

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

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

LLS NO. 17-0391.01 Debbie Haskins x2045

HOUSE BILL 17-1046

HOUSE SPONSORSHIP

Lebsock,

SENATE SPONSORSHIP

Donovan,

House Committees

Public Health Care & Human Services

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING UPDATING STATUTORY REFERENCES TO CERTAIN**
102 **LIMITED OUTDATED TERMS RELATING TO PEOPLE WITH**
103 **DISABILITIES.**

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>.)

The bill updates certain limited terms in statute that refer to persons with intellectual and developmental disabilities or physical disabilities using insensitive or outdated terminology.

The bill changes references as follows:

! "Mentally retarded", "mentally deficient person", and

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.

HOUSE
Amended 2nd Reading
January 30, 2017

"mental deficiency" or "mentally deficient" to " a person with an intellectual and developmental disability";
! "Mental defect" to "mental illness"; and
! "Physical defect" to "physical disability".

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

2 **SECTION 1.** In Colorado Revised Statutes, 8-70-140, **amend**
3 (1)(d) as follows:

4 **8-70-140. Employment does not include - nonprofit**
5 **organizations - governmental entities - Indian tribes.** (1) For the
6 purposes of sections 8-70-118, 8-70-119, and 8-70-125.5, "employment"
7 does not include services performed:

8 (d) By an individual receiving rehabilitation or remunerative work
9 in a facility conducted for the purpose of carrying out a program of
10 rehabilitation for individuals whose earning capacity is impaired by age,
11 physical DISABILITY, or ~~mental deficiency~~ INTELLECTUAL AND
12 DEVELOPMENTAL DISABILITY, or injury or of providing remunerative work
13 for individuals who, because of their impaired ~~physical or mental capacity~~
14 ABILITIES, cannot be readily absorbed in the competitive labor market; or

15 **SECTION 2.** In Colorado Revised Statutes, 12-43-224, **amend**
16 (2)(c)(II) introductory portion and (2)(c)(II)(B) as follows:

17 **12-43-224. Disciplinary proceedings - judicial review - mental**
18 **and physical examinations - multiple licenses.** (2) (c) (II) The board
19 that licenses, registers, or certifies a licensee, registrant, or certificate
20 holder pursuant to this ~~article~~ ARTICLE 43 may summarily suspend the
21 person's license, registration, or certification, subject to the limitation of
22 section 24-4-104, ~~C.R.S.~~, under the following circumstances:

23 (B) The licensee, registrant, or certificate holder has been

1 adjudicated by a court of competent jurisdiction as ~~being~~ a person who is
2 gravely disabled, ~~mentally retarded~~, mentally incompetent, or insane or
3 as a person with a mental illness ~~by a court of competent jurisdiction~~ OR
4 AS A PERSON WITH A DEVELOPMENTAL AND INTELLECTUAL DISABILITY; or

5 **SECTION 3.** In Colorado Revised Statutes, 13-9-103, **amend**
6 (1)(f) as follows:

7 **13-9-103. Jurisdiction.** (1) The probate court of the city and
8 county of Denver has original and exclusive jurisdiction in said city and
9 county of:

10 (f) The administration of guardianships of minors and of ~~mentally~~
11 ~~competent~~ persons DECLARED MENTALLY INCOMPETENT and of
12 conservatorships of persons with A mental illness or ~~mentally deficient~~
13 persons WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY and of
14 absentees;

15 **SECTION 4.** In Colorado Revised Statutes, 13-80-103.7, **amend**
16 (3.5)(a) as follows:

17 **13-80-103.7. General limitation of actions - sexual assault or**
18 **sexual offense against a child - six years.** (3.5) (a) For the purpose of
19 this section, "person under disability" means any person who is a minor
20 under eighteen years of age, a ~~mental incompetent~~ PERSON WHO HAS BEEN
21 DECLARED MENTALLY INCOMPETENT, or a person under other legal
22 disability and who does not have a legal guardian. "Person under
23 disability" also includes a victim of a sexual assault when the victim is in
24 a special relationship with the perpetrator of the assault or is a victim of
25 a sexual offense against a child or is a victim who is residing in an
26 institutional facility, such as a nursing home, regional center, or
27 residential facility for the treatment and care of persons with A mental

1 illness or for the care of persons with INTELLECTUAL AND developmental
2 disabilities and where the victim is psychologically or emotionally unable
3 to acknowledge the assault or offense and the RESULTING harm. ~~resulting~~
4 ~~therefrom~~. For the purpose of this subsection (3.5), "special relationship"
5 means a relationship between the victim and the perpetrator of the sexual
6 assault which is a confidential, trust-based relationship, such as
7 attorney-client, doctor-patient, psychotherapist-patient,
8 minister-parishioner, teacher-student, or familial relationship. It is the
9 intent of the general assembly to leave in place the six-year limitation for
10 adults subjected to a sexual assault except in the situations described in
11 this ~~paragraph (a)~~ SUBSECTION (3.5)(a) in which the victim is in a special
12 relationship with the perpetrator of the assault. In the circumstances in
13 which a victim is in a special relationship with the perpetrator of the
14 assault or is a victim of a sexual offense against a child or a victim who
15 is residing in an institutional facility, such as a nursing home, regional
16 center, or residential facility for the treatment and care of persons with A
17 mental illness or for the care of persons with INTELLECTUAL AND
18 developmental disabilities and where the victim is psychologically or
19 emotionally unable to acknowledge the assault or offense and the
20 RESULTING harm, ~~resulting therefrom~~, the six-year limitation shall be
21 tolled until the disability is removed. For the purpose of this section,
22 where the plaintiff is a victim of a series of sexual assaults or sexual
23 offenses against a child, the plaintiff need not establish which act of a
24 series of acts caused the plaintiff's injury, and the statute of limitations set
25 forth in this section ~~shall commence~~ COMMENCES with the last in the
26 series of acts, subject to the provisions of this section regarding disability.
27 However, as elements of the cause of action, a person under disability

1 who is psychologically or emotionally unable to acknowledge the assault
2 or offense and the RESULTING harm ~~resulting therefrom shall have~~ HAS the
3 burden of proving that the assault or offense occurred and that ~~such~~ THE
4 person was actually psychologically or emotionally unable to
5 acknowledge the assault or offense and the RESULTING harm. ~~resulting~~
6 ~~therefrom.~~

7 **SECTION 5.** In Colorado Revised Statutes, **amend** 13-90-109 as
8 follows:

9 **13-90-109. Estates of deceased persons, infants, and persons**
10 **who have been declared mentally incompetent.** Nothing in this article
11 ~~shall~~ ARTICLE 90 in any manner ~~affect~~ AFFECTS the laws now existing
12 relating to the settlement of estates of deceased persons, infants, or
13 ~~mentally incompetent~~ persons WHO HAVE BEEN DECLARED MENTALLY
14 INCOMPETENT or to the acknowledgment or proof of deeds and other
15 conveyances relating to real estate, in order to entitle the same to be
16 recorded, or to the attestation of the execution of the last wills and
17 testaments or of any other instrument required by law to be attested.

18 **SECTION 6.** In Colorado Revised Statutes, **amend** 14-7-104 as
19 follows:

20 **14-7-104. Application of article.** This ~~article shall~~ ARTICLE 7
21 DOES not apply to liability for the support of children admitted,
22 committed, or transferred to any public institution of this state supervised
23 by the department of human services for the care, support, maintenance,
24 education, or treatment of ~~persons with mental illness or who are mentally~~
25 ~~deficient~~ A PERSON WITH A MENTAL ILLNESS OR A PERSON WITH AN
26 INTELLECTUAL AND DEVELOPMENTAL DISABILITY.

27 **SECTION 7.** In Colorado Revised Statutes, 15-1.5-101, **amend**

1 the introductory portion and (8) as follows:

2 **15-1.5-101. Definitions.** As used in this ~~article~~ ARTICLE 1.5:

3 (8) "Incapacitated" means lacking the ability to manage property
4 and business affairs effectively by reason of A mental illness, ~~mental~~
5 ~~deficiency~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, A
6 physical illness or disability, chronic use of ~~drugs, chronic intoxication,~~
7 ~~confinement, detention by a foreign power, disappearance, minority,~~
8 or other disabling cause.

9 **SECTION 8.** In Colorado Revised Statutes, 15-14-118, **amend**
10 (2) introductory portion and (2)(c) as follows:

11 **15-14-118. Small estate - person under disability - no personal**
12 **representative.** (2) ~~Such petition shall~~ THE PETITION MUST state, so far
13 as known to petitioner:

14 (c) The date upon which and the court by which the person under
15 disability was adjudged as having a mental illness, ~~being mentally~~
16 ~~deficient, or being disabled~~ AN INTELLECTUAL AND DEVELOPMENTAL
17 DISABILITY, OR OTHER INCAPACITATING DISABILITY;

18 **SECTION 9.** In Colorado Revised Statutes, 17-27.7-103, **amend**
19 (1) as follows:

20 **17-27.7-103. Regimented inmate training program - eligibility**
21 **of offenders.** (1) The executive director may assign an inmate to a
22 regimented inmate training program pursuant to section 17-40-102 (2).
23 The executive director shall assign to a regimented inmate training
24 program only those inmates who are nonviolent offenders thirty years of
25 age or younger who are not serving a sentence, and have not served a
26 previous sentence, in a correctional facility for an unlawful sexual
27 behavior offense described in section 16-22-102 (9), ~~C.R.S.~~, a crime of

1 violence described in section 18-1.3-406, ~~C.R.S.~~, an assault offense
2 described in part 2 of article 3 of title 18, ~~C.R.S.~~, or a child abuse offense
3 described in part 4 of article 6 of title 18, ~~C.R.S.~~, or who are not presently
4 serving a sentence for a nonviolent offense that was reduced from an
5 unlawful sexual behavior offense described in section 16-22-102 (9),
6 ~~C.R.S.~~, a crime of violence described in section 18-1.3-406, ~~C.R.S.~~, an
7 assault offense described in part 2 of article 3 of title 18, ~~C.R.S.~~, or a
8 child abuse offense described in part 4 of article 6 of title 18, ~~C.R.S.~~, as
9 a result of a plea agreement or who are not aliens subject to a removal
10 order. Any offender assigned to the program shall be free of any physical
11 or mental ~~defect~~ ~~which~~ DISABILITY THAT could jeopardize his or her
12 ability to complete the program. The department may eliminate any
13 offender from the program upon a determination by the department that
14 a physical DISABILITY or A mental ~~defect~~ ILLNESS will prevent full
15 participation in the program by ~~such~~ THE offender. The department is
16 absolved of liability for participation in the program.

17 **SECTION 10.** In Colorado Revised Statutes, 19-3-604, **amend**
18 (1)(b)(I) as follows:

19 **19-3-604. Criteria for termination.** (1) The court may order a
20 termination of the parent-child legal relationship upon the finding by clear
21 and convincing evidence of any one of the following:

22 (b) That the child is adjudicated dependent or neglected and the
23 court finds that no appropriate treatment plan can be devised to address
24 the unfitness of the parent or parents. In making such a determination, the
25 court shall find one of the following as the basis for unfitness:

26 (I) Emotional illness, mental illness, or ~~mental deficiency~~ AN
27 INTELLECTUAL AND DEVELOPMENTAL DISABILITY of the parent of such

1 duration or nature as to render the parent unlikely within a reasonable
2 time to care for the ongoing physical, mental, and emotional needs and
3 conditions of the child;

4 **SECTION 11.** In Colorado Revised Statutes, 19-5-105, **amend**
5 (3.1)(a) introductory portion and (3.1)(a)(I) as follows:

6 **19-5-105. Proceeding to terminate parent-child legal**
7 **relationship.** (3.1) The court may order the termination of the other birth
8 parent's parental rights upon a finding that termination is in the best
9 interests of the child and that there is clear and convincing evidence of
10 one or more of the following:

11 (a) That the parent is unfit. In considering the fitness of the child's
12 parent, the court shall consider ~~but shall not be limited to~~, the following:

13 (I) Emotional illness, mental illness, or ~~mental deficiency~~ AN
14 INTELLECTUAL AND DEVELOPMENTAL DISABILITY of the parent of such
15 duration or nature as to render the parent unlikely, within a reasonable
16 period of time, to care for the ongoing physical, mental, and emotional
17 needs of the child;

18 **SECTION 12.** In Colorado Revised Statutes, 25-1-124.5, **amend**
19 (2) introductory portion and (2)(b) as follows:

20 **25-1-124.5. Nursing care facilities - employees - criminal**
21 **history check.** (2) As used in this section, "nursing care facility"
22 includes: ~~but is not limited to~~:

23 (b) An intermediate nursing facility for ~~the mentally retarded~~
24 PERSONS WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES as
25 defined in section 25.5-4-103 (9); ~~C.R.S.~~;

26 **SECTION 13.** In Colorado Revised Statutes, 25.5-4-103, **amend**
27 the introductory portion and (14) as follows:

1 **25.5-4-103. Definitions.** As used in this ~~article~~ ARTICLE 4 and
2 articles 5 and 6 of this ~~title~~ TITLE 25.5, unless the context otherwise
3 requires:

4 (14) "Nursing facility" means a facility, or a distinct part of a
5 facility, ~~which~~ THAT meets the state nursing home licensing standards in
6 section 25-1.5-103 (1)(a)(I), ~~C.R.S.~~, is maintained primarily for the care
7 and treatment of inpatients under the direction of a physician, and meets
8 the requirements in 42 U.S.C. sec. 1396r for certification as a qualified
9 provider of nursing facility services. The patients in such a facility require
10 supportive, therapeutic, or compensating services and the availability of
11 a licensed nurse for observation or treatment on a twenty-four-hour basis.
12 Nursing care may include ~~but is not limited to~~ terminal care; extensive
13 assistance or therapy in the activities of daily living; continual direction,
14 supervision, or therapy; extensive assistance or therapy for loss of
15 mobility; nursing assessment and services ~~which~~ THAT involve
16 assessment of the total needs of the patient, planning of patient care, and
17 observing, monitoring, and recording the patient's response to treatment;
18 and monitoring, observing, and evaluating the drug regimen. "Nursing
19 facility" includes private, nonprofit, or proprietary intermediate nursing
20 facilities for ~~the mentally retarded or developmentally disabled~~ PERSONS
21 WITH INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

22 **SECTION 14.** In Colorado Revised Statutes, 26-1-122, **amend**
23 (4)(e) as follows:

24 **26-1-122. County appropriations and expenditures -**
25 **advancements - procedures.** (4) (e) When a county department provides
26 or purchases certain specialized social services for public assistance
27 applicants, recipients, or others to accomplish self-support, self-care, or

1 better family life, including ~~but not limited to~~ day care, homemaker
2 services, foster care, and services to ~~mentally retarded~~ persons WITH
3 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, in accordance with
4 applicable rules, the state may advance funds to ~~such~~ THE county
5 department at a rate in excess of eighty percent within available
6 appropriations, but not to exceed the amount expended by the county
7 department for such services. The county department contribution ~~shall~~
8 ~~be~~ for the period from January 1, 1981, through June 30, 1981, IS ten
9 percent, and beginning July 1, 1981, IS five percent for the aid to the
10 needy disabled home care program, the special needs of the disabled
11 program, aid to the blind home care program, the special needs of the
12 blind program, the adult foster care program, and other programs
13 providing public assistance in the form of social services required by the
14 federal "Social Security Act", as amended, for the purpose of establishing
15 services ~~which~~ THAT promote self-sufficiency for adult clients. As funds
16 are advanced, adjustment shall be made from subsequent monthly
17 payments for those purposes. The expenses of training personnel to
18 provide these services as determined and approved by the state
19 department shall be paid from whatever state and federal funds are
20 available for such training purposes.

21 **SECTION 15.** In Colorado Revised Statutes, 26-2-103, **amend**
22 the introductory portion and (11)(a) as follows:

23 **26-2-103. Definitions.** As used in this ~~article~~ ARTICLE 2 and
24 article 1 of this ~~title~~ TITLE 26, unless the context otherwise requires:

25 (11) (a) "Social services" means services and payments for
26 services available, directly or indirectly, through the staff of the state
27 department of human services and county departments of HUMAN OR

1 social services or through state designated agencies, where applicable, for
2 the benefit of eligible persons. ~~which~~ THE services are provided pursuant
3 to rules adopted by the state board. "Social services" may include ~~but~~
4 ~~need not be limited to~~ day care, homemaker services, foster care, and
5 other services to individuals or families for the purpose of attaining or
6 retaining capabilities for maximum self-care, self-support, and personal
7 independence and services to families or members of families for the
8 purpose of preserving, rehabilitating, reuniting, or strengthening the
9 family. At such time as Title XX of the social security act becomes
10 effective with respect to federal reimbursements, "social services" may
11 include ~~but need not be limited to~~ child care services, protective services
12 for children and adults, services for children and adults in foster care,
13 services related to the management and maintenance of the home, day
14 care services for adults, transportation services, training and related
15 services, employment services, information, referral, and counseling
16 services, the preparation and delivery of meals, health support services,
17 and appropriate combinations of services designed to meet the special
18 needs of children, ~~the aged, the mentally retarded, the blind, the~~
19 ~~emotionally disturbed,~~ PERSONS WHO ARE ELDERLY, PERSONS WITH
20 INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, PERSONS WHO ARE
21 BLIND, PERSONS WITH A MENTAL ILLNESS, persons with A physical
22 ~~disabilities~~ DISABILITY, and alcoholics and drug addicts.

23 **SECTION 16. Safety clause.** The general assembly hereby finds,
24 determines, and declares that this act is necessary for the immediate
25 preservation of the public peace, health, and safety.