

MENTAL HEALTH / POINT OF CONTACT THROUGH JAIL RELEASE TASK FORCE

FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
January 13, 2017

FY17-MH #02. Changes to Emergency Mental Health Commitment Statute

Recommendation FY17-MH #02

Amend Title 27 of Colorado Revised Statutes (C.R.S.), section 65-105, to remove jails and correctional facilities as a placement option for individuals on an M1 (emergency mental health) hold. Introduce language that allows intervening professionals to transport individuals to an outpatient facility for immediate evaluation for treatment based on evidence of need.

Discussion

Colorado is one of only eight states in the nation that allows for individuals experiencing a mental health crisis to be held in a jail or correctional facility without charges. In order to ensure individual dignity and quality healthcare are provided, this practice must cease immediately. The evaluation and treatment of individuals experiencing behavioral health crises should be entrusted to healthcare providers and whenever possible individuals experiencing mental health crises should be shepherded into a health care system instead of a criminal justice system.

Therefore, language should be added in C.R.S. 27-65-105 that creates an opportunity for immediate evaluation for treatment at an outpatient facility. Allowing providers at outpatient facilities to conduct evaluations (face-to-face or via telehealth) reduces the burden on peace officers to assess for and initiate M-1 holds. By transferring individuals experiencing mental health crises into healthcare systems immediately, Colorado will reduce the burden on criminal justice systems at every intercept.

Proposed Statutory Language

§ 27-65-105. Emergency procedure

(1) Emergency procedure may be invoked under ~~either~~ one of the following ~~two~~ conditions:

(a)(I) When any person appears to have a mental illness and, as a result of such mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, then a person specified in subparagraph (III) of this paragraph (a), each of whom is referred to in this section as the “intervening professional”, upon probable cause and with such assistance as may be required, may take the person into custody, or cause the person to be taken into custody, and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation.

(II) WHEN ANY PERSON APPEARS TO HAVE A MENTAL ILLNESS AND, AS A RESULT OF SUCH MENTAL ILLNESS IS IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT IN ORDER TO

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PREVENT PHYSICAL AND PSYCHIATRIC HARM TO HIMSELF, HERSELF OR OTHERS, THEN A PERSON SPECIFIED IN SUBPARAGRAPH (III) OF THIS PARAGRAPH (a), EACH OF WHOM IS REFERRED TO IN THIS SECTION AS THE “INTERVENING PROFESSIONAL”, UPON PROBABLE CAUSE AND WITH SUCH ASSISTANCE AS MAY BE REQUIRED, MAY IMMEDIATELY TRANSPORT SUCH PERSON TO AN OUT PATIENT MENTAL HEALTH FACILITY DESIGNATED OR APPROVED BY THE EXECUTIVE DIRECTOR FOR A SEVENTY-TWO HOUR TREATMENT AND EVALUATION.

(III) The following persons may effect a seventy-two-hour hold as provided in subparagraph (I) **AND (II)** of this paragraph (a):

- (A) A certified peace officer;
- (B) A professional person;
- (C) 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;
- (D) A licensed marriage and family therapist, licensed professional counselor, or addiction counselor licensed under part 5, 6, or 8 of article 43 of title 12, C.R.S., who by reason of postgraduate education and additional preparation has gained knowledge, judgment, and skill in psychiatric or clinical mental health therapy, forensic psychotherapy, or the evaluation of mental disorders; or
- (E) A licensed clinical social worker licensed under the provisions of part 4 of article 43 of title 12, C.R.S.

(b) Upon an affidavit sworn to or affirmed before a judge that relates sufficient facts to establish that a person appears to have a mental illness and, as a result of the mental illness, appears to be an imminent danger to others or to himself or herself or appears to be gravely disabled, the court may order the person described in the affidavit to be taken into custody and placed in a facility designated or approved by the executive director for a seventy-two-hour treatment and evaluation. Whenever in this article a facility is to be designated or approved by the executive director, hospitals, if available, shall be approved or designated in each county before other facilities are approved or designated. Whenever in this article a facility is to be designated or approved by the executive director as a facility for a stated purpose and the facility to be designated or approved is a private facility, the consent of the private facility to the enforcement of standards set by the executive director shall be a prerequisite to the designation or approval.

(c) UPON AN AFFIDAVIT SWORN TO OR AFFIRMED BEFORE A JUDGE THAT RELATES SUFFICIENT FACTS TO ESTABLISH THAT A PERSON APPEARS TO HAVE A MENTAL ILLNESS AND, AS A RESULT OF THE MENTAL ILLNESS, IS IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT IN ORDER TO PREVENT PHYSICAL AND PSYCHIATRIC HARM, THE COURT MAY ORDER THE PERSON DESCRIBED IN THE AFFIDAVIT TO BE TRANSPORTED TO AN OUTPATIENT

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MENTAL HEALTH FACILITY DESIGNATED OR APPROVED BY THE EXECUTIVE DIRECTOR FOR A SEVENTY-TWO HOUR TREATMENT AND EVALUATION.

(2) ~~(a)~~ When a person is taken into custody pursuant to subsection (1) of this section, such person shall not be detained in a jail, lockup, or other place used for the confinement of persons charged with or convicted of penal offenses. ~~; except that such place may be used if no other suitable place of confinement for treatment and evaluation is readily available. In such situation the person shall be detained separately from those persons charged with or convicted of penal offenses and shall be held for a period not to exceed twenty four hours, excluding Saturdays, Sundays, and holidays, after which time he or she shall be transferred to a facility designated or approved by the executive director for a seventy-two hour treatment and evaluation. If the person being detained is a juvenile, as defined in section 19-1-103 (68), C.R.S., the juvenile shall be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders. When a person is taken into custody and confined pursuant to this subsection (2), such person shall be examined at least every twelve hours by a certified peace officer, nurse, or physician or by an appropriate staff professional of the nearest designated or approved mental health treatment facility to determine if the person is receiving appropriate care consistent with his or her mental condition.~~

~~(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (2), related to detaining juveniles may be subject to a civil fine of no more than one thousand dollars. The decision to fine shall be based on prior violations of the provisions of paragraph (a) of this subsection (2) by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with paragraph (a) of this subsection (2).~~

(3) Such facility shall require an application in writing, stating the circumstances under which the person's condition was called to the attention of the intervening professional and further stating sufficient facts, obtained from the personal observations of the intervening professional or obtained from others whom he or she reasonably believes to be reliable, to establish that the person has a mental illness and, as a result of the mental illness, is an imminent danger to others or to himself or herself, ~~or~~ is gravely disabled, **OR IN NEED OF IMMEDIATE EVALUATION FOR TREATMENT.** The application shall indicate when the person was taken into custody and who brought the person's condition to the attention of the intervening professional. A copy of the application shall be furnished to the person being evaluated, and the application shall be retained in accordance with the provisions of section 27-65-121(4).

(4) If the seventy-two-hour treatment and evaluation facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours, excluding Saturdays, Sundays, and holidays if evaluation and treatment services are not available on those days. For the purposes of this subsection (4), evaluation and treatment

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services are not deemed to be available merely because a professional person is on call during weekends or holidays. If, in the opinion of the professional person in charge of the evaluation, the person can be properly cared for without being detained, he or she shall be provided services on a voluntary basis.

(5) Each person admitted to a seventy-two-hour treatment and evaluation facility under the provisions of this article shall receive an evaluation as soon as possible after he or she is admitted and shall receive such treatment and care as his or her condition requires for the full period that he or she is held. The person shall be released before seventy-two hours have elapsed if, in the opinion of the professional person in charge of the evaluation, the person no longer requires evaluation or treatment. Persons who have been detained for seventy-two-hour evaluation and treatment shall be released, referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.