

STATUTORY CONSOLIDATION WORKGROUP RECOMMENDATIONS

The Statutory Consolidation Workgroup met seven times from July 15 through October 7, 2013. All meetings were held in a conference room at the Arapahoe House Denver Outpatient Clinic located in downtown Denver. Phone access was provided for all participants. The meetings were well attended and the participants were engaged and well informed. The workgroup is grateful to Michael Stafford, Assistant City Attorney for Denver, who prepared a draft of the actual statutory changes that are being submitted with these recommendations.

The Consolidation Workgroup consisted of representatives from the following organizations:

- Arapahoe House: Art Schut, B.J. Dean and Kim Meltzer
- Brandenberry McKenna Public Affairs: Julie McKenna and Megan Gilchrest
- Cedar Springs Hospital: Elaine Crnkovic
- Centennial Peaks Hospital: Elicia Bunch
- Centura Health: Jane Barnes
- City and County Attorney of Denver: Michael Stafford
- Colorado Behavioral Healthcare Council: Tom Olbrich, Terri Hurst and Josh Rael
- Colorado Department of Human Services: Chris Habgood and Patrick Fox
- Colorado Hospital Association: Ginny Brown and Gareen Hamalian
- Colorado Mental Wellness Network: Paul Gutierrez
- Colorado Nurses Association: Kristine Reimer
- Colorado Psychiatric Society: Elizabeth Lowdermilk
- COPIC: Jean Martin
- Denver Cares: O'ra Watson
- Denver Health and Hospital Association: Jeff Scott, Audrey Vincent and Jackie Zheleznyak
- Exempla Lutheran Medical Center: Glen Most
- Intern for Representative Kraft-Tharp: Alejandra Perez-Urkoski
- The Legal Center: Mark Ivandick
- Legislative Aide to Representative McCann: Mary Brice
- Lombard & Clayton: Debbie Wagner
- Mendez Consulting: Katie Wolf
- Mental Health America-Colorado: Don Mares, Michael Lott-Manier and Nan Morehead
- National Alliance on Mental Illness-Colorado: Marilyn Robertson
- National Association of Social Workers-Colorado: Leanne Clark
- Nora Neureiter
- Recovery Peer/CACI: Renay Miller
- Springer & Steinberg: JoAnne Zboydan
- State Representative-District 29: Tracy Kraft-Tharp
- State Representative-District 8: Beth McCann

GENERAL RECOMMENDATIONS:

- 1) The Task Force concludes that at this point the statutes regarding alcohol and substance abuse emergency holds and involuntary commitments should be consolidated for consistency and ease of use. (C.R.S. §27-81-101 *et. seq.* and C.R.S. §27-82-101 *et. seq.*)
- 2) The Task Force also concludes that discussion should continue as to whether to consolidate these statutes with the mental health involuntary hold and certification statute (C.R.S. §27-65-101 *et. seq.*). Due to a lack of detail as to how current impediments to further consolidation of statutes to a unified civil commitment statute can be resolved, there was not a consensus among the subcommittee members as to whether or not these statutes should be consolidated but there was consensus that the discussion should continue. This topic should be considered by the Behavioral Health Transformation Council or other council or commission that addresses issues related to mental health and substance use.

SPECIFIC RECOMMENDATIONS CONCERNING CONSOLIDATION OF ALCOHOL/SUBSTANCE ABUSE STATUTES:

- 1) **REMOVAL OF THE STATE FROM THE PLACEMENT PROCESS:** A major change recommended by the Task Force is to remove the state from the placement process in substance abuse commitments. The Task Force also recommends that the language regarding general powers of the unit within the DHS responsible for mental health and substance use disorders be moved to a different section of the statutes. Currently, if a court finds grounds for an involuntary commitment due to alcohol or drug abuse, it orders commitment to the unit within the DHS. The DHS can then transfer physical custody to an approved treatment facility upon agreement of the facility. The suggested language would change the word “unit” to “facility.” Thus if the court orders involuntary commitment, it will order commitment to the licensed facility. The facility will then have the right to transfer physical custody to another appropriate approved facility upon agreement of that facility. The facility, rather than the unit within DHS, will also be the entity to ask a court for recommitment. The facility will also be responsible for adequate and appropriate treatment. If adopted, the Task Force is in favor of a phased-in approach to permit sufficient opportunity to resolve any logistical or operational difficulties encountered during this transition.

One of the primary reasons for this change is that there is often a delay in placing someone in a treatment facility for alcohol or drug abuse because of the unavailability of the state employee who handles this area. Also, the practice of commitment to a facility has worked in other states and it seems that it would work in Colorado. Another option that was suggested was to commit the person to the Director of Human Services but not include the placement responsibility in DHS. Another possibility would be to allow the state to be available to assist in placement if there are problems with a facility not accepting a person when they have the space to do so.

Note: There was not complete consensus on this recommendation. The hospitals are concerned about the liability issues since the state now assumes liability for placement. Concern was also expressed about how to compel facilities to accept someone when they have space – perhaps the state has more ability to do that than another facility. However, it was pointed out that this issue could be addressed through the contracts the DHS establishes with facilities.

- 2) **DURATION OF TREATMENT:** The Task Force recommends that the time frames for substance abuse commitments mirror those for mental health certifications. Currently, for a mental health involuntary certification, the first certification is for up to three months, the extension is for up to three months and then there can be up to six months of certification that can be extended in six-month increments indefinitely. In the case of alcohol or substance abuse commitments, the current initial involuntary commitment is for up to thirty days with the possibility of two additional commitments of up to ninety days each.

The Task Force recommends that the initial commitment for substance abuse be up to three months rather than up to thirty days with a subsequent up to three month commitment possibility as well as subsequent up to six month commitments so that the time frames are the same as those for mental health certifications.

Those involved in substance abuse treatment feel that this is a more realistic approach because they have found that if people know they can get out in thirty days, they focus primarily on that fact and not on treatment. In many cases, thirty days is not sufficient for meaningful treatment. If the potential time frame is longer, the potential for effective treatment is greater. It is very rare that someone remains committed for the full ninety days.

- 3) **TERMINATION OF TREATMENT:** The Task Force also recommends that the termination of involuntary treatment with respect to persons who abuse substances be changed to allow termination of treatment without the necessity of a court order. In the case of the mental health certification, a professional person (M.D., D.O., Psy.D.) can file an M-10 Notice of Termination of Involuntary Treatment at the discretion of the professional person. With respect to substance abuse involuntary commitments, the treating professional can request that the court terminate involuntary commitment but the request must go to court, and the court has to order the termination. The Task Force recommends that termination of involuntary treatment be permitted for substance abuse commitments upon the filing of an M-10 Notice of Termination of Involuntary Treatment rather than requiring that the court terminate the treatment.

Since the list of persons who can initiate an involuntary commitment for substance abuse is broader than the list of those who can do so for mental health certifications, the

question arises as to who should be able to terminate treatment. Currently, a spouse, guardian, relative, physician, advanced practice nurse, the administrator of an approved facility, or any other responsible person may petition the court for involuntary commitment of an individual with substance abuse problems. The Task Force did not discuss precisely who would be able to terminate treatment for substance abuse commitments but contemplated that the person who could request a termination of treatment would be a licensed health professional on the staff of the approved treatment facility as designated by the administrator of the facility. (Currently the administrator has the authority to discharge a person from the five-day emergency hold if he/she determines that the grounds for which the emergency hold was initiated no longer exist.) We also need to be mindful of the personnel challenges in the rural areas.

- 4) **ENFORCEABILITY OF TREATMENT:** Currently, contempt of court can be used as an enforcement tool in the substance abuse context to attempt to compel a person back into treatment if he/she is refusing to participate or if he or she leaves the facility. This is not an available option for those certified under the mental health statute as they are not considered able to “knowingly and willfully” disregard a court order. Those in the substance abuse treatment field with whom the Task Force conferred do not think that the contempt procedure is useful or helpful in compelling people to seek or remain in treatment. When an individual under an IC order violates the court’s commitment order, the county attorney will first consult with a MD/DO in an effort to determine whether the conduct exhibited in violating the court’s order was volitional in nature. The county attorney will only proceed with the issuance of a citation of contempt after making a determination that the violation of the court order was done knowingly and willfully, and not as a result of a psychotic disorder. The Task Force recommends that contempt be used sparingly, in accordance with the Colorado County Attorneys’ Association manual entitled, Alcohol/Drug Involuntary Commitments: A Guide for County/District Attorneys.
- 5) **MANDATORY COURT HEARING:** Currently a mandatory court hearing is required for short and long-term involuntary commitments for substance abuse but not for mental health certifications. Mandatory hearings are required for long-term mental health certifications (six months) only. However, a hearing can be requested for short-term mental health certifications. The Task Force recommends eliminating the mandatory hearing for short-term substance abuse commitments and recommitments but allowing for a hearing if requested. The mandatory hearing for long-term certifications and commitments (six months) would remain the same. This would make the mental health and substance abuse processes more uniform.
- 6) **OTHER CHANGES:** There are recommended revisions to existing language throughout the combined statute. Some but not all of these are as follows:

- a) Rather than using terms such as “drug dependent persons and persons who are under the influence of drugs” or “alcoholics and intoxicated persons” the Task Force recommends using the following language: “persons who misuse substances” or “persons with substance-use disorders.”
- b) The Task Force also recommends incorporating the definitions of “danger to self or others” and “gravely disabled” that the Task Force recommends.
- c) The Task Force recommends replacing language concerning treatment that currently says: “treatment if possible and appropriate” to “deemed likely to be beneficial.”
- d) The Task Force recommends that next of kin of a person age 18 and over be notified of his/her commitment only if the person committed signs a release of information or as authorized in that person’s behavioral health advance directive.
- e) For emergency commitments, the Task Force recommends replacing the language “When any person is a person who misuses substances” with “is under the influence of substances and as a result of being under the influence of substances, is a danger to self or others or gravely disabled.”
- f) The Task Force also recommends adding a sentence in the discharge section that clarifies that a person being discharged shall be offered the opportunity to enroll in voluntary treatment.
- g) The Task Force recommends that the section that states that a person can be provided appropriate treatment at “no charge” be changed to “at reduced charge.” Those in the behavioral health field feel that it is important for the person to have some responsibility to encourage treatment even if the charge is nominal and based on ability to pay.
- 7) **ITEMS REMAINING FOR DISCUSSION:** There were several matters discussed but not resolved about which the Task Force recommends further discussion:
 - a) As mentioned, the issue of consolidation of the mental health and substance abuse involuntary commitment and certification statutes should continue to be discussed.
 - b) The scarcity of resources is an issue that comes up repeatedly in the context of inadequate capacity and access to treatment for persons placed both voluntarily and involuntarily. This bears further discussion particularly as concern exists as to whether or not there will be sufficient reimbursement for substance abuse services through the new Medicaid expansion under the Affordable Care Act, through third party insurance, and for those who are uninsured.

- c) Should the State continue to play an enforcement role in placement decisions and if so, to what extent? The suggestion was made that these issues can be addressed through contracts. The rules could also make clear that funded licensed programs have a responsibility to accept appropriate referrals for involuntary commitments. This would allow the State to intercede in cases where a transfer is appropriate, a facility has space, but the treatment facility is not cooperating. If the State is removed from the placement process, to whom is the person committed and what remedies are available should facilities refuse to accept certain individuals?

- d) The question as to which healthcare professionals should be authorized to sign certifications and terminations of certifications continues to be a topic of discussion. Scope of practice issues should continue to be considered.

APPENDICES

i. Statutory Revisions

Proposed Statutory Language Recommendations from the Civil Commitment Statute Review Task Force

C.R.S. §27-81-102: Definitions

As used in this article, unless the context otherwise requires:

- (1) "Approved private treatment facility" means a private agency meeting the standards prescribed in §27-81-106 (1) and approved under §27-81-106.
- (2) "Approved public treatment facility" means a treatment agency operating under the direction and control of or approved by the office or providing treatment under this article through a contract with the office under § 27-81-105 (7) and meeting the standards prescribed in § 27-81-106 (1) and approved under §27-81-106.
- (3) "Court" means the district court in the county in which the person named in a petition filed pursuant to this article 81 resides or is physically present. In the city and county of Denver, "court" means the probate court.
- (4) *"Danger to self or others" means, as a result of ~~abusing~~ misusing substances or being under the influence of substances that:*
 - a) *With respect to an individual, that the individual poses a substantial risk of physical harm to himself or herself as manifested by evidence of recent threats of or attempts at suicide or serious bodily harm to himself or herself;*
OR
 - b) *With respect to other persons, that the individual poses a substantial risk of physical harm to another person or persons, as manifested by evidence of recent homicidal or other violent behavior directed towards another person or persons by the individual in question, or by evidence that others are placed in reasonable fear of violent behavior ~~and~~ or serious physical harm to them, as evidenced by a recent overt act, attempt, or threat to do serious physical harm by the individual in question.*
- (5) "Department" means the department of human services created in §26-1-105, C.R.S.
- (6) "Director" means the director of the office.
- (7) "Emergency service patrol" means a patrol established under §27-81-115.

(8) "Executive director" means the executive director of the department.

(9) ~~"Incapacitated by substances" means that a person, as a result of the use of substances, is unconscious, has his or her judgment otherwise so impaired that he or she is incapable of realizing and making a rational decision with respect to his or her need for treatment, is unable to take care of his or her basic personal needs or safety, or lacks sufficient understanding or capacity to make or communicate rational decisions about himself or herself.~~

(10) *"Gravely disabled" means a condition in which a person, as a result of ~~abusing~~ misusing substances or being under the influence of substances:*

(i) lacks judgment in the management of his or her resources or in the conduct of his or her social relations to the extent that his or her health or safety is significantly endangered; or

(ii) is incapable of making informed decisions about, or providing for, his or her essential needs without significant supervision and assistance from other people;

and, as a result, is at risk of:

(i) substantial bodily harm;

(ii) dangerous worsening of any concomitant serious physical illness;

(iii) significant deterioration in mental functioning;

(iv) mismanagement of his or her essential needs, including but not limited to the following: nourishment, safe shelter, medical needs, clothing, that could result in substantial bodily harm;

(v) or destruction of property that could result in substantial bodily harm; or

(vi) any of the above if the person loses the necessary care and support without which he or she cannot function safely.

A person of any age may be "gravely disabled," but such term does not include a person whose decision making capabilities are limited solely by his or her developmental disability.

(11) *"Professional person" means a person licensed to practice medicine in this state, a psychologist certified to practice in this state, or a person licensed and in good standing to practice medicine in another state or a psychologist certified to practice and in good standing in another state who is providing medical or clinical*

services at a treatment facility in this state that is operated by the armed forces of the United States, the United States public health service, or the United States department of veterans affairs.

(12) "Minor" means a person under the age of eighteen years.

(13) "Office" means the office of behavioral health that *licenses* behavioral health programs and services, including those related to and substance misuse.

(14) "Person under the influence of substances" means any person whose mental or physical functioning is temporarily but substantially impaired as a result of the presence of substances in his or her body.

~~(15) "Person who misuses substances or is under the influence of substances" "Person who misuses substances" means a person who habitually lacks self-control as to the use of substances or uses substances to the extent that his or her health is substantially impaired or endangered or his or her social or economic functioning in the community is substantially disrupted, including but not limited to work, school or home. Nothing in this subsection (1) shall preclude the denomination of a person who misuses substances or is under the influence of substances as incapacitated by substances.~~

(16) "Substance" means a controlled substance as defined in § 18-18-102 (5), C.R.S., toxic vapors, alcohol and any other chemical that causes an altered mental state.

(17) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to person who misuses substances or is under the influence of substances. ~~and persons incapacitated by substances.~~

(18) "Toxic vapors" means a substance or product containing such substances as defined in § 18-18-412 (3), C.R.S.

~~§27-81-103 Powers of the office.~~

~~§27-81-104 Duties of the office-review.~~

~~§27-81-105 Comprehensive program for treatment--regional facilities~~

~~§27-81-106 Standards for public and private treatment facilities--fees--enforcement procedures--penalties.~~

~~§27-81-107 - Compliance with local government zoning regulations - notice to local governments - provisional approval.~~

~~§27-81-108 - Acceptance for treatment - rules.~~

The above stricken sections will be moved to appropriate sections under §27-80 with the guidance of OBH, as these are administrative functions for OBH.

(1) The director shall adopt and may amend and repeal rules for acceptance of persons into the treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of a person who misuses substances or persons under the influence of substances. In establishing the rules the director shall be guided by the following standards:

(a) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(b) A patient shall be initially assigned or transferred to outpatient or intermediate treatment, unless he or she is found to require inpatient treatment.

(c) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(d) An individualized treatment plan shall be prepared and maintained *by the treating facility* on a current basis for each patient.

(e) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and utilize other appropriate treatment.

§27-81-109 - Voluntary treatment of person who misuses substances or person under the influence of substances.

(1) A person who misuses substances or is under the influence of substances, including a minor, may apply for voluntary treatment directly to an approved treatment facility.

(2) Subject to rules adopted by the director, the administrator in charge of an approved treatment facility may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment facility, the administrator shall refer the person to another approved treatment facility for treatment if ~~possible and appropriate~~ *deemed to be likely to be beneficial*.

(3) If a patient receiving inpatient care leaves an approved treatment facility, he or she shall be encouraged to consent to appropriate outpatient or intermediate

treatment. If it appears to the administrator in charge of the treatment facility that the patient is a person who misuses substances or is under the influence of substances and requires help, the administrator *shall* arrange for assistance in obtaining supportive services and residential facilities.

§27-81-110 - Voluntary treatment for persons under the influence of substances.

(1) A person who misuses substances or a person under the influence of substances, including a minor, may ~~voluntarily admit~~ *apply himself or herself for admission* to an *approved* treatment facility for treatment.

(2) A person who comes voluntarily to an approved treatment facility shall be evaluated or examined by the facility administrator or by his or her authorized designee immediately. A person found to be in need of treatment shall then be *admitted to that facility or transferred* to another appropriate facility. If a person is found not to be in need of treatment, he or she shall be released or referred to another appropriate facility.

(3) Except as provided in subsection (7) of this section, a voluntarily admitted person shall be released from the approved treatment facility immediately upon his or her request.

(4) A person who is not admitted to an approved treatment facility, and who is not referred to another health facility, and who has no funds may be taken to his or her home, if any. If he or she has no home, the approved treatment facility may assist him or her in obtaining shelter.

~~(5) If a person is admitted to an approved treatment facility, his or her family or next of kin shall be notified as promptly as possible. If an adult person requests that there be no notification, his or her request shall be respected. If a person over the age of eighteen years is admitted to an approved treatment facility, his or her family or next of kin shall be notified only if that person has signed a release of information or given written consent.~~

(6) If the administrator in charge of the approved treatment facility or his or her authorized designee determines that it is for the person's benefit, the person shall be encouraged to agree to further diagnosis and appropriate voluntary treatment.

(7) Nothing in this section shall preclude the approved treatment facility administrator or his or her authorized designee from seeking emergency commitment as provided in section 27-81-111 or involuntary commitment of a person as provided in section 27-81-112, regardless of whether such person has been voluntarily admitted under this section. In such cases, the administrator or designee's further conduct shall be governed by section 27-81-111 or 27-81-112, as applicable.

§27-81-111- *Petition for substance misuse evaluation.*

(1) *A petition for court ordered evaluation alleging that an individual misuses substances or is under the influence of substances and as a result of such, is a danger to himself or herself or others or is gravely disabled may be filed by the person's spouse, significant other or guardian, a relative, a professional person, advanced practice nurse, the administrator in charge of any approved treatment facility, or any other responsible person over the age of eighteen. The petition shall allege that the person is a person who misuses substances or is under the influence of substances and as a result is a danger to self or others or gravely disabled. A refusal to undergo treatment does not constitute evidence of lack of judgment as to the need for treatment.*

(2) *The petition shall be personally served upon the person for whom court-ordered treatment is being sought along with a notice of hearing. Such hearing must be set within ten days of the filing of the petition. The burden of proof is upon the party seeking court-ordered treatment to establish by clear and convincing evidence that grounds exist to believe that the respondent is a person under the influence of substances or misuses substances and as a result of such, is a danger to himself or herself or others and/or gravely disabled. The person whom is the subject of the petition has the right to request court appointment of legal counsel if that person is indigent and cannot afford to pay for legal counsel.*

(3) *At the conclusion of the hearing, the court may enter the following orders: the court may order respondent into the custody of a facility designated for the evaluation and treatment of persons who are under the influence of substances or misuse substances and as a result of such, are a danger to himself or herself or others and/or gravely disabled; or the court may find that the evidence is not clear and convincing and dismiss the petition. If the court orders the respondent into the custody of a facility designated for the evaluation and treatment of persons who are under the influence of substances or misuse substances and as a result of such, are a danger to himself or herself or others and/or gravely disabled, the court may also direct the sheriff's department of the jurisdiction wherein the court resides to take the respondent into protective custody for the purposes of transporting the respondent to the nearest available facility designated for the treatment of such persons.*

(4) *Upon receiving the person ordered by the court under subsection (9), the facility designated for the treatment of persons under the influence of substances or misusing substances and who as a result are a danger to himself or herself or others and/or gravely disabled, shall evaluate the person for a period of no longer than five days and determine whether the person meets criteria for certification under §27-81-112. If the facility determines that the person does not meet criteria*

for short-term certification, then the facility shall discharge the person and file the notice of termination in accordance to §27-81-114.

§27-81-112 - Emergency ~~commitment~~ hold.

(1)(a) When any person is ~~a person who misuses substances or~~ *is under the influence of substances and as a result of being under the influence of substances, a danger to self or others or gravely disabled*, such person shall be taken into protective custody by law enforcement authorities or an emergency service patrol, acting with probable cause, and placed in a designated ~~an approved~~ treatment facility. If no such facilities are available, he or she may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent injury to himself or herself or others or to prevent a breach of the peace. If the person being detained is a juvenile, as defined in section 19-1-103(68), CRS, the juvenile shall be placed in a setting that is non-secure and physically segregated by sight and sound from the adult offenders. A law enforcement officer or emergency service patrolman, in detaining the person, is taking him into protective custody. In so doing, the detaining officer may protect himself or herself by reasonable methods but shall make every reasonable effort to protect the detainee's health and safety. A taking into protective custody under this section is not an arrest, and no entry or other record shall be made to indicate that the person has been arrested or charged with a crime. Law enforcement or emergency service personnel who act in compliance with this section are acting in the course of their official duties and are not criminally or civilly liable therefor. Nothing in this subsection (1) shall preclude a person who misuses substances or is under the influence of substances and who is not a *danger to self or others or gravely disabled* from being assisted to his or her home or like location by the law enforcement officer or emergency service patrolman.

(b) A sheriff or police chief who violates the provisions of paragraph (a) of this subsection (1) 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 (1) 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 (1).

(2) A law enforcement officer, emergency service patrolman, professional person, spouse, guardian, or relative of the person to be certified or any other responsible person *over the age of eighteen* may make a written application for an emergency ~~commitment~~ hold under this section, directed to the administrator of the approved treatment facility. The application shall state the circumstances requiring an emergency *hold* ~~commitment~~, including the applicant's personal observations and

the specific statements of others, if any, upon which he or she relies in making the application. A copy of the application shall be furnished to the person to be *certified*.

(3) If the ~~approved~~ designated treatment facility administrator or his or her authorized designee approves the application, the person shall be certified, evaluated, and treated for a period not to exceed five days. The person shall be brought to the facility by a peace officer, the emergency service patrol, or any interested person. If necessary, the court may be contacted to issue an order to the police or sheriff's department to transport the person to the facility.

(4) If the approved treatment facility administrator or his or her authorized designee determines that the application fails to sustain the grounds for an emergency *hold commitment* as set forth in subsection (1) of this section, the ~~commitment~~ *emergency hold* shall be refused and the person detained immediately released, and the person shall be encouraged to seek voluntary treatment if appropriate.

(5) When the administrator determines that the grounds for an *emergency hold commitment* no longer exist, he or she shall discharge the person certified under this section. *The person being discharged shall be offered the opportunity to enroll in voluntary treatment.* A person certified under this section may not be detained in any treatment facility for more than five days; except that a person may be detained for longer than five days at the approved treatment facility if, in that period of time, a ~~petition for involuntary commitment~~ *notice of certification for short-term treatment* has been filed pursuant to §27-81-112. ~~A person may not be detained longer than ten days after the date of filing of the petition for involuntary commitment.~~

(6) Whenever a person is involuntarily detained pursuant to this section, he or she shall immediately be advised by the facility administrator or his or her authorized designee, both orally and in writing, of his or her right to challenge such detention by application to the courts for a writ of habeas corpus, to be represented by counsel at every stage of any proceedings relating to his or her ~~commitment~~ *certification* and to have counsel appointed by the Court or provided by the Court if he or she wants the assistance of counsel and is unable to obtain counsel.

§27-81-113 – Involuntary short-term and extended short ~~commitment~~ certification of person who misuses substances or is under the influence of substances.

(1) If a person is detained under §27-81-111, he or she may be ~~committed~~ *certified for substance misuse treatment for a period not to exceed three months under the following conditions:*

- (a) *The professional person at the designated facility providing care and treatment under the emergency commitment has analyzed the person's*

condition and found that the person is either misuses substances or is under the influence of substances and as a result, is a danger to self or others or gravely disabled;

- (b) The person has been advised of the availability of voluntary treatment but has not accepted voluntary treatment; or*
- (c) The person has been advised of the availability of voluntary treatment and has accepted voluntary treatment but reasonable grounds exist to believe that the person will not remain in voluntary treatment, as evidenced by past behaviors.*
- (d) The facility providing short-term treatment has been designated by the executive director of the Colorado Department of Human Services to provide such treatment.*

(2) The notice of certification for short-term treatment must be signed by a professional person on the staff of the evaluation facility who participated in the evaluation and shall state facts sufficient to establish reasonable grounds to believe that the person is under the influence of substances or misuses substances and as a result are a danger to self or others and/or gravely disabled. The notice of short-term certification shall be filed with the court within forty-eight hours, excluding Saturdays, Sundays and court holidays, of the date and time of certification. The notice of certification shall be filed in the county in which the respondent resides or where the respondent was physically present when taken into protective custody and transported to the designated facility.

(3) Within twenty-four hours of the certification, copies of the certification including the professional person's statement of fact, shall be personally delivered to the respondent, and a copy shall be kept by the designated facility as part of the respondent's record. The respondent shall also be asked to designate one other person whom he or she wishes to be informed regarding the certification. If he or she is incapable of making such a designation at the time that the notice of certification is delivered to the respondent, he or she shall be asked to designate such person as soon as he or she is capable of designating such person. In addition to the copy of the certification, the respondent shall be given a written notice that a hearing upon his or her certification for short-term treatment may be had before the court upon written request directed to the court where the notice of certification was filed.

(4) Upon certification of the respondent, the facility designated for short-term treatment shall have custody of the respondent.

(5) Whenever a notice of certification is filed with the court, the court, if it has not already done so under 27-81-111, shall forthwith appoint an attorney to represent the respondent. The court shall determine whether the respondent is able to afford an attorney. If the respondent meets indigency guidelines and cannot

afford an attorney, the court shall appoint counsel, either from the legal services program operating in the jurisdiction or private counsel to represent the respondent. The attorney representing the respondent shall be provided with a copy of the certification immediately upon appointment. Waiver of counsel must be knowingly and intelligently made in writing and filed with the court by respondent. In the event that a respondent who is able to afford an attorney fails to pay the appointed counsel, such court-appointed counsel, upon application to the court, and after appropriate notice and hearing, may obtain a judgment for reasonable attorney fees against the respondent or person making request for such counsel or both the respondent and such person.

(6) *The respondent subject to certification for short-term treatment or his or her attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and his or her attorney and the certifying and treating professional person of the time and place thereof. The hearing shall be held in accordance with section 27-81-***. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order, subject to available appropriations.*

(7) *Records and papers in proceedings under this section shall be maintained separately by the clerks of the several courts. Upon the termination of the short-term or extended short-term certification for substance misuse, the designated facility shall file the notice of termination of involuntary treatment with the clerk of the court within five days of the termination. In the event a petition for long-term treatment is filed pursuant to section 27-81-113, such certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.*

(8) *Whenever it appears to the court, by reason of a report by the treating professional person or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a sheriff, the court may issue an order directing the sheriff or his or her designee to deliver the respondent to the designated facility.*

(9) *Upon the filing of a petition for recertification under subsection (8) of this section, the court shall fix a date for hearing no later than ten days after the date the petition was filed. A copy of the petition and of the notice of hearing shall be served and mailed as required in subsection (3) of this section. At the hearing, the court shall proceed as provided in section 27-81-115.*

(10) The ~~office~~ *the treating facility or successor treating facility*, shall provide for adequate and appropriate treatment of a person certified to its custody. The ~~office~~ *the treating facility* may transfer any person certified to its custody from one approved treatment facility to another if transfer is advisable.

(11) A person certified ~~to the custody of the office~~ for treatment shall be discharged at any time before the end of the period for which he or she has been certified if either of the following conditions is met:

(14) A person certified under this article may at any time seek to be discharged from commitment by an order in the nature of habeas corpus.

(15) The venue for proceedings under this section is the county in which the person to be certified resides or is present *when placed on an emergency hold*.

(16) All proceedings conducted pursuant to this article shall be conducted by the district attorney of the county where the proceeding is held or by an attorney acting for the district attorney appointed by the court for that purpose; except that, in any county or in any city and county having a population exceeding one hundred thousand persons, the proceedings shall be conducted by the county attorney or by an attorney acting for the county attorney appointed by the court.

§27-81-114 – Involuntary long-term and extended long ~~commitment~~ certification of person who misuses substances or is under the influence of substances.

(1) *Whenever a respondent has received short-term and extended short-term treatment for five consecutive months under the provisions of sections 27-81-113, the professional person in charge of the evaluation and treatment may file a petition with the court for long-term care and treatment of the respondent under the following conditions:*

(a) *The professional person of the agency or facility providing short-term and extended short-term treatment has analyzed the respondent's condition and has found that the respondent ~~has a mental illness~~ misuses substances or is under the influence of substances, and, as a result of ~~the mental illness~~ such, is a danger to others or to himself or herself or is gravely disabled.*

(b) *The respondent has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the respondent will not remain in a voluntary treatment program, his or her acceptance of voluntary treatment shall not preclude an order pursuant to this section.*

(c) *The facility that will provide long-term treatment has been designated or approved by the executive director to provide the treatment.*

(2) *Every petition for long-term treatment shall include a request for a hearing before the court prior to the expiration of six months from the date of original certification. A copy of the petition shall be delivered personally to the respondent for whom long-term treatment is sought and mailed to his or her attorney of record simultaneously with the filing thereof.*

(3) *Within ten days after receipt of the petition, the respondent or his or her attorney may request a court trial by filing a written request therefor with the court.*

(4) *The court ~~or jury~~ shall determine whether the conditions of subsection (1) of this section are met and whether the respondent ~~has a mental illness~~ misuses substances or is under the influence of substances, and, as a result of such, ~~the mental illness~~, is a danger to others or to himself or herself or is gravely disabled. The court shall thereupon issue an order of long-term treatment for a term not to exceed six months, or it shall discharge the respondent for whom long-term treatment was sought, or it shall enter any other appropriate order, subject to available appropriations. An order for long-term treatment shall grant custody of the respondent to the department for placement with an agency or facility designated by the executive director to provide long-term treatment. When a petition contains a request that a specific legal disability be imposed or that a specific legal right be deprived, the court may order the disability imposed or the right deprived if it has determined that the respondent ~~has a mental illness~~ misuses substances or is under the influence of substances and is gravely disabled or a danger to himself or herself and that, by reason thereof, the person is unable to competently exercise said right or perform the function as to which the disability is sought to be imposed. Any interested person may as leave of the court to intervene as a co-petitioner for the purpose of seeking the imposition of a legal disability or the deprivation of a legal right.*

(5) *An original order of long-term treatment or any extension of such order shall expire upon the date specified therein, unless further extended as provided in this subsection (5). If an extension is being sought, the professional person in charge of the evaluation and treatment shall certify to the court at least thirty days prior to the expiration date of the order in force that an extension of the order is necessary for the care and treatment of the respondent subject to the order in force, and a copy of the certification shall be delivered to the respondent and simultaneously mailed to his or her attorney of record. At least twenty days before the expiration of the order, the court shall give written notice to the respondent and his or her attorney of record that a hearing upon the extension may be had*

before the court or a jury upon written request to the court within ten days after receipt of the notice. If no hearing is requested by the respondent within such time, the court may proceed ex parte. If a hearing is timely requested, it shall be held before the expiration date of the order in force. If the court ~~or jury~~ finds that the conditions of subsection (1) of this section continue to be met and that the respondent misuses substances or is under the influence of substances ~~has a mental illness and~~, as a result of such ~~the mental illness~~, is a danger to others or to himself or herself or is gravely disabled, the court shall issue an extension of the order. Any extension shall be for a period of not more than six months, but there may be as many extensions as the court orders pursuant to this section.

27-81-115 Termination of short-term and long-term treatment-escape.

(1) An original certification for short-term or extended short-term treatment under section 27-81-112, or an order for long-term treatment or any extension thereof shall terminate as soon as, in the opinion of the professional person in charge of treatment of the respondent, the respondent has received sufficient benefit from such treatment for him or her to leave. Whenever a certification or extended certification is terminated under this section, the professional person in charge of providing treatment shall so notify the court in writing within five days of such termination. Such professional person may also prescribe day care, night care, or any other similar mode of treatment prior to termination.

(2) Before termination, an escaped respondent may be returned to the facility by order of the court without a hearing or by the superintendent or director of such facility without order of court. After termination, a respondent may be returned to the institution only in accordance with the provisions of this article.

(3) A licensed professional as designated by the director of each facility may sign the notice of termination of involuntary treatment.

27-81-116 Hearing procedures – jurisdiction

(1) Hearings before the court under section 27-81-112 or 27-81-113 shall be conducted in the same manner as other civil proceedings before the court. The burden of proof shall be upon the person or facility seeking to detain the respondent. The court ~~or jury~~ shall determine that the respondent is in need of care and treatment only if the court or jury finds by clear and convincing evidence that the person misuses substances or is under the influence of substances, and as a result of such, ~~has a mental illness and~~, as a result of the ~~mental illness~~, is a danger to others or to himself or herself or is gravely disabled.

(2) *The court, after consultation with respondent's counsel to obtain counsel's recommendations, may appoint a professional person to examine the respondent for whom short-term treatment or long-term treatment is sought and to testify at the hearing before the court as to the results of his or her examination. The court-appointed professional person shall act solely in an advisory capacity, and no presumption shall attach to his or her findings.*

(3) *Every respondent subject to an order for short-term treatment or long-term treatment shall be advised of his or her right to appeal the order by the court at the conclusion of any hearing as a result of which such an order may be entered.*

(4) *The court in the certification is filed under section 27-81-112 shall be the court of original jurisdiction and of continuing jurisdiction for any further proceedings under this article. When the convenience of the parties and the ends of justice would be promoted by a change in the court having jurisdiction, the court may order a transfer of the proceeding to another county. Until further order of the transferee court, if any, it shall be the court of continuing jurisdiction.*

(5) *All proceedings under this article, including proceedings to impose a legal disability pursuant to section 27-81-113, shall be conducted by the district attorney of the county where the proceeding is held or by a qualified attorney acting for the district attorney appointed by the district court for that purpose; except that, in any county or in any city and county having a population exceeding fifty thousand persons, the proceedings shall be conducted by the county attorney or by a qualified attorney acting for the county attorney appointed by the district court. In any case in which there has been a change of venue to a county other than the county of residence of the respondent or the county in which the certification proceeding was commenced, the county from which the proceeding was transferred shall either reimburse the county to which the proceeding was transferred and in which the proceeding was held for the reasonable costs incurred in conducting the proceeding or conduct the proceeding itself using its own personnel and resources, including its own district or county attorney, as the case may be. Upon request of a guardian appointed pursuant to article 14 of title 15, C.R.S., the guardian may intervene in any proceeding under this article concerning his or her ward and, through counsel, may present evidence and represent to the court the views of the guardian concerning the appropriate disposition of the case.*

§27-81-117 - Records of person who misuses substances or is under the influence of substances.

(1) The registration and other records of treatment facilities shall remain confidential and are privileged to the patient.

(2) Notwithstanding subsection (1) of this section, the director may make available information from patients' records for purposes of research into the causes and treatment of substance abuse. Information under this subsection (2) shall not be published in a way that discloses patients' names or other identifying information.

(3) Nothing in this section shall be construed to prohibit or limit the sharing of information by a state institution of higher education police department to authorized university administrators pursuant to §23-5-141, C.R.S.

§27-81-118 - Visitation and communication of patients.

(1) A patient in any approved treatment facility shall be granted opportunities for continuing visitation and communication with his or her family and friends consistent with an effective treatment program. A patient shall be permitted to consult with counsel at any time.

(2) Neither mail nor other communication to or from a patient in any approved treatment facility may be intercepted, read, or censored. The director may adopt reasonable rules regarding the use of the telephone by patients in approved treatment facilities.

§27-81-119 - Emergency service patrol - establishment - rules.

(1) The ~~office and~~ cities, counties, city and counties, and regional service authorities may establish emergency service patrols *pursuant to rules promulgated by the department*. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are under the influence of substances or incapacitated by substances. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and shall be authorized to transport a person under the influence of substances or incapacitated by substances to his or her home and to and from treatment facilities.

The director shall adopt rules for the establishment, training, and conduct of emergency service patrols.

§27-81-120 - Payment for treatment - financial ability of patients.

(1) If treatment is provided by an approved public treatment facility and the patient, including a certified person, has not paid the charge therefore, the approved treatment facility is entitled to any payment received by the patient or to which the patient may be entitled because of the services rendered and from any public or

private source available to the approved treatment facility because of the treatment provided to the patient. The approved treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges that have not been paid.

(2) A patient in an approved treatment facility, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability is liable to the approved treatment facility for the cost of maintenance and treatment of the patient therein in accordance with rates established. The approved treatment facility may seek and obtain a judgment in an appropriate court for any fees or charges that have not been paid.

(3) The director shall adopt rules that establish a standardized ability-to-pay schedule, under which those with sufficient financial ability are required to pay the full cost of services provided and those who are totally without sufficient financial ability are provided appropriate treatment at ~~no charge~~ *reduced charge*. The schedule shall take into consideration the income, including government assistance programs, savings, and other personal and real property, of the person required to pay and any support the person required to pay furnished to another person as required by law.

(4) Nothing in this section shall prohibit an approved treatment facility from charging a minimal fee for therapeutic purposes.

§27-81-121 - Criminal laws - limitations.

(1) Nothing in this article affects any law, ordinance, resolution, or rule against driving under the influence of substances or other similar offense involving the operation of a vehicle, an aircraft, a boat, any machinery, or any other equipment or regarding the sale, purchase, possession, or use of substances.

(2) The fact that a person is under the influence of ~~or incapacitated by~~ substances shall not prevent his or her arrest or prosecution for the commission of any criminal act or conduct.

(3) Nothing in this article shall be construed as a limitation upon the right of a police officer to make an otherwise legal arrest, notwithstanding the fact that the arrested person may be under the influence of or incapacitated by substances.

~~§27-81-118 - Limitations on services and programs provided - available funds.~~

This section will need to be rewritten & placed elsewhere as per OBH.