

JUDICIAL PROCESS

JUNE 9TH, 2010

I have been given the proposed legislative changes regarding the responsibility of the defense in Sexually Dangerous Individual Commitments. I would like to make some comments.

The Sexually Dangerous Individual Commitment statute may be amended to read that our agency take over the defense of these cases. §25-03.3-09. Further, our agency governing statute may be amended to allow our agency to “...establish and implement a process for the administration, supervision, and delivery of legal counsel services for indigents under the statute cited above.

I do not believe I can comment on the proposed change in our governing statute until I confer with the full commission, which will be on June 21st. They have gone on record opposing this transfer of duties, however, we would like to be able to provide guidance and counsel on what should or shouldn't be amended, added or deleted from our statute if this is going to happen. One remark I will make is that this proposed amendment to our governing statutes should be studied as to see what the ramifications might be to our agency or clients. For example, no other type of legal service is spelled out in our statute (criminal, juvenile, habeas corpus, etc.) so do we want to start doing that now? Also, we may want to add an amendment setting forth a separate division, and that may be a recommendation favorable to our agency as well as the States Attorneys, as it would keep this type of program in a civil, not criminal, division.

On the mental health amendments, one thing I noticed is that the drafter of these proposed amendments deleted §25-03.3-09, which was the statute allowing for the state's attorney to seek civil recovery. Wouldn't the state want an amendment where the AG could seek recovery instead? The people committed on

2-Huseby/June 9th

these types of cases are in custody for many years and there could be times that they inherit money, land or whatever, so why wouldn't the state want the option of collecting something back for the general fund.

Lastly, and very importantly, I ask this committee to consider the following. In criminal and juvenile law, a person can have an attorney but doesn't have to have an attorney. Under §25-03.3-09(1) a respondent to this type of civil action must be appointed counsel. What if the person isn't indigent but won't hire an attorney. He cannot waive the attorney. Who will pay the court. Trust me, this will happen as it happens with criminal and juvenile, and the court then just says, well, you are on your own then. That can't happen in these types of cases. This is a real problem and I would like to have it hammered out before it progresses to the legislature.

I would entertain any questions.

Thank you,

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Indigent Defense Commission