

**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.

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 (c) ~~Any~~ A defendant required to register pursuant to this
2 subsection (2) shall register as provided in section 16-8-115 (4). The local
3 law enforcement agency shall transmit any registrations received pursuant
4 to this subsection (2) to the Colorado bureau of investigation within three
5 business days ~~following~~ AFTER receipt. The Colorado bureau of
6 investigation shall include any registration information received pursuant
7 to this section in the central registry established pursuant to section
8 16-22-110 and shall specify that the information applies to a defendant
9 required to register as a condition of COMMUNITY PLACEMENT OR
10 temporary physical removal from an institution. The forms completed by
11 ~~defendants~~ A DEFENDANT required to register pursuant to this subsection
12 (2) ~~shall be~~ ARE confidential and ~~shall not be~~ ARE NOT open to inspection
13 except as otherwise provided in section 16-8-115 (3)(e) for information
14 pertaining to persons granted conditional release and except as provided
15 for release of information to the public pursuant to sections 16-22-110 (6)
16 and 16-22-112.

17 (d) (I) ~~Any~~ A defendant required to register pursuant to this
18 subsection (2), upon completion of a period of not less than twenty years
19 ~~from~~ AFTER the date the defendant begins receiving treatment and
20 rehabilitation activities involving COMMUNITY PLACEMENT OF THE
21 DEFENDANT OR temporary physical removal of the defendant from the
22 institution, may petition the district court for an order that discontinues
23 the requirement for ~~such~~ registration and removes the defendant's name
24 from the central registry established pursuant to section 16-22-110. The
25 court may issue ~~such~~ AN order only if the court makes written findings of
26 fact that the defendant has neither been convicted nor found not guilty by
27 reason of insanity of an offense involving unlawful sexual behavior

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.