

I've been put on a mental
health hold.

What are my rights?

Basic criteria are that you have a “mental health disorder,” and as a result you are:



**Danger to
self or
others**

OR

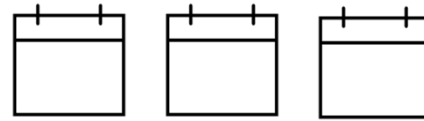
“Gravely disabled:”

a condition in which a person, as a result of a mental health disorder, is incapable of making informed decisions about or providing for the person's essential needs without significant supervision and assistance from other people. As a result of being incapable of making these informed decisions, a person who is gravely disabled is at risk of substantial bodily harm, dangerous worsening of any concomitant serious physical illness, significant psychiatric deterioration, or mismanagement of the person's essential needs that could result in substantial bodily harm. A person of any age may be “gravely disabled”, but the term does not include a person whose decision-making capabilities are limited solely by the person's developmental disability.

There are 3 main types of civil/involuntary commitment for mental health:

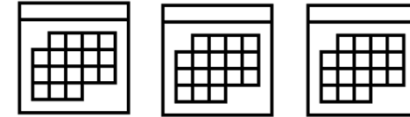
Emergency mental health hold (for screening) (C.R.S. §27-65-106)

- Can last up to 72 hours
- Used to be known as an “M1” hold
- No rights to hearing or representation by a lawyer



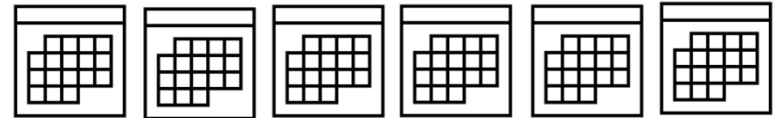
Short-term certification (C.R.S. §27-65-109)

- Lasts up to 3 months; can be renewed one time
- Can be inpatient or outpatient
- You have a right to a hearing and to be represented by a lawyer



Long-term certification (C.R.S. §27-65-110)

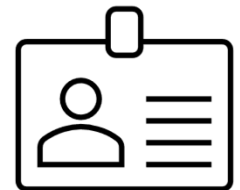
- Lasts up to 6 months
- Can be extended as many times as the court finds appropriate
- You have a right to a hearing and to be represented by a lawyer



Emergency mental health hold (up to 72 hours)

Can be initiated:

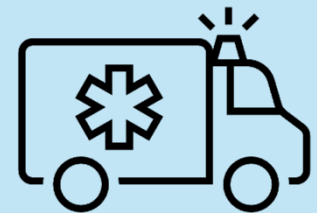
1. By a certified peace officer (CPO) who **has probable cause** to believe a person has a mental health disorder AND as a result of the mental health disorder, is an imminent danger to self or others or is gravely disabled
2. By a professional (known as an “intervening professional” or IP; includes some nurses, counselors, social workers, etc.) **reasonably believes** that a person has a mental health disorder AND as a result of the mental health disorder, is an imminent danger to self or others or is gravely disabled
3. By a court after “a person” files a petition alleging facts that you are a danger to self or others or gravely disabled, AND the court finds there is probably cause that you meet criteria (danger to self or others must be imminent)



What happens if an emergency mental health hold is invoked by CPO or IP?

If a certified peace officer or intervening professional initiates an emergency mental health hold,

- The person can be taken into “protective custody” and
- Transported to a facility designated for emergency mental health holds
- Or, if such a facility is not available, the person can be taken to an “emergency medical services facility”



Person can be transported by a certified peace officer, by a secure transportation provider (STP), or in collaboration with a “behavioral health crisis response team”



What must be included in a petition to a court for an emergency mental health hold?

- Name and address of person asking the court to initiate an emergency mental health hold (known as “the petitioner”)
- Name of the person for whom evaluation is being requested (known as “the respondent”). If known, the person’s address, age, marital status, occupation, and any animals or dependent children in the person’s care
- Allegations of facts showing that the person has a mental health disorder AND as a result is a danger to self or others or gravely disabled and “reasonable grounds to warrant an evaluation”
- The name, address, and phone number of the attorney (if any) that most recently represented the person (in a mental health proceeding)



The facility doing the evaluation SHALL require an application that includes:

- Description of the circumstances in which the person came to the attention of the officer or intervening professional
- Facts known to the officer or intervening professional that show that the person has a mental health disorder and as a result, is a danger to self or others or is gravely disabled
- When the person was taken into custody, and who brought the person's condition to the attention of the officer or intervening professional

A copy of the application must be given to the person being evaluated, and the application must be saved.

What happens if court receives a petition from “a person” for an emergency mental health hold?



If the court DOES NOT believe there is probable cause:

- The judge SHALL order that the person be screened to determine whether there is probable cause to believe the allegations in the petition
- After screening, a report SHALL be filed with the court, AND
- An emergency mental health hold CAN be initiated at the time of screening



If the court believes there IS probable cause:

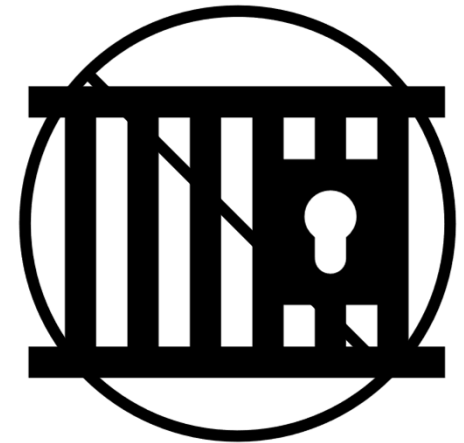
- AND the person has refused voluntary evaluation,
- The court SHALL order that the person be taken into custody for an evaluation
- Transported by certified peace officer or secure transportation provider to a facility designated for emergency mental health holds (“designated facility”)

If the court DOES order an emergency mental health hold

- The person (ordered to be evaluated) must be given a copy of the petition and of the order for evaluation
- Copies of petition and order for evaluation must also promptly be given to “one lay person designated by the respondent” (any person of the patient’s choosing” and to the person in charge of the facility named in the order
- If the person refuses to accept copies of these documents, this refusal must be documented

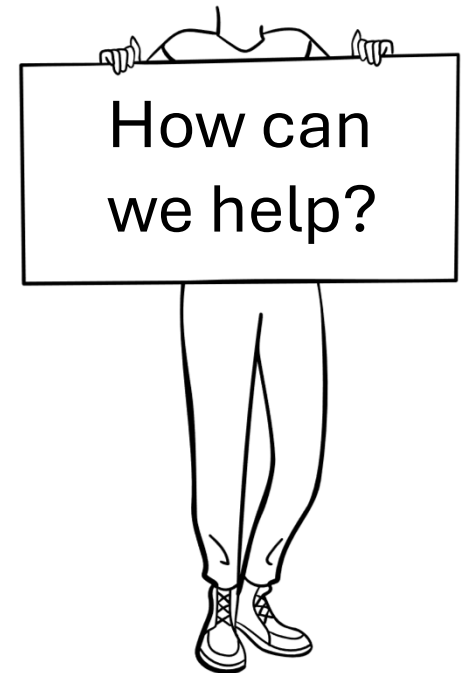
What happens once a person is “taken into custody” for evaluation?

- Person CANNOT be held in a jail or other facility meant to hold people convicted of crimes
- Person can be taken to an emergency medical services provider (ER) EVEN IF there is an active warrant for the person’s arrest if the officer believes it is in the person’s best interest



What happens after person is taken to the designated facility?

- Person should be evaluated as soon as possible
- Person SHALL receive appropriate treatment (“such treatment and care as the person’s condition requires for the full period that the person is held”) as well as **discharge instructions**



What happens after person is taken to the designated facility?

- The evaluation may include information about whether the person STILL meets criteria for emergency mental health hold and requires additional care in a designated facility
- The evaluation MUST state whether person should be released, referred for further care and treatment on voluntary basis, or certified for short-term treatment under 27-65-109
- Evaluation must be done by a “professional person” and must be done using a standard approved form
- A certification can ONLY be initiated by a “**professional person**”
- **IF person in charge of evaluation believes the person can be “properly cared for without being detained,” treatment SHALL be provided on a voluntary basis**

Who is a “professional person” that can initiate a certification?



“Professional Person”

- Licensed advanced practical RN with training in psychiatric nursing
- licensed physician’s assistant (PA)
- Licensed clinical social worker (LCSW)
- Licensed professional counselor (LPC)
- Licensed marriage and family therapist (LMFT) who has relevant experience

What are my rights while on an emergency mental health hold? (must be advised of these rights)

- Unless there is an order, not all treatment during detainment is mandatory (you can still refuse)
- You can request the change to voluntary treatment status
- Freedom from discrimination
- To be treated fairly, with respect and recognition of your dignity and individuality by all employees
- To consult with and retain an attorney (but no right to hearing or to be represented by an attorney or have an attorney provided for you)
- To practice your religion
- To access a patient representative within 24 hours (“who has no direct or indirect clinical, admin, or financial responsibility”)



What are my rights while on an emergency mental health hold? (must be advised of these rights)

- **Reasonable** access to telephones or other communication devices
 - Make and receive calls in private
 - staff should not “open, delay, intercept, read or censor mail or other communications”



Rights while on an emergency mental health hold

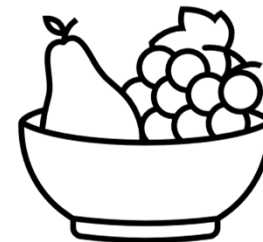
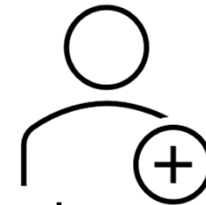
- To wear your own clothes, keep and use your personal property, and keep and spend a “reasonable sum” of money
 - Staff should conduct a safety assessment as soon as possible, and they may temporarily restrict your access to property until the safety assessment is done
 - Staff should discuss any restrictions with you, document in your medical record the specific reason(s) why it isn’t safe to give you access, and re-evaluate periodically with a goal of removing restrictions
- “To keep and use the person’s cell phone, unless access to the cell phone causes the person to destabilize or creates a danger to the person’s self or others, as determined by a provider, facility staff member, or security personnel involved in the person’s care”

Where’s my stuff???



What are my rights while on an emergency mental health hold? (must be advised of these rights)

- To have information and records given to a family member or lay person
- Confidentiality of records (unless disclosure is allowed by law)
- Not to be fingerprinted
- Appropriate access to water, hygiene products and food
- Personal privacy to the extent possible
- Visitation in line with facility's visitation policy



Important Notes about Rights (emergency holds):

- **Your rights under this subsection may only be denied if access to the item, program or service causes you to destabilize or creates a danger to self or others, as determined by a licensed provider involved in your care. Denial of any right must be entered into your treatment record and must be made available, upon request, to you, your legal guardian, or your attorney.**
- A facility SHALL NOT intentionally retaliate or discriminate against a detained person or employee for contacting or providing info to any official or to an employee of state Protection & Advocacy agency (that's us! Disability Justice)
- If you believe your rights have been denied or violated, you can file a complaint against the facility with the BHA and/or CDPHE



Short-term certification (C.R.S. §27-65-109) (up to 3 months, 6 months if extended)

Following evaluation during an emergency hold, you can be “certified” for up to 3 months of treatment if:

1. Professionals at the facility have evaluated you and found that you have a mental health disorder
AND that as a result, you are dangerous to self or others
OR gravely disabled
2. You have been told about and refused voluntary treatment, or there are reasonable grounds to believe you will not remain engaged in treatment voluntarily
3. The facility or community provider identified to provide care under the short-term certification has been designated to do so
4. You, your guardian (if applicable), and your lay person have been advised that you have a right to a lawyer and to contest the certification

The “notice of certification” must:

- Be signed by a “professional person” who participated in your evaluation
- State facts that establish that you have a mental health disorder and as a result are a danger to self or others or are gravely disabled
- Be filed with the court in the county in which you reside or were physically present immediately before being taken into custody within 48 hours of certification (not including weekends and holidays)
- Be given to you (copy) within 24 hours, be sent to the BHA, and a copy kept at the facility as part of your record
 - You will be asked to designate a lay person to receive a copy of the certification as well
 - You should be given written notice that a hearing may be held to the court or to a jury upon written request made to the court



Your Rights Once Short-term Certification is filed:

The court SHALL immediately appoint an attorney to represent you.

- You have a right to be represented by an attorney at all stages, including on appeal.
- The court can only find that you have waived (given up) your right to an attorney after you “make knowing and intelligent waiver IN FRONT OF” the judge
- You or your attorney can request at any time in the future that your certification be reviewed or made outpatient
 - If this request is made, a hearing will be set within 10 days of the making of the request
 - At a hearing, the court can confirm the certification, order your discharge, or make any other appropriate orders
- The court can also order that you be transported elsewhere or transferred to a different facility for your safety or for the safety of the public



Your Rights Once Short-term Certification is filed (continued):

- You can be discharged at any time with the signature of the treating medical professional and the medical director of the facility (does not require additional permission of the court)
- You can be discharged from outpatient certification with the signature of the “approved professional person” overseeing your treatment. The facility should notify the BHA prior to your discharge (so that they can follow up with you)
- The facility shall make your discharge instructions available to you or your guardian within 7 days, if requested
- If you are transferred to another facility or provider, your records must be sent at least 24 hours prior to transfer

Extension of a Short-Term Certification (up to another 3 months)

If the professional providing your treatment believes that a period of more than 3 months is necessary for your treatment, they can request an extended certification

- Must be filed with the court at least 30 days before the end of the original certification period
- Certification can be extended for up to an additional 3 months
- You have a right to a hearing on the extension and to be represented by a lawyer at that hearing, just like with the original certification



Long-Term Certification (C.R.S. §27-65-110) (up to 6 months at a time, can be repeated over and over)

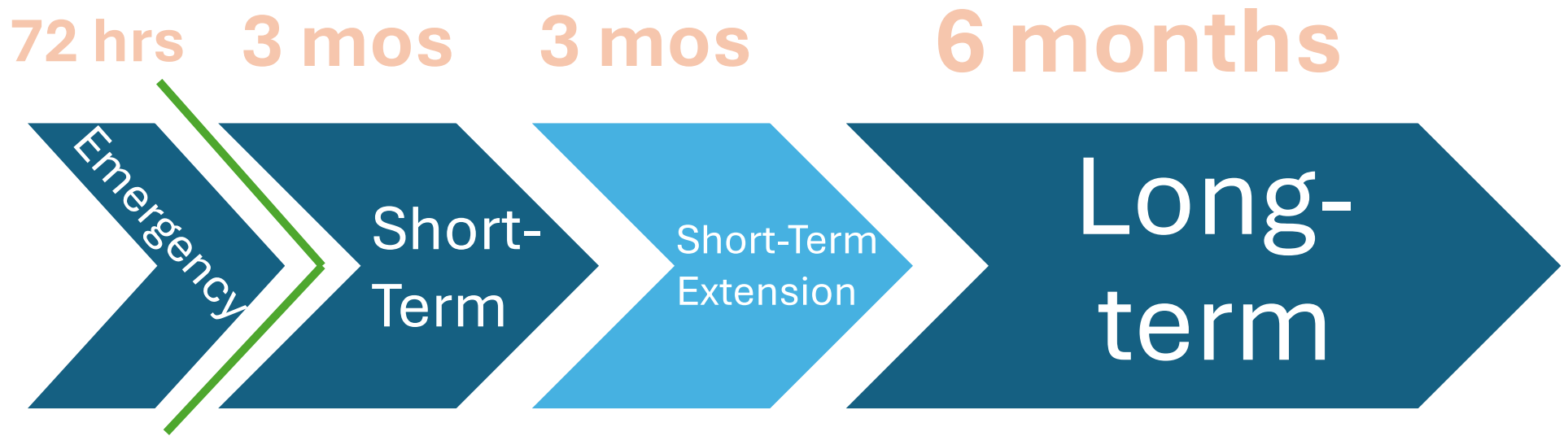
If your short-term certification is extended, the professionals treating you (the person in charge of your certification) of the BHA MAY file a request for long-term certification, at least 30 days before the end of the extension period, IF:

- Professional staff of the agency or facility treating you have analyzed your condition and found that you have a MH disorder and that as a result, you are a danger to self/others or are gravely disabled
- You will not accept voluntary treatment, or there are reasonable grounds to believe that you will not stay voluntarily
- The facility that would provide long-term care has been designated to do so



Long-Term Certification (C.R.S. §27-65-110) (up to 6 months at a time, can be repeated over and over)

- Every request for long-term certification MUST include a request for a hearing prior to the end of the 6 month period, and
- Must recommend inpatient versus outpatient treatment



Right to attorney (after filing of short-term cert)



What rights do I have while receiving inpatient treatment on a short-term or long-term certification?

- You can request the change to voluntary treatment status
- Freedom from discrimination
- To be treated fairly, with respect and recognition of your dignity and individuality by all employees
- Rights to appropriate treatment, administered “skillfully, safely, and humanely,” suited to your needs, which must be determined in collaboration with you
- To consult with and retain an attorney (but no right to hearing or to be represented by an attorney or have an attorney provided for you)
- To practice your religion
- To access a patient representative within 24 hours (“who has no direct or indirect clinical, admin, or financial responsibility”)

What rights do I have while receiving inpatient treatment on a short-term or long-term certification?

- To have your information and records released to a family member or lay person (as described in C.R.S. § 27-65-123)
- Confidentiality of records (unless disclosure is allowed by law)
- Not to be fingerprinted
- Appropriate access to water, hygiene products and food
- Personal privacy to the extent possible
- Frequent and convenient opportunities to meet with visitors
- To see your attorney, clergy, or physician at any time
- To have access to a representative within the facility who provides assistance to file a grievance

What rights do I have while receiving inpatient treatment on a short-term or long-term certification?

- **Reasonable** access to telephones or other communication devices
 - Make and receive calls in private
 - staff should not “open, delay, intercept, read or censor mail or other communications”
- To wear your own clothes, keep and use your personal property, including your cell phone, and keep and spend a “reasonable sum” of money

How can a facility restrict these rights?

- The above rights may be denied IF “access to the item, program, or service would endanger” you or another person “in close proximity” to you
- May ONLY be denied by a person involved in your care
- Denial (or restriction) of any right MUST be documented in your treatment record
- Information about the denial or restriction of rights contained in your treatment record MUST be made available to you, your legal guardian, or your attorney, upon request

Important Notes about Rights:

- **Your rights under this subsection may only be denied if access to the item, program or service causes you to destabilize or creates a danger to self or others, as determined by a licensed provider involved in your care. Denial of any right must be entered into your treatment record and must be made available, upon request, to you, your legal guardian, or your attorney.**
- A facility SHALL NOT intentionally retaliate or discriminate against a detained person or employee for contacting or providing info to any official or to an employee of state Protection & Advocacy agency (that's us! Disability Justice)
- If you believe your rights have been denied or violated, you can file a complaint against the facility with the BHA and/or CDPHE

