C.R.S. 27-81-111

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- Colorado Revised Statutes Annotated
- Title 27. Behavioral Health
- Alcohol and Substance Use - Alcohol and Substance Use Disorders (Arts. 80 — 82)
- Article 81. Alcohol Use Education, Prevention, and Treatment (§§ 27-81-101 — 27-81-118)

27-81-111. Emergency commitment.

(1)

(a) When a person is under the influence of or incapacitated by substances and clearly dangerous to the health and safety of himself, herself, or others, law enforcement authorities or an emergency service patrol, acting with probable cause, shall take the person into protective custody in an approved treatment facility. If no such facilities are available, the person may be detained in an emergency medical facility or jail, but only for so long as may be necessary to prevent injury to himself, herself, or others or to prevent a breach of the peace. If the person being detained is a juvenile, as defined in section 19-2.5-102, the juvenile must be placed in a setting that is nonsecure and physically segregated by sight and sound from the adult offenders. A law enforcement officer or emergency service patrol officer, in detaining the person, is taking the person 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 pursuant to this section is not an arrest, and an entry or other record shall not 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. Nothing in this subsection (1) precludes a person intoxicated by alcohol, under the influence of drugs, or incapacitated by substances who is not dangerous to the health and safety of himself, herself, or others from being assisted to the person's home or like location by the law enforcement officer or emergency service patrol officer.

(b) A sheriff or police chief who violates the provisions of subsection (1)(a) of this section related to detaining juveniles 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 subsection (1)(a) of this section by the sheriff or police chief and the willingness of the sheriff or police chief to address the violations in order to comply with subsection (1)(a) of this section.

(2) A law enforcement officer, emergency service patrol officer, physician, spouse, guardian, or relative of the person to be committed or any other responsible person may make a written application for emergency commitment under this section, directed to the administrator of the approved treatment facility. The application must state the circumstances requiring emergency commitment, including the applicant's personal observations and the specific statements of others, if any, upon which the applicant relies in making the application. A copy of the application must be furnished to the person to be committed.

(3) If the administrator approves the application, the administrator shall commit, evaluate, and treat the person for a period not to exceed five days. A peace officer, the emergency service patrol, or any interested person shall bring the person to the facility. If necessary, the court may be contacted to issue an order to the police, the peace officer's department, or the sheriff's department to transport the person to the facility.

(4) If the administrator determines that the application fails to sustain the grounds for emergency commitment as set forth in subsection (1) of this section, the administrator shall refuse the commitment, immediately release the detained person, and encourage the person to seek voluntary treatment, if appropriate.

(5) When the administrator determines that the grounds for commitment no longer exist, the administrator shall discharge the person committed under this section. A person committed under this

section must 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 has been filed pursuant to section 27-81-112. A person must not be detained longer than ten days, excluding weekends and holidays, after the date of filing of the petition for involuntary commitment unless a valid medical reason exists for detaining a person longer.
(6) Whenever a person is involuntarily detained pursuant to this section, the administrator shall, within twenty-four hours after detainment, advise the person who is involuntarily detained, both orally and in writing, of the person's right to challenge the 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 commitment and recommitment, and to have counsel appointed by the court or provided by the court if the person wants the assistance of counsel and is unable to obtain counsel.
(7) Any law enforcement officer, emergency service personnel, physician, spouse, guardian, or relative of any person to be committed; any treatment facility administrator or the administrator's designee; or any other employee or person acting on behalf of an approved treatment facility, participating in or carrying out the emergency commitment or treatment as described in this section, whether acting individually or in his or her official capacity, is not criminally or civilly liable therefor.

History

Source: L. 2010: Entire article added with relocations,(SB 10-175), ch. 188, p. 739, § 2, effective April 29. **L. 2020:**Entire section amended,(SB 20-007), ch. 286, p. 1399, § 20, effective July 13. **L. 2021:**(1)(a) amended,(SB 21-059), ch. 136, p. 749, § 132, effective October 1.

Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 27, Art. 81

State Notes

Notes

Editor's note:

This section is similar to former § 25-1-310 as it existed prior to 2010.

ANNOTATION

Law reviews.

For comment, "Leake v. Cain: Abrogation of the Public Duty Doctrine in Colorado?", see 59 U. Colo. L. Rev. 383 (1988).

Annotator's note.

Since § 27-81-111 is similar to § 25-1-310 as it existed prior to the 2010 amendments to this article, relevant cases construing that provision have been included in the annotations to this section.

Due process considerations.

A judicial hearing as a prerequisite to commitment of a clearly dangerous intoxicated person would hinder the government's efforts in controlling alcohol abuse without providing additional procedural safeguards. Due process demands only that a neutral fact finder independently determine that the statutory requirements for commitment and release are satisfied. Due process does not dictate that the neutral and detached fact finder be law-trained or a judicial or administrative officer. Carberry v. Adams County Task Force on Alcoholism, 672 P.2d 206 (Colo. 1983).

Intent of subsection (1).

In enacting subsection (1), the general assembly did not intend the police to take into protective custody every intoxicated person they meet. Rather, the general assembly designated a specific class of intoxicated persons who are subject to emergency commitment and left the determination of whether a particular individual is clearly dangerous to the police. Therefore, the decision to take a person into protective custody is discretionary and protected by official immunity. Leake v. Cain, 720 P.2d 152 (Colo. 1986).

Class of persons section was designated to protect.

Respondents-decedents are not included within the class of persons that subsection (1) was designated to protect, since the statutory intent was not to protect members of the public against intoxicated persons. Therefore, police officers had no duty to take defendant into "protective custody" or to escort him to his home. Leake v. Cain, 720 P.2d 152 (Colo. 1986).

The language of this section indisputably articulates a clear legislative determination that the act of taking a person into civil protective custody is not an arrest.

Colo. v. Dandrea, 736 P.2d 1211 (Colo. 1987); Anaya v. Crossroads Care Sys., 973 F. Supp. 1228 (D. Colo. 1997).

This section cannot be used to justify the equivalent of a criminal custodial arrest

not supported by probable cause. People v. Dandrea, 736 P.2d 1211 (Colo. 1987).

This section clearly contemplates encounters between police officers and those whom they perceive are intoxicated,

without any requirement that the officers also suspect involvement in criminal activity. People v. Herrera, 1 P.3d 234 (Colo. App. 1999).

In order to take an individual into protective custody under this section, an officer must have probable cause to believe

that the person is sufficiently intoxicated as to be a danger to himself, herself, or others, given the totality of the circumstances. United States v. Gilmore, 945 F. Supp. 2d 1211 (D. Colo. 2013).

A pat-down search under this section is justified by a reasonable concern for police officer safety as balanced against a limited intrusion into an individual's expectation of privacy.

People v. Dandrea, 736 P.2d 1211 (Colo. 1987); United States v. Gilmore, 945 F. Supp. 2d 1211 (D. Colo. 2013).

When a search is conducted pursuant to protective custody

the scope of the officer's inventory search is limited by the privacy interest of the detainee. People v. Chaves, 855 P.2d 852 (Colo. 1993).

Officers exceeded their authority under this section

by conducting an inventory search at the point of detention, rather than just a pat-down search. People v. Herrera, 1 P.3d 234 (Colo. App. 1999).

The inventory search of a civil detainee does not permit officers to search closed containers without a warrant.

The purpose of such a search is to ensure that all of the detainee's possessions are held safely and to remove those which may be dangerous. People v. Chaves, 855 P.2d 852 (Colo. 1993).

Limited pat-down search of person being taken into protective custody did not violate the fourth amendment

of the U.S. constitution, and the pistol discovered during that search need not be suppressed, because the police officer had probable cause to initiate the process of taking the person into protective custody. United States v. Gilmore, 945 F. Supp. 2d 1211 (D. Colo. 2013).