

CHAPTER 239

**CRIMINAL LAW AND PROCEDURE**

**HOUSE BILL 96-1196**

BY REPRESENTATIVES Kreutz, Armstrong, Clarke, Congrove, Dean, DeGette, George, Gordon, Grampsas, June, Keller, Knox, Lamm, Leyba, Lyle, Mace, Morrison, Nichol, Prinzler, Reeser, Saliman, Schauer, Schwarz, Sullivant, Swenson, and Tupa; also SENATORS Hopper, Hernandez, Linkhart, Pascoe, Perlmutter, and L. Powers.

**AN ACT**

**CONCERNING A DEMONSTRATION PROGRAM TO STUDY THE USE OF DEFERRED SENTENCING FOR MENTALLY ILL DEFENDANTS CHARGED WITH CERTAIN MISDEMEANOR OFFENSES.**

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

**SECTION 1.** Part 4 of article 7 of title 16, Colorado Revised Statutes, 1986 Repl. Vol., as amended, is amended BY THE ADDITION OF A NEW SECTION to read:

**16-7-403.5. Deferred sentencing - mentally ill defendants charged with certain misdemeanors - demonstration program - repeal.** (1) FOR PURPOSES OF THIS SECTION:

(a) "COUNTY" MEANS ANY COUNTY OR CITY AND COUNTY;

(b) "DIVISION OF MENTAL HEALTH" MEANS THE DIVISION IN THE DEPARTMENT OF HUMAN SERVICES RESPONSIBLE FOR OVERSEEING THE PROVISION OF MENTAL HEALTH SERVICES IN THE STATE; AND

(c) "MENTALLY ILL PERSON" HAS THE MEANING GIVEN IN SECTION 27-10-102 (7), C.R.S.

(2) ON OR BEFORE OCTOBER 1, 1996, THE DIVISION OF MENTAL HEALTH SERVICES, IN CONSULTATION WITH THE STATE JUDICIAL DEPARTMENT AND STATEWIDE ORGANIZATIONS REPRESENTING SHERIFFS AND DISTRICT ATTORNEYS SHALL DEVELOP AND IMPLEMENT A THREE-YEAR DEMONSTRATION PROGRAM TO STUDY THE USE OF DEFERRED SENTENCES FOR MENTALLY ILL PERSONS CHARGED WITH CERTAIN MISDEMEANOR OFFENSES. THE PROGRAM SHALL BE CONDUCTED IN NO MORE THAN

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

THREE PARTICIPATING COUNTIES, SHALL PROVIDE FOR THE USE OF DEFERRED SENTENCES AS AN ALTERNATIVE TO SENTENCING MENTALLY ILL MISDEMEANANTS TO COUNTY JAILS UPON CONVICTION, AND SHALL REQUIRE SUCH PERSONS TO PARTICIPATE IN MENTAL HEALTH TREATMENT AS A CONDITION OF THE DEFERRED SENTENCES.

(3) THE DEMONSTRATION PROGRAM SHALL MEET THE FOLLOWING CRITERIA:

(a) **Program sites.** (I) NO LATER THAN NOVEMBER 1, 1996, ANY COUNTY WISHING TO PARTICIPATE IN THE DEMONSTRATION PROGRAM SHALL APPLY FOR CONSIDERATION BY SUBMITTING TO THE DIVISION OF MENTAL HEALTH AN APPLICATION INCLUDING A LETTER OF INTENT TO PARTICIPATE. A COUNTY'S LETTER SHALL INCLUDE ALL OF THE FOLLOWING:

(A) STATEMENTS BY THE OFFICE OF THE SHERIFF AND COUNTY JAIL PERSONNEL, THE OFFICE OF THE DISTRICT ATTORNEY, COURT PERSONNEL, AND COMMUNITY MENTAL HEALTH PROGRAM ADMINISTRATORS INDICATING THE WILLINGNESS AND ABILITY OF SUCH ENTITIES TO PARTICIPATE IN THE DEMONSTRATION PROGRAM;

(B) A COMMITMENT BY THE COUNTY TO PROVIDE OR SHARE IN THE COST OF PROVIDING COMMUNITY MENTAL HEALTH SERVICES FOR ELIGIBLE DEFENDANTS UNDER THE DEMONSTRATION PROGRAM; AND

(C) A COMMITMENT BY THE COUNTY TO MONITOR THE DEMONSTRATION PROGRAM AND REPORT RESULTS AS DESCRIBED IN PARAGRAPH (e) OF THIS SUBSECTION (2) TO THE DIVISION OF MENTAL HEALTH.

(II) NO LATER THAN JANUARY 1, 1997, THE COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM SHALL BE SELECTED JOINTLY BY THE DIVISION OF MENTAL HEALTH, THE STATE JUDICIAL DEPARTMENT, AND STATEWIDE ORGANIZATIONS REPRESENTING SHERIFFS AND DISTRICT ATTORNEYS.

(b) **Sentencing option.** ON OR AFTER JANUARY 1, 1997, BUT PRIOR TO JANUARY 1, 2000, IN COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM, A MENTALLY ILL PERSON CHARGED WITH A CLASS 2 OR A CLASS 3 MISDEMEANOR OFFENSE MAY RECEIVE A DEFERRED SENTENCE, A CONDITION OF WHICH IS PARTICIPATION IN COURT-APPROVED MENTAL HEALTH TREATMENT FOR THE PERIOD OF TIME REQUIRED IN THE DEFERRED SENTENCE AGREEMENT. NO PERSON CHARGED WITH A FELONY OR A CLASS 1 MISDEMEANOR SHALL BE ELIGIBLE FOR A DEFERRED SENTENCE UNDER THIS SECTION.

(c) **Procedure and eligibility.** THE PROCEDURE FOR DETERMINING ELIGIBILITY AND IMPOSITION OF THE DEFERRED SENTENCE SHALL BE AS FOLLOWS:

(I) BEFORE OR AT AN ARRAIGNMENT, THE COURT, ON ITS OWN MOTION OR ON A MOTION MADE BY THE DISTRICT ATTORNEY, MAY REFER A DEFENDANT CHARGED WITH A CLASS 2 OR A CLASS 3 MISDEMEANOR OFFENSE TO A MENTAL HEALTH PROFESSIONAL PROVIDED BY OR PAID FOR BY THE COUNTY TO DETERMINE IF THE DEFENDANT IS ELIGIBLE FOR A DEFERRED SENTENCE UNDER THIS SECTION. IF THE REFERRAL OCCURS AT THE ARRAIGNMENT, A MENTAL HEALTH PROFESSIONAL SHALL BE AVAILABLE TO INTERVIEW THE DEFENDANT. THE DETERMINATION TO REFER A DEFENDANT TO THE MENTAL HEALTH PROFESSIONAL SHALL BE SUPPORTED BY SUFFICIENT EVIDENCE THAT

THE DEFENDANT IS A MENTALLY ILL PERSON. THE QUALIFICATIONS OF THE MENTAL HEALTH PROFESSIONAL SHALL BE ESTABLISHED BY THE DEPARTMENT OF HUMAN SERVICES.

(II) THE MENTAL HEALTH PROFESSIONAL SHALL CONDUCT AN INTERVIEW WITH THE DEFENDANT AT OR BEFORE THE ARRAIGNMENT TO VERIFY THAT THE DEFENDANT IS A MENTALLY ILL PERSON AND TO MAKE A RECOMMENDATION AS TO WHETHER THE DEFENDANT QUALIFIES FOR AND WOULD BENEFIT FROM A DEFERRED SENTENCE UNDER THIS SECTION. THE INTERVIEW OF THE DEFENDANT CONDUCTED BY THE MENTAL HEALTH PROFESSIONAL SHALL BE SUBJECT TO THE PROVISIONS OF SECTION 16-7-303.

(III) THE DISTRICT ATTORNEY HAS THE DISCRETION TO ACCEPT OR REJECT THE RECOMMENDATION BY THE MENTAL HEALTH PROFESSIONAL AND THE DISCRETION TO ENTER INTO A DEFERRED SENTENCE AGREEMENT WITH THE DEFENDANT. IN ADDITION, THE COURT HAS THE DISCRETION TO ACCEPT OR REJECT THE PLEA AGREEMENT BETWEEN THE DISTRICT ATTORNEY AND THE DEFENDANT PURSUANT TO SECTION 16-7-302.

(IV) ANY PROVISIONS OF SECTION 16-7-403 THAT DO NOT CONFLICT WITH THE PROVISIONS OF THIS SECTION SHALL APPLY; EXCEPT THAT THE COURT SHALL PLACE THE DEFENDANT UNDER THE SUPERVISION OF A LOCAL COMMUNITY CORRECTIONS PROGRAM FUNDED BY A COUNTY OR OTHER MUNICIPAL OR COUNTY AGENCY IN THE JUDICIAL DISTRICT IN WHICH THE DEFENDANT WAS CHARGED.

(V) WITHIN SEVENTY-TWO HOURS AFTER RECEIVING KNOWLEDGE OF ANY FAILURE OF A DEFENDANT TO COMPLY WITH THE TERMS OF THE MENTAL HEALTH TREATMENT PROGRAM, THE MENTAL HEALTH PROFESSIONAL CONDUCTING THE MENTAL HEALTH TREATMENT PROGRAM SHALL NOTIFY THE LOCAL COMMUNITY CORRECTIONS PROGRAM FUNDED BY A COUNTY OR THE MUNICIPAL OR COUNTY AGENCY OF THE FAILURE. THE LOCAL COMMUNITY CORRECTIONS PROGRAM FUNDED BY A COUNTY OR THE MUNICIPAL OR COUNTY AGENCY SHALL NOTIFY THE DISTRICT ATTORNEY OF ANY SUCH FAILURES.

(VI) AS AN ADDITIONAL CONDITION OF THE DEFERRED SENTENCE, THE DEFENDANT SHALL BE REQUIRED TO OBTAIN A FINAL EVALUATION FROM THE MENTAL HEALTH PROFESSIONAL CONDUCTING THE MENTAL HEALTH TREATMENT PROGRAM AND PROVIDE THE EVALUATION TO THE LOCAL COMMUNITY CORRECTIONS PROGRAM FUNDED BY A COUNTY OR THE MUNICIPAL OR COUNTY AGENCY AND THE DISTRICT ATTORNEY BEFORE THE CASE MAY BE DISMISSED.

(d) **Cost of mental health treatment.** (I) THE DIVISION OF MENTAL HEALTH, IN COOPERATION WITH COMMUNITY MENTAL HEALTH CENTERS, SHALL ESTABLISH A SCHEDULE OF FEES FOR MENTAL HEALTH TREATMENT PROVIDED TO DEFENDANTS WHO HAVE RECEIVED A DEFERRED SENTENCE PURSUANT TO THIS SECTION.

(II) EACH DEFENDANT SHALL BE REQUIRED TO PAY FOR THE COSTS OF MENTAL HEALTH TREATMENT RECEIVED ACCORDING TO THE DEFENDANT'S ABILITY TO PAY. EXCEPT AS REIMBURSED BY THE DEFENDANT OR OTHER SOURCES, COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM SHALL BE RESPONSIBLE FOR THE COSTS OF ANY MENTAL HEALTH TREATMENT SERVICES REQUIRED PURSUANT TO PARAGRAPH (b) OF THIS SUBSECTION (3).

(e) **Reports.** (I) THE COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM SHALL REPORT ANNUALLY TO THE DIVISION OF MENTAL HEALTH ON THE PROGRESS OF THE PROGRAM. ON THE EXPIRATION OF THE DEMONSTRATION PROGRAM, THE COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM, IN CONSULTATION WITH THE DIVISION OF MENTAL HEALTH AND THE STATE JUDICIAL DEPARTMENT, SHALL PROVIDE AN OBJECTIVE EVALUATION OF THE DEMONSTRATION PROGRAM TO THE DIVISION OF MENTAL HEALTH.

(II) THE DIVISION OF MENTAL HEALTH, IN CONSULTATION WITH THE STATE JUDICIAL DEPARTMENT, SHALL SUBMIT A FINAL REPORT TO THE GENERAL ASSEMBLY ON OR BEFORE DECEMBER 1, 2000, CONCERNING THE EFFECTIVENESS OF THE DEMONSTRATION PROGRAM. THE DIVISION OF MENTAL HEALTH SHALL BASE ITS REPORT ON THE OBJECTIVE EVALUATION, THE ANNUAL REPORTS FROM THE COUNTIES PARTICIPATING IN THE DEMONSTRATION PROGRAM, AND INPUT FROM THE STATE JUDICIAL DEPARTMENT AND STATEWIDE ORGANIZATIONS REPRESENTING SHERIFFS AND DISTRICT ATTORNEYS. THE DIVISION OF MENTAL HEALTH SHALL ADDRESS THE FOLLOWING IN ITS REPORT:

(A) THE REDUCTION IN THE RECIDIVISM RATE AMONG DEFENDANTS IN THE DEMONSTRATION PROGRAM;

(B) THE COST-SAVINGS, IF ANY, TO EACH COUNTY PARTICIPATING IN THE DEMONSTRATION PROGRAM IN OPERATING ITS JAILS;

(C) THE IMPACT, IF ANY, ON COMMUNITY MENTAL HEALTH PROGRAMS; AND

(D) THE RATE OF REVOKED DEFERRED SENTENCES AMONG THE DEFENDANTS IN THE DEMONSTRATION PROGRAM.

(III) THE REPORT SHALL ALSO CONTAIN A SUMMARY OF THE EVALUATIONS OF THE DEFENDANTS REQUIRED IN SUBPARAGRAPH (VI) OF PARAGRAPH (c) OF THIS SUBSECTION (3) USING NONIDENTIFYING INFORMATION WITH AN ANALYSIS OF WHETHER DEFENDANTS BENEFITTED MORE FROM RECEIVING A DEFERRED SENTENCE AND PARTICIPATING IN MENTAL HEALTH TREATMENT THAN FROM SERVING A JAIL SENTENCE.

(4) THIS SECTION IS REPEALED, EFFECTIVE JULY 1, 2001.

**SECTION 2. No appropriation.** The general assembly has determined that this act can be implemented within existing appropriations, and therefore no separate appropriation of state moneys is necessary to carry out the purposes of this act.

**SECTION 3. 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: June 1, 1996