

NOTE: The governor vetoed this measure on 6/9/2016.

An Act

SENATE BILL 16-169

BY SENATOR(S) Martinez Humenik and Cooke, Aguilar, Crowder, Guzman, Heath, Hodge, Johnston, Kefalas, Lundberg, Merrifield, Newell, Roberts, Scheffel, Tate, Todd, Cadman;
also REPRESENTATIVE(S) Kraft-Tharp and Landgraf, Mitsch Bush, Young.

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

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

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

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

(b) Although Colorado statute specifies that individuals placed on an emergency hold may be taken to a facility designated by the executive director of the department of human services to provide seventy-two-hour mental health treatment and evaluation or to a jail or other law enforcement facility, the designated facilities are often unavailable and law enforcement

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

facilities are not designed for, nor do they have adequate resources to provide, comprehensive mental health care to individuals in crisis;

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

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

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

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

(2) The general assembly therefore finds that:

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

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

SECTION 2. In Colorado Revised Statutes, 26-1-107, **add** (11) as follows:

26-1-107. State board of human services - rules. (11) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO GRANT RULE-MAKING AUTHORITY

OVER ANY DUTY OR RESPONSIBILITY DELEGATED TO A LAW ENFORCEMENT AGENCY, LAW ENFORCEMENT FACILITY, OR EMERGENCY MEDICAL SERVICES FACILITY PURSUANT TO ARTICLE 65 OF TITLE 27, C.R.S.

SECTION 3. In Colorado Revised Statutes, 27-65-102, **add** (5.3), (5.7), and (11.5) as follows:

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

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

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

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

SECTION 4. In Colorado Revised Statutes, 27-65-105, **amend** (1) (a) (I), (1) (a) (II) introductory portion, (1) (b), (2), (3), (4), and (5); and **add** (4.5) and (6) as follows:

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

(a) (I) When ~~any~~ A 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 (II) 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~~ TAKE THE PERSON TO A DESIGNATED FACILITY. IF SUCH A FACILITY IS UNAVAILABLE, THE PERSON MAY BE TAKEN TO AN EMERGENCY MEDICAL SERVICES FACILITY OR A LAW ENFORCEMENT FACILITY PURSUANT TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION.

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

(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~~ TAKEN TO A DESIGNATED FACILITY FOR seventy-two-hour treatment and evaluation. ~~Whenever in this article a facility is to be designated or approved by~~ IF SUCH A FACILITY IS UNAVAILABLE, THE PERSON MAY BE TAKEN TO AN EMERGENCY MEDICAL SERVICES FACILITY OR A LAW ENFORCEMENT FACILITY PURSUANT TO THE PROVISIONS OF SUBSECTION (2) OF THIS SECTION. IF the executive director ~~hospitals, if available, shall be approved or designated~~ IS TO DESIGNATE OR APPROVE A FACILITY PURSUANT TO THIS ARTICLE, HE OR SHE SHALL APPROVE A HOSPITAL OR HOSPITALS, IF AVAILABLE, in each county before other facilities are approved or designated. ~~Whenever in this article a facility is to be designated or approved by~~ IF the executive director as IS TO DESIGNATE OR APPROVE 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~~ IS a prerequisite to the designation or approval.

(2) (a) (I) 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~~ HE OR SHE MAY BE DETAINED IN A LAW ENFORCEMENT FACILITY ONLY UNDER THE FOLLOWING CIRCUMSTANCES, AND ONLY IF THE PERSON IS DETAINED SEPARATELY FROM ANY PERSONS CHARGED WITH OR CONVICTED OF PENAL OFFENSES:

(A) IF A DESIGNATED FACILITY IS NOT AVAILABLE FOR TREATMENT AND EVALUATION;

(B) IF AN EMERGENCY MEDICAL SERVICES FACILITY IS NOT READILY AVAILABLE; AND

(C) IF THE PERSON HAS DEMONSTRATED RECENT BEHAVIORAL AGGRESSION OR VIOLENCE THAT CANNOT BE DE-ESCALATED WITHIN THE CAPABILITY AND CAPACITY OF AN AVAILABLE EMERGENCY MEDICAL SERVICES FACILITY WITHOUT THE ASSISTANCE OF LAW ENFORCEMENT.

(II) THE PERSON TAKEN INTO CUSTODY MUST NOT BE HELD IN A LAW ENFORCEMENT FACILITY FOR A PERIOD THAT EXCEEDS 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~~ A DESIGNATED FACILITY FOR TREATMENT AND EVALUATION. IN THE EVENT THAT A DESIGNATED FACILITY SUITABLE FOR TREATMENT AND EVALUATION IS NOT AVAILABLE AT THE END OF THE TWENTY-FOUR-HOUR PERIOD PROVIDED FOR IN THIS SUBPARAGRAPH (II), A SHERIFF OR HIS OR HER DESIGNEE MAY PETITION THE COURT, THROUGH AN AFFIDAVIT SWORN TO OR AFFIRMED BEFORE A JUDGE, FOR A ONE-TIME ORDER GRANTING AN EXTENSION, NOT TO EXCEED TWENTY-FOUR HOURS, OF THE HOLDING PERIOD IN THE LAW ENFORCEMENT FACILITY. ALL PROVISIONS OF SUBPARAGRAPH (I) OF PARAGRAPH (a) OF THIS SUBSECTION (2) RELATING TO CONDITIONS OF CONFINEMENT CONTINUE TO APPLY DURING ANY COURT-ORDERED EXTENSION GRANTED PURSUANT TO THIS SUBPARAGRAPH (II).

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

(IV) When a person is taken into custody and confined IN A LAW ENFORCEMENT FACILITY pursuant to this subsection (2), ~~such person shall~~

~~be examined at least every twelve hours by a certified SWORN peace officer, nurse, or physician, or by an appropriate staff professional of the nearest designated or approved mental health treatment facility SHALL EXAMINE THE PERSON AT LEAST EVERY TWELVE HOURS to determine if the person~~ HE OR SHE is receiving appropriate care consistent with his or her mental condition.

(b) A sheriff or police chief who violates the provisions of SUBPARAGRAPH (III) 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 SUBPARAGRAPH (III) 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 SUBPARAGRAPH (III) OF paragraph (a) of this subsection (2).

(3) ~~Such~~ WHEN A PERSON IS TAKEN INTO EMERGENCY CUSTODY BY AN INTERVENING PROFESSIONAL PURSUANT TO SUBSECTION (1) OF THIS SECTION AND PRESENTS TO AN EMERGENCY MEDICAL SERVICES FACILITY OR IS ADMITTED TO A DESIGNATED FACILITY, THE 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. The application ~~shall~~ MUST indicate when the person was taken into EMERGENCY 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~~ A DESIGNATED FACILITY THAT ADMITS A PERSON PURSUANT TO THIS SECTION MAY RETAIN SUCH PERSON FOR A PERIOD NOT TO EXCEED SEVENTY-TWO HOURS FROM THE TIME THE PERSON IS ADMITTED TO THE DESIGNATED FACILITY. THE SEVENTY-TWO-HOUR PERIOD EXCLUDES Saturdays, Sundays, and holidays

if evaluation and treatment services are not available on those days, AND ANY TIME REQUIRED FOR NON-PSYCHIATRIC MEDICAL STABILIZATION. A PERSON WHO IS PROVIDED SERVICES UNDER THE PROVISIONS OF THIS ARTICLE MUST RECEIVE AN EVALUATION AS SOON AS POSSIBLE AND SUCH TREATMENT AS HIS OR HER CONDITION REQUIRES, AND IS WITHIN THE CAPABILITY OF THE FACILITY, FOR THE FULL PERIOD OF TIME THAT HE OR SHE IS ADMITTED. For the purposes of this subsection (4), EMERGENCY MENTAL HEALTH SERVICES AND evaluation and treatment 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.

(4.5) (a) ON OR BEFORE DECEMBER 31, 2016, AND EACH JULY 1 THEREAFTER, EACH EMERGENCY MEDICAL SERVICES FACILITY OR LAW ENFORCEMENT FACILITY WHICH HAS TAKEN CUSTODY OF A PERSON OR TREATED A PERSON PURSUANT TO THIS SECTION SHALL PROVIDE AN ANNUAL REPORT TO THE DEPARTMENT THAT INCLUDES ONLY AGGREGATE AND NONIDENTIFYING INFORMATION CONCERNING PERSONS WHO WERE TAKEN INTO CUSTODY OR TREATED AT AN EMERGENCY MEDICAL SERVICES FACILITY OR LAW ENFORCEMENT FACILITY PURSUANT TO THIS SECTION. LAW ENFORCEMENT FACILITIES MAY CONTACT CRISIS CENTERS FOR ASSISTANCE IN FULFILLING THE REQUIREMENTS OF THIS SUBSECTION (4.5). THE REPORT MUST CONTAIN THE FOLLOWING:

(I) THE NAMES AND COUNTIES OF THE FACILITIES;

(II) THE TOTAL NUMBER OF PERSONS TAKEN INTO CUSTODY OR TREATED PURSUANT TO THIS SECTION, INCLUDING A SUMMARY OF DEMOGRAPHIC INFORMATION;

(III) A SUMMARY REGARDING THE DIFFERENT REASONS FOR WHICH PERSONS WERE TAKEN INTO CUSTODY OR TREATED PURSUANT TO THIS SECTION; AND

(IV) A SUMMARY OF THE DISPOSITION OF PERSONS WHETHER RELEASED FROM CUSTODY OR TRANSFERRED TO A DESIGNATED FACILITY.

(b) (I) ANY INFORMATION AGGREGATED AND PROVIDED TO THE DEPARTMENT PURSUANT TO THIS SUBSECTION (4.5) IS PRIVILEGED AND

CONFIDENTIAL. SUCH INFORMATION MUST NOT BE MADE AVAILABLE TO THE PUBLIC EXCEPT IN AN AGGREGATE FORMAT THAT CANNOT BE USED TO IDENTIFY AN INDIVIDUAL FACILITY. THE INFORMATION IS NOT SUBJECT TO CIVIL SUBPOENA AND IS NOT DISCOVERABLE OR ADMISSIBLE IN ANY CIVIL, CRIMINAL, OR ADMINISTRATIVE PROCEEDING AGAINST AN EMERGENCY MEDICAL SERVICES FACILITY, LAW ENFORCEMENT FACILITY, HEALTH CARE PROFESSIONAL, OR LAW ENFORCEMENT OFFICER. THE INFORMATION MUST BE USED ONLY TO ASSESS STATEWIDE BEHAVIORAL HEALTH SERVICES NEEDS AND TO PLAN FOR SUFFICIENT LEVELS OF STATEWIDE BEHAVIORAL HEALTH SERVICES. IN THE COLLECTION OF DATA TO ACCOMPLISH THE REQUIREMENTS OF THIS SUBSECTION (4.5), THE DEPARTMENT SHALL PROTECT THE CONFIDENTIALITY OF PATIENT RECORDS, IN ACCORDANCE WITH STATE AND FEDERAL LAWS, AND SHALL NOT DISCLOSE ANY PUBLIC IDENTIFYING OR PROPRIETARY INFORMATION OF ANY HOSPITAL, HOSPITAL ADMINISTRATOR, HEALTH CARE PROFESSIONAL, OR EMPLOYEE OF A HEALTH CARE FACILITY.

(II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (b) DOES NOT APPLY TO INFORMATION THAT IS OTHERWISE AVAILABLE FROM A SOURCE OUTSIDE OF THE DATA COLLECTION ACTIVITIES REQUIRED PURSUANT TO PARAGRAPH (a) OF THIS SUBSECTION (4.5).

~~(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~~ AN EMERGENCY MEDICAL SERVICES FACILITY THAT ASSUMES EMERGENCY CUSTODY OF AN INDIVIDUAL PURSUANT TO THIS SECTION SHALL PROVIDE AN ASSESSMENT AS SOON AS POSSIBLE AND ANY TREATMENT THAT THE INDIVIDUAL'S CONDITION REQUIRES THAT IS WITHIN THE FACILITY'S CAPABILITIES FOR THE FULL PERIOD OF THE TIME THAT THE INDIVIDUAL IS IN CUSTODY AT THE FACILITY, CONSISTENT WITH ALL OTHER APPLICABLE LAWS. THE EMERGENCY MEDICAL SERVICES FACILITY MAY RETAIN THE INDIVIDUAL IN EMERGENCY CUSTODY FOR UP TO THIRTY-SIX HOURS TO DETERMINE WHETHER THE INDIVIDUAL REQUIRES TRANSFER TO A DESIGNATED FACILITY FOR SEVENTY-TWO-HOUR TREATMENT AND EVALUATION. SUCH THIRTY-SIX-HOUR PERIOD EXCLUDES ANY TIME

REQUIRED FOR NON-PSYCHIATRIC MEDICAL STABILIZATION AND COMPLETING THE TRANSFER TO THE ACCEPTING DESIGNATED FACILITY.

(6) IF, AT ANY TIME DURING EMERGENCY CUSTODY OF AN INDIVIDUAL IN EITHER AN EMERGENCY MEDICAL SERVICES FACILITY, DESIGNATED FACILITY, OR LAW ENFORCEMENT FACILITY, INCLUDING ANY EXTENSION PROVIDED FOR PURSUANT TO SUBSECTION (2) OF THIS SECTION, IN THE OPINION OF A PROFESSIONAL PERSON, AS THAT TERM IS DEFINED IN SECTION 27-65-102 (17), OR AN ADVANCED PRACTICE NURSE LICENSED PURSUANT TO ARTICLE 38 OF TITLE 12, C.R.S., AND INCLUDED IN THE ADVANCED PRACTICE REGISTRY PURSUANT TO SECTION 12-38-111.5, C.R.S., WITH A POPULATION FOCUS IN PSYCHIATRY OR MENTAL HEALTH, ACTING WITHIN HIS OR HER SCOPE OF PRACTICE, THE PERSON NO LONGER MEETS THE STANDARDS FOR EMERGENCY CUSTODY OR DETENTION AND HIS OR HER CARE CAN BE PROVIDED IN ANOTHER SETTING, THE PERSON MUST BE APPROPRIATELY DISCHARGED OR REFERRED FOR FURTHER CARE AND TREATMENT ON A VOLUNTARY BASIS. Persons who have ~~been detained for~~ RECEIVED seventy-two-hour evaluation and treatment AT A DESIGNATED FACILITY shall be released, referred for further care and treatment on a voluntary basis, or certified for treatment pursuant to section 27-65-107.

SECTION 5. In Colorado Revised Statutes, 27-60-103, **add** (6.5) as follows:

27-60-103. Behavioral health crisis response system - services - request for proposals - criteria - reporting - rules - definitions.
(6.5) ON OR BEFORE SEPTEMBER 1, 2016, THE UNIT IN THE STATE DEPARTMENT THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND SERVICES, INCLUDING THOSE RELATED TO MENTAL HEALTH AND SUBSTANCE ABUSE, SHALL CONVENE A SERIES OF STAKEHOLDER SESSIONS TO ADDRESS EMERGENCY MENTAL HEALTH TREATMENT NEEDS THROUGHOUT COLORADO. THE STAKEHOLDER GROUP SHALL ASSIST THE STATE DEPARTMENT IN DEVELOPING A COMPREHENSIVE NEEDS ANALYSIS, RECOMMENDATIONS, AND A BUDGET REQUEST FOR EMERGENCY MENTAL HEALTH SERVICES IN COLORADO. THE STAKEHOLDER GROUP MUST INCLUDE APPROPRIATE MENTAL HEALTH ADVOCACY GROUPS, NONPROFIT ORGANIZATIONS, PROVIDERS, AND ANY INTERESTED AND RELATED PARTIES. THE STAKEHOLDER SESSIONS MUST BE CONDUCTED WITHIN EXISTING DEPARTMENTAL RESOURCES. ON OR BEFORE JANUARY 31, 2017, THE STATE DEPARTMENT SHALL PRESENT TO THE JOINT JUDICIARY COMMITTEE AND THE

JOINT HEALTH AND HUMAN SERVICES COMMITTEE A NEEDS ANALYSIS, RECOMMENDATIONS, AND A BUDGET REQUEST FOR EMERGENCY MENTAL HEALTH TREATMENT NEEDS THROUGHOUT COLORADO AS PART OF ITS "STATE MEASUREMENT FOR ACCOUNTABLE, RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING REQUIRED BY SECTION 2-7-203, C.R.S.

SECTION 6. Safety clause. The general assembly hereby finds,

determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Bill L. Cadman
PRESIDENT OF
THE SENATE

Dickey Lee Hullinghorst
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO