

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB25-041 be amended as follows:

1 Amend printed bill, page 3, line 9, strike "PURSUANT TO SECTION  
2 16-8.5-111 OR 16-8.5-116.5".

3 Page 3, lines 20 and 21, strike "PURSUANT TO SECTION 16-8.5-111 OR  
4 16-8.5-116.5".

5 Page 4, lines 1 and 2, strike "PURSUANT TO SECTION 16-8.5-111 OR  
6 16-8.5-116.5".

7 Page 4, strike lines 26 and 27, and substitute:

8 "SECTION 3. In Colorado Revised Statutes, 16-8.5-103, **amend**  
9 (3) and (4) as follows:

10 **16-8.5-103. Determination of competency to proceed.**

11 (3) Within ~~seven~~ FOURTEEN days after receipt of the court-ordered report,  
12 either party may request a hearing or a second evaluation.

13 (4) If a party requests a second evaluation, any pending requests  
14 for a hearing must be continued until the receipt of the second evaluation  
15 report. The report of the expert conducting the second evaluation must be  
16 completed and filed with the court within thirty-five days after the court  
17 order allowing the second evaluation, unless the time period is extended  
18 by the court for good cause. ~~If a second evaluation is completed and~~  
19 ~~restoration is ultimately ordered, then~~ The court shall ~~make~~ PROVIDE the  
20 second evaluation ~~available~~ to THE PARTIES AND the department. THE  
21 DEPARTMENT SHALL USE THE SECOND EVALUATION TO ENSURE THAT THE  
22 DEPARTMENT COMPLIES WITH ITS RESPONSIBILITIES, INCLUDING  
23 REVIEWING AND SUMMARIZING PRIOR COMPETENCY OPINIONS AS  
24 REQUIRED IN SECTION 16-8.5-105 (5)(f). If the second evaluation is  
25 requested by the court, it must be paid for by the court.

26 **SECTION 4.** In Colorado Revised Statutes, 16-8.5-105, **amend**  
27 (5)(f) as follows:

28 **16-8.5-105. Evaluations, locations, time frames, and report.**

29 (5) The competency evaluation and report must include, but need not be  
30 limited to:

31 (f) An opinion as to whether there is a substantial probability that  
32 the defendant, with restoration services, will attain competency within the  
33 reasonably foreseeable future. ~~and:~~ AS PART OF FORMING THEIR OPINION,  
34 THE COMPETENCY EVALUATOR SHALL USE DUE DILIGENCE IN THE REVIEW  
35 AND SUMMARY OF ANY PRIOR COMPETENCY OPINIONS REGARDING THE  
36 DEFENDANT. IF THE COMPETENCY EVALUATOR'S OPINION REGARDING  
37 RESTORABILITY DIFFERS FROM OPINIONS IN PAST EVALUATIONS OF THE  
38 DEFENDANT, THE COMPETENCY EVALUATOR SHALL EXPLAIN THE BASIS

1 FOR THEIR DIFFERENT OPINION.

2 ~~(F) If any court within the previous five years found the defendant~~  
3 ~~incompetent to proceed and that the defendant would not attain~~  
4 ~~competency within the reasonably foreseeable future, an opinion as to~~  
5 ~~why the defendant's current circumstances are different from the prior~~  
6 ~~court's findings; and~~

7 ~~(H) If the defendant has been found incompetent to proceed after~~  
8 ~~being found competent to proceed three or more times within the previous~~  
9 ~~five years, an opinion as to whether, even if restored, the defendant will~~  
10 ~~maintain competency throughout the current case.~~

11 **SECTION 5.** In Colorado Revised Statutes, 16-8.5-106, **amend**  
12 **(2)** as follows:

13 **16-8.5-106. Evaluation at request of defendant.** (2) THE  
14 DEFENDANT SHALL PROVIDE a copy of the second evaluation ~~shall be~~  
15 ~~furnished~~ to the COURT AND prosecution in a reasonable amount of time  
16 in advance of the competency or restoration hearing. UPON RECEIPT OF  
17 THE SECOND EVALUATION, THE COURT SHALL FURNISH THE SECOND  
18 EVALUATION TO THE DEPARTMENT.

19 **SECTION 6.** In Colorado Revised Statutes, 16-8.5-111, **amend**  
20 **(2)(b), (3)(a)(III), (3)(b)(IV), (3)(b)(V) introductory portion, (4)(a), and**  
21 **(4)(b)** as follows:".

22 Strike page 5.

23 Page 6, strike lines 25 through 27 and substitute:

24 **"(3) Certification for short-term treatment.** (a) (III) The court  
25 may order initiation of certification for short-term treatment only:

26 (A) UPON A SPECIFIC REQUEST FROM A PERSON AUTHORIZED TO  
27 MAKE THE REQUEST PURSUANT TO SUBSECTION (3)(a)(I) OF THIS SECTION;

28 ~~(A)~~ (B) If the court finds reasonable grounds to believe that the  
29 defendant meets the standard for a certification for short-term treatment  
30 pursuant to section 27-65-108.5 or 27-65-109; and

31 ~~(B)~~ (C) If the defendant's highest charged offense is a petty  
32 offense, traffic offense, or misdemeanor offense, or with the agreement  
33 of the prosecuting attorney, regardless of the severity of the charge.

34 (b) If the court requires the requesting party to initiate certification  
35 for short-term treatment pursuant to subsection (3)(a) of this section:

36 (IV) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A  
37 MISDEMEANOR THAT IS NOT SUBJECT TO DISMISSAL PURSUANT TO  
38 SUBSECTION (1.6) OF THIS SECTION, the court may, upon the court's own  
39 motion, forgo an order for restoration services and dismiss the charges  
40 against the defendant without prejudice when the certification for  
41 short-term treatment is initiated; ~~if the highest charged offense is a petty~~

1 ~~offense, traffic offense, or misdemeanor offense, or~~  
2 (V) IF THE DEFENDANT'S HIGHEST CHARGED OFFENSE IS A FELONY,  
3 the court may, ONLY with the agreement of the prosecuting attorney and  
4 defendant, stay the restoration order to allow certification for short-term  
5 treatment proceedings to occur and to allow the district attorney to  
6 consider whether dismissal of the case is appropriate. In determining  
7 whether dismissal is appropriate while the criminal matter is pending, the  
8 defendant, the defendant's attorney in the criminal matter, and the  
9 prosecuting attorney in the criminal matter have access to limited  
10 information about any civil proceedings against the defendant pursuant  
11 to sections 27-65-108.5, 27-65-109, 27-65-110, and 27-65-111. Any  
12 information obtained must be kept confidential unless disclosure is  
13 otherwise authorized by law. The court shall not extend the defendant's  
14 criminal case past the time limits set forth in section 16-8.5-116.5. The  
15 limited information that the defendant, defendant's attorney, and  
16 prosecuting attorney may access includes:  
17 (4) **Restoration hearing.** (a) (I) If the final determination made  
18 pursuant to section 16-8.5-103 is that the defendant is incompetent to  
19 proceed and the evaluator opines at any time that there is not a substantial  
20 probability that the defendant, with restoration services, will attain  
21 competency within the reasonably foreseeable future, the court shall set  
22 a hearing within the time frame set forth in section 16-8.5-113 (5). If the  
23 court receives the evaluator's opinion pursuant to this subsection (4) prior  
24 to entering a restoration order AND A PARTY REQUESTS A HEARING, the  
25 court shall set the hearing in lieu of ordering restoration treatment.  
26 (II) WITHIN FOURTEEN DAYS AFTER RECEIPT OF A COURT-ORDERED  
27 REPORT REGARDING THE DEFENDANT'S COMPETENCY, EITHER PARTY MAY  
28 REQUEST A HEARING OR A SECOND EVALUATION. IF A PARTY REQUESTS A  
29 SECOND EVALUATION, THE COURT SHALL CONTINUE THE HEARING UNTIL  
30 THE COURT RECEIVES THE SECOND REPORT. THE EXPERT CONDUCTING THE  
31 SECOND EVALUATION SHALL COMPLETE AND FILE THE EXPERT'S REPORT  
32 WITH THE COURT WITHIN THIRTY-FIVE DAYS AFTER THE COURT ORDER  
33 ALLOWING THE SECOND EVALUATION, UNLESS THE COURT EXTENDS THE  
34 TIME PERIOD AFTER A FINDING OF GOOD CAUSE. THE COURT SHALL  
35 PROVIDE THE SECOND EVALUATION TO THE PARTIES AND THE  
36 DEPARTMENT.  
37 (b) If the final determination made pursuant to section 16-8.5-103  
38 is that the defendant is incompetent to proceed and the evaluator opines,  
39 pursuant to section 16-8.5-105 (5)(e)(I)(B), or another qualified expert  
40 opines that the defendant's diagnosis likely includes a moderate to severe  
41 intellectual or developmental disability, acquired traumatic brain injury,  
42 or dementia, which either alone or together with a co-occurring mental  
43 illness affects the defendant's ability to gain or maintain competency, the

1 court shall set a hearing within the time frame set forth in section  
2 16-8.5-113 (5) on the issue of whether there is a substantial probability  
3 that the defendant will be restored to competency in the reasonably  
4 foreseeable future. If the court receives the evaluator's opinion pursuant  
5 to this subsection (4) prior to entering a restoration order AND A PARTY  
6 REQUESTS A HEARING, the court shall set a hearing in lieu of ordering  
7 restoration treatment.

8 **SECTION 7.** In Colorado Revised Statutes, 16-8.5-113, **amend**  
9 (2) and (3) as follows:

10 **16-8.5-113. Restoration to competency.** (2) Within fourteen  
11 days after receipt of a report from the department or other court-approved  
12 ~~provider of restoration services~~ COMPETENCY EVALUATOR certifying that  
13 the defendant is competent to proceed, either party may request a hearing  
14 or a second evaluation. The court shall determine whether to allow the  
15 second evaluation or proceed to a hearing on competency. If the second  
16 evaluation is requested by the court or by an indigent defendant, the  
17 evaluation must be paid for by the court.

18 (3) If a second evaluation is allowed, any pending requests for a  
19 hearing must be continued until receipt of the second evaluation report.  
20 The report of the expert conducting the second evaluation report must be  
21 completed and filed with the court within thirty-five days after the court  
22 order allowing the second evaluation, unless the time period is extended  
23 by the court after a finding of good cause. THE COURT SHALL PROVIDE THE  
24 SECOND EVALUATION TO THE PARTIES AND THE DEPARTMENT.

25 **SECTION 8.** In Colorado Revised Statutes, 16-8.5-116, **amend**  
26 (2)(c)(V) and (2)(c)(VI); and **repeal** (2)(c)(VII) as follows:

27 **16-8.5-116. Certification - reviews - rules.** (2) (c) At least ten  
28 days before each review, the department treating team shall provide to the  
29 court an additional report that summarizes:

30 (V) The opinion of the treating team on the defendant's mental  
31 health functioning and ability to function on an outpatient basis for  
32 restoration services; AND

33 (VI) Whether the defendant, based on observations of the  
34 defendant's behavior in the facility, presents a substantial risk to the  
35 physical safety of the defendant's self, of another person, or of the  
36 community if released for community restoration. ~~and~~

37 (VII) ~~Any opinions which would be required during an initial~~  
38 ~~evaluation pursuant to section 16-8.5-105 (5)(f).~~

39 **SECTION 9.** In Colorado Revised Statutes, 16-8.5-116.5, **amend**  
40 (1)(b) and (7) as follows:

41 **16-8.5-116.5. Restoration - time limits - dismissal of charges -**  
42 **exceptions - rules.** (1) To ensure compliance with relevant constitutional  
43 principles, for any offense for which the defendant is ordered to receive

1 competency restoration services in an inpatient or outpatient setting, if the  
2 court determines, based on available evidence, that there is not a  
3 substantial probability that the defendant, with restoration services, will  
4 be restored to competency within the reasonably foreseeable future, the  
5 court:

6 (b) May, IF AFTER GIVING DUE WEIGHT TO THE OPINION OF A  
7 PROFESSIONAL PERSON, AS DEFINED IN SECTION 27-65-102, EMPLOYED BY  
8 OR UNDER CONTRACT WITH THE OFFICE OF CIVIL AND FORENSIC MENTAL  
9 HEALTH, THE COURT FINDS REASONABLE GROUNDS TO BELIEVE THAT THE  
10 DEFENDANT MEETS CRITERIA FOR A CERTIFICATION FOR SHORT TERM  
11 TREATMENT PURSUANT TO SECTION 27-65-108.5 OR SECTION 27-65-109,  
12 ORDER ONE OF THE FOLLOWING PERSONS TO INITIATE, IN A COURT WITH  
13 JURISDICTION, A PROCEEDING FOR A CERTIFICATION FOR SHORT-TERM  
14 TREATMENT OF THE DEFENDANT PURSUANT TO SECTION 27-65-108.5 OR  
15 27-65-109: The district attorney, or upon request from the district  
16 attorney; a professional person, as defined in section 27-65-102, WHO IS  
17 NOT EMPLOYED BY OR UNDER CONTRACT WITH THE BEHAVIORAL HEALTH  
18 ADMINISTRATION IN THE DEPARTMENT OR THE OFFICE OF CIVIL AND  
19 FORENSIC MENTAL HEALTH; a representative ~~of~~ DESIGNATED BY the  
20 behavioral health administration in the department, or a representative ~~of~~  
21 DESIGNATED BY the office of civil and forensic mental health. ~~to initiate,~~  
22 ~~in a court with jurisdiction, a proceeding for a certification for short-term~~  
23 ~~treatment of the defendant pursuant to section 27-65-108.5 or 27-65-109.~~  
24 ~~If the court finds reasonable grounds to believe the defendant meets~~  
25 ~~criteria for a certification for short-term treatment pursuant to section~~  
26 ~~27-65-108.5 or 27-65-109.~~ NOTWITHSTANDING THE AUTHORITY GRANTED  
27 PURSUANT TO THIS SUBSECTION (1)(b), A COURT SHALL NOT ORDER A  
28 PERSON TO INITIATE A PROCEEDING PURSUANT TO THIS SUBSECTION (1)(b)  
29 IF INITIATING A PROCEEDING WOULD CONTRADICT THE PERSON'S  
30 PROFESSIONAL MEDICAL OPINION OR OTHERWISE VIOLATE THE PERSON'S  
31 PROFESSIONAL CONDUCT RULES.

32 (7) (a) Prior to the dismissal of charges pursuant to this section or  
33 section 16-8.5-111 (5), ~~unless the court has already ordered a person to~~  
34 ~~initiate proceedings for a certification for short-term treatment,~~ the court  
35 shall make findings ABOUT whether there are reasonable grounds to  
36 believe the person meets the standard for a certification for short-term  
37 treatment. If the court finds there are reasonable grounds, the court may  
38 stay the dismissal for thirty-five days, SET A REVIEW HEARING, and notify  
39 any professional person, as defined in section 27-65-102; a representative  
40 ~~of~~ DESIGNATED BY the behavioral health administration in the department;  
41 or a representative ~~of~~ DESIGNATED BY the office of civil and forensic  
42 mental health who has recently treated or interacted with the defendant  
43 that there are reasonable grounds for short-term treatment and afford the

1 person an opportunity to pursue certification proceedings or to arrange  
2 necessary services.

3 (b) THE COURT SHALL GRANT THIRTY-FIVE DAY EXTENSIONS OF  
4 THE STAY DESCRIBED IN SUBSECTION (7)(a) OF THIS SECTION:

5 (I) ANY NUMBER OF TIMES WITH THE CONSENT OF THE DEFENDANT;  
6 AND

7 (II) REGARDLESS OF THE DEFENDANT'S CONSENT, UPON REQUEST  
8 OF THE PROSECUTION IF THE COURT FINDS GOOD CAUSE:

9 (A) UP TO FOUR TIMES, IN ADDITION TO THE INITIAL STAY  
10 AUTHORIZED IN SUBSECTION (7)(a) OF THIS SECTION, BUT NOT TO EXCEED  
11 ONE HUNDRED SEVENTY-FIVE DAYS IN TOTAL, IF THE DEFENDANT IS  
12 CHARGED WITH A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406,  
13 OR FOR FELONY UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION  
14 16-22-102; OR

15 (B) ONCE, IN ADDITION TO THE INITIAL STAY AUTHORIZED IN  
16 SUBSECTION (7)(a) OF THIS SECTION, BUT NOT TO EXCEED SEVENTY DAYS  
17 IN TOTAL, IF THE DEFENDANT IS NOT CHARGED WITH A CRIME OF VIOLENCE,  
18 AS DEFINED IN SECTION 18-1.3-406, OR FOR FELONY UNLAWFUL SEXUAL  
19 BEHAVIOR AS DEFINED IN SECTION 16-22-102.

20 (c) FOR THE PURPOSES OF SUBSECTION (7)(b) OF THIS SECTION,  
21 GOOD CAUSE DOES NOT INCLUDE A PERSON'S REFUSAL OR FAILURE TO  
22 TIMELY FILE A PETITION PURSUANT TO SECTION 27-65-108.5.

23 (d) WHEN A DEFENDANT'S CHARGES ARE DISMISSED PURSUANT TO  
24 THIS SECTION OR SECTION 16-8.5-111(5), THE COURT SHALL NOTIFY THE  
25 DEPARTMENT IN WRITING THAT THE CHARGES WERE DISMISSED AND THE  
26 REASON FOR THE DISMISSAL.

27 **SECTION 10.** In Colorado Revised Statutes, **add** 16-8.6-113 as  
28 follows:

29 **16-8.6-113. Effect of acceptance.** A COURT SHALL VACATE ANY  
30 EXISTING ORDER AND SHALL NOT ENTER A NEW ORDER DIRECTING THE  
31 DEPARTMENT TO CONDUCT A COMPETENCY EVALUATION OR PROVIDE  
32 RESTORATION SERVICES TO A DEFENDANT IF THE DEFENDANT WAS  
33 ACCEPTED TO PARTICIPATE IN THE BRIDGES WRAPAROUND CARE PROGRAM.

34 **SECTION 11.** In Colorado Revised Statutes, 16-5-401, **add** (2.5)  
35 as follows:

36 **16-5-401. Limitation for commencing criminal proceedings,**  
37 **civil infraction proceedings, and juvenile delinquency proceedings -**  
38 **definitions.** (2.5)(a) (I) THE TIME LIMITATIONS IMPOSED BY THIS SECTION  
39 ARE TOLLED WHILE THE OFFENDER IS IN A COMPETENCY-RELATED  
40 DIVERSION OR DEFLECTION PROGRAM.

41 (II) AS USED IN THIS SUBSECTION (2.5)(a), "COMPETENCY-RELATED  
42 DIVERSION OR DEFLECTION PROGRAM" MEANS A PROGRAM THAT OFFERS  
43 A POTENTIALLY INCOMPETENT OFFENDER THE OPPORTUNITY TO AVOID THE

1 FILING OR RE-FILING OF CHARGES IN EXCHANGE FOR THE OFFENDER'S  
2 PARTICIPATION AND SUCCESSFUL COMPLETION OF A PROGRAM DESIGNED  
3 FOR POTENTIALLY INCOMPETENT PERSONS.

4 (b) THE TIME LIMITATIONS IMPOSED BY THIS SECTION ARE TOLLED  
5 BEGINNING WHEN A DEFENDANT'S CASE IS DISMISSED WITHOUT PREJUDICE  
6 FOR THE PURPOSE OF FACILITATING CERTIFICATION FOR SHORT-TERM  
7 TREATMENT PURSUANT TO SECTION 16-8.5-111 (3) UNTIL EITHER THE  
8 DEFENDANTS CRIMINAL CASE IS RE-FILED OR SIX MONTHS HAS PASSED  
9 SINCE THE CASE WAS DISMISSED, WHICHEVER IS EARLIER.

10 **SECTION 12.** In Colorado Revised Statutes, 27-65-110, **amend**  
11 (1) introductory portion as follows:

12 **27-65-110. Long-term care and treatment of persons with**  
13 **mental health disorders - procedure.** (1) Whenever a respondent has  
14 received an extended certification for treatment pursuant section  
15 27-65-109 (10), INCLUDING AS IT IS APPLIED TO COURT-ORDERED  
16 CERTIFICATION PURSUANT TO SECTION 27-65-108.5 (9), the professional  
17 person in charge of the certification for short-term treatment or the BHA  
18 may file a petition with the court at least thirty days prior to the expiration  
19 date of the extended certification for long-term care and treatment of the  
20 respondent under the following conditions:".

21 Renumber succeeding section accordingly.

22 Page 7, strike lines 1 through 18.

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