

CHAPTER 128

HUMAN SERVICES - MENTAL HEALTH

HOUSE BILL 09-1253

BY REPRESENTATIVE(S) Pace, Apuan, Levy, McKinley, Miklosi, Vigil, Acree, Casso, Hullinghorst, Kerr A., King S., Labuda, Marostica, McFadyen, McGihon, Todd;
also SENATOR(S) Tapia, Boyd, Morse, Newell, Tochtrop.

AN ACT

**CONCERNING PROCESSES FOR INVOLUNTARY MENTAL HEALTH TREATMENT FOR DEFENDANTS
COMMITTED UNDER TITLE 16, COLORADO REVISED STATUTES.**

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

SECTION 1. 16-8.5-108 (1) (a) and (1) (b), Colorado Revised Statutes, are amended to read:

16-8.5-108. Evidence. (1) (a) Except as otherwise provided in this subsection (1), evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a competency evaluation OR INVOLUNTARY MEDICATION PROCEEDING is not admissible against the defendant on the issues raised by a plea of not guilty, or, if the offense occurred before July 1, 1995, a plea of not guilty by reason of impaired mental condition. Such evidence may be admissible at trial to rebut evidence introduced by the defendant of the defendant's mental condition to show incapacity of the defendant to form a culpable mental state; and, in such case, the evidence may only be considered by the trier of fact as bearing upon the question of capacity to form a culpable mental state, and the jury shall be so instructed at the request of either party.

(b) Evidence acquired directly or indirectly for the first time from a communication derived from the defendant's mental processes during the course of a competency evaluation OR INVOLUNTARY MEDICATION PROCEEDING is admissible at any sentencing hearing held pursuant to section 18-1.3-1201, 18-1.3-1302, or 18-1.4-102, C.R.S., only to prove the existence or absence of any mitigating factor.

SECTION 2. 16-8.5-112 (1) and (2), Colorado Revised Statutes, are amended,

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

and the said 16-8.5-112 is further amended BY THE ADDITION OF A NEW SUBSECTION, to read:

16-8.5-112. Venue for collateral hearings. (1) If a defendant committed to the custody of the department for evaluation or for restoration treatment meets the constitutional requirements for the administration of involuntary medication, the defendant's treating physician may petition the court for an order requiring that the defendant accept the treatment or, alternatively, that the medication be forcibly administered to the defendant. THE DEPARTMENT SHALL, PRIOR TO THE HEARING ON THE PETITION, DELIVER A COPY OF THE PETITION TO THE COURT THAT COMMITTED THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT, THE PROSECUTING ATTORNEY, AND THE DEFENDANT'S LEGAL REPRESENTATION IN THE CRIMINAL CASE, IF SUCH REPRESENTATION EXISTS, AND TO THE DEFENDANT DIRECTLY IF HE OR SHE DOES NOT HAVE LEGAL REPRESENTATION. A PHYSICIAN SHALL ASSESS AND DOCUMENT THE DEFENDANT'S MENTAL STATUS PRIOR TO THE ADMINISTRATION OF MEDICATION.

(2) ~~This~~ A petition FOR INVOLUNTARY TREATMENT ~~may~~ SHALL be heard in the court ~~that committed the defendant to the custody of the department or in the court of the jurisdiction in which the defendant is located. The court of the jurisdiction in which the defendant is located shall not exercise its jurisdiction without the permission of the court that committed the defendant to the custody of the department~~ OF THE JURISDICTION WHERE THE DEFENDANT IS LOCATED. THE DEPARTMENT SHALL PROMPTLY DELIVER A COPY OF THE ORDER GRANTING OR DENYING THE PETITION TO THE COURT THAT COMMITTED THE DEFENDANT TO THE CUSTODY OF THE DEPARTMENT, THE PROSECUTING ATTORNEY, AND THE DEFENDANT'S LEGAL REPRESENTATION IN THE CRIMINAL CASE, IF SUCH REPRESENTATION EXISTS, AND TO THE DEFENDANT DIRECTLY IF HE OR SHE DOES NOT HAVE LEGAL REPRESENTATION.

(4) IF A DEFENDANT COMMITTED TO THE CUSTODY OF THE DEPARTMENT FOR EVALUATION OR FOR RESTORATION TREATMENT IS ORDERED BY A COURT TO ACCEPT TREATMENT AS SET FORTH IN SUBSECTION (1) OF THIS SECTION AND IS SUBSEQUENTLY RETURNED TO JAIL FOR PENDING COURT PROCEEDINGS, THE COUNTY JAIL MAY REQUIRE THE DEFENDANT TO CONTINUE TO RECEIVE THE SAME COURT-ORDERED TREATMENT THAT WAS ADMINISTERED BY THE DEPARTMENT BEFORE THE DEFENDANT WAS DISCHARGED FROM INPATIENT CARE, OR, ALTERNATIVELY, APPROPRIATE MEDICAL PERSONNEL PROVIDED BY THE JAIL MAY FORCIBLY ADMINISTER SUCH COURT-ORDERED MEDICATION TO THE DEFENDANT.

SECTION 3. 27-10-111 (4.5), Colorado Revised Statutes, is amended to read:

27-10-111. Hearing procedures - jurisdiction. (4.5) (a) In the event that a respondent OR a person found not guilty by reason of impaired mental condition pursuant to section 16-8-103.5 (5), C.R.S., or by reason of insanity pursuant to section 16-8-105 (4) OR 16-8-105.5, C.R.S., ~~or a defendant found incompetent to proceed pursuant to section 16-8.5-103, C.R.S.,~~ refuses to accept medication, the court having jurisdiction of the action pursuant to subsection (4) of this section, the court committing the person or defendant to the custody of the department of human services pursuant to section 16-8-103.5 (5), 16-8-105 (4), or ~~16-8.5-111 (2) (b)~~ 16-8-105.5, C.R.S., or the court of the jurisdiction in which the designated facility

treating the respondent OR person ~~or defendant~~ is located shall have jurisdiction and venue to accept a petition by a treating physician and to enter an order requiring that the respondent OR person ~~or defendant~~ accept such treatment or, in the alternative, that the medication be forcibly administered to him or her. The court of the jurisdiction in which the designated facility is located shall not exercise its jurisdiction without the permission of the court that committed the person ~~or defendant~~ to the custody of the department of human services. Upon the filing of such a petition, the court shall appoint an attorney, if one has not been appointed, to represent ~~such~~ THE respondent OR person ~~or defendant~~ and hear the matter within ten days.

(b) In any case brought under paragraph (a) of this subsection (4.5) in a court for the county in which the treating facility is located, the county where the proceeding was initiated pursuant to subsection (4) of this section or the court committing the person ~~or defendant~~ to the custody of the department of human services pursuant to section 16-8-103.5 (5), 16-8-105 (4), or ~~16-8-5-111 (2) (b)~~ 16-8-105.5, C.R.S., shall either reimburse the county in which the proceeding pursuant to this subsection (4.5) was filed 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.

(c) IN THE CASE OF A DEFENDANT WHO IS FOUND INCOMPETENT TO PROCEED PURSUANT TO SECTION 16-8.5-103, C.R.S., AND WHO REFUSES TO ACCEPT MEDICATION, THE JURISDICTION FOR THE PETITION FOR INVOLUNTARY TREATMENT PROCEDURES SHALL BE AS SET FORTH IN SECTION 16-8.5-112, C.R.S.

SECTION 4. Repeal. 16-8-113, Colorado Revised Statutes, is repealed.

SECTION 5. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly that is allowed for submitting a referendum petition pursuant to article V, section 1 (3) of the state constitution, (August 5, 2009, if adjournment sine die is on May 6, 2009); except that, if a referendum petition is filed against this act or an item, section, or part of this act within such period, then the act, item, section, or part, if approved by the people, shall take effect on the date of the official declaration of the vote thereon by proclamation of the governor.

Approved: April 16, 2009