

**First Regular Session
Sixty-ninth General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 13-0766.01 Jerry Barry x4341

SENATE BILL 13-116

SENATE SPONSORSHIP

Ulibarri, Newell, Giron, Guzman, Aguilar, Roberts

HOUSE SPONSORSHIP

Lee,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 **CONCERNING THE AUTHORITY OF FORENSIC PSYCHOLOGISTS TO**
102 **CONDUCT MENTAL HEALTH EVALUATIONS UNDER ARTICLE 8 OF**
103 **TITLE 16, COLORADO REVISED STATUTES.**

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://www.leg.state.co.us/billsummaries>.)

Current law authorizes psychiatrists to perform evaluations to determine a criminal defendant's sanity or impaired mental condition. The bill authorizes certain licensed psychologists who have additional certifications in forensic psychology to perform such evaluations.

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
Amended 2nd Reading
February 11, 2013

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

2 **SECTION 1.** In Colorado Revised Statutes, 16-8-102, **add** (2.5)
3 as follows:

4 **16-8-102. Other definitions.** As used in this article, unless the
5 context otherwise requires:

6 (2.5) "FORENSIC PSYCHOLOGIST" MEANS A LICENSED
7 PSYCHOLOGIST WHO IS BOARD CERTIFIED IN FORENSIC PSYCHOLOGY BY
8 THE AMERICAN BOARD OF PROFESSIONAL PSYCHOLOGY OR WHO HAS
9 COMPLETED A FELLOWSHIP IN FORENSIC PSYCHOLOGY MEETING CRITERIA
10 ESTABLISHED BY THE AMERICAN BOARD OF FORENSIC PSYCHOLOGY.

11 **SECTION 2.** In Colorado Revised Statutes, 16-8-103, **amend** (2)
12 as follows:

13 **16-8-103. Pleading insanity as a defense.** (2) If counsel for the
14 defendant believes that a plea of not guilty by reason of insanity should
15 be entered on behalf of the defendant but the defendant refuses to permit
16 the entry of the plea, counsel may so inform the court. The court shall
17 then conduct such investigation as it deems proper, which may include
18 the appointment of psychiatrists or FORENSIC psychologists to assist a
19 ~~psychiatrist to examine~~ IN EXAMINING the defendant and ~~advise~~ ADVISING
20 the court. After its investigation the court shall conduct a hearing to
21 determine whether the plea should be entered. If the court finds that the
22 entry of a plea of not guilty by reason of insanity is necessary for a just
23 determination of the charge against the defendant, it shall enter the plea
24 on behalf of the defendant, and the plea so entered shall have the same
25 effect as though it had been voluntarily entered by the defendant himself
26 OR HERSELF.

1 **SECTION 3.** In Colorado Revised Statutes, 16-8-103.5, **amend**
2 (2) as follows:

3 **16-8-103.5. Impaired mental condition - when raised -**
4 **procedure - legislative intent.** (2) If counsel for the defendant believes
5 that an assertion of the affirmative defense of impaired mental condition
6 should be entered on behalf of the defendant but the defendant refuses to
7 permit counsel to offer such evidence, counsel may so inform the court.
8 The court shall then conduct such investigation as it deems proper, which
9 may include the appointment of psychiatrists or FORENSIC psychologists
10 to assist a ~~psychiatrist to examine~~ IN EXAMINING the defendant and ~~advise~~
11 ADVISING the court. After its investigation, the court shall conduct a
12 hearing to determine whether evidence of impaired mental condition
13 should be offered at trial. If the court finds that such a defense is
14 necessary for a just determination of the charge against the defendant, it
15 shall inform the prosecution that such defense shall be asserted at trial by
16 the defendant and shall order the defendant's counsel to present evidence
17 at trial on the defense of impaired mental condition.

18 **SECTION 4.** In Colorado Revised Statutes, 16-8-106, **amend** (1),
19 (2), (3), and (5) (a) as follows:

20 **16-8-106. Examinations and report.** (1) All examinations
21 ordered by the court in criminal cases shall be accomplished by the entry
22 of an order of the court specifying the place where such examination is
23 to be conducted and the period of time allocated for such examination.
24 The defendant may be committed for such examination to the Colorado
25 psychiatric hospital in Denver, the Colorado mental health institute at
26 Pueblo, the place where he or she is in custody, or such other public
27 institution designated by the court. In determining the place where such

1 examination is to be conducted, the court shall give priority to the place
2 where the defendant is in custody, unless the nature and circumstances of
3 the examination require designation of a different facility. The defendant
4 shall be observed and examined by one or more psychiatrists OR FORENSIC
5 PSYCHOLOGISTS during such period as the court directs. For good cause
6 shown, upon motion of the prosecution or defendant, or upon the court's
7 own motion, the court may order such further or other examination
8 ~~including services of psychologists,~~ as is advisable under the
9 circumstances. Nothing in this section shall abridge the right of the
10 defendant to procure a psychiatric AN examination as provided in section
11 16-8-108.

12 (2) (a) The defendant shall have a privilege against
13 self-incrimination during the course of an examination under this section.
14 The fact of the defendant's noncooperation with psychiatrists, FORENSIC
15 PSYCHOLOGISTS, and other personnel conducting the examination may be
16 admissible in the defendant's trial on the issue of insanity or impaired
17 mental condition and in any sentencing hearing held pursuant to section
18 18-1.3-1201 or 18-1.3-1302, C.R.S. This paragraph (a) shall apply only
19 to offenses committed before July 1, 1995.

20 (b) The defendant shall have a privilege against self-incrimination
21 during the course of an examination under this section. The fact of the
22 defendant's noncooperation with psychiatrists, FORENSIC PSYCHOLOGISTS,
23 and other personnel conducting the examination may be admissible in the
24 defendant's trial on the issue of insanity and in any sentencing hearing
25 held pursuant to section 18-1.3-1201 or 18-1.4-102, C.R.S. This
26 paragraph (b) shall apply to offenses committed on or after July 1, 1995,
27 but prior to July 1, 1999.

1 (c) The defendant shall cooperate with psychiatrists, FORENSIC
2 PSYCHOLOGISTS, and other personnel conducting any examination ordered
3 by the court pursuant to this section. Statements made by the defendant
4 in the course of such examination shall be protected as provided in
5 section 16-8-107. If the defendant does not cooperate with psychiatrists,
6 FORENSIC PSYCHOLOGISTS, and other personnel conducting the
7 examination, the court shall not allow the defendant to call any
8 psychiatrist, FORENSIC PSYCHOLOGIST, or other expert witness to provide
9 evidence at the defendant's trial concerning the defendant's mental
10 condition including, but not limited to, providing evidence on the issue
11 of insanity or at any sentencing hearing held pursuant to section
12 18-1.3-1201 or 18-1.4-102, C.R.S. In addition, the fact of the defendant's
13 noncooperation with psychiatrists, FORENSIC PSYCHOLOGISTS, and other
14 personnel conducting the examination may be admissible in the
15 defendant's trial to rebut any evidence introduced by the defendant with
16 regard to the defendant's mental condition including, but not limited to,
17 the issue of insanity and in any sentencing hearing held pursuant to
18 section 18-1.3-1201 or 18-1.4-102, C.R.S. This paragraph (c) shall apply
19 to offenses committed on or after July 1, 1999.

20 (3) (a) To aid in forming an opinion as to the mental condition of
21 the defendant, it is permissible in the course of an examination under this
22 section to use confessions and admissions of the defendant and any other
23 evidence of the circumstances surrounding the commission of the offense,
24 as well as the medical and social history of the defendant, in questioning
25 the defendant. When the defendant is noncooperative with psychiatrists,
26 FORENSIC PSYCHOLOGISTS, and other personnel conducting the
27 examination, an opinion of the mental condition of the defendant may be

1 rendered by such psychiatrists, FORENSIC PSYCHOLOGISTS, or other
2 personnel based upon such confessions, admissions, and any other
3 evidence of the circumstances surrounding the commission of the offense,
4 as well as the known medical and social history of the defendant, and
5 such opinion may be admissible into evidence at trial and in any
6 sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.3-1302,
7 C.R.S. It shall also be permissible to conduct a narcoanalytic interview of
8 the defendant with such drugs as are medically appropriate and to subject
9 the defendant to polygraph examination. In any trial or hearing on the
10 issue of the defendant's sanity, eligibility for release, or impaired mental
11 condition, and in any sentencing hearing held pursuant to section
12 18-1.3-1201 or 18-1.3-1302, C.R.S., the physicians and other personnel
13 conducting the examination may testify to the results of any such
14 procedures and the statements and reactions of the defendant insofar as
15 the same entered into the formation of their opinions as to the mental
16 condition of the defendant both at the time of the commission of the
17 alleged offense and at the present time. This paragraph (a) shall apply
18 only to offenses committed before July 1, 1995.

19 (b) To aid in forming an opinion as to the mental condition of the
20 defendant, it is permissible in the course of an examination under this
21 section to use confessions and admissions of the defendant and any other
22 evidence of the circumstances surrounding the commission of the offense,
23 as well as the medical and social history of the defendant, in questioning
24 the defendant. When the defendant is noncooperative with psychiatrists,
25 FORENSIC PSYCHOLOGISTS, and other personnel conducting the
26 examination, an opinion of the mental condition of the defendant may be
27 rendered by such psychiatrists, FORENSIC PSYCHOLOGISTS, or other

1 personnel based upon such confessions, admissions, and any other
2 evidence of the circumstances surrounding the commission of the offense,
3 as well as the known medical and social history of the defendant, and
4 such opinion may be admissible into evidence at trial and in any
5 sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,
6 C.R.S. It shall also be permissible to conduct a narcoanalytic interview of
7 the defendant with such drugs as are medically appropriate and to subject
8 the defendant to polygraph examination. In any trial or hearing on the
9 issue of the defendant's sanity or eligibility for release and in any
10 sentencing hearing held pursuant to section 18-1.3-1201 or 18-1.4-102,
11 C.R.S., the physicians and other personnel conducting the examination
12 may testify to the results of any such procedures and the statements and
13 reactions of the defendant insofar as the same entered into the formation
14 of their opinions as to the mental condition of the defendant both at the
15 time of the commission of the alleged offense and at the present time.
16 This paragraph (b) shall apply to offenses committed on or after July 1,
17 1995.

18 (c) For offenses committed on or after July 1, 1999, when a
19 defendant undergoes an examination pursuant to the provisions of
20 paragraph (b) of this subsection (3) because the defendant has given
21 notice pursuant to section 16-8-107 (3) that he or she intends to introduce
22 expert opinion evidence concerning his or her mental condition, the
23 physicians, FORENSIC PSYCHOLOGISTS, and other personnel conducting
24 the examination may testify to the results of any such procedures and the
25 statements and reactions of the defendant insofar as such statements and
26 reactions entered into the formation of their opinions as to the mental
27 condition of the defendant.

1 (5) With respect to offenses committed before July 1, 1995, the
2 report of examination shall include, but is not limited to:

3 (a) The name of each physician, FORENSIC PSYCHOLOGIST, or other
4 expert who examined the defendant; and

5 **SECTION 5.** In Colorado Revised Statutes, 16-8-107, **amend** (2)
6 as follows:

7 **16-8-107. Evidence.** (2) In any trial or hearing concerning the
8 defendant's mental condition, physicians, FORENSIC PSYCHOLOGISTS, and
9 other experts may testify as to their conclusions reached from their
10 examination of hospital records, laboratory reports, X rays,
11 electroencephalograms, and psychological test results if the material
12 which they examined in reaching their conclusions is produced at the time
13 of the trial or hearing.

14 **SECTION 6. Act subject to petition - effective date.** This act
15 takes effect at 12:01 a.m. on the day following the expiration of the
16 ninety-day period after final adjournment of the general assembly (August
17 7, 2013, if adjournment sine die is on May 8, 2013); except that, if a
18 referendum petition is filed pursuant to section 1 (3) of article V of the
19 state constitution against this act or an item, section, or part of this act
20 within such period, then the act, item, section, or part will not take effect
21 unless approved by the people at the general election to be held in
22 November 2014 and, in such case, will take effect on the date of the
23 official declaration of the vote thereon by the governor.