



## EMERGENCY MENTAL HEALTH HOLDS

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Access to mental health treatment is a growing concern in Colorado. According to the Colorado Department of Public Health and Environment (CDPHE), in 2015 a total of 1,093 Colorado residents committed suicide, at a rate of 20.9 per 100,000 residents. This represents the highest number of suicide deaths ever recorded in the state.

This *issue brief* addresses the state's emergency mental health hold procedure, which allows for a person to be involuntarily held for a 72-hour period of treatment and evaluation if he or she appears to have a mental illness and, due to the mental illness, appears to be an imminent danger to self or others, or appears to be gravely disabled.<sup>1</sup> The brief also discusses short-term and long-term treatment following a mental health hold.

### Definitions

A person is considered to be a danger to self if he or she poses a substantial risk of self harm, as evidenced by recent threats of or attempts at suicide or serious bodily harm.<sup>2</sup> A person is considered a danger to others if he or she poses a substantial risk of physical harm to another person, as evidenced by recent homicidal or violent behavior, or by evidence that others are reasonably fearful of such harm, as indicated by a recent overt act, attempt, or threat to commit harm.<sup>3</sup>

The term "gravely disabled" means that a person has a mental illness and, due to that illness, is unable to make informed decisions about, or provide for essential needs without significant supervision and assistance.<sup>4</sup> State law notes that as a result of having a mental illness that prevents a person from making informed decisions about self-care, such a person is at a risk of bodily harm, dangerous worsening of any co-occurring serious physical illness, serious psychiatric deterioration, or mismanagement of essential needs that could result in substantial bodily harm. The term "gravely disabled" does not apply to a person whose decision-making abilities are limited solely by a developmental disability.

### Initiating a Mental Health Hold

A 72-hour mental health hold can be initiated by an intervening professional, including a certified peace officer, medical professional, registered professional nurse with training in psychiatric or mental health nursing, licensed marriage and family therapist or counselor with training in mental health, or licensed clinical social worker. Additionally, a hold can be initiated upon an affidavit sworn to or affirmed before a judge that establish that a person appears to have a mental illness and, as a result of such illness, appears to be an imminent danger to himself or herself or others, or gravely disabled. A concerned relative or friend may utilize the affidavit process

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<sup>1</sup>Section 27-65-105, C.R.S.

<sup>2</sup>Section 27-65-102 (4.5)(a), C.R.S.

<sup>3</sup>Section 27-65-102 (4.5)(b), C.R.S.

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<sup>4</sup>Section 27-65-102 (9), C.R.S.

to request a mental health hold by contacting the county attorney.

## Treatment and Evaluation

A person who is taken into custody for a 72-hour hold can be placed in a facility approved by the executive director of the Colorado Department of Human Services. Beginning May 1, 2018, approved facilities will include outpatient mental health facilities and, if no other space is available, emergency medical services facilities.<sup>5</sup> Further, on that date, intervening professionals will no longer be able to place a person subject to a hold in a jail, lockup, or similar place.

A facility that accepts a person for a hold must obtain a written application stating the circumstances in which the person's condition was brought to the attention of the intervening professional, as well as sufficient facts to establish that the person is eligible for a mental health hold. A copy of the application must be given to the person being evaluated.

A person subject to a hold can be held for a period of up to 72 hours, excluding Saturdays, Sundays, and holidays if treatment and evaluation services are not available on those days. An evaluation must be given as soon as possible after a person is admitted into a facility, and appropriate treatment must be provided for the full period that the person is held. If at any time during the holding period the evaluating professional believes that the person no longer requires evaluation or treatment, the person must be released.

Once the 72-hour period has elapsed, the person must be released, referred for further care and treatment on a voluntary basis, or certified for short-term treatment.

**Certification for short-term treatment.** If, at the end of a 72-hour hold, an evaluating professional determines that an individual has a mental illness and, due to that illness, remains a danger to self or others, or is gravely disabled, the professional can certify the person for short-term treatment not to exceed three months. The person must have been

advised of the availability of voluntary treatment and declined it, or the professional must have grounds to believe that the person will not remain in voluntary treatment.

A person who is certified for short-term treatment must be given a copy of the certification application, as well as an opportunity to identify someone he or she wishes to be informed about the certification. Once the certification is filed with the court, the court must determine whether the person subject to certification can afford an attorney. If he or she cannot afford an attorney, the court must appoint one. The individual or his or her attorney may file a written request at any time to have the certification reviewed by the court or to request that treatment be provided on an outpatient basis.

**Extension of short-term treatment.** An evaluating professional may extend an initial certification for short-term treatment for up to three more months.<sup>6</sup> The individual must be given the opportunity to have a hearing on the extension. Additionally, the attorney who initially represented the person must continue to do so, unless the court appoints another attorney.

**Long-term treatment.** An evaluating professional may petition the court for long-term care and treatment of a person if that person has been in short-term treatment for five consecutive months, and, in the opinion of the professional, remains a danger to self or others or is gravely disabled due to mental illness.<sup>7</sup> As with certification for short-term treatment, the person must have been given the option to accept treatment voluntarily and declined, or there must be grounds to believe the person would not continue voluntary treatment.

## Additional Mental Health Resources

Colorado Crisis Services operates a 24-hour hotline for mental health and substance abuse issues. The number is 1-844-493-8255.

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<sup>5</sup>Senate Bill 17-207.

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<sup>6</sup>Section 27-65-108, C.R.S.

<sup>7</sup>Section 27-65-109, C.R.S.