

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

BILL C

LLS NO. 26-0122.01 Owen Hatch x2698

SENATE BILL

SENATE SPONSORSHIP

Amabile and Michaelson Jenet,

HOUSE SPONSORSHIP

Rydin,

Senate Committees

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.

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

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

16-8-108. Examination at instance of defendant. (2) A copy of any report of examination of the defendant made at the instance of the defense ~~shall~~ MUST be furnished to THE COURT AND the prosecution IN a reasonable time in advance of trial. UPON RECEIPT OF THE REPORT OF EXAMINATION, THE COURT SHALL PROVIDE A COPY OF THE REPORT TO THE DEPARTMENT OF HUMAN SERVICES.

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

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition - definitions. (1) (a) (I) Upon an initial commitment following a finding of not guilty by reason of insanity pursuant to section 16-8-105.5 (4)(b), or upon delaying final entry of the finding of not guilty by reason of insanity pursuant to ~~section 16-8.5-105.5 (4)(a)~~ SECTION 16-8-105.5 (4)(a), the court shall schedule an initial release hearing no later than one hundred twenty days after the initial commitment. The court shall order the department of human services to complete a release examination no later than thirty days prior to the initial release hearing. The defendant may request an additional release examination by a

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

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

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

20 **16-8-117. Advisement on matters to be determined.** When a
21 determination is ~~to be~~ made as to a defendant's eligibility for
22 CONDITIONAL OR UNCONDITIONAL release, the court shall explain to the
23 defendant the nature and consequences of the proceeding and the rights
24 of the defendant pursuant to this section, including the defendant's right
25 to a jury trial upon the question of eligibility for CONDITIONAL OR
26 UNCONDITIONAL release. The defendant ~~if the defendant wishes to contest~~
27 ~~the question,~~ may request a hearing that must be granted as a matter of

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

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

12 **16-8-118. Temporary removal and community placement for**
13 **treatment and rehabilitation.** (1) The chief officer of the institution
14 where a defendant has been committed ~~under~~ PURSUANT TO this article 8
15 or article 8.5 of this title 16, or the chief officer's designee, may authorize
16 treatment and rehabilitation activities involving COMMUNITY PLACEMENT
17 OF THE DEFENDANT OR temporary physical removal of the defendant from
18 the institution where the defendant has been placed, if prior to the
19 authorization the following procedures are carried out:

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

1 authorization ~~are received by the chief officer, or the chief officer's~~
2 ~~designee~~, within thirty-five days ~~from~~ AFTER the date of mailing the
3 notice.

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

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

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

26 (c) ~~Any~~ A defendant required to register pursuant to this
27 subsection (2) shall register as provided in section 16-8-115 (4). The local

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

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

1 if allowed to live in the community without registration.

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

4 **16-8-120. Applicable tests for release.** (5) AS TO A PERSON
5 CHARGED WITH A CRIME ALLEGEDLY COMMITTED ON OR AFTER JULY 1,
6 2026:

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

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

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