

SENATE FLOOR AMENDMENT

Second Reading

BY SENATOR Michaelson Jenet

1 Amend reengrossed bill, page 2, strike lines 2 through 19.

2 Page 3, strike lines 1 through 13.

3 Renumber succeeding sections accordingly.

4 Page 4, after line 22, insert:

5 **"25.5-1-1101. Legislative declaration. (1) THE GENERAL**
6 **ASSEMBLY FINDS AND DECLARES THAT:**

7 (a) THE UNITED STATES SUPREME COURT DECISION IN *OLMSTEAD*
8 *v. L.C.*, 527 U.S. 581 (1999), REFERRED TO IN THIS PART 11 AS
9 "*OLMSTEAD*", ENSHRINED IN LAW THE DUTY UPON STATES TO ACTIVELY
10 WORK TOWARD HELPING INDIVIDUALS WITH DISABILITIES TRANSITION OUT
11 OF INSTITUTIONS AND INTO THE COMMUNITY AND TO HAVE
12 COMMUNITY-BASED SERVICES AVAILABLE TO DECREASE THE RISK OF
13 INSTITUTIONALIZATION;

14 (b) *OLMSTEAD* PLACED ON STATES THE OBLIGATION TO ADMINISTER
15 SERVICES, PROGRAMS, AND ACTIVITIES IN THE MOST INTEGRATED SETTING
16 APPROPRIATE TO THE NEEDS OF QUALIFIED INDIVIDUALS WITH
17 DISABILITIES;

18 (c) SEGREGATING INDIVIDUALS WITH DISABILITIES IN INSTITUTIONS
19 DENIES THOSE INDIVIDUALS THE FREEDOM TO MAKE DECISIONS, KEEPS
20 THEM APART FROM FAMILY AND FRIENDS, AND DENIES THEM
21 OPPORTUNITIES THAT EXIST IN THEIR COMMUNITIES. SEGREGATION ALSO
22 DENIES COMMUNITIES THE CONTRIBUTIONS THAT INDIVIDUALS WITH
23 DISABILITIES MAKE TO THEIR COMMUNITIES.

24 (d) COMMUNITY-BASED SERVICES ARE CHEAPER IN THE LONG RUN
25 THAN INSTITUTIONALIZATION SERVICES.

26 (2) THE GENERAL ASSEMBLY FURTHER DECLARES THAT CODIFYING
27 IN STATE LAW THE RIGHTS THAT WERE LEGALLY RECOGNIZED AS FEDERAL
28 LAW THROUGH *OLMSTEAD* IS CRUCIAL BECAUSE:

29 (a) THE FUNDAMENTAL RIGHTS FOR INDIVIDUALS WITH
30 DISABILITIES TO LIVE IN THE LEAST RESTRICTIVE SETTING AND TO HAVE
31 ACCESS TO SERVICES IN THE COMMUNITY IS CONSISTENT WITH
32 COLORADO'S RECOGNITION OF THE HUMANITY AND DIGNITY OF ALL
33 INDIVIDUALS;

34 (b) THE *OLMSTEAD* DECISION REQUIRED STATES TO DEVELOP AN
35 *OLMSTEAD* PLAN. COLORADO'S PLAN, CALLED THE "COLORADO
36 COMMUNITY LIVING PLAN", WAS DEVELOPED MORE THAN 10 YEARS AGO
37 AS A COLLABORATION BETWEEN THE STATE DEPARTMENTS OF HEALTH
38 CARE POLICY AND FINANCING, HUMAN SERVICES, AND LOCAL AFFAIRS. THE
39 PLAN'S EFFECTIVENESS HAS NEVER BEEN EVALUATED OR UPDATED, AND

1 THE PLAN IS INSUFFICIENT; AND
2 (c) FEDERAL LAW UNDER *OLMSTEAD* CURRENTLY PROVIDES A
3 PRIVATE RIGHT OF ACTION TO ENFORCE THE LAW. THEREFORE, THE
4 GENERAL ASSEMBLY DOES NOT SEE A NEED TO CREATE A NEW RIGHT OF
5 ACTION. HOWEVER, IF THE *OLMSTEAD* PROTECTIONS ARE WEAKENED, WE
6 URGE A FUTURE GENERAL ASSEMBLY TO STRENGTHEN THESE RIGHTS BY
7 CREATING A PRIVATE RIGHT OF ACTION TO FURTHER ENFORCE THIS LAW
8 FOR INDIVIDUALS WITH DISABILITIES."

9 Renumber succeeding C.R.S. sections accordingly.

10 Page 6, line 6, strike "MEANS" and substitute "AND "LEAST RESTRICTIVE
11 SETTING" BOTH MEAN".

12 Page 6, line 11, strike "25.5-1-1104." and substitute "8-88-102.5."

13 Page 7, strike lines 5 through 9.

14 Page 7, line 20, strike "APPROPRIATE;" and substitute "APPROPRIATE, AS
15 DETERMINED BY THE STATE'S TREATING PROFESSIONALS;"

16 Page 7, line 22, strike "SERVICES;" and substitute "SERVICES; AND".

17 Page 7, line 26, strike "DISABILITIES; AND" and substitute "DISABILITIES."

18 Page 7, strike line 27.

19 Page 8, strike line 1.

20 Page 8, lines 5 and 6, strike "IF SO, THE ENTITY SHALL MAKE A PLAN TO
21 AMELIORATE THE RISK."

22 Page 9, after line 13, insert:
23 **"25.5-1-1106. No private right of action - consistency with**
24 **federal *Olmstead* standard.** (1) NOTHING IN THIS PART 11 CREATES:
25 (a) A NEW RIGHT OF ACTION AGAINST THE STATE OF COLORADO OR
26 OTHER PUBLIC ENTITIES; OR
27 (b) A STANDARD DIFFERENT THAN THAT DELINEATED IN
28 *OLMSTEAD*, SUBSEQUENT CASES INTERPRETING *OLMSTEAD*, AND UNITED
29 STATES DEPARTMENT OF JUSTICE GUIDANCE INTERPRETING *OLMSTEAD*, AS
30 OF APRIL 20, 2025."

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