

C.R.S. 27-65-109

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- [Colorado Revised Statutes Annotated](#)
- [Title 27. Behavioral Health](#)
- [Mental Health and Mental Health Disorders \(Arts. 65 — 71\)](#)
- [Article 65. Care and Treatment of Persons with Mental Health Disorders \(§§ 27-65-101 — 27-65-131\)](#)

27-65-109. Certification for short-term treatment - procedure.

(1) [Editor's note: This version of subsection (1) is effective until July 1, 2024.] If a person detained pursuant to section 27-65-106 has received an evaluation, the person may be certified for not more than three months for short-term treatment under the following conditions:

(a) The professional staff of the agency or facility providing seventy-two-hour treatment and evaluation has analyzed the person's condition and has found the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to the person's self or is gravely disabled;

(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification; and

(c) The facility that will provide short-term treatment has been designated or approved by the commissioner to provide such treatment.

(1) [Editor's note: This version of subsection (1) is effective July 1, 2024.] A person may be certified for not more than three months for short-term treatment under the following conditions:

(a) The professional staff of the facility detaining the person on an emergency mental health hold has evaluated the person and has found the person has a mental health disorder and, as a result of the mental health disorder, is a danger to the person's self or others or is gravely disabled;

(b) The person has been advised of the availability of, but has not accepted, voluntary treatment; but, if reasonable grounds exist to believe that the person will not remain in a voluntary treatment program, the person's acceptance of voluntary treatment does not preclude certification;

(c) The facility or community provider that will provide short-term treatment has been designated by the commissioner to provide such treatment; and

(d) The person, the person's legal guardian, and the person's lay person, if applicable, have been advised of the person's right to an attorney and to contest the certification for short-term treatment.

(2) [Editor's note: This version of subsection (2) is effective until July 1, 2024.] The notice of certification must be signed by a professional person on the staff of the evaluation facility who participated in the evaluation and must:

(a) State facts sufficient to establish reasonable grounds to believe that the person has a mental health disorder and, as a result of the mental health disorder, is a danger to others or to the person's self or is gravely disabled;

(b) Be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, of the date of certification; and

(c) Be filed with the court in the county in which the respondent resided or was physically present immediately prior to being taken into custody.

(2) [Editor's note: This version of subsection (2) is effective July 1, 2024.] The notice of certification must be signed by a professional person who participated in the evaluation. The notice of certification must:

(a) State facts sufficient to establish reasonable grounds to believe that the respondent has a mental health disorder and, as a result of the mental health disorder, is a danger to the respondent's self or others or is gravely disabled;

(b) Be filed with the court within forty-eight hours, excluding Saturdays, Sundays, and court holidays, after the date of certification;

(c) Be filed with the court in the county in which the respondent resided or was physically present immediately prior to being taken into custody; and

(d) Provide recommendations if the certification should take place on an inpatient or outpatient basis.

(3) [Editor's note: This version of subsection (3) is effective until July 1, 2024.] Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, and a copy must be kept by the evaluation facility as part of the respondent's record. The respondent must also be asked to designate one other person whom the respondent wishes informed regarding certification. If the respondent is incapable of making such a designation at the time the certification is delivered, the respondent must be asked to designate such person as soon as the respondent is capable. In addition to the copy of the certification, the respondent must be given a written notice that a hearing upon the respondent's certification for short-term treatment may be had before the court or a jury upon written request directed to the court pursuant to subsection (6) of this section.

(3) [Editor's note: This version of subsection (3) is effective July 1, 2024.] Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, the BHA, and a copy must be kept by the evaluating facility as part of the respondent's record, if applicable. The facility or court shall ask the respondent to designate a lay person whom the respondent wishes to be informed regarding certification. If the respondent is incapable of making such a designation at the time the certification is delivered, the respondent must be asked to designate a lay person as soon as the respondent is capable. In addition to the copy of the certification, the respondent must be given a written notice that a hearing upon the respondent's certification for short-term treatment may be had before the court or a jury upon written request directed to the court pursuant to subsection (6) of this section.

(4) Upon certification of the respondent, the facility designated for short-term treatment has custody of the respondent.

(5) Whenever a certification is filed with the court by a professional person, the court shall immediately appoint an attorney to represent the respondent. The respondent has the right to an attorney for all proceedings conducted pursuant to this section, including any appeals. The attorney representing the respondent must be provided with a copy of the certification immediately upon the attorney's appointment. The respondent may only waive counsel when the respondent makes a knowing and intelligent waiver in front of the court.

(6) [Editor's note: This version of subsection (6) is effective until July 1, 2024.] The respondent for short-term treatment or the respondent's attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and the respondent's attorney and the certifying and treating professional person of the time and place thereof. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order, subject to available appropriations.

(6) [Editor's note: This version of subsection (6) is effective July 1, 2024.] The respondent or the respondent's attorney may at any time file a written request that the certification for short-term treatment or the treatment be reviewed by the court or that the treatment be on an outpatient basis. If review is requested, the court shall hear the matter within ten days after the request, and the court shall give notice to the respondent and the respondent's attorney and the certifying and treating professional person of the time and place of the hearing. The hearing must be held in accordance with section 27-65-113. At the conclusion of the hearing, the court may enter or confirm the certification for short-term treatment, discharge the respondent, or enter any other appropriate order.

(7) [Editor's note: This version of subsection (7) is effective until July 1, 2024.] Records and papers in proceedings under this section must be maintained separately by the clerks of the several courts. Upon the release of any respondent in accordance with section 27-65-112, the facility shall notify the clerk of the court within five days after the release, and the clerk shall forthwith seal the record in the case and omit the name of the respondent from the index of cases in the court until and unless the respondent becomes subject to an order of long-term care and treatment pursuant to section 27-65-110 or until and unless the court orders them opened for good cause shown. In the event a petition is filed pursuant to section 27-65-110, the certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.

(7) [Editor's note: This version of subsection (7) is effective July 1, 2024.] Records and papers in proceedings pursuant to this section must be maintained separately by the clerks of the several courts. Upon the release of any respondent in accordance with section 27-65-112, the facility shall notify the clerk of

the court within five days after the release, and the clerk shall immediately seal the record in the case and omit the name of the respondent from the index of cases in the court until and unless the respondent becomes subject to an order of certification for long-term care and treatment pursuant to section 27-65-110 or until and unless the court orders the records opened for good cause shown. In the event a petition is filed pursuant to section 27-65-110, the certification record may be opened and become a part of the record in the long-term care and treatment case and the name of the respondent indexed.

(8) [Editor's note: This version of subsection (8) is effective until July 1, 2024.] Whenever it appears to the court, by reason of a report by the treating professional person or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a secure transportation provider, or a law enforcement agency, the court may issue an order directing the law enforcement agency where the respondent resides to deliver the respondent to the designated facility.

(8) [Editor's note: This version of subsection (8) is effective July 1, 2024.] Whenever it appears to the court, by reason of a report by the treating professional person or the BHA or any other report satisfactory to the court, that a respondent detained for evaluation and treatment or certified for short-term treatment should be transferred to another facility for treatment and the safety of the respondent or the public requires that the respondent be transported by a secure transportation provider or a law enforcement agency, the court may issue an order directing the law enforcement agency where the respondent resides or secure transportation provider to deliver the respondent to the designated facility.

(9) A respondent certified for short-term treatment may be discharged upon the signature of the treating medical professional and the medical director of the facility. A respondent certified for short-term treatment on an outpatient basis may be discharged upon the signature of the approved professional person overseeing the respondent's treatment, and the professional person shall notify the BHA prior to the discharge. A facility or program shall make the respondent's discharge instructions available to the respondent, the respondent's attorney, and the respondent's legal guardian, if applicable, within seven days after discharge, if requested. A facility or program that is transferring a respondent to a different treatment facility or to an outpatient provider shall provide all treatment records to the facility or provider accepting the respondent at least twenty-four hours prior to the transfer.

(10) [Editor's note: This version of subsection (10) is effective until July 1, 2024.] If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary for treatment of the respondent, the professional person shall file with the court an extended certification. Extended certification for treatment is not for a period of more than three months. The respondent is entitled to a hearing on the extended certification under the same conditions as an original certification. The attorney initially representing the respondent shall continue to represent the respondent, unless the court appoints another attorney.

(10) [Editor's note: This version of subsection (10) is effective July 1, 2024.] If the professional person in charge of the evaluation and treatment believes that a period longer than three months is necessary to treat the respondent, the professional person shall file with the court an extended certification at least thirty days prior to the expiration date of the original certification. An extended certification for treatment must not be for a period of more than three months. The respondent is entitled to a hearing on the extended certification under the same conditions as an original certification. The attorney initially representing the respondent shall continue to represent the respondent, unless the court appoints another attorney.

History

Source: L. 2022:(1)(c) amended,(HB 22-1278), ch. 222, p. 1540, § 117, effective July 1; entire article amended with relocations,(HB 22-1256), ch. 451, p. 3186, § 1, effective August 10; (1), (2), (3), (6), (7), (8), and (10) amended,(HB 22-1256), ch. 451, p. 3217, § 3, effective July 1, 2024.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 27, Art. 65

State Notes





Notes

Editor's note:

(1) This section is similar to former §§ 27-65-107 and 27-65-108 as they existed prior to 2022. For a detailed comparison, see the comparative tables located in the back of the index.

(2) Subsection (1)(c) was numbered as § 27-65-107 (1)(c) in HB 22-1278 (see L. 2022, p. 1540). That provision was harmonized with subsection (1)(c) of this section as it appears in HB 22-1256.

ANNOTATION

-  **I. GENERAL CONSIDERATION.**
-  **II. PROCEDURAL REQUIREMENTS.**
-  **III. FINDINGS NECESSARY.**
-  **I. GENERAL CONSIDERATION.**

Law reviews.

For article, "Procedures for Involuntary Commitment on the Basis of Alleged Mental Illness", see 42 U. Colo. L. Rev. 231 (1970). For article, "Patients' Rights vs. Patients' Needs: The Right of the Mentally Ill to Refuse Treatment in Colorado", see 58 Den. L.J. 567 (1981). For article, "New Legislation Concerning the Mentally Disabled", see 11 Colo. Law. 2131 (1982). For article, "Pre-trial Technical Defenses to Mental Health Certification", see 17 Colo. Law. 1327 (1988). For article, "Perreira v. Colorado -- A Psychiatrist's Duty to Protect Others", see 18 Colo. Law. 2323 (1989). For article, "The Clinton Mental Health Case -- A Civil Procedure Lesson", see 19 Colo. Law. 1809 (1990). For article, "Clinton Redux: A Mental Health and Technical Defense Follow-up", see 22 Colo. Law. 2389 (1993).

Annotator's note.

Since § 27-65-109 is similar to § 27-65-107 and § 27-65-108 as they existed prior to the 2022 amendments to this article and to laws antecedent to those sections, relevant cases construing those provisions have been included in the annotations to this section.

Constitutionality.

Failure of this section to require a mandatory state-initiated hearing before the involuntary commitment of an individual for up to 90 days does not render the statute unconstitutional. *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *Curnow v. Yarbrough*, 676 P.2d 1177 (Colo. 1984).

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).

Subsequent certification proceedings are not rendered invalid

as a result of the certification for short-term treatment being set aside. *People in Interest of Dveirin*, 755 P.2d 1207 (Colo. 1988).

State’s interest in certifying individual for short-term treatment is

to provide care to one whose mental condition poses a threat to society or to the person himself. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Civil commitment statute must be liberally construed

to promote the legislative purpose of encouraging the “use of voluntary rather than coercive measures to secure treatment and care for mental illness”. *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

This article is to be strictly construed

to see that no limit is placed on a person’s right to seek voluntary treatment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Statutory definition of mental illness, on its own terms, cannot be read to intend

that every idiosyncratic or eccentric person requires involuntary medical intervention. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Voluntary treatment program not terminated.

Where voluntarily committed outpatient was off the hospital premises and was taken into custody by the police and then returned to the hospital, this did not, as a matter of law, terminate his voluntary treatment program. *People in Interest of Henderson*, 44 Colo. App. 102, 610 P.2d 1350 (1980).

Standard for liability of medical professionals.

In determining whether to release an involuntarily committed mental patient, the psychiatrist has a legal duty to exercise due care, consistent with the knowledge and skill ordinarily possessed by psychiatric practitioners under similar circumstances, to determine whether the patient has a propensity for violence and would present an unreasonable risk of serious bodily harm to others. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

In discharging his duty, a psychiatrist may be required to take reasonable precautions to protect the public from the danger created by the release giving due consideration to extending the term of the patient's commitment or placing appropriate conditions and restrictions on such release. *Perreira v. State*, 768 P.2d 1198 (Colo. 1989).

Standard for liability of medical professionals.

No duty exists to prevent a third person from harming another unless a special relation exists between the actor and the wrongdoer or between the actor and the victim. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

Medical professionals involved in the care and treatment of a mentally ill patient have a legal duty under the "special relation" rule to prevent the patient from harming himself or others only if the patient in their care constitutes a danger to himself or to the safety of others. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

This danger may be shown by evidence of injurious acts, attempts, or threats by the patient. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

A psychotherapist treating a mental patient as an outpatient may fall under the special relation rule. *Perreira v. State*, 738 P.2d 4 (Colo. App. 1986).

Certification for involuntary short-term mental health treatment entered by a professional person under this section is not a court order under § 13-5-142 (1)(c) or § 13-9-123 (1)(c)

and a person's information should not be sent to the Colorado bureau of investigation for forwarding on to the National Instant Criminal Background Check System, which would subject the person to federal firearms prohibitions. *Ray v. People*, 2019 COA 24, 456 P.3d 54.

Applied

in *People v. Lane*, 196 Colo. 42, 581 P.2d 719 (1978); *Gatwick v. State Dept. of Insts.*, 198 Colo. 407, 603 P.2d 123 (1979); *People in Interest of Paiz*, 43 Colo. App. 352, 603 P.2d 976 (1979); *People v. Chavez*, 629 P.2d 1040 (Colo. 1981); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982); *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983); *People v. Medina*, 705 P.2d 961 (Colo. 1985).

🔑 II. PROCEDURAL REQUIREMENTS.

Involuntary commitment to mental hospital is deprivation of liberty

which the state cannot accomplish without procedural safeguards. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

This section sets out certain procedures which the general assembly and our courts have determined

are adequate to protect a respondent's due process rights. These procedures include: (1) a professional decision to initiate the 72-hour evaluation; (2) professional medical evaluation at the time of involuntary short-term commitment; (3) notice concerning certification within 24 hours to the person committed; (4) notice concerning certification to one other person the respondent designates; (5) prompt appointment of an attorney; (6) a hearing within 10 days if requested (7) the burden of proof by clear and convincing evidence upon the petitioner; and (8) optional court appointment of an independent professional person to examine the respondent. *Curnow v. Yarbrough*, 676 P.2d 1177 (Colo. 1984); *People in Interest of Reynes*, 870 P.2d 518 (Colo. App. 1993).

Strict adherence to procedural requirements of this section is required

because of the curtailment of personal liberty which results from certification for treatment of mental illness. *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

In situations involving involuntary confinement, strict compliance with this article is a necessity. *People in Interest of Henderson*, 44 Colo. App. 102, 610 P.2d 1350 (1980).

Procedural prerequisites to obtaining certification must be met for court to have subject matter jurisdiction, so review of such issues is by court not jury.

People in Interest of Bailey, 745 P.2d 280 (Colo. App. 1987).

Right to a mental health certification review hearing within 10 days of the filing of a petition for certification is for protection of certified person

and may be waived by such person without vitiating jurisdiction of court. *People in Interest of Lynch*, 783 P.2d 848 (Colo. 1989).

When the procedural provisions of former § 27-10-105 are not followed, even a credible certification cannot cure the jurisdictional defect.

People in Interest of Lloyd-Pellman, 844 P.2d 1309 (Colo. App. 1992).

Failure to convene hearing within 10 days after request

is made as mandated by this section deprives court of subject matter jurisdiction to certify person for short-term treatment regardless of person's purported waiver. *People in Interest of Lynch*, 757 P.2d 145 (Colo. App. 1988), rev'd, 783 P.2d 848 (Colo. 1989).

The statutorily defined procedures for civil commitment proceedings have been applied to hearings involving the issue of nonconsensual treatment with antipsychotic medication.

People ex rel. Ofengand, 183 P.3d 688 (Colo. App. 2008).

Because a committed patient's right to counsel during civil commitment proceedings is derived from the civil commitment statutes, any defect in respondent's waiver of counsel is analyzed under the standard applicable to statutory defects in civil commitment proceedings. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

Where respondent seeks reversal of civil commitment order based on the failure to comply strictly with statutory requirements, and where the defect, if any, does not implicate the jurisdiction of the trial court to grant the order, the appeals court's inquiry is whether the defect concerns a failure to comply with essential statutory provisions grave enough to undermine confidence in the fairness and outcome of the certification proceedings. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

This inquiry includes: (1) the evaluation of the gravity of the deviation from statutory provisions, including a consideration of due process concerns; and (2) a determination of any prejudice to respondent caused by the deviation. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

Patient to be advised of available, voluntary treatments.

A trial court exceeds its jurisdiction in affirming a petitioner's short-term certification, in light of the uncontroverted jury finding that the petitioner had not been properly advised of the availability of voluntary treatment for mental illness, as required by this section. *Sisneros v. District Court*, 199 Colo. 179, 606 P.2d 55 (1980).

Privilege against self-incrimination is inapplicable to civil commitment proceedings.

Due process does not require that the fifth amendment privilege against self-incrimination be extended to this state's civil commitment proceedings. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Nor does privilege against self-incrimination apply to hearings on the forcible administration of medication,

which occur during the civil commitment process. *People ex rel. Strodman*, 293 P.3d 123 (Colo. App. 2011).

Former §§ 27-10-111 (1) and 27-10-107 (3), read together, clearly and unambiguously grant a right to a jury hearing

to a person being certified for short-term treatment. *People in Interest of Hoylman*, 865 P.2d 918 (Colo. App. 1993).

Failure to abide by statutory requirement of forthwith appointment of counsel in mental health certification proceeding did not constitute personal jurisdiction defect,

as requirement for appointment of counsel did not affect the nature of notice to be given to mentally ill person or statutory requirements for acquisition of jurisdiction over person. *People in Interest of Clinton*, 762 P.2d 1381 (Colo. 1988).

For the purposes of subsection (7),

neither the Eclipse system, the user interface of the judicial branch's computerized case management system, nor its underlying database, ICON, functions as an "index of cases". Therefore, the court clerk is not required to remove an individual's name from either upon discharge. *People in Interest of T.T.*, 2019 CO 54, 442 P.3d 851.

Reversible error where trial court failed to comply with essential statutory provision requiring respondent's waiver of counsel

to be made knowingly, intelligently, and in writing in a hearing involving a petition for involuntary administration of medication. *People ex rel. Ofengand*, 183 P.3d 688 (Colo. App. 2008).

📌 III. FINDINGS NECESSARY.

If it is shown that person is mentally ill, short-term involuntary commitment cannot be justified unless

it is shown that, as a result of such illness, the person is: (1) a danger to others; (2) a danger to himself; (3) "gravely disabled" because of an inability to take care of basic personal needs; or (4) "gravely disabled" because the person is "making irrational or grossly irresponsible decisions concerning his person and lacks the capacity to understand this is so". *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Section requires that causal nexus be established

between a person's mental illness and the condition of being a danger to others or to himself or gravely disabled. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Disability sufficient to justify involuntary commitment must arise as result of mental illness;

and in keeping with the statutory purpose, it must be so grave that the person's safety is threatened by his inability to take care of his basic personal needs. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Mere disability alone is insufficient to warrant involuntary commitment.

Mere disability alone, even if found in conjunction with mental illness, is not enough to warrant involuntary commitment. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Dangerousness to others may be shown by evidence of injurious acts,

attempts, or threats. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Dangerousness to oneself may be shown by similar evidence,

where the individual's injurious behavior is directed toward himself. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Passive injury to oneself,

because of an inability to take care of one's most basic personal needs, may be as dangerous or damaging to the individual as the active threat posed by suicide. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Standard of proof necessary to commit for short-term involuntary psychiatric treatment,

"clear and convincing evidence", adopted by the general assembly for treatment, strikes a fair balance between the interest of the individual and the interest of the state. *People v. Taylor*, 618 P.2d 1127 (Colo. 1980).

Standard of proof met.

Where three medical experts testified at appellant's certification hearing that she was dangerous or potentially dangerous to herself or to others there was clear and convincing evidence that there was a reasonable basis to believe that appellant's mental illness resulted in a present danger to herself or others, thereby satisfying the prerequisite conditions for short-term certification. *People v. Stevens*, 761 P.2d 768 (Colo. 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); *In re P.F. v. Walsh*, 648 P.2d 1067 (Colo. 1982); *Brown v. Jensen*, 572 F. Supp. 193 (D. Colo. 1983). *People v. Medina*, 705 P.2d 961 (Colo. 1985).