

C.R.S. 27-65-108.5

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Statutes current and final through all legislation from the 2023 Regular and First Extraordinary Sessions.

- [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 \(§§ 27-65-101 — 27-65-131\)](#)

27-65-108.5. Court-ordered certification for short-term treatment for incompetent defendants in a criminal matter - contents of petition - procedure to contest petition - commitment to behavioral health administration - definition.

(1) *[Editor's note: This section is effective July 1, 2024.]* Upon petition of the district attorney, a professional person, a representative of the BHA, or a representative of the office of civil and forensic mental health, a court may certify a person for short-term treatment for not more than three months under the following conditions:

- (a)** The person is a respondent in a criminal matter in which the person has been found incompetent to proceed;
- (b)** The court hearing the criminal matter referred the matter for filing of a petition pursuant to section 16-8.5-111 or 16-8.5-116;
- (c)** The person has been advised of the availability of, but has not accepted, voluntary treatment, or, 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;
- (d)** The facility or community provider that will provide short-term treatment has been designated or approved by the commissioner to provide such treatment; and
- (e)** 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) The petition filed pursuant to subsection (1) of this section must:

- (a)** State sufficient facts to establish reasonable grounds 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 accompanied by a report of the competency evaluator or professional person who has evaluated the respondent within fifty-six days before submission of the petition, unless the respondent whose certification is sought has refused to submit to an evaluation or the respondent cannot be evaluated due to the respondent's condition;
- (c)** Be filed within fourteen days after the initiating party received the court order from the criminal court initiating the process;
- (d)** Be filed with the court in the county where the respondent resided or was physically present immediately prior to the filing of the petition; except that if the person was arrested for the prior case and held in custody, the petition may be filed in the county where the respondent resided or was physically present immediately prior to the respondent's arrest; and
- (e)** Provide recommendations if any certification should occur on an inpatient or outpatient basis.

(3) Within twenty-four hours after certification, copies of the certification must be personally delivered to the respondent, the BHA, or the office of civil and forensic mental health. The department shall retain a copy as part of the respondent's record. If the criminal case is pending, or not yet dismissed, notice of the filing of the petition should be given by the petitioning party to the criminal court, which shall provide such notice to the prosecuting and defense attorneys in the criminal case and any attorney appointed pursuant to section 27-65-113. The court shall ask the respondent to designate one other person whom the respondent wants to be informed regarding the petition. If the respondent is incapable of making such a designation at the time the petition is delivered, the court may ask the respondent to designate such person as soon as the respondent is capable.

(4) Whenever a petition is filed pursuant to this section, the court shall immediately appoint an attorney to represent the respondent. The court shall provide the respondent with a written notice that the respondent has a right to a hearing on the petition and may make a written request for a jury trial. 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 petition and any supporting materials immediately upon the attorney's appointment. The respondent may only waive counsel when the respondent makes a knowing and voluntary waiver in front of the court.

(5) Upon the filing of the petition pursuant to this section and affording the respondent a chance to contest the petition, the court may grant or deny certification based on the facts established in the petition, subject to the court's further review or a jury trial.

(6) Within fourteen days after receipt of the petition filed pursuant to this section, the respondent, or the respondent's attorney, may request a jury trial by filing a written motion with the court.

(7) The respondent may knowingly and voluntarily consent in writing to the petition.

(8) The respondent or the respondent's attorney may, at any time, file a written request for the court to review short-term certification or request that inpatient certification be changed to outpatient treatment. If the review is requested, the court shall hear the matter within fourteen days after the request, and the court shall give notice to the respondent, the respondent's attorney, the department, and the community or facility provider who is or will provide treatment. 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.

(9) Section 27-65-109 (7) to (10) applies to proceedings held pursuant to this section.

(10) In assessing whether the respondent with a pending criminal charge is a danger to self or others or is gravely disabled, if the person is incarcerated, the professional person and court shall not rely upon the fact that the person is incarcerated to establish that the respondent is not a danger to self or others or is not gravely disabled.

(11) An emergency mental health hold pursuant to section 27-65-106 is not a prerequisite to a proceeding pursuant to this section.

(12) For the purposes of this section only, "respondent" means the defendant in the referring criminal matter.

History

Source: L. 2023:Entire section added, (HB 23-1138), ch. 423, p. 2485, § 5, effective July 1, 2024.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

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