A BILL FOR AN ACT

CONCERNING LOWERING THE AGE OF CONSENT FOR MINORS SEEKING OUTPATIENT PSYCHOTHERAPY.

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://leg.colorado.gov/)

The bill lowers the age of consent from 15 years of age and older to 10 years of age and older for a minor to seek and obtain outpatient psychotherapy services from a licensed mental health professional. The bill allows a minor 10 years of age or older to receive such outpatient psychotherapy services without the consent of his or her parent or guardian. The licensed mental health professional is immune from civil
or criminal liability for providing outpatient psychotherapy services unless he or she acts negligently or outside the scope of his or her practice.

The bill clarifies that the age of consent for a minor seeking inpatient psychotherapy or other inpatient mental health services without the consent of a parent or legal guardian remains 15 years of age or older.

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

SECTION 1. In Colorado Revised Statutes, 12-43-201, amend the introductory portion and (9)(a) as follows:

12-43-201. Definitions. As used in this article ARTICLE 43, unless the context otherwise requires:

(9) (a) "Psychotherapy", OR "PSYCHOTHERAPY SERVICES", means the treatment, diagnosis, testing, assessment, or counseling in a professional relationship to assist individuals or groups to alleviate mental disorders, understand unconscious or conscious motivation, resolve emotional, relationship, or attitudinal conflicts, or modify behaviors that interfere with effective emotional, social, or intellectual functioning. Psychotherapy follows a planned procedure of intervention that takes place on a regular basis, over a period of time, or in the cases of testing, assessment, and brief psychotherapy, psychotherapy can be a single intervention.

SECTION 2. In Colorado Revised Statutes, add 12-43-202.5 as follows:

12-43-202.5. Minors - consent for outpatient psychotherapy - legislative declaration - immunity. (1) (a) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT:

(I) THE CENTERS FOR DISEASE CONTROL FOUND SUICIDE TO BE THE TENTH-LEADING CAUSE OF DEATH FOR ALL AGES IN 2013 AND IS
CURRENTLY THE LEADING CAUSE OF DEATH IN COLORADO YOUTH WHO ARE TEN THROUGH FOURTEEN YEARS OF AGE;

(II) ACCORDING TO THE AMERICAN ASSOCIATION OF SUICIDOLOGY, THE SUICIDE RATE FOR YOUTH WHO ARE TEN THROUGH FOURTEEN YEARS OF AGE HAS INCREASED BY MORE THAN FIFTY PERCENT OVER THE PAST THREE DECADES; AND

(III) YOUTH WHO ARE TEN THROUGH FOURTEEN YEARS OF AGE OFTEN AVOID OBTAINING, OR ARE LEGALLY UNABLE TO OBTAIN WITHOUT PARENTAL CONSENT, OUTPATIENT PSYCHOTHERAPY SERVICES THAT WOULD HELP THEM PRIOR TO REACHING CRISIS LEVELS BECAUSE THEY ARE EMBARRASSED OR CONCERNED ABOUT SPEAKING WITH THEIR PARENTS ABOUT THEIR MENTAL HEALTH CONCERNS AND SITUATION.

(b) THE GENERAL ASSEMBLY THEREFORE DECLARES THAT IT IS A MATTER OF STATEWIDE CONCERN TO ALLOW YOUTH WHO ARE TWELVE YEARS OF AGE AND OLDER TO HAVE LEGAL ACCESS TO OUTPATIENT PSYCHOTHERAPY SERVICES WITHOUT THE CONSENT OF OR NOTIFICATION TO THE YOUTH'S PARENT OR LEGAL GUARDIAN. PROVIDING THESE YOUTH WITH ACCESS TO OUTPATIENT PSYCHOTHERAPY SERVICES IS INTENDED TO REDUCE YOUTH SUICIDES AND ALLOW MENTAL HEALTH PROVIDERS TO WORK WITH YOUTH TO TEACH THEM FUNCTIONAL COPING SKILLS. MENTAL HEALTH PROVIDERS WOULD FURTHER HAVE THE OPPORTUNITY TO HELP THESE YOUTH BUILD HEALTHY CONNECTIONS WITH PARENTS OR LEGAL GUARDIANS BY INCREASING COMMUNICATION AND STRENGTHENING THE BOND BETWEEN PARENT AND CHILD, THUS BUILDING AN ONGOING, NONCLINICAL SUPPORT SYSTEM FOR THE YOUTH TO USE TO MANAGE HIS OR HER MENTAL HEALTH CONCERNS.

(2) NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE
CONTRARY, A MINOR TWELVE YEARS OF AGE AND OLDER MAY REQUEST AND CONSENT TO OUTPATIENT PSYCHOTHERAPY SERVICES, AS DEFINED IN SECTION 12-43-201 (9), PROVIDED BY ANY MENTAL HEALTH PROFESSIONAL LICENSED PURSUANT TO THIS ARTICLE 43. THE MINOR MAY OBTAIN SUCH OUTPATIENT PSYCHOTHERAPY SERVICES WITHOUT THE CONSENT OF HIS OR HER PARENT, PARENTS, OR LEGAL GUARDIAN, OR TO ANY OTHER PERSON HAVING CUSTODY OR DECISION-MAKING RESPONSIBILITY WITH RESPECT TO THE MINOR. EXCEPT AS PROVIDED IN SUBSECTION (3) OF THIS SECTION AND IN SECTION 13-21-117 (2), THE MENTAL HEALTH PROFESSIONAL WHO IS PROVIDING OUTPATIENT PSYCHOTHERAPY SERVICES TO A MINOR PURSUANT TO THIS SECTION IS NOT REQUIRED TO PROVIDE NOTIFICATION OF SUCH PROVISION OF PSYCHOTHERAPY SERVICES TO THE MINOR'S PARENT, PARENTS, LEGAL GUARDIAN, OR ANY OTHER PERSON HAVING CUSTODY OR DECISION-MAKING RESPONSIBILITY WITH RESPECT TO THE MINOR. IN ANY SUCH CASE, THE MENTAL HEALTH PROFESSIONAL WHO IS LICENSED PURSUANT TO THIS ARTICLE 43 AND IS PROVIDING THE MINOR WITH OUTPATIENT PSYCHOTHERAPY SERVICES IS IMMUNE FROM CIVIL OR CRIMINAL LIABILITY, UNLESS THE MENTAL HEALTH PROFESSIONAL ACTED NEGLIGENTLY OR OUTSIDE THE SCOPE OF HIS OR HER PRACTICE. THE PROVISIONS OF THIS SECTION DO NOT APPLY TO INPATIENT PSYCHOTHERAPY OR OTHER INPATIENT MENTAL HEALTH SERVICES PROVIDED IN A HOSPITAL, FACILITY, OR OTHER INPATIENT SETTING PURSUANT TO SECTION 27-65-103 (2).

(3) IF A MINOR WHO IS RECEIVING PSYCHOTHERAPY SERVICES PURSUANT TO THIS SECTION COMMUNICATES TO THE MENTAL HEALTH PROFESSIONAL A CLEAR AND IMMINENT INTENT OR THREAT TO INFLECT SERIOUS BODILY HARM ON HIMSELF OR HERSELF OR OTHERS, THE MENTAL
HEALTH PROFESSIONAL IS SUBJECT TO THE PROVISIONS OF SECTION 13-21-117 (2) AND SHALL IMMEDIATELY NOTIFY THE MINOR PATIENT'S PARENT, PARENTS, LEGAL GUARDIAN, OR ANY OTHER PERSON HAVING CUSTODY OR DECISION-MAKING RESPONSIBILITY WITH RESPECT TO THE MINOR, OF SUCH COMMUNICATION.

SECTION 3. In Colorado Revised Statutes, 13-21-117, amend (2) as follows:

13-21-117. Civil liability - mental health providers - duty to warn - definitions. (2) (a) A mental health provider is not liable for damages in any civil action for failure to warn or protect a specific person or persons, including those identifiable by their association with a specific location or entity, against the violent behavior of a person receiving treatment from the mental health provider, and any such mental health provider must not be held civilly liable for failure to predict such violent behavior except where:

(I) The patient has communicated to the mental health provider a serious threat of imminent physical violence against a specific person or persons, including those identifiable by their association with a specific location or entity; OR

(II) THE PATIENT HAS COMMUNICATED TO THE MENTAL HEALTH PROVIDER A CLEAR AND IMMINENT INTENT OR THREAT TO INFlict SERIOUS BODILY HARM ON HIMSELF OR HERSELF OR OTHERS.

(b) When there is a duty to warn and protect under the provisions of paragraph (a) of this subsection (2) of this section, the mental health provider shall make reasonable and timely efforts to notify EACH OF THE FOLLOWING PERSONS, AS APPLICABLE TO THE SPECIFIC CIRCUMSTANCES OF THE SITUATION:
(I) The person or persons THREATENED; or

(II) The person or persons responsible for a specific location or entity, that is specifically threatened, as well as to notify an appropriate law enforcement agency; or to AND

(III) IN THE CASE OF A MINOR RECEIVING PSYCHOTHERAPY SERVICES PURSUANT TO SECTION 12-43-202.5, THE MINOR'S PARENT, PARENTS, LEGAL GUARDIAN, OR ANY OTHER PERSON HAVING CUSTODY OR DECISION-MAKING RESPONSIBILITY WITH RESPECT TO THE MINOR.

(b.3) WHEN THERE IS A DUTY TO WARN AND PROTECT UNDER THE PROVISIONS OF SUBSECTION (2)(a) OF THIS SECTION, THE MENTAL HEALTH PROVIDER MAY, IN ADDITION TO THE NOTIFICATION PROVISIONS OF SUBSECTION (2)(b) OF THIS SECTION, take other appropriate action, including but not limited to hospitalizing the patient.

(b.5) A mental health provider is not liable for damages in any civil action for warning a specific person or persons; A MINOR'S PARENT, PARENTS, LEGAL GUARDIAN, OR ANY OTHER PERSON HAVING CUSTODY OR DECISION-MAKING RESPONSIBILITY WITH RESPECT TO THE MINOR; or a person or persons responsible for a specific location or entity, against or predicting the violent behavior of a person receiving treatment from the mental health provider.

(c) A mental health provider must not be subject to professional discipline when there is a duty to warn and protect pursuant to this section.

SECTION 4. In Colorado Revised Statutes, 27-65-103, amend (1) and (2) as follows:

27-65-103. Voluntary application for inpatient mental health services in hospitals, facilities, or other inpatient setting - consent by
minor - mandatory reviews. (1) (a) Nothing in this article shall be construed in any way as limiting the right of any person to make voluntary application at any time to any public or private agency or professional person at any time to any public or private agency or professional person. HOSPITAL, FACILITY, OR OTHER INPATIENT SETTING for INPATIENT mental health services, either by direct application in person or by referral from any other public or private agency or professional person. (b) Subject to section 15-14-316 (4), C.R.S., a ward, as defined in section 15-14-102 (15), C.R.S., may be admitted to a hospital, or institutional FACILITY, OR OTHER INPATIENT SETTING FOR INPATIENT care and treatment for a mental illness by consent of the guardian for so long as the ward agrees to such care and treatment. Within ten days of any such THE WARD’S admission of the ward for such hospital or institutional FOR care and treatment OF A MENTAL ILLNESS, the guardian shall notify, in writing, the court that appointed the guardian of the admission. (2) FOR THE PURPOSES OF THIS ARTICLE 65 ONLY, AND notwithstanding any other provision of law, a minor who is fifteen years of age or older whether with or without the consent of a parent or legal guardian, may consent, WITH OR WITHOUT THE CONSENT OF A PARENT OR LEGAL GUARDIAN, to receive INPATIENT mental health services to be rendered by a hospital, facility, OR OTHER INPATIENT SETTING, or by a professional person or mental health professional licensed pursuant to part 3, 4, 5, 6, or 8 of article 43 of title 12, C.R.S., in any practice setting. Such consent shall not be IS NOT subject to disaffirmance because of minority. The professional person or licensed mental health professional rendering HOSPITAL, FACILITY, OR OTHER INPATIENT FACILITY PROVIDING INPATIENT mental health services to a minor may, with or without the
consent of the minor, advise the parent or legal guardian of the minor of the services given or needed.

SECTION 5. In Colorado Revised Statutes, 27-65-121, amend (1) introductory portion; and add (1)(j) as follows:

27-65-121. Records. (1) Except as provided in subsection (2) of this section, all information obtained and records prepared in the course of providing any services under PURSUANT TO this article ARTICLE 65 to individuals under PURSUANT TO any provision of this article shall be ARTICLE 65 ARE confidential and privileged matter. The information and records may be disclosed only:

(j) PURSUANT TO THE PROVISIONS OF SECTION 13-21-117 (2).

SECTION 6. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.