

SB09-007

Senator Veiga/Representative Riesberg
House Judiciary Committee - March 2, 2009

Purpose of this legislation: To maintain the requirement that a licensed physician be the professional authorized in statute to examine, certify and testify in relation to the court proceedings for the involuntary commitment of individuals for alcohol or drug abuse.

Definition of Involuntary Commitment: Involuntary commitment involves a court order to commit into the legal custody of the state for up to 30 days a person who has been determined by clear and convincing proof to pose an imminent risk of physical harm to him/herself or others, or to be incapacitated by alcohol or drug abuse, and who has refused voluntary treatment. If the conditions remain, such an individual may be recommitted for up to two additional 90-day periods, for a total of 7 months. The person's civil liberties are denied for the period of the commitment. Approximately 200 involuntary commitments statewide occur annually. The average length of stay is about 6 months. An involuntary commitment is distinguishable from an "emergency commitment," which does not require a court hearing and is limited to 5 days. There are approximately 7,200 emergency commitments statewide annually.

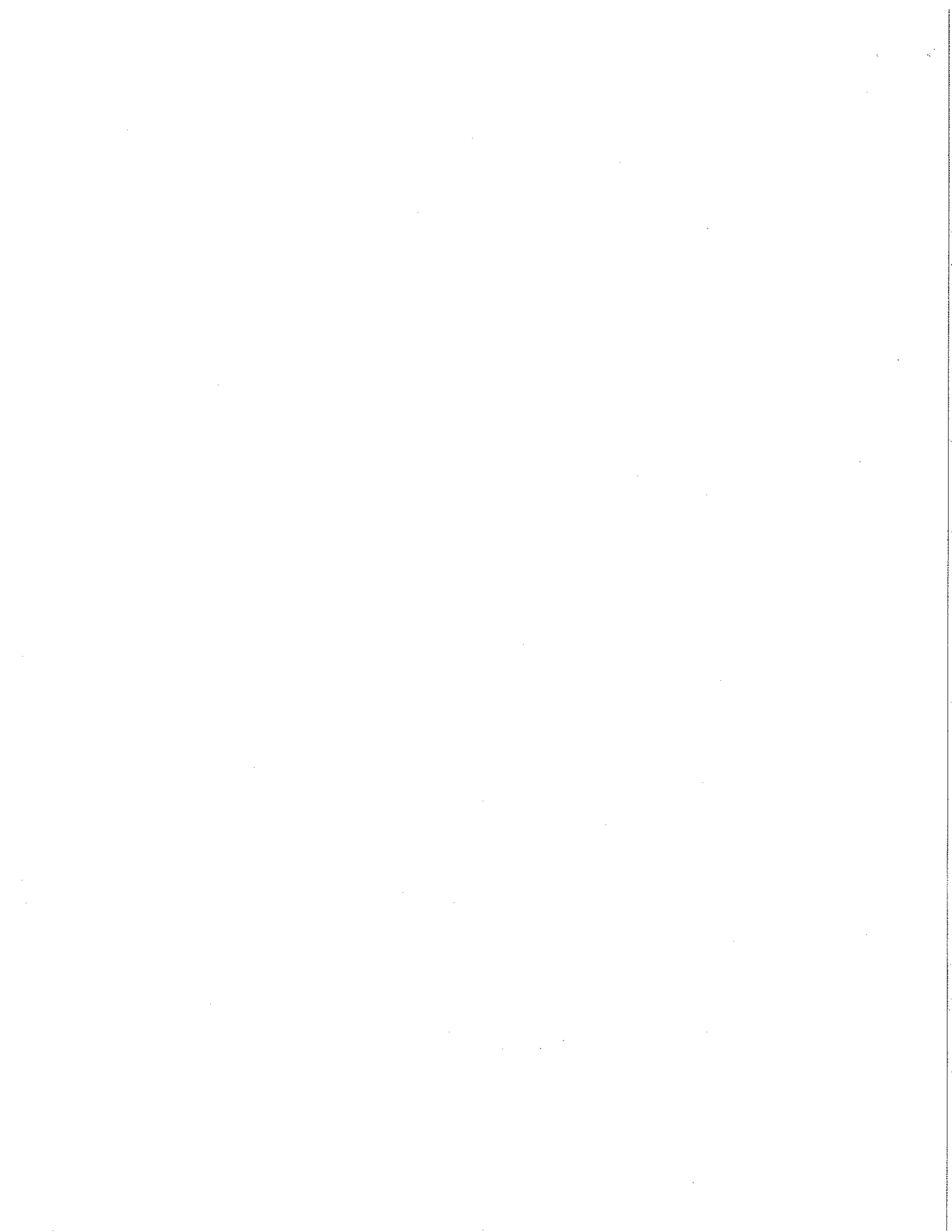
Background: Since Colorado law concerning involuntary commitments was enacted in 1973, a licensed physician has been assigned the sole authority to examine, certify and testify in court proceedings related to alcohol or drug abuse. Among its multiple provisions concerning the role of advanced practice nurses (APNs), HB08-1061 extended this authority to APNs in a late floor amendment on 2nd reading in the 2nd house without the opportunity for input from those most directly involved in such court proceedings. An amendment was added to a later bill to delay the effective date of that portion of HB08-1061 to July 1, 2009.

The delayed effective date was to allow discussions to occur prior to the 2009 legislative session between representatives of the APNs, the CO Department of Human Services, which is assigned custody for all involuntary commitments, county and district attorneys who represent the state in such proceedings, other professional associations with an interest and expertise in this area, and consumer representatives. Those discussions did not achieve agreement.

This bill: Enables legislators to consider input from stakeholders prior to deciding whether the authority to examine, certify and testify in such proceedings should be extended to APNs. SB09-007 will not limit or negatively affect any other portion of HB08-1061 related to the role of APNs. The Department is not aware of an access problem with regard to obtaining a physician to evaluate, certify and testify in court proceedings. The number of involuntary commitments across the state is proportional to population distribution. In 2008, rural counties that comprise 15% of the state's population had 13.7% of all involuntary commitments.

The determination of involuntary commitment is the legal process of denying the civil liberties of a person incapacitated by, or likely to inflict harm on themselves or others due to, substance abuse. It involves a significant degree of clinical and jurisprudence training, carries considerable professional liability and should require the highest standards of medical training.

Due to the highly specialized clinical and legal decision-making involved, the level of training required to make such decisions, and the absence of access or other problems with long-standing current policy, the Colorado Department of Human Services believes it is appropriate to maintain licensed physicians as the professional level designated to examine, certify and testify in relation to such court proceedings.



Involuntary Commitment Process (IC)
Alcohol and Drug Abuse Division (ADAD) now Division of Behavioral Health (DBH)

Individual presents problematic Substance Abuse Issue or Alcohol Abuse issue
Danger to self and others
(Taken by Family, Law Enforcement, or others to detox facility)

Detox Provider*
Individual Committed Under
EMERGENCY COMMITMENT (EC)
Originally initiated as an Emergency Commitment
(See EC vs IC on reverse side)
Detox provider recommends that Individual needs Involuntary Commitment

ADAD Review

ADAD does not support IC, person discharged from Detox

* 10 detox providers; 17 locations
Approximately 7200 EC's yearly

ADAD SUPPORTS IC

EVALUATION by Physician at Detox

Detox provider notifies ADAD of evaluation results.
ADAD determines treatment recommendation

ADAD forwards recommendation to court

Court Hearing /Judge Determination based on Testimony of Expert Witness

Hearing: IC recommendation not supported

Dismissal

Hearing: Court orders commitment to ADAD for initial 30 days, with up to two 90-day recommitments (by court hearing/order), not to exceed seven (7) months*

Treatment Provider*

*Approximately 200 yearly

*Average length-of-stay: six months

NOTES:
(1) Client may go back to detox to await treatment or transportation to treatment
(2) ADAD monitors placements

Division of Behavioral Health, Colorado Department of Human Services

Differences Between the Emergency Commitment Process and the Involuntary Commitment Process

	Emergency Commitment (EC)	Involuntary Commitment (IC)
Location	Transported From Any Location to an Approved Detoxification Program; Rarely at a Hospital	An Approved Detoxification Program, Within Ten Days of The IC Petition Being Filed; Requires The Involvement Of The Involuntary Commitment Coordinator; If the EC Is Done in a Hospital, Person Must Be Brought to a Detoxification Facility
Transportation	Law Enforcement Authorities (Protective Custody, Not An Arrest) Emergency Service Patrol Officer Any Interested Person	N/A
Who makes application	APNs Physicians Law Enforcement Officials Spouse, Guardian, Relative Any Responsible Person	Petitioner Is Any Responsible Adult With Firsthand Knowledge; Petition Must Be Accompanied by a Physician's Certificate or a Document Stating Refusal of an Evaluation by a Physician: "The petition shall be accompanied by a certificate of a licensed physician who has examined the person" (usually at the detoxification facility) "within two days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the physician's findings in support of the allegations of the petition."
Where	Detoxification Programs Approved By The Division	City or County Court
In Attendance	N/A	Petitioner, Physician, Person To Be Committed, City or County Attorney, Judge
Who Testifies	N/A	Physician "At the hearing the court shall hear all relevant testimony, including, if possible, the testimony of at least one licensed physician who has examined the person whose commitment is sought."
Statutes	CRS 25-10-310 (Alcohol) CRS 25-1-1106 (Drug)	CRS 25-1-311
Grounds	Clearly Dangerous - Intoxicated or Incapacitated	Danger To Self or Others
Length	Five Days	Minimum of Thirty Days, Maximum of 210 Days (7 Months)
Imposition of Commitment	Detoxification Facility Administrator or Authorized Designee Determines That Application Is Approved; Detoxification Facility Administrator or Authorized Designee Determines Daily Whether Grounds Continue To Exist	Judge Determines, After Hearing All Relevant Evidence, That The Grounds For Involuntary Commitment Have Been Established By Clear And Convincing Proof; Committed To The Care And Custody Of The Division
Length of Commitment	Person Detained Longer Than Five Days Only if a Petition For Involuntary Commitment Is Made, But No Longer Than Ten Days After Filing of IC Petition	