

## CHAPTER 44

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**HUMAN SERVICES - BEHAVIORAL HEALTH**

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**SENATE BILL 18-096**

BY SENATOR(S) Martinez Humenik, Moreno, Tate, Zenzinger, Aguilar, Court, Crowder, Garcia, Gardner, Guzman, Jahn, Kagan, Kefalas, Kerr, Lambert, Merrifield, Priola, Smallwood, Todd;  
also REPRESENTATIVE(S) Thurlow, Arndt, Hooton, McKean, Bridges, Buckner, Esgar, Ginal, Hamner, Hansen, Herod, Jackson, Kennedy, Lontine, McLachlan, Melton, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Saine, Singer, Valdez, Weissman, Winter, Young, Duran.

**AN ACT**

**CONCERNING MODERNIZING STATUTORY PROVISIONS THAT REFER TO TERMS RELATED TO "MENTAL RETARDATION".**

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

**SECTION 1. Legislative declaration.** The general assembly declares that the purpose of Senate Bill 18-096, enacted in 2018, is to effect a nonsubstantive change in statute to modernize the outdated use of the terms "mental retardation" and "mentally retarded" where appropriate. The general assembly further declares that these terminology changes do not in any way alter the scope or applicability of the statutory sections in which the terminology appears.

**SECTION 2.** In Colorado Revised Statutes, 18-1.3-1101, **amend** (2) as follows:

**18-1.3-1101. Definitions.** As used in this part 11:

(2) "Mentally retarded defendant OR DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY" means any defendant with significantly subaverage general intellectual functioning existing concurrently with substantial deficits in adaptive behavior and manifested and documented during the developmental period. The requirement for documentation may be excused by the court upon a finding that extraordinary circumstances exist.

**SECTION 3.** In Colorado Revised Statutes, **amend** 18-1.3-1102 as follows:

**18-1.3-1102. Pretrial motion by defendant in class 1 felony case -**

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*Capital letters or bold & italic numbers indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.*

**determination whether defendant is mentally retarded or has an intellectual and developmental disability - procedure.** (1) Any defendant may file a motion with the trial court in which the defendant may allege that such defendant is a mentally retarded defendant ~~Such~~ OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY. THE motion ~~shall~~ MUST be filed at least ninety-one days prior to trial.

(2) The court shall hold a hearing upon any motion filed pursuant to subsection (1) of this section and shall make a determination regarding ~~such~~ THE motion no later than fourteen days prior to trial. At such hearing, the defendant ~~shall~~ MUST be permitted to present evidence with regard to ~~such~~ THE motion and the prosecution ~~shall~~ MUST be permitted to offer evidence in rebuttal. The defendant ~~shall have~~ HAS the burden of proof to show by clear and convincing evidence that ~~such defendant~~ HE OR SHE is mentally retarded OR HAS AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY.

(3) The court shall enter specific findings of fact and conclusions of law regarding whether or not the defendant is a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, as defined in section 18-1.3-1101.

**SECTION 4.** In Colorado Revised Statutes, **amend** 18-1.3-1103 as follows:

**18-1.3-1103. Mentally retarded defendant or defendant with an intellectual and developmental disability - death penalty not imposed.** A sentence of death shall not be imposed upon any defendant who is determined to be a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to section 18-1.3-1102. If any person who is determined to be a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY is found guilty of a class 1 felony, such defendant shall be sentenced to life imprisonment.

**SECTION 5.** In Colorado Revised Statutes, 18-1.3-1104, **amend** (1), (3), (4), (6) introductory portion, and (6)(c) as follows:

**18-1.3-1104. Evaluation and report.** (1) When the defendant files a motion alleging that the defendant is a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, the court shall order one or more evaluations of the defendant with regard to such motion.

(3) The defendant ~~shall have~~ HAS a privilege against self-incrimination that may be invoked prior to or during the course of an evaluation ~~under~~ PURSUANT TO this section. A defendant's failure to cooperate with the evaluators or other personnel conducting the evaluation may be admissible in the defendant's HEARING CONCERNING mental retardation ~~hearing~~ OR THE PRESENCE OF AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY.

(4) To aid in the formation of an opinion as to mental retardation OR THE PRESENCE OF AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, it is permissible in the course of an evaluation ~~under~~ CONDUCTED PURSUANT TO this section to use statements ~~of~~ MADE BY the defendant and any other evidence, including but not

limited to the circumstances surrounding the commission of the offense as well as the DEFENDANT'S medical and social history, ~~of the defendant~~, in evaluating the defendant.

(6) The report of evaluation ~~shall~~ MUST include, but is not limited to:

(c) Diagnosis and an opinion as to whether the defendant is mentally retarded OR HAS AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY.

**SECTION 6.** In Colorado Revised Statutes, **amend** 18-1.3-1105 as follows:

**18-1.3-1105. Evaluation at insistence of defendant.** (1) If the defendant wishes to be evaluated by an expert ~~in mental retardation~~ of the defendant's choice IN MENTAL RETARDATION OR INTELLECTUAL AND DEVELOPMENTAL DISABILITIES in connection with the mental retardation OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY hearing ~~under~~ PURSUANT TO this part 11, the court, upon timely motion, shall order that the evaluator chosen by the defendant be given reasonable opportunity to conduct the evaluation.

(2) Whenever an expert is endorsed as a witness by the defendant, a copy of any report of an evaluation of the defendant shall be furnished to the prosecution within a reasonable time but not less than thirty-five days prior to the mental retardation OR INTELLECTUAL AND DEVELOPMENTAL DISABILITY hearing.

**SECTION 7.** In Colorado Revised Statutes, 18-1.3-1201, **amend** (1)(a) as follows:

**18-1.3-1201. Imposition of sentence in class 1 felonies - appellate review.** (1) (a) Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense or unless the defendant has been determined to be a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to part 11 of this ~~article~~ ARTICLE 1.3, in either of which cases, the defendant ~~shall~~ MUST be sentenced to life imprisonment. THE TRIAL JUDGE SHALL CONDUCT the hearing ~~shall be conducted by the trial judge~~ before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and ~~shall~~ MUST remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors ~~shall~~ MUST sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the court, any member or members of the trial jury are excused from participation in the sentencing hearing, the trial judge shall replace each juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant pled guilty, the hearing shall be conducted before the trial judge. The court shall instruct the defendant when waiving his or her right to a jury trial or when pleading guilty that he or she is also waiving his or her right to a jury determination of the sentence at the sentencing hearing.

**SECTION 8.** In Colorado Revised Statutes, 18-1.4-102, **amend** (1)(a) as

follows:

**18-1.4-102. Imposition of sentence in class 1 felonies for crimes committed on or after July 1, 1995, and prior to July 12, 2002 - appellate review.**

(1) (a) Upon conviction of guilt of a defendant of a class 1 felony, the trial court shall conduct a separate sentencing hearing to determine whether the defendant should be sentenced to death or life imprisonment, unless the defendant was under the age of eighteen years at the time of the commission of the offense, or unless the defendant has been determined to be a mentally retarded defendant OR A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY pursuant to part 4 of article 9 of title 16, C.R.S., as it existed prior to October 1, 2002, in either of which cases, the defendant shall be sentenced to life imprisonment. THE TRIAL JUDGE SHALL CONDUCT the hearing ~~shall be conducted by the trial judge~~ before the trial jury as soon as practicable. Alternate jurors shall not be excused from the case prior to submission of the issue of guilt to the trial jury and ~~shall~~ MUST remain separately sequestered until a verdict is entered by the trial jury. If the verdict of the trial jury is that the defendant is guilty of a class 1 felony, the alternate jurors shall sit as alternate jurors on the issue of punishment. If, for any reason satisfactory to the court, any member or members of the trial jury are excused from participation in the sentencing hearing, the trial judge shall replace such juror or jurors with an alternate juror or jurors. If a trial jury was waived or if the defendant pled guilty, the hearing shall be conducted before the trial judge. The court shall instruct the defendant when waiving his or her right to a jury trial or when pleading guilty, that he or she is also waiving his or her right to a jury determination of the sentence at the sentencing hearing.

**SECTION 9.** In Colorado Revised Statutes, 22-20-103, **amend** (25) as follows:

**22-20-103. Definitions.** As used in this part 1, unless the context otherwise requires:

(25) "Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written. ~~which~~ THE disorder may manifest itself in the imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations, and includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. "Specific learning disability" does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities; ~~of mental retardation, of~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY; AN emotional disturbance; or ~~of~~ AN environmental, cultural, or economic disadvantage.

**SECTION 10.** In Colorado Revised Statutes, **amend** 25-3-403 as follows:

**25-3-403. Department to administer federal mental health construction funds.** The department of public health and environment is designated as the sole agency for carrying out the purposes of Part C of Title I and Title II of the federal "Mental Retardation Facilities and Community Mental Health Centers Construction Act of 1963", Public Law 88-164 of the 88th congress of the United States, approved October 31, 1963, or any amendments thereto, and is authorized to administer a state plan for carrying out ~~the~~ ITS provisions ~~thereof~~ and to accept, on

behalf of the state, all funds allotted to the state under the provisions of ~~said~~ THE federal act. ~~or any amendments thereto. Such~~ THE STATE MENTAL HEALTH AUTHORITY SHALL FORMULATE THE state plan. ~~shall be formulated by the state mental health and mental retardation authority.~~ In carrying out the purposes hereof OF THE FEDERAL ACT, the department of public health and environment is authorized to make such reports as may be required by ~~said~~ THE federal act, ~~or any amendments thereto,~~ and to do all things that may be required as a condition precedent to the proper application for the receipt of federal grants under ~~said~~ THE federal act, ~~and any amendments thereto and regulations thereof,~~ and to administer and supervise the expenditure of such grants for the purposes hereof in consultation with the mental health ~~and mental retardation~~ authority of the state of Colorado.

**SECTION 11.** In Colorado Revised Statutes, **amend** 25-4-801 as follows:

**25-4-801. Legislative declaration.** The general assembly declares that, as a matter of public policy of this state and in the interest of public health, every newborn infant should be tested for phenylketonuria and other metabolic DISORDERS OR defects in order to prevent ~~mental retardation resulting therefrom~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES RESULTING FROM SUCH CONDITIONS and that the people of this state should be extensively informed as to the nature and effects of such METABOLIC DISORDERS OR defects.

**SECTION 12.** In Colorado Revised Statutes, 25-4-802, **amend** (2) as follows:

**25-4-802. Tests for metabolic disorders or defects.** (2) The state board of health has the duty to prescribe from time to time effective tests and examinations designed to detect phenylketonuria and such other metabolic disorders or defects likely to cause ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES, as accepted medical practice indicates.

**SECTION 13.** In Colorado Revised Statutes, **amend** 25-4-803 as follows:

**25-4-803. Rules.** (1) The state board of health shall promulgate rules ~~and regulations~~ concerning the obtaining of samples or specimens from newborn infants required for the tests prescribed by the state board of health for the handling and delivery of the same and for ~~the~~ testing and examination ~~thereof~~ to detect phenylketonuria or other metabolic disorders THAT HAVE BEEN found likely to cause ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

(2) The department of public health and environment shall furnish all physicians, public health nurses, hospitals, maternity homes, county departments of HUMAN OR social services, and the state department of human services available medical information concerning the nature and effects of phenylketonuria and other metabolic disorders and defects THAT HAVE BEEN found likely to cause ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES.

**SECTION 14.** In Colorado Revised Statutes, 25-4-1004.5, **amend** (1)(b) as follows:

**25-4-1004.5. Follow-up testing and treatment - second screening - legislative declaration - fee - rules.** (1) The general assembly finds that:

(b) Newborn testing is designed to identify metabolic disorders that cause ~~mental retardation~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES and other health problems unless they are diagnosed and treated early in life;

**SECTION 15.** In Colorado Revised Statutes, 25.5-6-403, **amend** (3.3)(a) as follows:

**25.5-6-403. Definitions.** As used in this part 4, unless the context otherwise requires:

(3.3) (a) "Intellectual and developmental disability" means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to ~~mental retardation~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY or related conditions, ~~which include~~ INCLUDING cerebral palsy, epilepsy, autism, or other neurological conditions, when those conditions result in impairment of general intellectual functioning or adaptive behavior similar to that of a person with ~~mental retardation~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY. Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. sec. 15001 et seq. ~~shall~~ DOES not apply.

**SECTION 16.** In Colorado Revised Statutes, 25.5-10-202, **amend** (26)(a) as follows:

**25.5-10-202. Definitions.** As used in this article 10, unless the context otherwise requires:

(26) (a) "Intellectual and developmental disability" means a disability that manifests before the person reaches twenty-two years of age, that constitutes a substantial disability to the affected person, and that is attributable to ~~mental retardation~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY or related conditions, ~~which include~~ INCLUDING cerebral palsy, epilepsy, autism, or other neurological conditions, ~~when those conditions result~~ WHEN THE CONDITION OR CONDITIONS RESULT in impairment of general intellectual functioning or adaptive behavior similar to that of a person with ~~mental retardation~~ AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY. Unless otherwise specifically stated, the federal definition of "developmental disability" found in 42 U.S.C. sec. 15001 et seq. ~~shall~~ DOES not apply.

**SECTION 17.** In Colorado Revised Statutes, **amend** 25.5-10-239 as follows:

**25.5-10-239. Evaluations to determine whether a defendant is mentally retarded or has an intellectual and developmental disability for purposes of class 1 felony trials.** Upon request of the court, the executive director, or his or her designee, shall recommend specific professionals who are qualified to perform an evaluation to determine whether a defendant is mentally retarded OR IS A DEFENDANT WITH AN INTELLECTUAL AND DEVELOPMENTAL DISABILITY, as defined in section 18-1.3-1101. ~~C.R.S. Any professional who is recommended shall~~ A RECOMMENDED PROFESSIONAL MUST be licensed as a psychologist in the state of Colorado and ~~shall~~ MUST have experience in and ~~shall have~~ demonstrated competence in determination and evaluation of persons with ~~mental retardation~~

INTELLECTUAL AND DEVELOPMENTAL DISABILITIES. The executive director shall convene a panel of not fewer than three persons with expertise in ~~mental retardation~~ ~~who shall~~ INTELLECTUAL AND DEVELOPMENTAL DISABILITIES TO assess the qualifications of licensed psychologists and make recommendations to the executive director OR HIS OR HER DESIGNEE.

**SECTION 18.** In Colorado Revised Statutes, 26-11-207, **amend** (5) as follows:

**26-11-207. Family caregiver support program - creation.** (5) The area agency on aging shall give priority for services under the program to older individuals with greatest social and economic need, with particular attention to low-income older individuals, and to older individuals providing care and support to persons with ~~mental retardation and related~~ INTELLECTUAL AND developmental disabilities.

**SECTION 19.** In Colorado Revised Statutes, 27-66-105, **amend** (1)(e) as follows:

**27-66-105. Standards for approval.** (1) In approving or rejecting community mental health clinics for the purchase of behavioral or mental health services, the executive director shall:

(e) Require that each clinic from which services may be purchased be under the control and direction of a county or community board of health, a board of directors or trustees of a corporation, for profit or not for profit, a regional mental health ~~and mental retardation~~ board, or a political subdivision of the state;

**SECTION 20.** In Colorado Revised Statutes, **amend** 27-66-106 as follows:

**27-66-106. Federal grants-in-aid - administration.** The department is designated the official mental health ~~and mental retardation~~ authority, and is authorized to receive grants-in-aid from the federal government under the provisions of 42 U.S.C. sec. 246, and shall administer said grants in accordance therewith.

**SECTION 21. Act subject to petition - effective date.** This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 21, 2018