

Initiative 2025-2026 #180
Mental Competency and Civil Commitment

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Be it enacted by the People of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 16-8.5-103, **add** (10) as follows:

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

(10) THE BEHAVIORAL HEALTH ADMINISTRATION MUST EVALUATE AND ESTABLISH VALID CRITERIA FOR COMPETENCY EVALUATORS AND MAKE A PUBLICLY AVAILABLE LIST OF THE REQUIRED EXPERIENCE, SKILL, AND CREDIBILITY FOR EVALUATORS.

SECTION 2. In Colorado Revised Statutes, 16-8.5-111, **amend** (1.6) and (5) as follows:

16-8.5-111. Procedure after determination of competency or incompetency - bond determinations.

(1.6) Mandatory dismissal.

(a) If the final determination made pursuant to section 16-8.5-103 is that the defendant is incompetent to proceed and if a defendant's highest charged offense is a class 2 misdemeanor, a petty offense, a drug misdemeanor, or a traffic offense, the court shall dismiss the charges against the defendant AFTER THE DEFENDANT HAS BEEN CONFINED FOR NO MORE THAN SIX MONTHS unless the district attorney objects prior to the entry of the order to dismiss and makes a prima facie showing that the defendant is a danger to the defendant's self or others or is gravely disabled and there is a reasonable belief that the defendant will be certified for treatment and receive the necessary services pursuant to article 65 of title 27.

(b) IF THE FINAL DETERMINATION MADE PURSUANT TO SECTION 16-8.5-103 IS THAT THE DEFENDANT IS INCOMPETENT TO PROCEED AND IF A DEFENDANT'S HIGHEST CHARGED OFFENSE IS A CLASS 4 DRUG FELONY, THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT AFTER THE DEFENDANT HAS BEEN CONFINED FOR NO MORE THAN ONE YEAR UNLESS THE DISTRICT ATTORNEY OBJECTS PRIOR TO THE ENTRY OF THE ORDER TO DISMISS AND MAKES A PRIMA FACIE SHOWING THAT THE DEFENDANT IS A DANGER TO THE DEFENDANT'S SELF OR OTHERS OR IS GRAVELY DISABLED AND THERE IS A REASONABLE BELIEF THAT THE DEFENDANT WILL BE CERTIFIED FOR TREATMENT AND RECEIVE THE NECESSARY SERVICES PURSUANT TO ARTICLE 65 OF TITLE 27.

(~~b~~c) If the district attorney makes the prima facie showing pursuant to subsection (1.6)(a) of this section, the court shall proceed pursuant to subsection (3) of this section or section 16-8.5-116.5 (7) and, upon completion of the certification process, the court shall dismiss the charges against the defendant AFTER THE DEFENDANT HAS BEEN CONFINED FOR NO MORE THAN SIX MONTHS.

(d) IF THE DISTRICT ATTORNEY MAKES THE PRIMA FACIE SHOWING PURSUANT TO SUBSECTION (1.6)(b) OF THIS SECTION, THE COURT SHALL PROCEED PURSUANT TO SUBSECTION (3) OF THIS SECTION OR SECTION 16-8.5-116.5 (7) AND, UPON COMPLETION OF THE CERTIFICATION PROCESS, THE COURT SHALL DISMISS THE CHARGES AGAINST THE DEFENDANT AFTER THE DEFENDANT HAS BEEN CONFINED FOR NO MORE THAN ONE YEAR.

(~~e~~e) If the court does not refer the defendant for certification pursuant to subsection (3) of this section or section 16-8.5-116.5 (7), the court may refer the defendant to voluntarily participate and receive services in the court liaison program pursuant to article 95 of title 13.

(5) **Dismissal of charges.** To ensure compliance with relevant constitutional principles, if the court at any point determines that there is not a substantial probability that the defendant will be restored to competency within the reasonably foreseeable future, the court shall, upon motion of the district attorney, the defendant, or on its own motion, ~~dismiss the criminal proceedings pursuant to section 16-8.5-116.5 (1)(a).~~ HOLD A HEARING TO DETERMINE WHETHER THE

DEFENDANT IS A CONTINUING DANGER TO THE PUBLIC. VICTIMS OF THE DEFENDANT AND FAMILY MEMBERS OF THE DEFENDANT MAY TESTIFY AT THE HEARING, ALONG WITH EXPERT WITNESSES CALLED BY THE DISTRICT ATTORNEY AND THE DEFENDANT'S ATTORNEY. IF, AT THIS HEARING, THE COURT DETERMINES THAT THE DEFENDANT IS A CONTINUING DANGER TO THE PUBLIC, THE JUDGE MAY CERTIFY THE DEFENDANT FOR CIVIL COMMITMENT. ONCE THE DEFENDANT IS CERTIFIED FOR CIVIL COMMITMENT, THE DISTRICT ATTORNEY MAY VOLUNTARILY DISMISS THE CASE WITHOUT PREJUDICE AND RETAIN THE ABILITY TO LATER REFILE CHARGES, SHOULD THE DEFENDANT BECOME COMPETENT. THE STATUTE OF LIMITATIONS IS SUSPENDED DURING THE DEFENDANT'S CIVIL COMMITMENT. Subject to the provisions and presumptions of this section that may apply, a court shall not continue criminal proceedings against an incompetent defendant, except to stay a dismissal pursuant to section 16-8.5-116.5 (7), OR TO CONDUCT A HEARING ON THE FINDING OF INCOMPETENCE OR ON THE DEFENDANT'S CONTINUING DANGER TO THE PUBLIC, unless, after proper evaluation, the court finds it more likely than not that the defendant will be restored to competency in the reasonably foreseeable future.

SECTION 3. In Colorado Revised Statutes, title 27, article 91, **add** 110 as follows:

27-91-110. Prioritization of civil confinement beds.

- (1) The state must prioritize civil commitment beds for defendants whose civil commitment was certified by a judge under this statute since they have been determined to be permanently incompetent and a continuing danger to the public.
- (2) The director of the civil commitment facility may ask at any time for a reevaluation of the defendant's competency status, if the director believes the defendant has been restored to competency.

SECTION 4. In Colorado Revised Statutes, 27-65-102, **amend** (17) as follows:

27-65-102. Definitions.

As used in this article 65, unless the context otherwise requires:

- (17) "Gravely disabled" means a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about or providing for the person's essential needs without significant supervision and assistance from other people. A PERSON WHO IS FOUND INCOMPETENT TO STAND TRIAL FOR CHARGES INVOLVING DEATH, GREAT BODILY HARM, OR A SERIOUS THREAT TO THE WELL-BEING OF ANOTHER PERSON IS GRAVELY DISABLED. As a result of being incapable of making these informed decisions, a person who is gravely disabled is at risk of substantial bodily harm, dangerous worsening of any concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in substantial bodily harm. A person of any age may be "gravely disabled", but the term does not include a person whose decision-making capabilities are limited solely by the person's developmental disability.

SECTION 5. In Colorado Revised Statutes, 27-65-10, **add** (1)(a)(III) as follows:

27-65-106. Emergency mental health hold - screening - court-ordered evaluation - discharge instructions - respondent's rights.

- (1) An emergency mental health hold may be invoked under one of the following conditions:

(a)(III) WHEN A DISTRICT ATTORNEY ALLEGES THAT THE INDIVIDUAL IS AN ADULT WHO BECAUSE OF A MENTAL DISORDER OR PERMANENT MENTAL INCOMPETENCE, PRESENTS A SERIOUS DANGER TO THE SAFETY OF OTHER PERSONS AND, UNLESS COMMITTED, WILL CONTINUE TO REPRESENT AN EXTREME RISK TO THE SAFETY OF OTHER PERSONS FOR THE FORESEEABLE FUTURE.