

C.R.S. 27-65-109

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Statutes current through Chapter 220 of the 2021 Regular Session and effective as of June 10, 2021. The inclusion of the 2021 legislation is not final. It will be final later in 2021 after reconciliation with the official statutes, produced by the Colorado Office of Legislative Legal Services.

- [Colorado Revised Statutes Annotated](#)
- [Title 27. Behavioral Health \(§§ 27-1-101 — 27-94-106\)](#)
- [Mental Health and Mental Health Disorders \(Arts. 65 — 70\)](#)
- [Article 65. Care and Treatment of Persons with Mental Health Disorders \(§§ 27-65-101 — 27-65-131\)](#)

27-65-109. Long-term care and treatment of persons with mental health disorders - procedure

(1) Whenever a respondent has received short-term treatment for five consecutive months pursuant to the provisions of sections 27-65-107 and 27-65-108, 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 staff of the agency or facility providing short-term treatment has analyzed the respondent's condition and has found that the respondent has a mental health disorder and, as a result of the mental health disorder, 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 care and treatment has been designated or approved by the executive director to provide the care and treatment.

(2) Every petition for long-term care and 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 care and 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 jury 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 health disorder and, as a result of the mental health disorder, is a danger to others or to himself or herself or is gravely disabled. The court shall thereupon issue an order of long-term care and treatment for a term not to exceed six months, or it shall discharge the respondent for whom long-term care and treatment was sought, or it shall enter any other appropriate order, subject to available appropriations. An order for long-term care and treatment must grant custody of the respondent to the department for placement with an agency or facility designated by the executive director to provide long-term care and 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 the court or a jury has determined that the respondent has a mental health disorder or is gravely disabled 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 ask leave of the court to intervene as a copetitioner 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 care and treatment or any extension of such order expires on the date specified, 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 must 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 a hearing is not requested by the respondent within such time, the court may proceed ex parte. If a hearing is timely requested, it must 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 has a mental health disorder and, as a result of the mental health disorder, 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 must not exceed six months, but there may be as many extensions as the court orders pursuant to this section.

History

Source: **L. 2010:** Entire article added with relocations, (SB 10-175), ch. 188, p. 688, § 2, effective April 29. **L. 2017:** IP(1), (1)(a), (4), and (5) amended, (SB 17-242), ch. 263, p. 1344, § 238, effective May 25.

▼ Annotations

State Notes

Notes

Editor's note:

This section is similar to former § 27-10-109 as it existed prior to 2010.

Cross references: For the legislative declaration in SB 17-242, see section 1 of chapter 263, Session Laws of Colorado 2017.

ANNOTATION

Law reviews.

For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567. For article, "Legal But Not Fair: Legal Implications of a Mental Illness Medical Model", see 11 Colo. Law. 1234 (1982). For article, "Pre-trial Technical Defenses to Mental Health Certification", see 17 Colo. Law. 1327 (1988).

Annotator's note. Since § 27-65-109 is similar to § 27-10-109 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.

The term "danger" in subsection (1)(a) does not offend due process as long as the state proves by clear and convincing evidence that there is a reasonable basis to believe that the individual's mental illness results in a present danger to herself or others or renders her gravely disabled. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

Less restrictive alternatives need not be considered as a condition precedent to certification. Civil commitment constitutes a severe infringement of liberty requiring due process protection. However, the statutory scheme set forth in this article contains a number of procedural safeguards that greatly reduce the inherent risk of erroneous deprivation. Therefore, due process does not require a mandatory hearing at the time of certification since the statute provides for a hearing on request. *People v. Stevens*, 761 P.2d 768 (Colo. 1988).

These statutory requirements are mandatory and must be strictly carried out. *Watkins v. People*, 140 Colo. 228, 344 P.2d 682 (1959).

Thus, the failure to deliver personally to a respondent in a mental health proceeding a copy of the petition for long-term care and treatment, as required by subsection (2), deprives the court of personal jurisdiction over the respondent to proceed on the petition and does not toll the relevant time limits for a hearing on the petition. *Gilford v. People*, 2 P.3d 120 (Colo. 2000).

But only statutory deviations that are considered serious enough to undermine the confidence in the fairness and outcome of judicial proceedings will justify a dismissal of an order that was not made in strict compliance with procedural aspects of the civil commitment statutes. Hearing for extension of long-term care and treatment and for administration of involuntary medications that took place six days after expiration of respondent's certification was held not to undermine the confidence in the fairness and outcome of the certification proceedings when respondent received a full hearing and had previously declined to have the hearing before the expiration date of the certification. *People in Interest of Gilford*, 983 P.2d 156 (Colo. App. 1999), cert. denied, No. 99SC404 (Colo. Aug. 23, 1999).

Key inquiry in determining whether a failure to follow the civil commitment statute was a violation of an individual's due process rights is whether the failure violates an "essential condition" of the statute. Such determination is made by evaluating the gravity of the deviation from the statutory procedures and requires consideration of any due process concerns and any prejudice to the respondent. *People in Interest of Gilford*, 983 P.2d 156 (Colo. App. 1999), cert. denied, No. 99SC404 (Colo. Aug. 23, 1999).

Special statutory proceeding. An action in the district court to inquire into the mental health of a party can best be described as a special statutory proceeding; it is neither a criminal case nor a civil action. *Sabon v. People*, 142 Colo. 323, 350 P.2d 576 (1960).

Request for jury trial must be honored. Where the respondent or his attorney requests a jury trial, the court is required to honor the request. *Young v. Brofman*, 139 Colo. 296, 338 P.2d 286 (1959).

Defendant held to have been wrongfully deprived of opportunity to demand a jury trial. *Hultquist v. People*, 77 Colo. 310, 236 P. 995 (1925).

Court may enter judgment notwithstanding the verdict on jury's factual finding under this section as a matter of law when the evidence is undisputed. *People in Interest of Lees*, 745 P.2d 281 (Colo. App. 1987).

The determination at a certification hearing as to whether a person is "gravely disabled" must focus on the individual's existing condition and not on the possibility of future relapse. *People in Interest of Bucholz*, 778 P.2d 300 (Colo. App. 1989).

Underlying propensity for dangerousness, even though related to future conduct, is sufficient to meet the test of presenting a danger to one's self and others. *People in Interest of King*, 795 P.2d 273 (Colo. App. 1990).

Review of commitment order based on erroneous diagnosis. Where an order of commitment is based on an erroneous diagnosis, that order can be reviewed on appeal. *Zimmerman v. Angele*, 137 Colo. 129, 321 P.2d 1105 (1958).

Subsection (5) extension runs from expiration of previous order.The period of extension allowed by subsection (5) is to run from the date the previous order expires, and not from the date the extension order is entered. *People in Interest of Archuleta*, 653 P.2d 93 (Colo. App. 1982).

Person confined only to extent necessary to protect society.A person who is found to be mentally ill is treated and confined only to the extent necessary for the protection of society. *Parks v. Denver District Court*, 180 Colo. 202, 503 P.2d 1029 (1972).

Medication not to be given over incompetent's objection absent court order.Absent an emergency situation calling for immediate action (in which event the least intrusive means should be used by the physician to meet the emergency), antipsychotic medication shall not be administered to a mentally incompetent institutionalized patient who has not given his consent to this medication unless ordered by a court following a proper hearing. *People in Interest of Medina*, 662 P.2d 184 (Colo. App. 1982), *aff'd*, 705 P.2d 961 (Colo. 1985).

Order for involuntary medication must not extend beyond expiration date of the order of long-term care and treatment.*Hopkins v. People*, 772 P.2d 624 (Colo. App. 1988).

Applied in

People v. Lane, 196 Colo. 42, 581 P.2d 719 (1978); *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979); *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *People in Interest of Kleinfieldt*, 680 P.2d 864 (Colo. App. 1984).