commit or recommit the
10 defendant or enter any new order necessary to facilitate the defendant's
11 restoration to mental competency, CONSISTENT WITH THE REQUIREMENTS
12 OF SECTION 16-8.5-111.

13 **SECTION 7. In Colorado Revised Statutes, repeal and reenact,**
14 **with amendments,** 16-8.5-116 as follows:

15 **16-8.5-116. Certification - reviews - termination of**
16 **proceedings - rules.** (1) SUBJECT TO THE TIME PERIODS SET FORTH IN
17 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, WHICHEVER IS SHORTEST,
18 A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
19 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
20 INCOMPETENCY TO PROCEED MUST NOT REMAIN CONFINED FOR A PERIOD
21 IN EXCESS OF THE MAXIMUM TERM OF CONFINEMENT THAT COULD BE
22 IMPOSED FOR THE MOST SERIOUS OFFENSE WITH WHICH THE DEFENDANT
23 IS CHARGED, LESS ANY TIME CREDITS THE DEFENDANT WOULD BE
24 ENTITLED TO PURSUANT TO ARTICLE 22.5 OF TITLE 17 AND SECTION
25 17-26-109. AT THE END OF SUCH TIME PERIOD, THE COURT SHALL DISMISS
26 THE CHARGES, AND CERTIFICATION PROCEEDINGS OR PROVISION OF
27 SERVICES, IF ANY, MUST BE GOVERNED BY ARTICLE 65 OR 10.5 OF TITLE 27.

1 (2) AT LEAST EVERY THREE MONTHS, THE COURT SHALL REVIEW
2 THE CASE OF A DEFENDANT WHO HAS BEEN DETERMINED TO BE
3 INCOMPETENT TO PROCEED WITH REGARD TO THE PROBABILITY THAT THE
4 DEFENDANT WILL EVENTUALLY BE RESTORED TO COMPETENCY AND WITH
5 REGARD TO THE JUSTIFICATION FOR CERTIFICATION OR CONFINEMENT. THE
6 REVIEW MAY BE HELD IN CONJUNCTION WITH A RESTORATION HEARING
7 HELD PURSUANT TO SECTION 16-8.5-113. PRIOR TO EACH REVIEW, THE
8 INDIVIDUAL OR ENTITY EVALUATING THE DEFENDANT SHALL PROVIDE THE
9 COURT WITH A CURRENT REPORT REGARDING:

10 (a) THE DEFENDANT'S COMPETENCY;
11 (b) WHETHER THERE IS A SUBSTANTIAL PROBABILITY THAT THE
12 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE TIME
13 PERIODS SET FORTH IN THIS SECTION; AND
14 (c) WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR
15 CERTIFICATION SET FORTH IN ARTICLE 65 OF TITLE 27 OR IS ELIGIBLE FOR
16 SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27.

17 (3) IF THE DEFENDANT IS CHARGED WITH A MISDEMEANOR, A
18 MISDEMEANOR DRUG OFFENSE, OR A PETTY OFFENSE, EXCEPT FOR THOSE
19 OFFENSES ENUMERATED IN SECTION 24-4.1-302 (1), AND HAS BEEN
20 COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR OTHERWISE
21 CONFINED AS A RESULT OF A DETERMINATION OF INCOMPETENCY TO
22 PROCEED, THE FOLLOWING PROVISIONS APPLY:

23 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY
24 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
25 AN AGGREGATE TIME OF THREE MONTHS, EXCLUDING TIME RESULTING
26 FROM A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR
27 TREATMENT, THE COURT SHALL HOLD A REVIEW HEARING. IF THE COURT

1 DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT
2 REMAINS INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
3 PROBABILITY THE DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN
4 THE NEXT THREE MONTHS, THE COURT SHALL DISMISS THE CHARGES
5 AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (6)
6 OF THIS SECTION.

7 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
8 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
9 WITHIN THE NEXT THREE MONTHS, RESTORATION SERVICES MAY
10 CONTINUE, AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS
11 PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION.

12 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
13 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
14 AGGREGATE TIME OF SIX MONTHS, EXCLUDING TIME RESULTING FROM A
15 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, AND
16 THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE
17 DEFENDANT IS NOT RESTORED TO COMPETENCY, THE COURT SHALL DISMISS
18 THE CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF
19 SUBSECTION (6) OF THIS SECTION.

20 (4) IF THE DEFENDANT IS CHARGED WITH A CLASS 5 OR CLASS 6
21 FELONY, EXCEPT FOR THOSE OFFENSES ENUMERATED IN SECTION
22 24-4.1-302 (1); WITH A CLASS 3 OR CLASS 4 DRUG FELONY; OR WITH ANY
23 MISDEMEANOR OFFENSE THAT IS NOT INCLUDED IN SUBSECTION (3)(a) OF
24 THIS SECTION, AND HAS BEEN COMMITTED TO THE CUSTODY OF THE
25 DEPARTMENT OR OTHERWISE CONFINED AS A RESULT OF A DETERMINATION
26 OF INCOMPETENCY TO PROCEED, THE FOLLOWING PROVISIONS APPLY:

27 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY

1 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
2 AN AGGREGATE TIME OF ONE YEAR, EXCLUDING TIME RESULTING FROM A
3 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, THE
4 COURT SHALL HOLD A REVIEW HEARING. IF THE COURT DETERMINES,
5 BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT REMAINS
6 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
7 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
8 WITHIN THE NEXT SIX MONTHS, THEN THE COURT SHALL DISMISS THE
9 CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF
10 SUBSECTION (6) OF THIS SECTION.

11 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
12 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
13 WITHIN THE NEXT SIX MONTHS, RESTORATION SERVICES MAY CONTINUE
14 AND THE COURT SHALL CONTINUE TO REVIEW THE CASE AS PROVIDED FOR
15 IN SUBSECTION (2) OF THIS SECTION.

16 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
17 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
18 AGGREGATE TIME OF EIGHTEEN MONTHS, EXCLUDING TIME RESULTING
19 FROM A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR
20 TREATMENT, AND THE COURT DETERMINES, BASED ON AVAILABLE
21 EVIDENCE, THAT THE DEFENDANT IS NOT RESTORED TO COMPETENCY,
22 THEN THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT,
23 SUBJECT TO THE PROVISIONS OF SUBSECTION (6) OF THIS SECTION.

24 (5) IF THE DEFENDANT IS CHARGED WITH ANY OTHER FELONY
25 OFFENSE, EXCEPT A CLASS 1, CLASS 2, OR CLASS 3 FELONY; A SEX OFFENSE
26 AS DEFINED IN SECTION 18-1.3-1003 (5); A CRIME OF VIOLENCE AS DEFINED
27 IN SECTION 18-1.3-406 (2); OR A CLASS 1 OR CLASS 2 DRUG FELONY, AND

1 HAS BEEN COMMITTED TO THE CUSTODY OF THE DEPARTMENT OR
2 OTHERWISE CONFINED AS A RESULT OF A DETERMINATION OF
3 INCOMPETENCY TO PROCEED, THE FOLLOWING PROVISIONS APPLY:

4 (a) (I) IF THE DEFENDANT HAS RECEIVED COMPETENCY
5 RESTORATION SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR
6 AN AGGREGATE TIME OF THREE YEARS, EXCLUDING TIME RESULTING FROM
7 A REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, THE
8 COURT SHALL HOLD A REVIEW HEARING. IF THE COURT DETERMINES,
9 BASED ON AVAILABLE EVIDENCE, THAT THE DEFENDANT REMAINS
10 INCOMPETENT TO PROCEED AND THERE IS NOT A SUBSTANTIAL
11 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
12 WITHIN THE NEXT YEAR, THEN THE COURT SHALL DISMISS THE CHARGES
13 AGAINST THE DEFENDANT, SUBJECT TO THE PROVISIONS OF SUBSECTION (6)
14 OF THIS SECTION.

15 (II) IF, HOWEVER, THE COURT FINDS THAT THERE IS A SUBSTANTIAL
16 PROBABILITY THAT THE DEFENDANT WILL BE RESTORED TO COMPETENCY
17 WITHIN THE NEXT YEAR, RESTORATION SERVICES MAY CONTINUE AND THE
18 COURT SHALL CONTINUE TO REVIEW THE CASE AS PROVIDED FOR IN
19 SUBSECTION (2) OF THIS SECTION.

20 (b) IF THE DEFENDANT HAS RECEIVED COMPETENCY RESTORATION
21 SERVICES WHILE COMMITTED OR OTHERWISE CONFINED FOR AN
22 AGGREGATE TIME OF FOUR YEARS, EXCLUDING TIME RESULTING FROM A
23 REFUSAL BY THE DEFENDANT TO ACCEPT SERVICES OR TREATMENT, AND
24 THE COURT DETERMINES, BASED ON AVAILABLE EVIDENCE, THAT THE
25 DEFENDANT IS NOT RESTORED TO COMPETENCY, THEN THE COURT SHALL
26 DISMISS THE CHARGES AGAINST THE DEFENDANT, SUBJECT TO THE
27 PROVISIONS OF SUBSECTION (6) OF THIS SECTION, UNLESS ANY PARTY

1 OBJECTS TO DISMISSAL.

2 (c) IF A PARTY OBJECTS TO DISMISSAL OF CHARGES PURSUANT TO
3 SUBSECTION (5)(b) OF THIS SECTION, THE COURT SHALL SET THE MATTER
4 FOR A HEARING. UPON COMPLETION OF THE HEARING, THE COURT SHALL
5 DISMISS THE CHARGES UNLESS THE COURT DETERMINES THAT THERE IS A
6 COMPELLING PUBLIC INTEREST IN CONTINUING THE PROSECUTION AND
7 THERE IS A SUBSTANTIAL PROBABILITY THAT THE DEFENDANT WILL ATTAIN
8 COMPETENCY IN THE FORESEEABLE FUTURE. IF THE COURT DECLINES TO
9 DISMISS THE CHARGES, THE COURT SHALL ADDRESS THE APPROPRIATENESS
10 OF CONTINUED CONFINEMENT AND MAY ALTER OR REDUCE BOND IF
11 APPROPRIATE PURSUANT TO ARTICLE 4 OF TITLE 16 OR THE DECISION TO
12 COMMIT THE DEFENDANT TO THE DEPARTMENT PURSUANT TO SECTION
13 16-8.5-111.

14 (6) PRIOR TO THE DISMISSAL OF CHARGES PURSUANT TO
15 SUBSECTION (3), (4), OR (5) OF THIS SECTION, THE COURT SHALL IDENTIFY
16 WHETHER THE DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION
17 PURSUANT TO ARTICLE 65 OF TITLE 27 OR FOR THE PROVISION OF SERVICES
18 PURSUANT TO ARTICLE 10.5 OF TITLE 27. IF THE COURT FINDS THE
19 REQUIREMENTS FOR EITHER ARE MET, THE COURT MAY STAY THE
20 DISMISSAL FOR TWENTY-ONE DAYS AND NOTIFY THE DEPARTMENT AND
21 COUNTY ATTORNEY IN THE RELEVANT JURISDICTION OF THE PENDING
22 DISMISSAL SO AS TO PROVIDE THE DEPARTMENT AND THE COUNTY
23 ATTORNEY WITH THE OPPORTUNITY TO PURSUE CERTIFICATION
24 PROCEEDINGS OR THE PROVISION OF SERVICES.

25 (7) NOTWITHSTANDING THE TIME PERIODS PROVIDED IN
26 SUBSECTIONS (3), (4), AND (5) OF THIS SECTION, FOR ANY OFFENSE FOR
27 WHICH THE DEFENDANT REMAINS CONFINED AS A RESULT OF A

1 DETERMINATION OF INCOMPETENCY TO PROCEED FOR A PERIOD OF TIME IN
2 EXCESS OF ONE YEAR, IF THE COURT DETERMINES, BASED ON AVAILABLE
3 EVIDENCE, THAT THERE IS NOT A SUBSTANTIAL PROBABILITY THAT THE
4 DEFENDANT WILL BE RESTORED TO COMPETENCY WITHIN THE
5 FORESEEABLE FUTURE, THE COURT MAY ORDER THE DEFENDANT'S
6 RELEASE FROM COMMITMENT PURSUANT TO THIS ARTICLE 8.5 THROUGH
7 ONE OR MORE OF THE FOLLOWING MEANS:

8 (a) UPON MOTION OF THE DISTRICT ATTORNEY, THE DEFENDANT,
9 OR, ON ITS OWN MOTION, THE COURT MAY TERMINATE THE CRIMINAL
10 PROCEEDING, THE COMMITMENT, OR THE RESTORATION SERVICES ORDER;

11 (b) THE COURT MAY COMMENCE CERTIFICATION PROCEEDINGS
12 PURSUANT TO THE PROVISIONS OF ARTICLE 65 OF TITLE 27 IF THE
13 DEFENDANT MEETS THE REQUIREMENTS FOR CERTIFICATION PURSUANT TO
14 SAID ARTICLE 65; OR

15 (c) IN THE CASE OF A DEFENDANT WHO HAS BEEN FOUND ELIGIBLE
16 FOR SERVICES PURSUANT TO ARTICLE 10.5 OF TITLE 27 DUE TO AN
17 INTELLECTUAL AND DEVELOPMENTAL DISABILITY, THE COURT OR A PARTY
18 MAY INITIATE AN ACTION TO RESTRICT THE RIGHTS OF THE DEFENDANT
19 PURSUANT TO ARTICLE 10.5 OF TITLE 27.

20 (8) IN EACH CASE, THE COURT SHALL ENTER A WRITTEN DECISION
21 OUTLINING WHY THE COURT DID OR DID NOT TERMINATE THE CRIMINAL
22 PROCEEDING.

23 (9) IF CHARGES AGAINST A DEFENDANT ARE DISMISSED PURSUANT
24 TO THIS SECTION, SUCH CHARGES ARE NOT ELIGIBLE FOR SEALING
25 PURSUANT TO SECTION 24-73-702.5.

26 (10) THE DEPARTMENT SHALL PROMULGATE SUCH RULES AS
27 NECESSARY TO CONSISTENTLY ENFORCE THE PROVISIONS OF THIS ARTICLE

1 8.5.

2 **SECTION 8.** In Colorado Revised Statutes, 13-1-137, **amend**
3 (1)(d) and (1)(e); and add (1)(f) as follows:

4 **13-1-137. Reporting of data concerning juvenile proceedings**
5 **and determinations of competency to proceed.** (1) Notwithstanding
6 section 24-1-136(11)(a)(I), the judicial branch shall report annually to the
7 judiciary committees of the house of representatives and senate, or to any
8 successor committees, information concerning:

9 (d) The status of recommended reviews to juvenile court rules,
10 forms, and chief justice directives regarding the representation of children
11 in juvenile delinquency courts; and

12 (e) The number of juvenile delinquency cases that involved a
13 detention hearing, the number of juveniles who were released after the
14 detention hearing, and the number of juveniles who remained in detention
15 after the detention hearing; AND

16 (f) THE PROCESS OF TRAINING JUDICIAL OFFICERS CONCERNING
17 DETERMINATIONS OF COMPETENCY TO PROCEED FOR JUVENILES AND
18 ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES TO RESTORE
19 COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE
20 65 OF TITLE 27.

21 **SECTION 9.** In Colorado Revised Statutes, 20-1-111, **add (4)(c)**
22 as follows:

23 **20-1-111. District attorneys may cooperate or contract -**
24 **contents.** (4) (c) THE GENERAL ASSEMBLY SHALL MAKE AN
25 APPROPRIATION TO THE DEPARTMENT OF LAW FOR STATE FISCAL YEAR
26 2018-19 FOR ALLOCATION TO THE STATEWIDE ORGANIZATION
27 REPRESENTING DISTRICT ATTORNEYS, FOR THE PUBLIC PURPOSE OF

1 PROVIDING PROSECUTION TRAINING CONCERNING DETERMINATIONS OF
2 COMPETENCY TO PROCEED FOR JUVENILES AND ADULTS, COMPETENCY
3 EVALUATION REPORTS, SERVICES TO RESTORE COMPETENCY, AND
4 CERTIFICATION PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

5 **SECTION 10.** In Colorado Revised Statutes, 21-1-104, amend
6 (4)(d) and (4)(e); and add (4)(f) as follows:

7 **21-1-104. Duties of public defender.** (4) Notwithstanding
8 section 24-1-136 (11)(a)(I), pursuant to section 2-7-203, the state public
9 defender shall report annually to the judiciary committees of the house of
10 representatives and senate, or to any successor committees, information
11 concerning:

12 (d) The average length of time attorneys are assigned to juvenile
13 court; and

14 (e) The outcome of efforts to reduce juvenile court rotations and
15 increase opportunities for promotional advancement in salaries for
16 attorneys in juvenile court; AND

17 (f) THE PROCESS OF TRAINING ATTORNEYS AND OTHER EMPLOYEES
18 OF THE OFFICE CONCERNING DETERMINATIONS OF COMPETENCY TO
19 PROCEED FOR JUVENILES AND ADULTS, COMPETENCY EVALUATION
20 REPORTS, SERVICES TO RESTORE COMPETENCY, AND CERTIFICATION
21 PROCEEDINGS GOVERNED BY ARTICLE 65 OF TITLE 27.

22 **SECTION 11.** In Colorado Revised Statutes, 21-2-104, amend
23 (3)(d) and (3)(e); and add (3)(f) as follows:

24 **21-2-104. Duties of alternate defense counsel and contract**
25 attorneys.

26 (3) Pursuant to section 2-7-203, C.R.S., the office of alternate
27 defense counsel shall report annually to the judiciary committees of the

1 house of representatives and senate, or to any successor committees,
2 information concerning:

3 (d) The average length of time attorneys are assigned to juvenile
4 court; and

5 (e) The outcome of efforts to reduce juvenile court rotations and
6 increase opportunities for promotional advancement in salaries for
7 attorneys in juvenile court; AND

8 (f) THE PROCESS OF TRAINING EMPLOYEES AND CONTRACTORS
9 CONCERNING DETERMINATIONS OF COMPETENCY TO PROCEED FOR
10 JUVENILES AND ADULTS, COMPETENCY EVALUATION REPORTS, SERVICES
11 TO RESTORE COMPETENCY, AND CERTIFICATION PROCEEDINGS GOVERNED
12 BY ARTICLE 65 OF TITLE 27.

13 **SECTION 12. Appropriation.** (1) For the 2018-19 state fiscal
14 year, \$1,599,892 is appropriated to the department of human services for
15 use by the office of behavioral health. This appropriation is from the
16 general fund and is based on an assumption that the office will require an
17 additional 6.3 FTE. To implement this act, the office may use this
18 appropriation as follows:

19 **Mental health institutes, forensic services**

20 <u>Court services</u>	<u>\$585,892 (6.3 FTE)</u>
21 <u>Outpatient competency restoration program</u>	<u>\$1,014,000</u>

22 (2) For the 2018-19 state fiscal year, \$120,000 is appropriated to
23 the judicial department. This appropriation is from the general fund. To
24 implement this act, the department may use this appropriation as follows:

25 **Courts administration, centrally administered programs**

26 <u>Judicial education and training</u>	<u>\$50,000</u>
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27 **Office of the state public defender**

1	<u>Operating expenses</u>	<u>\$50,000</u>
2	<u>Office of the alternate defense counsel</u>	
3	<u>Training and conferences</u>	<u>\$20,000</u>
4	<u>(3) For the 2018-19 state fiscal year, \$50,000 is appropriated to</u>	
5	<u>the department of law. This appropriation is from the general fund. To</u>	
6	<u>implement this act, the department of law may use this appropriation for</u>	
7	<u>deputy district attorney training.</u>	

8 **SECTION 13. Effective date.** This act takes effect February 1,
9 2019.

10 **SECTION 14. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, and safety.