

Second Regular Session  
Seventieth General Assembly  
STATE OF COLORADO

INTRODUCED

LLS NO. 16-1125.01 Jane Ritter x4342

SENATE BILL 16-169

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SENATE SPONSORSHIP

Martinez Humenik and Cooke,

HOUSE SPONSORSHIP

Kraft-Tharp and Landgraf,

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Senate Committees  
Judiciary

House Committees

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A BILL FOR AN ACT

101 CONCERNING CHANGES RELATED TO THE SEVENTY-TWO-HOUR  
102 EMERGENCY MENTAL HEALTH PROCEDURE.

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Bill Summary

*(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)*

The bill clarifies the difference between a "designated facility", an "emergency medical services facility", and a "law enforcement facility", as those terms are used in connection with the 72-hour emergency mental health procedure. In current law, a person who is being detained under a 72-hour emergency mental health procedure must be taken to a facility that was previously designated or approved by the executive director of

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.  
*Capital letters indicate new material to be added to existing statute.*  
*Dashes through the words indicate deletions from existing statute.*

the department of human services (designated facility). The bill expands this to allow individuals to be admitted to a law enforcement facility if space is not available in a designated facility or an emergency medical services facility, provided certain conditions are met, including that the person cannot be held for longer than 24 hours in the law enforcement facility without a court order granting a one-time extension, not to exceed 72 additional hours.

Current law allows for the facility in which the person is receiving treatment and evaluation to hold the person for a period not to exceed 72 hours from the time of his or her admission to the facility providing treatment and evaluation, excluding Saturdays, Sundays, and holidays, if treatment and evaluation is not available on those days. The bill also excludes from the 72-hour calculation any time required for non-psychiatric medical screening or treatment. It requires that a person who is taken into custody through the emergency procedure must receive an evaluation as soon as possible and receive appropriate treatment for his or her condition for the full period that he or she is in emergency custody.

If, at any time during the 72-hour custody, a mental health or medical professional determines the person can be properly cared for without being detained any longer, the person must be discharged as soon as possible.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly  
3 finds and declares that:

4 (a) Colorado currently lacks adequate resources to appropriately  
5 care for some individuals who are experiencing a mental health crisis or  
6 psychiatric emergency;

7 (b) Although Colorado statute specifies that individuals placed on  
8 an emergency hold may be taken to a facility designated by the executive  
9 director of the department of human services to provide seventy-two-hour  
10 mental health treatment and evaluation or to a jail or other law  
11 enforcement facility, the designated facilities are often unavailable and  
12 law enforcement facilities are not designed for, nor do they have adequate  
13 resources to provide, comprehensive mental health care to individuals in

1 crisis;

2 (c) Because law enforcement facilities lack the resources to  
3 provide comprehensive mental health evaluation and treatment to  
4 individuals in crisis, they should only be used as a last resort when other,  
5 more appropriate facilities are unavailable when an individual is placed  
6 on an emergency mental health hold;

7 (d) Often, patients who are experiencing a psychiatric emergency  
8 are taken to the nearest emergency department, regardless of whether or  
9 not it is part of a facility that is designated to provide seventy-two-hour  
10 treatment and evaluation;

11 (e) Federal law requires all hospitals to screen and stabilize every  
12 patient who comes to an emergency department, including those  
13 experiencing a psychiatric emergency; and

14 (f) Colorado hospitals are committed to providing appropriate care  
15 for patients with mental illnesses, but many of our hospitals are not  
16 equipped or lack other resources to offer the type of specialty mental  
17 health care required for designated facilities.

18 (2) The general assembly therefore finds that:

19 (a) It is necessary to provide more clarity and flexibility in state  
20 law so communities throughout the state can determine the appropriate  
21 response for their individual community in caring for persons who are  
22 experiencing a mental health crisis or psychiatric emergency; and

23 (b) In the absence of additional state resources, law enforcement  
24 and health care providers should work collaboratively to provide the best  
25 and most compassionate care possible for individuals experiencing a  
26 mental health crisis or psychiatric emergency.

27 **SECTION 2.** In Colorado Revised Statutes, 27-65-102, **add** (5.3),

1 (5.7), and (11.5) as follows:

2 **27-65-102. Definitions.** As used in this article, unless the context  
3 otherwise requires:

4 (5.3) "DESIGNATED FACILITY" MEANS A FACILITY DESIGNATED OR  
5 APPROVED BY THE EXECUTIVE DIRECTOR FOR SEVENTY-TWO-HOUR  
6 TREATMENT AND EVALUATION OF PERSONS WHO MEET THE CRITERIA  
7 PROVIDED IN SECTION 27-65-105.

8 (5.7) "EMERGENCY MEDICAL SERVICES FACILITY" MEANS A  
9 FACILITY LICENSED PURSUANT TO PART 1 OF ARTICLE 3 OF TITLE 25,  
10 C.R.S., OR CERTIFIED PURSUANT TO SECTION 25-1.5-103, C.R.S., THAT  
11 PROVIDES EMERGENCY MEDICAL SERVICES. AN EMERGENCY MEDICAL  
12 SERVICES FACILITY IS NOT REQUIRED TO BE, BUT MAY ELECT TO BECOME,  
13 A DESIGNATED FACILITY AS DEFINED IN SUBSECTION (5.3) OF THIS SECTION.

14 (11.5) "LAW ENFORCEMENT FACILITY" MEANS A SECURE JAIL,  
15 LOCKUP, OR OTHER PLACE USED FOR THE CONFINEMENT OF PERSONS  
16 CHARGED WITH OR CONVICTED OF CRIMES.

17 **SECTION 3.** In Colorado Revised Statutes, 27-65-105, **amend**  
18 (1) (a) (I), (1) (a) (II) introductory portion, (1) (b), (2), (3), (4), and (5) as  
19 follows:

20 **27-65-105. Emergency procedure.** (1) Emergency procedure  
21 may be invoked under either one of the following two conditions:

22 (a) (I) When ~~any~~ A person appears to have a mental illness and, as  
23 a result of such mental illness, appears to be an imminent danger to others  
24 or to himself or herself or appears to be gravely disabled, then a person  
25 specified in subparagraph (II) of this paragraph (a), each of whom is  
26 referred to in this section as the "intervening professional", upon probable  
27 cause and with such assistance as may be required, may take the person

1 into custody, or cause the person to be taken into custody, and placed in  
2 a facility designated or approved by the executive director for a  
3 ~~seventy-two-hour treatment and evaluation~~ TAKE THE PERSON TO AN  
4 EMERGENCY MEDICAL SERVICES FACILITY OR DESIGNATED FACILITY. IF  
5 SUCH A FACILITY IS UNAVAILABLE, THE PERSON MAY BE TAKEN TO A LAW  
6 ENFORCEMENT FACILITY PURSUANT TO THE PROVISIONS OF SUBSECTION (2)  
7 OF THIS SECTION.

8 (II) The following persons ~~may effect a seventy-two-hour hold as~~  
9 ARE INTERVENING PROFESSIONALS WHO MAY INVOKE THE EMERGENCY  
10 PROCEDURE provided FOR in subparagraph (I) of this paragraph (a):

11 (b) Upon an affidavit sworn to or affirmed before a judge that  
12 relates sufficient facts to establish that a person appears to have a mental  
13 illness and, as a result of the mental illness, appears to be an imminent  
14 danger to others or to himself or herself or appears to be gravely disabled,  
15 the court may order the person described in the affidavit to be taken into  
16 custody and placed in a facility designated or approved by the executive  
17 ~~director for a~~ TAKEN TO AN EMERGENCY MEDICAL SERVICES FACILITY OR  
18 A DESIGNATED FACILITY FOR seventy-two-hour treatment and evaluation.  
19 ~~Whenever in this article a facility is to be designated or approved by~~ IF  
20 SUCH A FACILITY IS UNAVAILABLE, THE PERSON MAY BE TAKEN TO A LAW  
21 ENFORCEMENT FACILITY PURSUANT TO THE PROVISIONS OF SUBSECTION (2)  
22 OF THIS SECTION. IF the executive director ~~hospitals, if available, shall be~~  
23 ~~approved or designated~~ IS TO DESIGNATE OR APPROVE A FACILITY  
24 PURSUANT TO THIS ARTICLE, HE OR SHE SHALL APPROVE A HOSPITAL OR  
25 HOSPITALS, IF AVAILABLE, in each county before other facilities are  
26 approved or designated. ~~Whenever in this article a facility is to be~~  
27 ~~designated or approved by~~ IF the executive director ~~as~~ IS TO DESIGNATE

1 OR APPROVE a facility for a stated purpose and the facility to be  
2 designated or approved is a private facility, the consent of the private  
3 facility to the enforcement of standards set by the executive director ~~shall~~  
4 ~~be~~ IS a prerequisite to the designation or approval.

5 (2) (a) (I) When a person is taken into custody pursuant to  
6 subsection (1) of this section, ~~such person shall not~~ HE OR SHE MAY be  
7 detained in a ~~jail, lockup, or other place used for the confinement of~~  
8 ~~persons charged with or convicted of penal offenses; except that such~~  
9 ~~place may be used~~ LAW ENFORCEMENT FACILITY if ~~no other~~ ANOTHER  
10 suitable ~~place of confinement~~ FACILITY for treatment and evaluation is  
11 NOT readily available. In such A situation, the person ~~shall~~ MUST be  
12 detained separately from ~~those~~ ANY persons charged with or convicted of  
13 penal offenses. ~~and shall be held for a period not to exceed~~

14 (II) THE PERSON TAKEN INTO CUSTODY MUST NOT BE HELD IN A  
15 LAW ENFORCEMENT FACILITY FOR A PERIOD THAT EXCEEDS twenty-four  
16 hours, excluding Saturdays, Sundays, and holidays, after which time he  
17 or she shall be transferred to a ~~facility designated or approved by the~~  
18 ~~executive director for a seventy-two-hour treatment and evaluation~~ A  
19 DESIGNATED FACILITY FOR TREATMENT AND EVALUATION. IN THE EVENT  
20 THAT A DESIGNATED FACILITY SUITABLE FOR TREATMENT AND  
21 EVALUATION IS NOT AVAILABLE AT THE END OF THE TWENTY-FOUR-HOUR  
22 PERIOD PROVIDED FOR IN THIS SUBPARAGRAPH (II), A SHERIFF OR HIS OR  
23 HER DESIGNEE MAY PETITION THE COURT, THROUGH AN AFFIDAVIT SWORN  
24 TO OR AFFIRMED BEFORE A JUDGE, FOR A ONE-TIME ORDER GRANTING AN  
25 EXTENSION, NOT TO EXCEED SEVENTY-TWO HOURS, OF THE HOLDING  
26 PERIOD IN THE LAW ENFORCEMENT FACILITY. ALL PROVISIONS OF  
27 SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2) RELATING

1 TO CONDITIONS OF CONFINEMENT CONTINUE TO APPLY DURING ANY  
2 COURT-ORDERED EXTENSION GRANTED PURSUANT TO THIS SUBPARAGRAPH  
3 (II).

4 (III) If the person being detained is a juvenile, as defined in  
5 section 19-1-103 (68), C.R.S., ~~the juvenile shall~~ HE OR SHE MUST be  
6 placed in a setting that is nonsecure and physically segregated by sight  
7 and sound from ~~the~~ ANY adult offenders.

8 (IV) When a person is taken into custody and confined IN A LAW  
9 ENFORCEMENT FACILITY pursuant to this subsection (2), ~~such person shall~~  
10 ~~be examined at least every twelve hours by~~ a certified peace officer,  
11 nurse, ~~or~~ physician, ~~or by an~~ appropriate staff professional of the nearest  
12 designated ~~or approved~~ mental health treatment facility SHALL EXAMINE  
13 THE PERSON AT LEAST EVERY TWELVE HOURS to determine if ~~the person~~  
14 HE OR SHE is receiving appropriate care consistent with his or her mental  
15 condition.

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

24 (3) ~~Such~~ WHEN A PERSON IS TAKEN INTO EMERGENCY CUSTODY BY  
25 AN INTERVENING PROFESSIONAL PURSUANT TO SUBSECTION (1) OF THIS  
26 SECTION AND IS ADMITTED OR PRESENTS TO AN EMERGENCY MEDICAL  
27 SERVICES FACILITY OR DESIGNATED FACILITY, THE facility shall require an

1 application in writing, stating the circumstances under which the person's  
2 condition was called to the attention of the intervening professional and  
3 further stating sufficient facts, obtained from the personal observations  
4 of the intervening professional or obtained from others whom he or she  
5 reasonably believes to be reliable, to establish that the person has a mental  
6 illness and, as a result of the mental illness, is an imminent danger to  
7 others or to himself or herself or is gravely disabled. The application shall  
8 MUST indicate when the person was taken into EMERGENCY custody and  
9 who brought the person's condition to the attention of the intervening  
10 professional. A copy of the application shall be furnished to the person  
11 being evaluated, and the application shall be retained in accordance with  
12 the provisions of section 27-65-121 (4).

13 (4) ~~If the seventy-two-hour treatment and evaluation facility~~  
14 ~~admits the person, it may detain him or her for evaluation and treatment~~  
15 ~~for a period not to exceed seventy-two hours, excluding~~ AN EMERGENCY  
16 MEDICAL SERVICES FACILITY OR DESIGNATED FACILITY THAT ASSUMES  
17 EMERGENCY CUSTODY OF A PERSON PURSUANT TO THIS SECTION, OR THAT  
18 ASSUMES CUSTODIAL RESPONSIBILITY OF THE PERSON AFTER A TRANSFER  
19 FROM A LAW ENFORCEMENT FACILITY PURSUANT TO SUBSECTION (2) OF  
20 THIS SECTION, MAY RETAIN CUSTODY OF SUCH PERSON FOR A PERIOD OF UP  
21 TO SEVENTY-TWO HOURS FROM THE TIME THE PERSON IS ADMITTED TO THE  
22 DESIGNATED FACILITY OR EMERGENCY MEDICAL FACILITY. THE  
23 SEVENTY-TWO-HOUR PERIOD EXCLUDES Saturdays, Sundays, and holidays  
24 if evaluation and treatment services are not available on those days, AND  
25 ANY TIME REQUIRED FOR NON-PSYCHIATRIC MEDICAL SCREENING OR  
26 TREATMENT. A PERSON WHO IS PROVIDED SERVICES UNDER THE  
27 PROVISIONS OF THIS ARTICLE MUST RECEIVE AN EVALUATION AS SOON AS

1 POSSIBLE AND SUCH TREATMENT AS HIS OR HER CONDITION REQUIRES, AND  
2 IS WITHIN THE CAPABILITY OF THE FACILITY, FOR THE FULL PERIOD OF TIME  
3 THAT HE OR SHE IS IN EMERGENCY CUSTODY. For the purposes of this  
4 subsection (4), EMERGENCY MENTAL HEALTH SERVICES AND evaluation  
5 and treatment services are not deemed to be available merely because a  
6 professional person is on call during weekends or holidays. If, in the  
7 opinion of the professional person in charge of the evaluation, the person  
8 can be properly cared for without being detained, he or she shall be  
9 provided services on a voluntary basis.

10 ~~(5) Each person admitted to a seventy-two-hour treatment and~~  
11 ~~evaluation facility under the provisions of this article shall receive an~~  
12 ~~evaluation as soon as possible after he or she is admitted and shall receive~~  
13 ~~such treatment and care as his or her condition requires for the full period~~  
14 ~~that he or she is held. The person shall be released before seventy-two~~  
15 ~~hours have elapsed if, in the opinion of the professional person in charge~~  
16 ~~of the evaluation, the person no longer requires evaluation or treatment~~  
17 IF, AT ANY TIME DURING EMERGENCY CUSTODY, INCLUDING ANY  
18 EXTENSION PROVIDED FOR PURSUANT TO SUBSECTION (2) OF THIS SECTION,  
19 IN THE OPINION OF A MENTAL HEALTH CARE OR MEDICAL PROFESSIONAL  
20 LICENSED PURSUANT TO TITLE 12, C.R.S., ACTING WITHIN HIS OR HER  
21 SCOPE OF PRACTICE AND DETERMINED BY THE FACILITY TO BE IN CHARGE  
22 OF THE EVALUATION, THE PERSON CAN BE PROPERLY CARED FOR WITHOUT  
23 BEING DETAINED, OR THAT HE OR SHE NO LONGER REQUIRES EVALUATION  
24 OR TREATMENT, THE PERSON MUST BE APPROPRIATELY DISCHARGED OR  
25 REFERRED FOR FURTHER CARE AND TREATMENT ON A VOLUNTARY BASIS.  
26 Persons who have ~~been detained for~~ RECEIVED seventy-two-hour  
27 evaluation and treatment AT A DESIGNATED FACILITY shall be released,

1 referred for further care and treatment on a voluntary basis, or certified  
2 for treatment pursuant to section 27-65-107.

3 **SECTION 4. Safety clause.** The general assembly hereby finds,  
4 determines, and declares that this act is necessary for the immediate  
5 preservation of the public peace, health, and safety.