

CHAPTER 26

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 95-1120

BY REPRESENTATIVES Adkins, Agler, Allen, Congrove, Dean, George, Kaufman, Lamborn, Lamm, McPherson, Musgrave, Paschall, Piffner, Prinster, Prinzler, Reeser, Schwarz, Swenson, and Tool;
also SENATORS Wells, Alexander, Ament, Bishop, Mares, Norton, Perlmutter, R. Powers, Tebedo, and Wham.

AN ACT

CONCERNING A RESTRUCTURING OF THE NOT GUILTY BY REASON OF INSANITY DEFENSE, AND, IN CONNECTION THEREWITH, MERGING THE IMPAIRED MENTAL CONDITION DEFENSE INTO THE NOT GUILTY BY REASON OF INSANITY DEFENSE AND ELIMINATING THE SEPARATE HEARING ON THE INSANITY DEFENSE.

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

SECTION 1. 16-8-101, Colorado Revised Statutes, 1986 Repl. Vol., is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-101. Insanity defined - offenses committed before July 1, 1995. (3) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

SECTION 2. Article 8 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

16-8-101.5. Insanity defined - offenses committed on and after July 1, 1995.

(1) THE APPLICABLE TEST OF INSANITY SHALL BE:

(a) A PERSON WHO IS SO DISEASED OR DEFECTIVE IN MIND AT THE TIME OF THE COMMISSION OF THE ACT AS TO BE INCAPABLE OF DISTINGUISHING RIGHT FROM WRONG WITH RESPECT TO THAT ACT IS NOT ACCOUNTABLE; EXCEPT THAT CARE SHOULD BE TAKEN NOT TO CONFUSE SUCH MENTAL DISEASE OR DEFECT WITH MORAL OBLIQUITY, MENTAL DEPRAVITY, OR PASSION GROWING OUT OF ANGER, REVENGE, HATRED, OR OTHER MOTIVES AND KINDRED EVIL CONDITIONS, FOR, WHEN THE ACT IS INDUCED BY ANY OF THESE CAUSES, THE PERSON IS ACCOUNTABLE TO THE LAW; OR

(b) A PERSON WHO SUFFERED FROM A CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT THAT PREVENTED THE PERSON FROM FORMING A CULPABLE

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

MENTAL STATE THAT IS AN ESSENTIAL ELEMENT OF A CRIME CHARGED, BUT CARE SHOULD BE TAKEN NOT TO CONFUSE SUCH MENTAL DISEASE OR DEFECT WITH MORAL OBLIQUITY, MENTAL DEPRAVITY, OR PASSION GROWING OUT OF ANGER, REVENGE, HATRED, OR OTHER MOTIVES AND KINDRED EVIL CONDITIONS BECAUSE, WHEN THE ACT IS INDUCED BY ANY OF THESE CAUSES, THE PERSON IS ACCOUNTABLE TO THE LAW.

(2) AS USED IN SUBSECTION (1) OF THIS SECTION:

(a) "DISEASED OR DEFECTIVE IN MIND" DOES NOT REFER TO AN ABNORMALITY MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT.

(b) "MENTAL DISEASE OR DEFECT" INCLUDES ONLY THOSE SEVERELY ABNORMAL MENTAL CONDITIONS THAT GROSSLY AND DEMONSTRABLY IMPAIR A PERSON'S PERCEPTION OR UNDERSTANDING OF REALITY AND THAT ARE NOT ATTRIBUTABLE TO THE VOLUNTARY INGESTION OF ALCOHOL OR ANY OTHER PSYCHOACTIVE SUBSTANCE BUT DOES NOT INCLUDE AN ABNORMALITY MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT.

(3) THIS SECTION SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 3. 16-8-102 (2.7), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 16-8-102, as amended, is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

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

(2.7) (a) "Impaired mental condition" means a condition of mind, caused by mental disease or defect ~~which does not constitute insanity but, nevertheless,~~ THAT prevents the person from forming ~~a~~ THE culpable mental state ~~which~~ THAT is an essential element of ~~a~~ ANY crime charged. For the purposes of this subsection (2.7), "mental disease or defect" includes only those severely abnormal mental conditions which grossly and demonstrably impair a person's perception or understanding of reality and which are not attributable to the voluntary ingestion of alcohol or any other psychoactive substance; except that it does not include an abnormality manifested only by repeated criminal or otherwise antisocial conduct.

(b) THIS SUBSECTION (2.7) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(4.7) "MENTAL DISEASE OR DEFECT" MEANS ONLY THOSE SEVERELY ABNORMAL MENTAL CONDITIONS THAT GROSSLY AND DEMONSTRABLY IMPAIR A PERSON'S PERCEPTION OR UNDERSTANDING OF REALITY AND THAT ARE NOT ATTRIBUTABLE TO THE VOLUNTARY INGESTION OF ALCOHOL OR ANY OTHER PSYCHOACTIVE SUBSTANCE; EXCEPT THAT IT DOES NOT INCLUDE AN ABNORMALITY MANIFESTED ONLY BY REPEATED CRIMINAL OR OTHERWISE ANTISOCIAL CONDUCT.

SECTION 4. 16-8-103 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended, and the said 16-8-103 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8-103. Pleading insanity as a defense. (1) (a) The defense of insanity may only be raised by a specific plea entered at the time of arraignment; except that the court, for good cause shown, may permit the plea to be entered at any time prior to trial. The form of the plea shall be: "Not guilty by reason of insanity"; and it must be pleaded orally either by the defendant or by ~~his~~ THE DEFENDANT'S counsel. A defendant who does not raise the defense as provided in this section shall not be permitted to rely upon insanity as a defense to the crime charged, but, when charged with a crime requiring a specific intent as an element thereof, may introduce evidence of ~~his~~ THE DEFENDANT'S mental condition as bearing upon his OR HER capacity to form the required specific intent. The plea of not guilty by reason of insanity includes the plea of not guilty.

(b) THIS SUBSECTION (1) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(1.5) (a) THE DEFENSE OF INSANITY MAY ONLY BE RAISED BY A SPECIFIC PLEA ENTERED AT THE TIME OF ARRAIGNMENT; EXCEPT THAT THE COURT, FOR GOOD CAUSE SHOWN, MAY PERMIT THE PLEA TO BE ENTERED AT ANY TIME PRIOR TO TRIAL. THE FORM OF THE PLEA SHALL BE: "NOT GUILTY BY REASON OF INSANITY"; AND IT MUST BE PLEADED ORALLY EITHER BY THE DEFENDANT OR BY THE DEFENDANT'S COUNSEL. THE PLEA OF NOT GUILTY BY REASON OF INSANITY INCLUDES THE PLEA OF NOT GUILTY.

(b) THIS SUBSECTION (1.5) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 5. 16-8-103.5, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

16-8-103.5. Impaired mental condition - when raised - procedure - legislative intent. (8) THIS SECTION SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

SECTION 6. 16-8-103.6, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended to read:

16-8-103.6. Waiver of privilege. (1) (a) A defendant who places his OR HER mental condition at issue by pleading not guilty by reason of insanity pursuant to section 16-8-103, asserting the affirmative defense of impaired mental condition pursuant to section 16-8-103.5, or raising the question of incompetency to proceed pursuant to section 16-8-110 waives any claim of confidentiality or privilege as to communications made by ~~him~~ THE DEFENDANT to a physician or psychologist in the course of an examination or treatment for such mental condition for the purpose of any trial or hearing on the issue of such mental condition. The court shall order both the prosecutor and the defendant to exchange the names, addresses, reports, and statements of any physician or psychologist who has examined or treated the defendant for such mental condition.

(b) THIS SUBSECTION (1) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(2) (a) A DEFENDANT WHO PLACES HIS OR HER MENTAL CONDITION AT ISSUE BY PLEADING NOT GUILTY BY REASON OF INSANITY PURSUANT TO SECTION 16-8-103 OR RAISING THE QUESTION OF INCOMPETENCY TO PROCEED PURSUANT TO SECTION 16-8-110 WAIVES ANY CLAIM OF CONFIDENTIALITY OR PRIVILEGE AS TO COMMUNICATIONS MADE BY THE DEFENDANT TO A PHYSICIAN OR PSYCHOLOGIST IN THE COURSE OF AN EXAMINATION OR TREATMENT FOR SUCH MENTAL CONDITION FOR THE PURPOSE OF ANY TRIAL OR HEARING ON THE ISSUE OF SUCH MENTAL CONDITION. THE COURT SHALL ORDER BOTH THE PROSECUTOR AND THE DEFENDANT TO EXCHANGE THE NAMES, ADDRESSES, REPORTS, AND STATEMENTS OF ANY PHYSICIAN OR PSYCHOLOGIST WHO HAS EXAMINED OR TREATED THE DEFENDANT FOR SUCH MENTAL CONDITION.

(b) THIS SUBSECTION (2) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 7. 16-8-103.7, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-8-103.7. Examination after entry of defenses of insanity and impaired mental condition for offenses committed before July 1, 1995. (1) (a) When, at the time of arraignment, the defense of insanity is raised, pursuant to section 16-8-103, and the defendant asserts his OR HER intention to raise the affirmative defense of impaired mental condition, pursuant to section 16-8-103.5, the court shall order one examination of the defendant with regard to both defenses pursuant to section 16-8-106.

(b) THIS SUBSECTION (1) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(2) (a) WHEN, AT THE TIME OF ARRAIGNMENT, THE DEFENSE OF INSANITY IS RAISED PURSUANT TO SECTION 16-8-103, THE COURT SHALL ORDER AN EXAMINATION OF THE DEFENDANT WITH REGARD TO THE INSANITY DEFENSE PURSUANT TO SECTION 16-8-106.

(b) THIS SUBSECTION (2) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 8. 16-8-104, Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-8-104. Separate trial of issues. The issues raised by the plea of not guilty by reason of insanity shall be tried separately to different juries, and the sanity of the defendant shall be tried first. THIS SECTION SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

SECTION 9. 16-8-106 (2) and (3) and the introductory portion to 16-8-106 (5), Colorado Revised Statutes, 1986 Repl. Vol., are amended, and the said 16-8-106 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8-106. Examinations and report. (2) (a) The defendant shall have a privilege against self-incrimination during the course of an examination under this section. The

fact of the defendant's noncooperation with psychiatrists and other personnel conducting the examination may be admissible in the defendant's trial on the issues of insanity, competency, or impaired mental condition. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) THE DEFENDANT SHALL HAVE A PRIVILEGE AGAINST SELF-INCRIMINATION DURING THE COURSE OF AN EXAMINATION UNDER THIS SECTION. THE FACT OF THE DEFENDANT'S NONCOOPERATION WITH PSYCHIATRISTS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION MAY BE ADMISSIBLE IN THE DEFENDANT'S TRIAL ON THE ISSUES OF INSANITY OR COMPETENCY. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

(3) (a) To aid in forming an opinion as to the mental condition of the defendant, it is permissible in the course of an examination under this section to use confessions and admissions of the defendant and any other evidence of the circumstances surrounding the commission of the offense, as well as the medical and social history of the defendant, in questioning the defendant. When the defendant is noncooperative with psychiatrists and other personnel conducting the examination, an opinion of the mental condition of the defendant may be rendered by such psychiatrists or other personnel based upon such confessions, admissions, and any other evidence of the circumstances surrounding the commission of the offense, as well as the known medical and social history of the defendant, and such opinion may be admissible into evidence at trial. It shall also be permissible to conduct a narcoanalytic interview of the defendant with such drugs as are medically appropriate and to subject the defendant to polygraph examination. In any trial or hearing on the issue of the defendant's sanity, eligibility for release, impaired mental condition, or competency to proceed, the physicians and other personnel conducting the examination may testify to the results of any such procedures and the statements and reactions of the defendant insofar as the same entered into the formation of their opinions as to the mental condition of the defendant both at the time of the commission of the alleged offense and at the present time. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) TO AID IN FORMING AN OPINION AS TO THE MENTAL CONDITION OF THE DEFENDANT, IT IS PERMISSIBLE IN THE COURSE OF AN EXAMINATION UNDER THIS SECTION TO USE CONFESSIONS AND ADMISSIONS OF THE DEFENDANT AND ANY OTHER EVIDENCE OF THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE, AS WELL AS THE MEDICAL AND SOCIAL HISTORY OF THE DEFENDANT, IN QUESTIONING THE DEFENDANT. WHEN THE DEFENDANT IS NONCOOPERATIVE WITH PSYCHIATRISTS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION, AN OPINION OF THE MENTAL CONDITION OF THE DEFENDANT MAY BE RENDERED BY SUCH PSYCHIATRISTS OR OTHER PERSONNEL BASED UPON SUCH CONFESSIONS, ADMISSIONS, AND ANY OTHER EVIDENCE OF THE CIRCUMSTANCES SURROUNDING THE COMMISSION OF THE OFFENSE, AS WELL AS THE KNOWN MEDICAL AND SOCIAL HISTORY OF THE DEFENDANT, AND SUCH OPINION MAY BE ADMISSIBLE INTO EVIDENCE AT TRIAL. IT SHALL ALSO BE PERMISSIBLE TO CONDUCT A NARCOANALYTIC INTERVIEW OF THE DEFENDANT WITH SUCH DRUGS AS ARE MEDICALLY APPROPRIATE AND TO SUBJECT THE DEFENDANT TO POLYGRAPH EXAMINATION. IN ANY TRIAL OR HEARING ON THE ISSUE OF THE DEFENDANT'S SANITY, ELIGIBILITY FOR RELEASE, OR COMPETENCY TO PROCEED, THE PHYSICIANS AND OTHER PERSONNEL CONDUCTING THE EXAMINATION MAY TESTIFY TO THE RESULTS OF ANY SUCH PROCEDURES AND THE STATEMENTS AND REACTIONS OF

THE DEFENDANT INsofar AS THE SAME ENTERED INTO THE FORMATION OF THEIR OPINIONS AS TO THE MENTAL CONDITION OF THE DEFENDANT BOTH AT THE TIME OF THE COMMISSION OF THE ALLEGED OFFENSE AND AT THE PRESENT TIME. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

(5) WITH RESPECT TO OFFENSES COMMITTED BEFORE JULY 1, 1995, the report of examination shall include, but is not limited to:

(6) WITH RESPECT TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995, THE REPORT OF EXAMINATION SHALL INCLUDE, BUT IS NOT LIMITED TO, THE ITEMS DESCRIBED IN PARAGRAPHS (a) TO (c) OF SUBSECTION (5) OF THIS SECTION, AND:

(a) AN OPINION AS TO WHETHER THE DEFENDANT SUFFERED FROM A MENTAL DISEASE OR DEFECT OR FROM A CONDITION OF MIND CAUSED BY MENTAL DISEASE OR DEFECT THAT PREVENTED THE PERSON FROM FORMING THE CULPABLE MENTAL STATE THAT IS AN ESSENTIAL ELEMENT OF ANY CRIME CHARGED; AND, IF SO,

(b) SEPARATE OPINIONS AS TO WHETHER THE DEFENDANT WAS INSANE, IS INCOMPETENT TO PROCEED, OR IS INELIGIBLE FOR RELEASE, AS THOSE TERMS ARE DEFINED IN THIS ARTICLE. THE NATURE OF THE OPINIONS REQUIRED DEPENDS UPON THE TYPE OF EXAMINATION ORDERED BY THE COURT.

SECTION 10. 16-8-110 (1), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-8-110. Mental incompetency to proceed - effect - how and when raised.

(1) (a) ~~Except for trial of the issue raised by a plea of not guilty by reason of insanity or the assertion of the affirmative defense of impaired mental condition;~~ No person shall be tried, sentenced, or executed if ~~he~~ SUCH PERSON is incompetent to proceed at that stage of the proceedings against him OR HER. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) NO PERSON SHALL BE TRIED, SENTENCED, OR EXECUTED IF SUCH PERSON IS INCOMPETENT TO PROCEED AT THAT STAGE OF THE PROCEEDINGS AGAINST HIM OR HER. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 11. 16-8-114 (3), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-8-114. Procedure after hearing concerning restoration to competency.

(3) (a) Evidence of any determination as to the defendant's competency or incompetency is not admissible on the issues raised by the pleas of not guilty or not guilty by reason of insanity or the affirmative defense of impaired mental condition. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) EVIDENCE OF ANY DETERMINATION AS TO THE DEFENDANT'S COMPETENCY OR INCOMPETENCY IS NOT ADMISSIBLE ON THE ISSUES RAISED BY THE PLEAS OF NOT GUILTY OR NOT GUILTY BY REASON OF INSANITY. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

SECTION 12. 16-8-115 (1.5) and (2), Colorado Revised Statutes, 1986 Repl. Vol., as amended, are amended to read:

16-8-115. Release from commitment after verdict of not guilty by reason of insanity or not guilty by reason of impaired mental condition. (1.5) (a) Any victim of any crime or any member of such victim's immediate family, if the victim has died or is a minor, the perpetrator of which has been found not guilty by reason of insanity or not guilty by reason of impaired mental condition, shall be notified by the court in a timely manner prior to any hearing for release of the perpetrator held pursuant to subsection (1) of this section, if such victim or family member can reasonably be located. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) ANY VICTIM OF ANY CRIME OR ANY MEMBER OF SUCH VICTIM'S IMMEDIATE FAMILY, IF THE VICTIM HAS DIED OR IS A MINOR, THE PERPETRATOR OF WHICH HAS BEEN FOUND NOT GUILTY BY REASON OF INSANITY, SHALL BE NOTIFIED BY THE COURT IN A TIMELY MANNER PRIOR TO ANY HEARING FOR RELEASE OF THE PERPETRATOR HELD PURSUANT TO SUBSECTION (1) OF THIS SECTION, IF SUCH VICTIM OR FAMILY MEMBER CAN REASONABLY BE LOCATED. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON OR AFTER JULY 1, 1995.

(2) (a) The court shall order a release examination of the defendant when a current one has not already been furnished or when either the prosecution or defense moves for an examination of THE defendant at a different institution or by different experts. The court may order any additional or supplemental examination, investigation, or study which it deems necessary to a proper consideration and determination of the question of eligibility for release. The court shall set the matter for release hearing after it has received all of the reports which it has ordered under this section. When none of said reports indicates that the defendant is eligible for release, the defendant's request for release hearing shall be denied by the court if the defendant is unable to show by way of an offer of proof any evidence by a medical expert in mental disorders that would indicate that ~~he~~ THE DEFENDANT is eligible for release. For the purposes of this subsection (2), "medical expert in mental disorders" means a physician licensed under the provisions of article 36 of title 12, C.R.S., a psychologist licensed under the provisions of article 43 of title 12, C.R.S., a psychiatric technician licensed under the provisions of article 42 of title 12, C.R.S., a registered professional nurse as defined in section 12-38-103 (11), C.R.S., who by reason of postgraduate education and additional nursing preparation has gained knowledge, judgment, and skill in psychiatric or mental health nursing, or a social worker ~~H~~ licensed under the provisions of ~~article 63.5 of title 12,~~ PART 4 OF ARTICLE 43 OF TITLE 12, C.R.S. The release hearing shall be to the court or, on demand by the defendant, to a jury of not to exceed six persons. At the release hearing, if any evidence of insanity is introduced, the defendant has the burden of proving restoration of sanity by a preponderance of the evidence; if any evidence of ineligibility for release by reason of impaired mental condition is introduced, the defendant has the burden of proving, by a preponderance of the evidence, that ~~he~~ THE DEFENDANT is eligible for release by no longer having an impaired mental condition. THIS PARAGRAPH (a) SHALL APPLY ONLY TO OFFENSES COMMITTED BEFORE JULY 1, 1995.

(b) THE COURT SHALL ORDER A RELEASE EXAMINATION OF THE DEFENDANT WHEN A CURRENT ONE HAS NOT ALREADY BEEN FURNISHED OR WHEN EITHER THE

PROSECUTION OR DEFENSE MOVES FOR AN EXAMINATION OF THE DEFENDANT AT A DIFFERENT INSTITUTION OR BY DIFFERENT EXPERTS. THE COURT MAY ORDER ANY ADDITIONAL OR SUPPLEMENTAL EXAMINATION, INVESTIGATION, OR STUDY THAT IT DEEMS NECESSARY TO A PROPER CONSIDERATION AND DETERMINATION OF THE QUESTION OF ELIGIBILITY FOR RELEASE. THE COURT SHALL SET THE MATTER FOR RELEASE HEARING AFTER IT HAS RECEIVED ALL OF THE REPORTS THAT IT HAS ORDERED UNDER THIS SECTION. WHEN NONE OF THE REPORTS INDICATES THAT THE DEFENDANT IS ELIGIBLE FOR RELEASE, THE DEFENDANT'S REQUEST FOR RELEASE HEARING SHALL BE DENIED BY THE COURT IF THE DEFENDANT IS UNABLE TO SHOW BY WAY OF AN OFFER OF PROOF ANY EVIDENCE BY A MEDICAL EXPERT IN MENTAL DISORDERS THAT WOULD INDICATE THAT THE DEFENDANT IS ELIGIBLE FOR RELEASE. FOR THE PURPOSES OF THIS SUBSECTION (2), "MEDICAL EXPERT IN MENTAL DISORDERS" MEANS A PHYSICIAN LICENSED UNDER THE PROVISIONS OF ARTICLE 36 OF TITLE 12, C.R.S., A PSYCHOLOGIST LICENSED UNDER THE PROVISIONS OF ARTICLE 43 OF TITLE 12, C.R.S., A PSYCHIATRIC TECHNICIAN LICENSED UNDER THE PROVISIONS OF ARTICLE 42 OF TITLE 12, C.R.S., A REGISTERED PROFESSIONAL NURSE AS DEFINED IN SECTION 12-38-103 (11), C.R.S., WHO BY REASON OF POSTGRADUATE EDUCATION AND ADDITIONAL NURSING PREPARATION HAS GAINED KNOWLEDGE, JUDGMENT, AND SKILL IN PSYCHIATRIC OR MENTAL HEALTH NURSING, OR A SOCIAL WORKER LICENSED UNDER THE PROVISIONS OF PART 4 OF ARTICLE 43 OF TITLE 12, C.R.S. THE RELEASE HEARING SHALL BE TO THE COURT OR, ON DEMAND BY THE DEFENDANT, TO A JURY COMPOSED OF NOT MORE THAN SIX PERSONS. AT THE RELEASE HEARING, IF ANY EVIDENCE THAT THE DEFENDANT DOES NOT MEET THE RELEASE CRITERIA IS INTRODUCED, THE DEFENDANT HAS THE BURDEN OF PROVING BY A PREPONDERANCE OF THE EVIDENCE THAT THE DEFENDANT HAS NO ABNORMAL MENTAL CONDITION WHICH WOULD BE LIKELY TO CAUSE HIM OR HER TO BE DANGEROUS EITHER TO HIMSELF OR HERSELF OR TO OTHERS OR TO THE COMMUNITY IN THE REASONABLY FORESEEABLE FUTURE. THIS PARAGRAPH (b) SHALL APPLY TO OFFENSES COMMITTED ON AND AFTER JULY 1, 1995.

SECTION 13. 16-8-120 (4), Colorado Revised Statutes, 1986 Repl. Vol., is amended to read:

16-8-120. Applicable tests for release. (4) As to any person charged with any crime allegedly committed on or after July 1, 1983, BUT BEFORE JULY 1, 1995, resulting in commitment by reason of impaired mental condition, the test for determination of a defendant's mental condition for release from commitment, or ~~his~~ A DEFENDANT'S eligibility for conditional release, shall be: "That the defendant has no abnormal mental condition which would be likely to cause ~~him~~ THE DEFENDANT to be dangerous either to himself OR HERSELF or to others or to the community in the reasonably foreseeable future".

SECTION 14. Effective date - applicability. This act shall take effect July 1, 1995, and shall apply to offenses committed on or after said date.

SECTION 15. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: March 23, 1995