

SENATE COMMITTEE OF REFERENCE AMENDMENT

Committee on Judiciary.

SB26-149 be amended as follows:

1 Amend printed bill, page 8, after line 7 insert:

2 "(17.5) "INPATIENT CARE" MEANS PLACEMENT AT A FACILITY:

3 (a) WHERE THE PERSON IS REQUIRED TO RESIDE AND IS NOT
4 PERMITTED TO LEAVE UNLESS ACCOMPANIED AND SUPERVISED BY STAFF;

5 (b) THAT AGREES TO SUPERVISE THE PERSON, THAT AGREES TO
6 TAKE APPROPRIATE MEASURES TO PREVENT THE PERSON FROM
7 CONTACTING A VICTIM WITHOUT COURT PERMISSION, AND THAT HAS
8 PROCEDURES IN PLACE THAT WOULD RESULT IN A FORTHWITH AND TIMELY
9 REPORT TO THE COURT AND AUTHORITIES IF THE PERSON ABSCONDED
10 WITHOUT PERMISSION;

11 (c) WHERE A PROFESSIONAL PERSON, AS DEFINED IN SECTION
12 27-65-102, WHO IS EMPLOYED BY OR CONTRACTED BY CDHS, BHA, OR
13 HCPF, ATTESTS THAT THE FACILITY IS MEDICALLY APPROPRIATE AND
14 SUFFICIENTLY PROTECTS VICTIMS AND THE COMMUNITY FROM THE
15 SUBSTANTIAL RISK OF HARM POSED BY THE PERSON; AND

16 (d) THAT IS OPERATED BY, OR HAS CONTRACTED WITH, CDHS,
17 BHA OR HCPF TO PROVIDE SERVICES FOR CDHS, BHA, OR HCPF."

18 Page 24, strike lines 20 through 22 and substitute "DISTRICT ATTORNEY
19 IS AWARE OF AN ACT NOT CHARGED IN THE CURRENT CASE THAT WOULD
20 QUALIFY PURSUANT TO SECTION 16-8.5-118 (5)(b)(II)."

21 Page 49, strike lines 2 through 4 and substitute "TO OTHERS BECAUSE THE
22 PROSECUTION IS AWARE OF AN ACT NOT CHARGED IN THE CURRENT CASE
23 THAT WOULD QUALIFY PURSUANT TO SECTION 16-8.5-118 (5)(b)(II). IF
24 THE PROSECUTION REQUESTS AN OPINION".

25 Page 70, line 2, strike "THAT THE DEFENDANT:" and substitute "THAT:".

26 Page 70, line 3, strike "HAS" and substitute "THE DEFENDANT HAS".

27 Page 70, strike lines 4 through 9 and substitute:

28 "(b) (I) THE DEFENDANT COMMITTED AN ACT THAT, IN THE
29 ABSENCE OF ANY MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY,
30 WOULD CONSTITUTE:

31 (A) HOMICIDE PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 18;

32 (B) A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406 (2);

33 OR

34 (C) A FELONY THAT CONSTITUTES UNLAWFUL SEXUAL BEHAVIOR,

1 AS DEFINED IN SECTION 16-22-102; AND

2 (II) THE ACT DESCRIBED IN SUBSECTION (5)(b)(I) OF THIS SECTION
3 THAT THE DEFENDANT IS ALLEGED TO HAVE COMMITTED IS OR WAS
4 CHARGED IN A CRIMINAL CASE IN COLORADO IN WHICH COMPETENCY WAS
5 RAISED; AND".

6 Page 70, line 10, strike "POSES" and substitute "THE DEFENDANT POSES".

7 Page 71, lines 8 and 9, strike "CHARGED AND ACQUITTED AS THE
8 QUALIFYING ACTS PURSUANT TO THIS SUBSECTION (6)(c)," and substitute
9 "ACQUITTED OR CONVICTED AS THE QUALIFYING ACTS SATISFYING THE
10 CRITERIA LISTED IN SUBSECTION (5)(b) OF THIS SECTION,".

11 Page 71, lines 10 and 11, strike "CHARGED AND ACQUITTED" and
12 substitute "ACQUITTED OR CONVICTED".

13 Page 71, line 12, strike "EVIDENCE." and substitute "EVIDENCE AND
14 RELEVANT TO THE CRITERIA LISTED IN SUBSECTION (5)(a) OR (5)(c) OF
15 THIS SECTION.".

16 Page 71, after line 12 insert:

17 "(d) (I) PRIOR TO TRIAL, THE COURT SHALL FIND THAT THE
18 PROSECUTION HAS MET THE REQUIREMENTS IN SUBSECTION (5)(b)(II) OF
19 THIS SECTION IF AN ACT ALLEGED TO SATISFY THE REQUIREMENT OF
20 SUBSECTION (5)(b)(I) OF THIS SECTION IS:

21 (A) CHARGED IN THE CURRENT CASE; OR

22 (B) CHARGED IN ANOTHER PENDING CASE IN THE SAME
23 JURISDICTION AND COMPETENCY WAS RAISED IN THE CASE.

24 (II) PRIOR TO TRIAL, THE COURT MAY FIND THAT THE PROSECUTION
25 HAS MET THE REQUIREMENTS IN SUBSECTION (5)(b)(II) OF THIS SECTION
26 IF:

27 (A) WITHOUT ADMITTING TO COMMITTING ANY ACTS, THE
28 DEFENDANT STIPULATES THE DEFENDANT WAS CHARGED WITH AN ACT
29 THAT MEETS THE REQUIREMENTS OF SUBSECTION (5)(b)(II) OF THIS
30 SECTION; OR

31 (B) THE PROSECUTION FILES WITH THE COURT CERTIFIED COURT
32 RECORDS FROM ANOTHER CRIMINAL CASE, CURRENT OR DISMISSED, THAT
33 DEMONSTRATE BY CLEAR AND CONVINCING EVIDENCE THAT THE
34 REQUIREMENTS OF SUBSECTION (5)(b)(II) OF THIS SECTION ARE
35 SATISFIED.".

36 Page 73, strike lines 7 through 27.

37 Strike pages 74 through 79 and substitute:

1 "(9) IF THE COURT FINDS THAT THE PROSECUTION DID NOT MEET
2 ONE OR MORE OF THE REQUIREMENTS DESCRIBED IN SUBSECTION (5) OF
3 THIS SECTION, THE COURT SHALL DENY THE PROSECUTION'S REQUEST TO
4 CIVILLY COMMIT OR ORDER THE ENHANCED PROTECTIVE PLACEMENT OF
5 THE DEFENDANT AND SHALL DISMISS THE DEFENDANT'S CASE; EXCEPT
6 THAT THE COURT MAY CONSIDER WHETHER TO ORDER OTHER CIVIL
7 PROCEEDINGS PURSUANT TO SECTION 16-8.5-117.

8 (10) (a) IF THE COURT FINDS THAT THE PROSECUTION MET THE
9 REQUIREMENTS DESCRIBED IN SUBSECTION (5) OF THIS SECTION, THE
10 COURT SHALL:

11 (I) ORDER THE CIVIL COMMITMENT OR ENHANCED PROTECTIVE
12 PLACEMENT OF THE DEFENDANT IN ACCORDANCE WITH SUBSECTION (11)
13 OF THIS SECTION;

14 (II) PLACE THE DEFENDANT AND ISSUE ANY RELATED ORDERS
15 PURSUANT TO SUBSECTION (12) OF THIS SECTION; AND

16 (III) TRANSFER JURISDICTION OF THE CIVIL COMMITMENT OR
17 ENHANCED PROTECTIVE PLACEMENT TO AN APPROPRIATE CIVIL COURT
18 WITH JURISDICTION AND DISMISS THE CASE IN ACCORDANCE WITH
19 SUBSECTION (13) OF THIS SECTION.

20 (b) THE COURT HAS SEVENTY DAYS TO PLACE THE DEFENDANT AND
21 TRANSFER JURISDICTION TO THE APPROPRIATE CIVIL COURT; EXCEPT THAT
22 THE COURT MAY EXTEND THE TIME LIMIT WITH THE CONSENT OF THE
23 DEFENDANT. THE COURT SHALL ORDER THE PLACEMENT AND TRANSFER
24 JURISDICTION AS SOON AS PRACTICABLE.

25 (11) (a) IF THE COURT FINDS THAT THE PROSECUTION MET THE
26 REQUIREMENTS DESCRIBED IN SUBSECTION (5) OF THIS SECTION OR IF THE
27 COURT ACCEPTS THE DEFENDANT'S STIPULATION TO CIVIL COMMITMENT OR
28 ENHANCED PROTECTIVE PLACEMENT, THE COURT SHALL MAKE A FINDING
29 OF THE DEFENDANT'S PRIMARY DIAGNOSIS THAT CONSTITUTES THE
30 MENTAL DISABILITY OR DEVELOPMENTAL DISABILITY. THE COURT SHALL
31 ORDER THE DEFENDANT CIVILLY COMMITTED TO THE LEGAL CUSTODY OF
32 CDHS AND SUPERVISED PURSUANT TO SECTION 27-65-201, UNLESS THE
33 DEFENDANT'S PRIMARY DIAGNOSIS IS AN INTELLECTUAL AND
34 DEVELOPMENTAL DISABILITY OR A NEUROCOGNITIVE DISORDER, AS THOSE
35 TERMS ARE DEFINED IN SECTION 25.5-10-501, IN WHICH CASE, THE COURT
36 SHALL ORDER AN ENHANCED PROTECTIVE PLACEMENT AND LEGAL
37 CUSTODY OF THE DEFENDANT TO THE DEPARTMENT OF HEALTH CARE
38 POLICY AND FINANCING AND SUPERVISED PURSUANT TO SECTION
39 25.5-10-507. AT ANY TIME PRIOR TO TRANSFERRING JURISDICTION TO A
40 CIVIL COURT, THE COURT MAY, UPON A RECOMMENDATION FROM CDHS,
41 CHANGE THE DESIGNATION OF THE PRIMARY DIAGNOSIS AND CONVERT THE
42 ORDER TO CIVIL COMMITMENT OR ENHANCED PROTECTIVE PLACEMENT, AS
43 APPROPRIATE, BASED ON THE DETERMINATION OF CDHS.

44 (b) THE COURT SHALL ISSUE ITS FINDINGS AND ORDERS PURSUANT
45 TO THIS SECTION IN WRITING. WHEN THE COURT TRANSFERS JURISDICTION

1 TO A CIVIL COURT PURSUANT TO SECTION 27-65-113 OR 25.5-10-509, THE
2 COURT SHALL SEND THE CIVIL COURT RECEIVING JURISDICTION ALL THE
3 WRITTEN FINDINGS AND ORDERS ENTERED PURSUANT TO THIS SECTION.

4 (12) (a) WHEN THE COURT ORDERS A CIVIL COMMITMENT OR
5 ENHANCED PROTECTIVE PLACEMENT, IF CDHS PROPOSES PLACING THE
6 DEFENDANT INTO INPATIENT CARE, THE COURT SHALL ORDER, WITHOUT
7 FURTHER COURT REVIEW, THE DEFENDANT PLACED INTO INPATIENT CARE
8 AT THE DISCRETION OF CDHS IF THE COURT ORDERED A CIVIL
9 COMMITMENT OR AT THE DISCRETION OF HCPF IF THE COURT ORDERED AN
10 ENHANCED PROTECTIVE PLACEMENT. IF CDHS HAS IDENTIFIED AN
11 APPROPRIATE PROVIDER THAT DOES NOT MEET THE DEFINITION OF
12 INPATIENT CARE BUT IS WILLING TO ACCEPT PLACEMENT OF THE
13 DEFENDANT, THE COURT SHALL SET A REVIEW HEARING AS SOON AS
14 PRACTICABLE WHILE ENSURING THE PARTIES, ANY APPOINTED EMERGENCY
15 GUARDIAN, AND VICTIMS ARE GIVEN SUFFICIENT NOTICE AND
16 OPPORTUNITY TO PREPARE AND APPEAR.

17 (b) WHEN THE COURT ORDERS A CIVIL COMMITMENT OR ENHANCED
18 PROTECTIVE PLACEMENT, IF CDHS HAS NOT IDENTIFIED AN APPROPRIATE
19 PROVIDER THAT IS WILLING TO ACCEPT PLACEMENT OF THE DEFENDANT,
20 THE COURT SHALL:

21 (I) SET A REVIEW HEARING WITHIN THIRTY-FIVE DAYS AFTER THE
22 ORDER FOR CIVIL COMMITMENT OR ENHANCED PROTECTIVE PLACEMENT;
23 AND

24 (II) PRIOR TO THE REVIEW HEARING, ORDER CDHS, IN
25 CONSULTATION WITH THE BEHAVIORAL HEALTH ADMINISTRATION, TO
26 IDENTIFY AT LEAST ONE APPROPRIATE PROVIDER THAT IS WILLING TO
27 IMMEDIATELY ACCEPT PLACEMENT OF THE DEFENDANT.

28 (c) AT THE REVIEW HEARING, IF CDHS PROPOSES PLACING THE
29 DEFENDANT INTO INPATIENT CARE, THE COURT SHALL ORDER, WITHOUT
30 FURTHER COURT REVIEW, THE DEFENDANT PLACED INTO INPATIENT CARE
31 AT THE DISCRETION OF CDHS IF THE COURT ORDERED A CIVIL
32 COMMITMENT OR AT THE DISCRETION OF HCPF IF THE COURT ORDERED AN
33 ENHANCED PROTECTIVE PLACEMENT. IF CDHS DOES NOT PROPOSE
34 PLACING THE DEFENDANT INTO INPATIENT CARE, THE COURT SHALL
35 REVIEW ANY PLACEMENT IDENTIFIED BY CDHS TO ENSURE IT IS
36 APPROPRIATE AND SUFFICIENTLY PROTECTS VICTIMS AND THE COMMUNITY
37 FROM THE SUBSTANTIAL RISK OF SERIOUS HARM TO OTHERS POSED BY THE
38 DEFENDANT. THE COURT MAY CONTINUE THE REVIEW HEARING OR ORDER
39 AN ADDITIONAL REVIEW HEARING WITHIN THE TIME FRAME SET FORTH IN
40 SUBSECTION (10)(b) OF THIS SECTION.

41 (d) WHEN CONSIDERING THE APPROPRIATENESS OF THE
42 PLACEMENT FOR THE DEFENDANT, VICTIMS, AND THE COMMUNITY, THE
43 COURT SHALL:

44 (I) ALLOW CDHS, THE PARTIES, AND ANY APPOINTED EMERGENCY
45 GUARDIAN TO BE HEARD REGARDING THE DEFENDANT'S PLACEMENT;

- 1 (II) GIVE DEFERENCE TO CDHS'S RECOMMENDATION ON ANY
2 ISSUE RELATED TO THE DEFENDANT'S PRIMARY DIAGNOSIS;
- 3 (III) GIVE DEFERENCE TO CDHS AND THE OPINION OF A MEDICAL
4 PROFESSIONAL ON THE APPROPRIATENESS OF THE PROVIDER AND
5 PLACEMENT FOR THE DEFENDANT;
- 6 (IV) NOT GIVE DEFERENCE TO CDHS OR A MEDICAL
7 PROFESSIONAL AS TO WHETHER THE PLACEMENT SUFFICIENTLY PROTECTS
8 VICTIMS AND THE COMMUNITY FROM THE SUBSTANTIAL RISK OF SERIOUS
9 HARM TO OTHERS POSED BY THE DEFENDANT; AND
- 10 (V) CONSIDER THE TOTALITY OF THE CIRCUMSTANCES, INCLUDING:
- 11 (A) THE DEFENDANT'S STATEMENTS AND WHETHER THE
12 DEFENDANT LACKS INSIGHT INTO THE DEFENDANT'S MENTAL DISABILITY
13 OR DEVELOPMENTAL DISABILITY;
- 14 (B) THE DEFENDANT'S CLINICAL DIAGNOSIS AND PROGNOSIS,
15 INCLUDING ANY OPINIONS THAT THE DEFENDANT AND THE DEFENDANT'S
16 CURRENT MENTAL STATE AND BEHAVIORS POSE RISKS TO OTHERS;
- 17 (C) THE DEFENDANT'S REFUSAL TO VOLUNTARILY SEEK AND
18 COMPLY WITH A TREATMENT PLAN IN THE RECENT PAST, INCLUDING IN THE
19 DEFENDANT'S MOST RECENT PERIOD OF BEING IN THE COMMUNITY;
- 20 (D) RECENT OVERT ACTS BY THE DEFENDANT TO THREATEN,
21 CAUSE, OR ATTEMPT TO CAUSE HARM TO THE DEFENDANT'S SELF OR
22 OTHERS;
- 23 (E) ANY PREVIOUS PATTERNS OF DECOMPENSATION OR
24 DETERIORATION THAT RESULTED IN THE DEFENDANT'S HOSPITALIZATION,
25 ARREST, OR CERTIFICATION FOR SHORT-TERM TREATMENT AND THAT
26 DEMONSTRATE A RISK OF LIKELY FUTURE DECOMPENSATION;
- 27 (F) WHEN THE DEFENDANT WAS LAST OUT OF CUSTODY AND
28 WHETHER THE DEFENDANT WAS FOUND IN A CONDITION IN WHICH THE
29 DEFENDANT WAS NOT ABLE TO CARE FOR THE DEFENDANT'S OWN BASIC
30 NEEDS IN ORDER TO AVOID THE RISK OF SERIOUS PHYSICAL HARM;
- 31 (G) THE FREQUENCY, RECENCY, AND SEVERITY OF THE
32 CONSIDERATIONS DESCRIBED IN SUBSECTIONS (12)(d)(V)(B) TO
33 (12)(d)(V)(F) OF THIS SECTION, SUCH THAT THE CIRCUMSTANCES ARE
34 PRESENT IN A MANNER THAT REQUIRES INPATIENT TREATMENT OR THAT
35 THE CIRCUMSTANCES ARE ABSENT IN A MANNER THAT ALLOWS FOR
36 COMMUNITY-BASED PLACEMENT;
- 37 (H) WHETHER THE DEFENDANT OPPOSES THE PLACEMENT;
- 38 (I) WHETHER COMMUNITY-BASED PLACEMENT CAN BE
39 REASONABLY ACCOMMODATED;
- 40 (J) THE LIMITED RESOURCES OF THE STATE AND THE NEEDS OF
41 OTHERS; AND
- 42 (K) THE PLACEMENT RECOMMENDATIONS OF ANY TREATING
43 PROFESSIONALS.
- 44 (e) THE COURT SHALL NOT ORDER OR PERMIT A DEFENDANT TO BE
45 PLACED INTO A COMMUNITY-BASED SETTING OUTSIDE OF INPATIENT CARE

1 UNLESS THE COURT FINDS THE RISK OF HARM POSED BY THE DEFENDANT
2 TO VICTIMS AND THE COMMUNITY CAN BE REASONABLY MITIGATED IN THE
3 COMMUNITY-BASED SETTING AND UNTIL AFTER PROVIDING VICTIMS WITH
4 NOTICE AND AN OPPORTUNITY TO BE HEARD.

5 (f) AFTER REVIEWING THE PROVIDERS, IF THE COURT FINDS THAT
6 MULTIPLE PROVIDERS ARE APPROPRIATE FOR THE DEFENDANT, VICTIMS,
7 AND THE COMMUNITY, THE COURT SHALL ORDER THE DEFENDANT BE
8 PLACED IN THE LEAST-RESTRICTIVE SETTING THAT IS ADEQUATE TO
9 PROTECT THE VICTIMS AND THE COMMUNITY AND TO PROVIDE, TO THE
10 GREATEST EXTENT POSSIBLE, THE APPROPRIATE LEVEL OF CARE FOR,
11 TREATMENT FOR, AND SUPERVISION OF THE DEFENDANT. IF MORE THAN
12 ONE EQUALLY RESTRICTIVE PLACEMENT IS AVAILABLE AND APPROPRIATE,
13 THE COURT SHALL ORDER THE DEFENDANT BE PLACED INTO A SETTING
14 THAT IS BEST SUITED FOR THE DEFENDANT'S TREATMENT NEEDS AND
15 SUPERVISION, AS DETERMINED BY CDHS.

16 (g) IF CDHS DOES NOT PROPOSE PLACING THE DEFENDANT INTO
17 INPATIENT CARE AND CDHS HAS NOT IDENTIFIED ANY OTHER
18 APPROPRIATE PLACEMENT WITH SUFFICIENT TIME TO REVIEW AND PLACE
19 THE DEFENDANT WITHIN THE TIME FRAME SET FORTH IN SUBSECTION
20 (10)(b) OF THIS SECTION, THE COURT SHALL ORDER THE DEFENDANT
21 PLACED INTO INPATIENT CARE AT THE DISCRETION OF CDHS IF THE COURT
22 ORDERED A CIVIL COMMITMENT OR AT THE DISCRETION OF HCPF IF THE
23 COURT ORDERED AN ENHANCED PROTECTIVE PLACEMENT.

24 (h) IN ADDITION TO ANY ORDERS ISSUED PURSUANT TO THIS
25 SECTION, THE COURT SHALL ISSUE ANY ORDERS NECESSARY TO MITIGATE
26 THE DEFENDANT'S RISK TO VICTIMS AND THE COMMUNITY, INCLUDING
27 ORDERING A PROVIDER THAT HAS ACCEPTED PLACEMENT OF THE
28 DEFENDANT TO TAKE REASONABLE AND PRACTICABLE PROTECTIVE
29 MEASURES TO PREVENT THE DEFENDANT FROM CONTACTING ANY VICTIMS;
30 EXCEPT THAT THE COURT SHALL NOT ORDER THE DEFENDANT TO COMPLY
31 WITH ANY CONDITIONS THAT ARE NOT NECESSARY TO MITIGATE THE
32 DEFENDANT'S RISK OR WITH WHICH THE DEFENDANT CANNOT COMPLY.

33 (i) AFTER THE COURT ORDERS PLACEMENT OF THE DEFENDANT:

34 (I) THE COURT, THE DISTRICT ATTORNEY, AND CDHS SHALL
35 TRANSMIT ALL NECESSARY INFORMATION, INCLUDING THE DEFENDANT'S
36 MEDICAL RECORDS, COMPETENCY EVALUATIONS, MATERIALS USED DURING
37 THE COMPETENCY PROCESS, AND RESTORATION RECORDS, TO THE COUNTY
38 ATTORNEY WITHIN THREE BUSINESS DAYS AFTER THE ORDER FOR
39 PLACEMENT. THE DISTRICT ATTORNEY AND CDHS SHALL PROVIDE
40 ADDITIONAL NECESSARY INFORMATION UPON REQUEST OF THE COUNTY
41 ATTORNEY.

42 (II) THE COURT SHALL, UNLESS OTHER APPROPRIATE
43 TRANSPORTATION HAS BEEN APPROVED BY THE COURT, ORDER THE
44 SHERIFF TO SECURELY TRANSPORT THE DEFENDANT TO THE ORDERED
45 PLACEMENT AS SOON AS PRACTICABLE. THE COURT SHALL SET ANY

1 REVIEW HEARINGS NECESSARY TO ENSURE THE DEFENDANT IS
2 TRANSPORTED TO THE INITIAL PLACEMENT. THE COURT MAY DELAY
3 TRANSPORTATION IF A BED AT A PLACEMENT IS NOT AVAILABLE BUT WILL
4 BE AVAILABLE WITHIN THE NEXT THIRTY DAYS.

5 (13) AFTER THE DEFENDANT HAS BEEN TRANSPORTED TO THE
6 PLACEMENT ORDERED BY THE COURT, THE COURT SHALL:

7 (a) TRANSFER JURISDICTION OF THE CIVIL COMMITMENT TO A CIVIL
8 COURT WITH JURISDICTION PURSUANT TO SECTION 27-65-113 OR
9 TRANSFER JURISDICTION OF THE ENHANCED PROTECTIVE PLACEMENT TO
10 A CIVIL COURT WITH JURISDICTION PURSUANT TO SECTION 25.5-10-507;

11 (b) NOTIFY CDHS AND THE COUNTY ATTORNEY; AND

12 (c) DISMISS THE CRIMINAL CASE AGAINST THE DEFENDANT. THE
13 COURT SHALL NOTE IN THE COURT'S FINAL ORDER DISMISSING THE CASE
14 THAT THE CHARGES MAY BE REFILED, BUT THE PROSECUTION IS NOT
15 PRECLUDED FROM REFILING MERELY BECAUSE THE COURT DID NOT STATE
16 SO IN THE ORDER."

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