

HOUSE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

HB22-1061 be amended as follows:

1 Amend printed bill, strike everything below the enacting clause and  
2 substitute:

3 "SECTION 1. In Colorado Revised Statutes, 16-8-105.5, amend  
4 (4) and (5) as follows:

5 **16-8-105.5. Procedure after plea for offenses committed on or**  
6 **after July 1, 1995.** (4) (a) (I) IF THE TRIER OF FACT FINDS THE  
7 DEFENDANT NOT GUILTY BY REASON OF INSANITY, AT THE REQUEST OF THE  
8 DEFENDANT, THE COURT MAY CONTINUE THE BOND PURSUANT TO SECTION  
9 16-4-108 TO ALLOW THE DEFENDANT TO REMAIN AT LIBERTY OR SET A  
10 HEARING TO MODIFY THE BOND PURSUANT TO SECTION 16-4-109 AND  
11 DELAY FINAL DISPOSITION, FORMAL ENTRY OF THE FINDING OF NOT GUILTY  
12 BY REASON OF INSANITY, AND STAY THE COMMITMENT OF THE DEFENDANT  
13 TO THE CUSTODY OF THE DEPARTMENT OF HUMAN SERVICES PURSUANT TO  
14 SUBSECTION (4)(b) OF THIS SECTION UNTIL THE CONCLUSION OF THE  
15 INITIAL RELEASE HEARING REQUIRED PURSUANT TO SECTION 16-8-115  
16 (1)(a). IF THE DEFENDANT IS ON BOND, THE COURT SHALL ORDER THE  
17 DEPARTMENT OF HUMAN SERVICES TO CONDUCT A RELEASE EXAMINATION  
18 ON AN OUTPATIENT BASIS, AS WELL AS ANY OTHER APPROPRIATE  
19 CONDITIONS OF RELEASE, INCLUDING PARTICIPATION IN OUTPATIENT  
20 TREATMENT.

21 (II) IN DETERMINING WHETHER TO CONTINUE OR MODIFY THE  
22 BOND, THE COURT SHALL CONSIDER THE CRITERIA DESCRIBED IN SECTION  
23 16-4-103, AS WELL AS THAT THE DEFENDANT WAS FOUND NOT GUILTY BY  
24 REASON OF INSANITY RATHER THAN CONVICTED, THE DEFENDANT'S  
25 TREATMENT NEEDS, THE AVAILABILITY OF TREATMENT IN THE  
26 COMMUNITY, THE ABILITY OF THE DEPARTMENT OF HUMAN SERVICES TO  
27 CONDUCT A RELEASE EVALUATION IN THE COMMUNITY, WHETHER THE  
28 DEPARTMENT OF HUMAN SERVICES CAN TIMELY ADMIT THE DEFENDANT,  
29 AND THE USEFULNESS OF AN OBSERVATION PERIOD AS PART OF THE  
30 RELEASE EVALUATION.

31 (III) (A) THE COURT SHALL NOT DELAY THE FINAL DISPOSITION  
32 AND ENTRY OF FINDING OF NOT GUILTY BY REASON OF INSANITY UNLESS  
33 THE DEFENDANT IS AT LIBERTY AND REQUESTS A DELAY, IN WHICH CASE  
34 THE COURT MAY DELAY THE FINAL DISPOSITION TO ALLOW THE  
35 DEFENDANT TO POST BOND FOR AN OUTPATIENT RELEASE EXAMINATION.

36 (B) IF THE DEFENDANT IS ON BOND, THE DISTRICT ATTORNEY OR  
37 A BONDING COMMISSIONER MAY FILE WITH THE COURT A VERIFIED MOTION  
38 TO REVOKE THE DEFENDANT'S BOND PURSUANT TO SECTION 16-4-109;  
39 EXCEPT THAT, IF THE COURT FINDS THE DEFENDANT VIOLATED A BOND  
40 CONDITION, THE COURT MAY REVOKE THE BOND AND ENTER THE FINAL

1 DISPOSITION OF NOT GUILTY BY REASON OF INSANITY AND ORDER THE  
2 DEFENDANT COMMITTED TO THE DEPARTMENT OF HUMAN SERVICES.

3 (IV) THIS SUBSECTION (4)(a) DOES NOT APPLY IF THE COURT FINDS  
4 THAT THE CRIME FOR WHICH THE DEFENDANT IS FOUND NOT GUILTY BY  
5 REASON OF INSANITY:

6 (A) IS A CLASS 1 OR CLASS 2 FELONY;

7 (B) RESULTED IN ANOTHER PERSON SUFFERING SERIOUS BODILY  
8 INJURY OR DEATH;

9 (C) INVOLVED THE DEFENDANT USING A DEADLY WEAPON; OR

10 (D) INVOLVED FELONY UNLAWFUL SEXUAL BEHAVIOR PURSUANT  
11 TO SECTION 16-22-102 (9).

12 (b) If the trier of fact finds the defendant not guilty by reason of  
13 insanity, UNLESS DELAYED PURSUANT TO SUBSECTION (4)(a) OF THIS  
14 SECTION, the court shall commit the defendant to the custody of the  
15 department of human services until such time as the defendant is found  
16 eligible for release. The executive director of the department of human  
17 services shall designate the state facility at which the defendant ~~shall be~~  
18 is held for care and psychiatric treatment and may transfer the defendant  
19 from one facility to another if in the opinion of the director it is desirable  
20 to do so in the interest of the proper care, custody, and treatment of the  
21 defendant or the protection of the public or the personnel of the facilities  
22 in question. ONCE AN ORDER OF COMMITMENT IS ENTERED BY THE COURT  
23 AND RECEIVED BY THE DEPARTMENT OF HUMAN SERVICES, THE  
24 DEPARTMENT OF HUMAN SERVICES SHALL ARRANGE TO TRANSPORT AND  
25 ADMIT THE DEFENDANT TO AN APPROPRIATE FACILITY.

26 (5) This section ~~shall apply~~ APPLIES to offenses committed on or  
27 after July 1, 1995; EXCEPT THAT SUBSECTION (4)(a) OF THIS SECTION  
28 APPLIES TO INDIVIDUALS FOUND NOT GUILTY BY REASON OF INSANITY ON  
29 OR AFTER SEPTEMBER 1, 2022.

30 **SECTION 2.** In Colorado Revised Statutes, 16-8-115, **amend** (1);  
31 and **add** (2.5) as follows:

32 **16-8-115. Release from commitment after verdict of not guilty**  
33 **by reason of insanity or not guilty by reason of impaired mental**  
34 **condition.** (1) (a) (I) UPON AN INITIAL COMMITMENT FOLLOWING A  
35 FINDING OF NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION  
36 16-8-105.5 (4)(b), OR UPON DELAYING FINAL ENTRY OF THE FINDING OF  
37 NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8.5-105.5  
38 (4)(a), THE COURT SHALL SCHEDULE AN INITIAL RELEASE HEARING NO  
39 LATER THAN ONE HUNDRED AND TWENTY DAYS FROM THE INITIAL  
40 COMMITMENT. THE COURT SHALL ORDER THE DEPARTMENT OF HUMAN  
41 SERVICES TO COMPLETE A RELEASE EXAMINATION NO LATER THAN THIRTY  
42 DAYS PRIOR TO THE INITIAL RELEASE HEARING. THE DEFENDANT MAY  
43 REQUEST AN ADDITIONAL RELEASE EXAMINATION BY A MEDICAL EXPERT

1 IN MENTAL HEALTH DISORDERS OF THE DEFENDANT'S CHOOSING PURSUANT  
2 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  
4 NECESSARY TO CONDUCT A SECOND EVALUATION OF THE DEFENDANT.

5 (II) THE COURT SHALL CONDUCT THE INITIAL RELEASE HEARING.  
6 AT THE INITIAL RELEASE HEARING, IF ANY EVIDENCE IS INTRODUCED THAT  
7 SHOWS THE DEFENDANT IS INELIGIBLE FOR CONDITIONAL RELEASE, THE  
8 DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE  
9 EVIDENCE THAT THE DEFENDANT MEETS THE APPLICABLE TEST FOR  
10 CONDITIONAL RELEASE PURSUANT TO SECTION 16-8-120. IF THE COURT  
11 FINDS THE DEFENDANT ELIGIBLE FOR CONDITIONAL RELEASE, THE COURT  
12 MAY IMPOSE SUCH TERMS AND CONDITIONS AS THE COURT DETERMINES  
13 ARE IN THE BEST INTEREST OF THE DEFENDANT AND THE COMMUNITY. IF  
14 THE COURT FINDS THE DEFENDANT INELIGIBLE FOR CONDITIONAL RELEASE,  
15 THE COURT SHALL COMMIT OR CONTINUE THE PREVIOUS COMMITMENT OF  
16 THE DEFENDANT TO THE PHYSICAL CUSTODY OF THE DEPARTMENT OF  
17 HUMAN SERVICES.

18 (III) THIS SUBSECTION (1)(a) APPLIES TO INDIVIDUALS FOUND NOT  
19 GUILTY BY REASON OF INSANITY ON OR AFTER SEPTEMBER 1, 2022.

20 (b) FOLLOWING THE INITIAL RELEASE HEARING PURSUANT TO  
21 SUBSECTION (1)(a) OF THIS SECTION, the court may order a release hearing  
22 at any time on its own motion, on motion of the prosecuting attorney, or  
23 on motion of the defendant. The court shall order a release hearing upon  
24 receipt of the report of the chief officer of the institution in which the  
25 defendant is committed that the defendant no longer requires  
26 hospitalization, as provided in section 16-8-116. ~~or upon motion of the~~  
27 ~~defendant made after one hundred eighty-two days following the date of~~  
28 ~~the initial commitment order.~~ Except for the first hearing following the  
29 initial commitment order INITIAL RELEASE HEARING, unless the court for  
30 good cause shown permits, the defendant is not entitled to a hearing  
31 within one year subsequent to a previous hearing.

32 (c) BEGINNING SEPTEMBER 1, 2022, THE CHIEF OFFICER OF THE  
33 INSTITUTION IN WHICH THE DEFENDANT IS COMMITTED SHALL ANNUALLY  
34 SUBMIT A RELEASE EXAMINATION REPORT TO THE COURT CERTIFYING  
35 WHETHER THE DEFENDANT CONTINUES TO MEET THE CRITERIA FOR  
36 ONGOING INPATIENT HOSPITALIZATION OR MEETS THE APPLICABLE TEST  
37 FOR RELEASE PURSUANT TO SECTION 16-8-120. THE REPORT MUST BE  
38 SUBMITTED EACH YEAR BY THE DATE ON WHICH THE DEFENDANT WAS  
39 INITIALLY COMMITTED FOR INPATIENT HOSPITALIZATION UNLESS ANOTHER  
40 RELEASE EXAMINATION IS ORDERED WITHIN THE TWELVE MONTHS  
41 PRECEDING SUCH DATE. THE RELEASE EXAMINATION REPORT MUST  
42 INCLUDE THE INFORMATION REQUIRED FOR A RELEASE EXAMINATION  
43 PURSUANT TO SUBSECTION (2.5) OF THIS SECTION. THE INSTITUTION SHALL  
44 PROVIDE A COPY OF THE REPORT TO THE DEFENDANT, THE PROSECUTING

1 ATTORNEY, AND ANY OTHER ATTORNEY OF RECORD. UPON RECEIPT AND  
2 AFTER REVIEW OF THE REPORT, THE COURT MAY ORDER A RELEASE  
3 HEARING ON ITS OWN MOTION, ON MOTION OF THE PROSECUTING  
4 ATTORNEY, OR ON MOTION OF THE DEFENDANT.

5 (2.5) IN ADDITION TO ANY OTHER REQUIREMENT PURSUANT TO  
6 THIS SECTION, THE RELEASE EXAMINATION REPORT MUST INCLUDE:

7 (a) A SUMMARY OF THE MATERIALS REVIEWED, ASSESSMENTS  
8 CONDUCTED, AND OTHER BASES OF OPINION RENDERED;

9 (b) THE DEFENDANT'S CURRENT DIAGNOSIS AND WHETHER THE  
10 DEFENDANT'S SYMPTOMS OF MENTAL DISEASE OR DEFECT ARE IN  
11 REMISSION;

12 (c) INFORMATION ABOUT MEDICATIONS CURRENTLY PRESCRIBED  
13 TO THE DEFENDANT AND WHETHER THE DEFENDANT IS COMPLIANT WITH  
14 TAKING THE PRESCRIBED MEDICATIONS;

15 (d) A SUMMARY OF THE TREATMENT PROVIDED TO THE DEFENDANT  
16 SINCE THE LAST RELEASE EXAMINATION, IF APPLICABLE;

17 (e) AN INITIAL ASSESSMENT OF THE DEFENDANT'S RISK OF  
18 REOFFENDING, INCLUDING A SUMMARY OF THE DEFENDANT'S TREATMENT  
19 NEEDS BY UTILIZING EVIDENCE-BASED STANDARDS OF INDIVIDUALIZED  
20 TREATMENT AND MANAGEMENT OF PEOPLE ACQUITTED BY REASON OF  
21 INSANITY;

22 (f) A SUMMARY OF THE SPECIFIC TREATMENT OPTIONS AVAILABLE  
23 TO THE DEFENDANT IN THE COMMUNITY AND THE SPECIFIC TREATMENT  
24 THE DEFENDANT MAY RECEIVE AT A FACILITY DESIGNATED BY THE  
25 EXECUTIVE DIRECTOR OF THE DEPARTMENT OF HUMAN SERVICES;

26 (g) A SUMMARY OF WHETHER AND HOW ONGOING RISKS COULD BE  
27 MANAGED IF PLACEMENT IN THE COMMUNITY WERE GRANTED; AND

28 (h) AN OPINION AS TO WHETHER THE DEFENDANT CURRENTLY  
29 MEETS THE APPLICABLE TEST FOR RELEASE, AS DESCRIBED IN SECTION  
30 16-8-120, CITING SPECIFIC FACTS AND EVIDENCE SUPPORTING THE  
31 OPINION.

32 **SECTION 3. Act subject to petition - effective date.** This act  
33 takes effect at 12:01 a.m. on the day following the expiration of the  
34 ninety-day period after final adjournment of the general assembly; except  
35 that, if a referendum petition is filed pursuant to section 1 (3) of article V  
36 of the state constitution against this act or an item, section, or part of this  
37 act within such period, then the act, item, section, or part will not take  
38 effect unless approved by the people at the general election to be held in  
39 November 2022 and, in such case, will take effect on the date of the  
40 official declaration of the vote thereon by the governor."

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