

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

## INTRODUCED

LLS NO. 26-0122.01 Owen Hatch x2698

**SENATE BILL 26-014**

## SENATE SPONSORSHIP

Amabile and Michaelson Jenet,

## **HOUSE SPONSORSHIP**

Rydin,

## Senate Committees

## Judiciary

## House Committees

## A BILL FOR AN ACT

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

## Bill Summary

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

**Legislative Oversight Committee Concerning the Treatment of Persons with Behavioral Health Disorders in the Criminal and Juvenile Justice Systems.** Current law requires the defense to furnish a copy of any report of examination of the defendant that is made at the instance of the defense to the prosecution in a reasonable amount of time in advance of trial. The bill requires a copy of the report to also be

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.

furnished to the court who, upon receipt of the copy, shall provide a copy to the department of human services.

The bill authorizes community placement of a defendant for treatment and rehabilitation.

The bill clarifies the legal standard for a defendant's conditional or unconditional release from the department.

The bill makes technical corrections.

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

2           **SECTION 1.** In Colorado Revised Statutes, 16-8-108, **amend** (2)

3       as follows:

4           **16-8-108. Examination at instance of defendant.**

5           (2) A copy of any report of examination of the defendant made at  
6       the instance of the defense ~~shall~~ MUST be furnished to THE COURT AND the  
7       prosecution IN a reasonable time in advance of trial. UPON RECEIPT OF THE  
8       REPORT OF EXAMINATION, THE COURT SHALL PROVIDE A COPY OF THE  
9       REPORT TO THE DEPARTMENT OF HUMAN SERVICES.

10           **SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend**  
11       (1)(a)(I) and **add** (1)(b.5) as follows:

12           **16-8-115. Release from commitment after verdict of not guilty  
13       by reason of insanity or not guilty by reason of impaired mental  
14       condition - definitions.**

15           (1) (a) (I) Upon an initial commitment following a finding of not  
16       guilty by reason of insanity pursuant to section 16-8-105.5 (4)(b), or upon  
17       delaying final entry of the finding of not guilty by reason of insanity  
18       pursuant to ~~section 16-8.5-105.5 (4)(a)~~ SECTION 16-8-105.5 (4)(a), the  
19       court shall schedule an initial release hearing no later than one hundred  
20       twenty days after the initial commitment. The court shall order the  
21       department of human services to complete a release examination no later  
22       than thirty days prior to the initial release hearing. The defendant may

1 request an additional release examination by a medical expert in mental  
2 health disorders of the defendant's choosing pursuant to section 16-8-108.  
3 The court may continue the hearing beyond one hundred and twenty days  
4 upon a finding of good cause or if necessary to conduct a second  
5 evaluation of the defendant.

6 (b.5) AT ANY UNCONDITIONAL RELEASE HEARING FOR A  
7 DEFENDANT WHO IS ON ANY CONDITIONAL RELEASE, IF ANY EVIDENCE IS  
8 INTRODUCED THAT SHOWS THE DEFENDANT IS INELIGIBLE FOR  
9 CONDITIONAL RELEASE, THE DEFENDANT HAS THE BURDEN OF PROVING BY  
10 A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT MEETS THE  
11 APPLICABLE TEST FOR UNCONDITIONAL RELEASE PURSUANT TO SECTION  
12 16-8-120. IF THE COURT FINDS THE DEFENDANT ELIGIBLE FOR  
13 UNCONDITIONAL RELEASE, THE COURT SHALL ORDER THE UNCONDITIONAL  
14 RELEASE OF THE DEFENDANT. IF THE COURT FINDS THE DEFENDANT  
15 INELIGIBLE FOR UNCONDITIONAL RELEASE, THE COURT SHALL CONTINUE  
16 THE CONDITIONAL RELEASE AND MAY IMPOSE OR MODIFY SUCH TERMS  
17 AND CONDITIONS AS THE COURT DETERMINES ARE IN THE BEST INTEREST  
18 OF THE DEFENDANT AND THE COMMUNITY.

19 **SECTION 3.** In Colorado Revised Statutes, **amend** 16-8-117 as  
20 follows:

21 **16-8-117. Advisement on matters to be determined.**

22 When a determination is ~~to be~~ made as to a defendant's eligibility  
23 for CONDITIONAL OR UNCONDITIONAL release, the court shall explain to  
24 the defendant the nature and consequences of the proceeding and the  
25 rights of the defendant pursuant to this section, including the defendant's  
26 right to a jury trial upon the question of eligibility for CONDITIONAL OR  
27 UNCONDITIONAL release. The defendant ~~if the defendant wishes to contest~~

1       the question, may request a hearing that must be granted as a matter of  
2       right. At the hearing, the defendant and the prosecuting attorney are  
3       entitled to be present in person, to examine any reports of examination or  
4       other matter to be considered by the court as bearing upon the  
5       determination, to introduce evidence, summon witnesses, cross-examine  
6       witnesses for the other side or the court, and to make opening and closing  
7       statements and argument. The court may examine or cross-examine any  
8       witness called by the defendant or prosecuting attorney and may summon  
9       and examine witnesses on its own motion.

10           **SECTION 4.** In Colorado Revised Statutes, 16-8-118, **amend** (1)  
11       introductory portion, (1)(a), (2)(a) introductory portion, (2)(a.5), (2)(b),  
12       (2)(c), and (2)(d)(I) as follows:

13           **16-8-118. Temporary removal and community placement for  
14       treatment and rehabilitation.**

15           (1) The chief officer of the institution where a defendant has been  
16       committed ~~under~~ PURSUANT TO this article 8 or article 8.5 of this title 16,  
17       or the chief officer's designee, may authorize treatment and rehabilitation  
18       activities involving COMMUNITY PLACEMENT OF THE DEFENDANT OR  
19       temporary physical removal of the defendant from the institution where  
20       the defendant has been placed, if prior to the authorization the following  
21       procedures are carried out:

22           (a) The chief officer, or the chief officer's designee, shall give  
23       written notice by certified mail, with return receipt requested, to the  
24       committing court and the district attorney that on or after thirty-five days  
25       from the date of mailing the notice, the chief officer, or the chief officer's  
26       designee, will authorize treatment and rehabilitation activities involving  
27       COMMUNITY PLACEMENT OF THE DEFENDANT OR temporary physical

1 removal of the defendant from the institution, unless THE CHIEF OFFICER,  
2 OR THE CHIEF OFFICER'S DESIGNEE, RECEIVES written objections to the  
3 authorization ~~are received by the chief officer, or the chief officer's~~  
4 ~~designee;~~ within thirty-five days ~~from~~ AFTER the date of mailing the  
5 notice.

6 (2) (a) A court shall order ~~any~~ A defendant who receives treatment  
7 and rehabilitation activities involving COMMUNITY PLACEMENT OF THE  
8 DEFENDANT OR temporary physical removal of the defendant from the  
9 institution to register with the local law enforcement agency of the  
10 jurisdiction ~~in which~~ WHERE the defendant resides if the court finds that:

11 (a.5) A court may order ~~any~~ A defendant who receives treatment  
12 and rehabilitation activities involving COMMUNITY PLACEMENT OF THE  
13 DEFENDANT OR temporary physical removal of the defendant from the  
14 institution to register with the local law enforcement agency of the  
15 jurisdiction where the defendant resides if the court finds that the chief  
16 officer of the institution where the defendant has been committed, or the  
17 chief officer's designee, recommends registration based on information  
18 obtained from the defendant during the course of treatment that indicates  
19 the defendant has committed an offense involving unlawful sexual  
20 behavior.

21 (b) Prior to COMMUNITY PLACEMENT OR temporary physical  
22 removal from the institution of ~~any~~ A defendant who is required to  
23 register pursuant to this subsection (2), the department of human services  
24 shall obtain from the defendant the address where the defendant plans to  
25 reside and the department shall notify the local law enforcement agency  
26 of the jurisdiction where the defendant plans to reside and the Colorado  
27 bureau of investigation as provided in section 16-8-115 (4)(c).



1 subsequent to ~~such~~ THE COMMUNITY PLACEMENT OR temporary removal  
2 and that the defendant would not pose an undue threat to the community  
3 if allowed to live in the community without registration.

4 **SECTION 5.** In Colorado Revised Statutes, 16-8-120, **add** (5) as  
5 follows:

6 **16-8-120. Applicable tests for release.**

7 (5) AS TO A PERSON CHARGED WITH A CRIME ALLEGEDLY  
8 COMMITTED ON OR AFTER JULY 1, 2026:

9 (a) THE STANDARD FOR UNCONDITIONAL RELEASE FROM  
10 COMMITMENT IS: THE DEFENDANT HAS NO ABNORMAL MENTAL CONDITION  
11 THAT WOULD BE LIKELY TO CAUSE THE DEFENDANT TO BE DANGEROUS TO  
12 THE DEFENDANT'S SELF OR OTHERS OR TO THE COMMUNITY IN THE  
13 REASONABLY FORESEEABLE FUTURE, AND THE DEFENDANT IS CAPABLE OF  
14 DISTINGUISHING RIGHT FROM WRONG AND HAS SUBSTANTIAL CAPACITY TO  
15 CONFORM THE DEFENDANT'S CONDUCT TO REQUIREMENTS OF LAW.

16 (b) THE STANDARD FOR CONDITIONAL RELEASE FROM  
17 COMMITMENT IS: WITHOUT THE IMPOSITION OF CONDITIONS, THE  
18 DEFENDANT IS INELIGIBLE FOR RELEASE, BUT WITH THE IMPOSITION OF  
19 CONDITIONS, THE DEFENDANT HAS NO ABNORMAL MENTAL CONDITION  
20 THAT WOULD BE LIKELY TO CAUSE THE DEFENDANT TO BE DANGEROUS TO  
21 THE DEFENDANT'S SELF OR OTHERS OR TO THE COMMUNITY IN THE  
22 REASONABLY FORESEEABLE FUTURE, AND THE DEFENDANT IS CAPABLE OF  
23 DISTINGUISHING RIGHT FROM WRONG AND HAS SUBSTANTIAL CAPACITY TO  
24 CONFORM THE DEFENDANT'S CONDUCT TO THE REQUIREMENTS OF LAW.

25 **SECTION 6. Safety clause.** The general assembly finds,  
26 determines, and declares that this act is necessary for the immediate  
27 preservation of the public peace, health, or safety or for appropriations for

1      the support and maintenance of the departments of the state and state  
2      institutions.