

Second Regular Session
Seventieth General Assembly
STATE OF COLORADO

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 16-1125.01 Jane Ritter x4342

SENATE BILL 16-169

SENATE SPONSORSHIP

Martinez Humenik and Cooke,

HOUSE SPONSORSHIP

Kraft-Tharp and Landgraf,

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

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

Bill Summary

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

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

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

SENATE
Amended 2nd Reading
April 18, 2016

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

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

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

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

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

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

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

1 crisis;

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

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

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

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

18 (2) The general assembly therefore finds that:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

13 (4) ~~If the seventy-two-hour treatment and evaluation facility~~
14 ~~admits the person, it may detain him or her for evaluation and treatment~~
15 ~~for a period not to exceed seventy-two hours, excluding~~ A DESIGNATED
16 FACILITY THAT ADMITS A PERSON PURSUANT TO THIS SECTION MAY RETAIN
17 SUCH PERSON FOR A PERIOD NOT TO EXCEED SEVENTY-TWO HOURS FROM
18 THE TIME THE PERSON IS ADMITTED TO THE DESIGNATED FACILITY. THE
19 SEVENTY-TWO-HOUR PERIOD EXCLUDES Saturdays, Sundays, and holidays
20 if evaluation and treatment services are not available on those days, AND
21 ANY TIME REQUIRED FOR NON-PSYCHIATRIC MEDICAL STABILIZATION. A
22 PERSON WHO IS PROVIDED SERVICES UNDER THE PROVISIONS OF THIS
23 ARTICLE MUST RECEIVE AN EVALUATION AS SOON AS POSSIBLE AND SUCH
24 TREATMENT AS HIS OR HER CONDITION REQUIRES, AND IS WITHIN THE
25 CAPABILITY OF THE FACILITY, FOR THE FULL PERIOD OF TIME THAT HE OR
26 SHE IS ADMITTED. For the purposes of this subsection (4), EMERGENCY
27 MENTAL HEALTH SERVICES AND evaluation and treatment services are not

1 deemed to be available merely because a professional person is on call
2 during weekends or holidays. If, in the opinion of the professional person
3 in charge of the evaluation, the person can be properly cared for without
4 being detained, he or she shall be provided services on a voluntary basis.

5 (4.5) ON OR BEFORE DECEMBER 31, 2016, AND EACH JULY 1
6 THEREAFTER, EACH EMERGENCY MEDICAL SERVICES FACILITY OR LAW
7 ENFORCEMENT FACILITY WHICH HAS TAKEN CUSTODY OF A PERSON OR
8 TREATED A PERSON PURSUANT TO THIS SECTION SHALL PROVIDE AN
9 ANNUAL REPORT TO THE DEPARTMENT THAT INCLUDES ONLY AGGREGATE
10 AND NONIDENTIFYING INFORMATION CONCERNING PERSONS WHO WERE
11 TAKEN INTO CUSTODY OR TREATED AT AN EMERGENCY MEDICAL SERVICES
12 FACILITY OR LAW ENFORCEMENT FACILITY PURSUANT TO THIS SECTION.
13 LAW ENFORCEMENT FACILITIES MAY CONTACT CRISIS CENTERS FOR
14 ASSISTANCE IN FULFILLING THE REQUIREMENTS OF THIS SUBSECTION (4.5).
15 THE REPORT MUST CONTAIN THE FOLLOWING:

- 16 (a) THE NAMES AND COUNTIES OF THE FACILITIES;
- 17 (b) THE TOTAL NUMBER OF PERSONS TAKEN INTO CUSTODY OR
18 TREATED PURSUANT TO THIS SECTION, INCLUDING A SUMMARY OF
19 DEMOGRAPHIC INFORMATION;
- 20 (c) A SUMMARY REGARDING THE DIFFERENT REASONS FOR WHICH
21 PERSONS WERE TAKEN INTO CUSTODY OR TREATED PURSUANT TO THIS
22 SECTION; AND
- 23 (d) A SUMMARY OF THE DISPOSITION OF PERSONS WHETHER
24 RELEASED FROM CUSTODY OR TRANSFERRED TO A DESIGNATED FACILITY.

25 ~~(5) Each person admitted to a seventy-two-hour treatment and~~
26 ~~evaluation facility under the provisions of this article shall receive an~~
27 ~~evaluation as soon as possible after he or she is admitted and shall receive~~

1 such treatment and care as his or her condition requires for the full period
2 that he or she is held. The person shall be released before seventy-two
3 hours have elapsed if, in the opinion of the professional person in charge
4 of the evaluation, the person no longer requires evaluation or treatment

5 AN EMERGENCY MEDICAL SERVICES FACILITY THAT ASSUMES EMERGENCY
6 CUSTODY OF AN INDIVIDUAL PURSUANT TO THIS SECTION SHALL PROVIDE
7 AN ASSESSMENT AS SOON AS POSSIBLE AND ANY TREATMENT THAT THE
8 INDIVIDUAL'S CONDITION REQUIRES THAT IS WITHIN THE FACILITY'S
9 CAPABILITIES FOR THE FULL PERIOD OF THE TIME THAT THE INDIVIDUAL IS
10 IN CUSTODY AT THE FACILITY, CONSISTENT WITH ALL OTHER APPLICABLE
11 LAWS. THE EMERGENCY MEDICAL SERVICES FACILITY MAY RETAIN THE
12 INDIVIDUAL IN EMERGENCY CUSTODY FOR UP TO THIRTY-SIX HOURS TO
13 DETERMINE WHETHER THE INDIVIDUAL REQUIRES TRANSFER TO A
14 DESIGNATED FACILITY FOR SEVENTY-TWO-HOUR TREATMENT AND
15 EVALUATION. SUCH THIRTY-SIX-HOUR PERIOD EXCLUDES ANY TIME
16 REQUIRED FOR NON-PSYCHIATRIC MEDICAL STABILIZATION AND
17 COMPLETING THE TRANSFER TO THE ACCEPTING DESIGNATED FACILITY.

18 (6) IF, AT ANY TIME DURING EMERGENCY CUSTODY OF AN
19 INDIVIDUAL IN EITHER AN EMERGENCY MEDICAL SERVICES FACILITY,
20 DESIGNATED FACILITY, OR LAW ENFORCEMENT FACILITY, INCLUDING ANY
21 EXTENSION PROVIDED FOR PURSUANT TO SUBSECTION (2) OF THIS SECTION,
22 IN THE OPINION OF A PROFESSIONAL PERSON, AS THAT TERM IS DEFINED IN
23 SECTION 27-65-102 (17), OR A PSYCHIATRIC ADVANCE PRACTICE NURSE
24 LICENSED PURSUANT TO TITLE 12, C.R.S., ACTING WITHIN HIS OR HER
25 SCOPE OF PRACTICE AND DETERMINED BY THE FACILITY TO BE IN CHARGE
26 OF THE EVALUATION, THE PERSON NO LONGER MEETS THE STANDARDS FOR
27 EMERGENCY CUSTODY OR DETENTION AND HIS OR HER CARE CAN BE

1 PROVIDED IN ANOTHER SETTING, ___ THE PERSON MUST BE APPROPRIATELY
2 DISCHARGED OR REFERRED FOR FURTHER CARE AND TREATMENT ON A
3 VOLUNTARY BASIS. Persons who have ~~been detained for~~ RECEIVED
4 seventy-two-hour evaluation and treatment AT A DESIGNATED FACILITY
5 shall be released, referred for further care and treatment on a voluntary
6 basis, or certified for treatment pursuant to section 27-65-107.

7 SECTION 4. In Colorado Revised Statutes, 27-60-103, add (6.5)
8 as follows:

9 27-60-103. Behavioral health crisis response system - services
10 - request for proposals - criteria - reporting - rules - definitions.

11 (6.5) ON OR BEFORE SEPTEMBER 1, 2016, THE UNIT IN THE STATE
12 DEPARTMENT THAT ADMINISTERS BEHAVIORAL HEALTH PROGRAMS AND
13 SERVICES, INCLUDING THOSE RELATED TO MENTAL HEALTH AND
14 SUBSTANCE ABUSE, SHALL CONVENE A SERIES OF STAKEHOLDER SESSIONS
15 TO ADDRESS EMERGENCY MENTAL HEALTH TREATMENT NEEDS
16 THROUGHOUT COLORADO. THE STAKEHOLDER GROUP SHALL ASSIST THE
17 STATE DEPARTMENT IN DEVELOPING A COMPREHENSIVE NEEDS ANALYSIS,
18 RECOMMENDATIONS, AND A BUDGET REQUEST FOR EMERGENCY MENTAL
19 HEALTH SERVICES IN COLORADO. THE STAKEHOLDER GROUP MUST
20 INCLUDE APPROPRIATE MENTAL HEALTH ADVOCACY GROUPS, NONPROFIT
21 ORGANIZATIONS, PROVIDERS, AND ANY INTERESTED AND RELATED
22 PARTIES. THE STAKEHOLDER SESSIONS MUST BE CONDUCTED WITHIN
23 EXISTING DEPARTMENTAL RESOURCES. ON OR BEFORE JANUARY 31, 2017,
24 THE STATE DEPARTMENT SHALL PRESENT TO THE JOINT JUDICIARY
25 COMMITTEE AND THE JOINT HEALTH AND HUMAN SERVICES COMMITTEE A
26 NEEDS ANALYSIS, RECOMMENDATIONS, AND A BUDGET REQUEST FOR
27 EMERGENCY MENTAL HEALTH TREATMENT NEEDS THROUGHOUT

1 COLORADO AS PART OF ITS "STATE MEASUREMENT FOR ACCOUNTABLE,
2 RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING
3 REQUIRED BY SECTION 2-7-203, C.R.S.

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