

Second Regular Session
Seventy-first General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 18-1136.01 Jane Ritter x4342

SENATE BILL 18-263

SENATE SPONSORSHIP

Martinez Humenik, Cooke

HOUSE SPONSORSHIP

Singer,

Senate Committees

State, Veterans, & Military Affairs

House Committees

A BILL FOR AN ACT

101 CONCERNING THE CREATION OF A PILOT PROGRAM TO ALLOW FOR
102 COURT APPROVAL OF TREATMENT MEDICATIONS IN JAILS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a pilot program in the department of human services (department) to establish the safety and effectiveness of allowing a licensed psychiatrist to petition the court for authority to administer medications in a jail over the objection of a respondent. The advisory board to the department (advisory board) shall approve any applying jail for participation in the pilot program if it has established a contract with

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

a facility designated by the department and also meets the minimum criteria established in the bill. The advisory board shall only authorize a maximum of 5 jails to participate in the pilot program. The pilot program will be monitored by the office of behavioral health.

The office of behavioral health and the sheriff or appropriate law enforcement for a jail applying to participate in the pilot program shall collaboratively develop requirements for a participating jail. Requirements for information and affirmations are to be included in the petition to the court. The department is required to report on the pilot program on or before December 31, 2021.

The pilot program is repealed, effective September 1, 2022.

Language is clarified concerning hearings and jurisdiction in cases brought to the court for mental health proceedings, including involuntary administration of medications and certifications. If such a case is presented to a jury, the jury shall only hear evidence on the issue of whether the person has a mental health disorder and, as a result of such mental health disorder, is a danger to others or to himself or herself or is gravely disabled.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 27-65-102, **add**
3 (12.5) as follows:

4 **27-65-102. Definitions.** As used in this article 65, unless the
5 context otherwise requires:

6 (12.5) "OFFICE OF BEHAVIORAL HEALTH" MEANS THE OFFICE OF
7 BEHAVIORAL HEALTH IN THE DEPARTMENT.

8 **SECTION 2.** In Colorado Revised Statutes, **add** 27-65-132 as
9 follows:

10 **27-65-132. Pilot program to allow for court approval of**
11 **treatment medications in jails - creation - purpose - requirements -**
12 **reporting - rules - repeal.** (1) THERE IS CREATED IN THE DEPARTMENT
13 A PILOT PROGRAM TO ALLOW FOR COURT APPROVAL OF TREATMENT
14 MEDICATIONS IN JAILS, REFERRED TO IN THIS SECTION AS THE "PILOT
15 PROGRAM". THE PURPOSE OF THE PILOT PROGRAM IS TO ESTABLISH THE

1 SAFETY AND EFFECTIVENESS OF ALLOWING A LICENSED PSYCHIATRIST TO
2 PETITION, AS PROVIDED FOR IN SUBSECTION (2) OF THIS SECTION, A
3 DISTRICT COURT OF APPROPRIATE JURISDICTION THAT IS SITTING AS
4 PROBATE COURT FOR AUTHORITY TO ADMINISTER MEDICATIONS IN THE
5 JAIL, OVER THE OBJECTION OF A RESPONDENT, PURSUANT TO SECTION
6 27-65-111 (5). FIVE OR FEWER JAILS MAY PARTICIPATE IN THE PILOT
7 PROGRAM AFTER SEEKING AND OBTAINING WRITTEN APPROVAL BASED ON
8 THE REQUIREMENTS ESTABLISHED BY THE ADVISORY BOARD ESTABLISHED
9 IN SECTION 27-65-131, REFERRED TO IN THIS SECTION AS THE "ADVISORY
10 BOARD". ONCE APPROVED AS A PARTICIPANT IN THE PILOT PROGRAM, THE
11 APPROVED JAIL IS SUBJECT TO OVERSIGHT AND MONITORING BY THE OFFICE
12 OF BEHAVIORAL HEALTH AND WILL BE REQUIRED TO REMAIN IN
13 CONTINUANCE COMPLIANCE WITH RULES PROMULGATED BY THE
14 DEPARTMENT, INCLUDING RULES THAT ENSURE THAT RESPONDENTS
15 RECEIVING PSYCHOTROPIC MEDICATIONS HAVE ACCESS TO APPROPRIATE
16 AND NECESSARY HEALTH CARE OVERSIGHT AND SERVICES. A JAIL MAY
17 NOT PARTICIPATE IN THE PILOT PROGRAM UNTIL THE DEPARTMENT HAS
18 ADOPTED RULES PURSUANT TO SUBSECTION (6) OF THIS SECTION.

19 (2) (a) THE PETITION TO THE COURT REQUIRED BY SUBSECTION (1)
20 OF THIS SECTION MUST INCLUDE THE FOLLOWING INFORMATION AND
21 ASSERTIONS:

22 (I) THAT THE RESPONDENT IS NOT COMPETENT TO EFFECTIVELY
23 PARTICIPATE IN TREATMENT DECISIONS REGARDING MEDICATIONS;

24 (II) THAT THE REQUESTED MEDICATIONS ARE NECESSARY TO
25 PREVENT A SIGNIFICANT AND LIKELY LONG-TERM DETERIORATION IN THE
26 RESPONDENT'S MENTAL HEALTH CONDITION AND ARE NECESSARY TO
27 REDUCE THE LIKELIHOOD THAT THE RESPONDENT MAY CAUSE SERIOUS

1 HARM TO HIMSELF OR HERSELF OR TO OTHERS IN THE JAIL;

2 (III) THAT A VIABLE, LESS INVASIVE TREATMENT ALTERNATIVE IS
3 NOT AVAILABLE;

4 (IV) THAT THE RESPONDENT'S NEED FOR TREATMENT BY
5 PSYCHOTROPIC MEDICATION IS SUFFICIENTLY COMPELLING TO OVERRIDE
6 ANY BONAFIDE AND LEGITIMATE INTERESTS OF THE RESPONDENT IN
7 REFUSING TREATMENT; AND

8 (V) WHAT CLASS OR NAME OF MEDICATION IS BEING
9 RECOMMENDED AS POTENTIALLY BENEFICIAL TO THE RESPONDENT.

10 (b) THE COURT SHALL GRANT A PETITION FOR ADMINISTRATION OF
11 INVOLUNTARY MEDICATIONS FOR A MAXIMUM PERIOD OF THREE MONTHS
12 THAT IS TRANSFERABLE BETWEEN JAILS PARTICIPATING IN THE PILOT
13 PROGRAM. PRIOR TO THE CONCLUSION OF THE THREE-MONTH
14 AUTHORIZATION PERIOD, IF THE CRITERIA SET FORTH IN THE ORIGINAL
15 PETITION STILL EXISTS, THE LICENSED PSYCHIATRIST MAY PETITION THE
16 COURT FOR AN ADDITIONAL THREE-MONTH PERIOD DURING WHICH TO
17 ADMINISTER THE AUTHORIZED MEDICATIONS.

18 (3) THE ADVISORY BOARD SHALL MAKE RECOMMENDATIONS TO
19 THE EXECUTIVE DIRECTOR FOR UP TO FIVE JAILS TO PARTICIPATE IN THE
20 PILOT PROGRAM. ANY APPLYING JAIL MUST HAVE ESTABLISHED A
21 CONTRACT WITH A FACILITY, AS DEFINED IN SECTION 27-65-102 (7),
22 DESIGNATED BY THE EXECUTIVE DIRECTOR PURSUANT TO THIS ARTICLE 65
23 AND BE ABLE TO CONTINUOUSLY MEET THE MINIMUM CRITERIA SET FORTH
24 IN THIS SUBSECTION (3) AND ANY REQUIREMENTS OF RULES TO BE
25 PROMULGATED BY THE DEPARTMENT DURING THE TIME PERIOD IT IS A
26 PARTICIPANT. THE EXECUTIVE DIRECTOR SHALL NOT APPROVE MORE THAN
27 FIVE JAILS TO PARTICIPATE IN THE PILOT PROGRAM. THE MINIMUM

1 CRITERIA TO BE MET, AS DETERMINED COLLABORATIVELY BETWEEN THE
2 OFFICE OF BEHAVIORAL HEALTH AND THE SHERIFFS OR LAW ENFORCEMENT
3 RESPONSIBLE FOR AN APPLYING JAIL, INCLUDE:

4 (a) MAINTAIN A MEMORANDUM OF AGREEMENT WITH THE CLOSEST
5 HOSPITAL TO THE JAIL THAT IS ACCREDITED BY A NATIONALLY
6 RECOGNIZED ORGANIZATION FOR THE PROVISION OF HEALTH SERVICES IF
7 AT ANY TIME THERE IS AN ADVERSE EFFECT FROM THE ADMINISTRATION
8 OF TREATMENT MEDICATIONS THROUGH THE PILOT PROGRAM;

9 (b) MAINTAIN THE ABILITY TO TRANSFER CARE, UPON A
10 RESPONDENT'S RELEASE, TO A MENTAL HEALTH AGENCY THAT IS
11 APPROVED BY THE OFFICE OF BEHAVIORAL HEALTH AND THAT IS EASILY
12 ACCESSIBLE TO THE RESPONDENT. AN APPOINTMENT MUST BE MADE WITH
13 THE APPROPRIATE MENTAL HEALTH AGENCY ON THE RESPONDENT'S
14 BEHALF PRIOR TO HIS OR HER RELEASE. THE OFFICE OF BEHAVIORAL
15 HEALTH SHALL CONTRACT FOR TRANSITIONAL SERVICES TO BE AVAILABLE
16 FOR RESPONDENTS WHO HAVE BEEN APPROVED BY THE COURT FOR THE
17 ADMINISTRATION OF TREATMENT MEDICATIONS IN A JAIL THAT IS
18 PARTICIPATING IN THE PILOT PROGRAM.

19 (c) (I) HAVE TWENTY-FOUR-HOUR ACCESS TO A TREATING
20 PSYCHIATRIST, EITHER EMPLOYED OR UNDER CONTRACT, WHO IS
21 RESPONSIBLE FOR THE EVALUATION AND TREATMENT OF EACH INDIVIDUAL
22 WHO IS ADMINISTERED MEDICATIONS PURSUANT TO THIS SECTION. THE
23 TREATING PSYCHIATRIST MAY DELEGATE PARTS OF HIS OR HER DUTIES,
24 EXCEPT AS LIMITED BY SUBSECTION (3)(c)(II) OF THIS SECTION, LICENSING
25 STATUTES, THE MEMORANDUM OF AGREEMENT, OR THE PROVISIONS OF
26 THIS SECTION OR RULES PROMULGATED BY THE DEPARTMENT.

27 (II) ENSURE THAT THE PSYCHIATRIST WHO SIGNS THE PETITION TO

1 THE COURT FOR THE ADMINISTRATION OF TREATMENT MEDICATIONS
2 PURSUANT TO THIS SECTION HAS CONDUCTED AN IN-PERSON EVALUATION
3 OF THE RESPONDENT PRIOR TO SIGNING THE PETITION TO THE COURT;

4 (d) ENSURE THAT A RESPONDENT WHO WAS APPROVED BY THE
5 COURT TO RECEIVE TREATMENT MEDICATIONS AGAINST HIS OR HER WILL
6 IS MONITORED DAILY BY A LICENSED PSYCHIATRIST, PSYCHIATRIC
7 REGISTERED NURSE, PSYCHIATRIC PHYSICIAN'S ASSISTANT, LICENSED
8 PROFESSIONAL COUNSELOR, LICENSED PSYCHOLOGIST, OR LICENSED
9 CLINICAL SOCIAL WORKER; AND

10 (e) MAINTAIN CONFIDENTIAL INDIVIDUAL DOCUMENTATION ON
11 TREATMENT MEDICATIONS ADMINISTERED IN THE JAIL THROUGH THE PILOT
12 PROGRAM AS FOLLOWS:

13 (I) PSYCHIATRIC MEDICATIONS THAT WERE REQUESTED, ANY
14 ADVERSE EFFECTS EXPERIENCED BY THE RESPONDENT WHO RECEIVED
15 SUCH MEDICATIONS, WHAT ACTIONS WERE TAKEN BY THE JAIL WHEN
16 ADVERSE EFFECTS OCCURRED, AND ANY OUTCOMES FROM ADVERSE
17 EFFECTS OF PSYCHIATRIC MEDICATIONS ADMINISTERED THROUGH THE
18 PILOT PROGRAM;

19 (II) THE CRIME AND CHARGE FOR WHICH THE RESPONDENT WAS IN
20 CUSTODY;

21 (III) THE RESPONDENT'S BOND ELIGIBILITY;

22 (IV) THE AMOUNT OF TIME THE RESPONDENT WAS IN CUSTODY,
23 INCLUDING THE DATE OF BOOKING INTO THE JAIL AND THE DATE OF
24 RELEASE;

25 (V) DATA CONCERNING THE TRANSITIONAL APPOINTMENT WITH A
26 MENTAL HEALTH AGENCY, INCLUDING THE DATE OF THE APPOINTMENT
27 AND NAME OF THE MENTAL HEALTH AGENCY;

1 (VI) DOCUMENTATION ON EFFORTS MADE TO ENCOURAGE THE
2 RESPONDENT TO TAKE THE PRESCRIBED MEDICATIONS VOLUNTARILY;

3 (VII) DOCUMENTATION ON EFFORTS TO FIND AN AVAILABLE BED
4 IN THE COMMUNITY FOR BEHAVIORAL HEALTH TREATMENT, IF
5 APPROPRIATE; AND

6 (VIII) ANY OTHER INDIVIDUAL DATA AS DETERMINED NECESSARY
7 BY THE DEPARTMENT NECESSARY FOR ONGOING TREATMENT PURPOSES.

8 (4) ON OR BEFORE DECEMBER 31, 2020, THE DEPARTMENT SHALL
9 SUBMIT A REPORT TO THE PUBLIC HEALTH CARE AND HUMAN SERVICES
10 COMMITTEE OF THE HOUSE OF REPRESENTATIVES AND THE HEALTH AND
11 HUMAN SERVICES COMMITTEE OF THE SENATE, OR ANY SUCCESSOR
12 COMMITTEES, DURING THE "STATE MEASUREMENT FOR ACCOUNTABLE,
13 RESPONSIVE, AND TRANSPARENT (SMART) GOVERNMENT ACT" HEARING
14 REQUIRED BY SECTION 2-7-203, CONCERNING THE STATUS OF THE PILOT
15 PROGRAM AND ANY STATISTICALLY RELEVANT DATA.

16 (5) ON OR BEFORE DECEMBER 31, 2021, IF THE ADVISORY BOARD
17 APPROVES ANY JAIL TO PARTICIPATE IN THE PILOT PROGRAM PURSUANT TO
18 SUBSECTION (1) OF THIS SECTION, THE DEPARTMENT SHALL PROVIDE A
19 SUMMARY REPORT CONCERNING THE SAFETY AND EFFECTIVENESS OF THE
20 PROGRAM TO THE PUBLIC HEALTH CARE AND HUMAN SERVICES COMMITTEE
21 OF THE HOUSE OF REPRESENTATIVES, THE HEALTH AND HUMAN SERVICES
22 COMMITTEE OF THE SENATE, AND THE LEGISLATIVE OVERSIGHT
23 COMMITTEE CONCERNING THE TREATMENT OF PERSONS WITH MENTAL
24 HEALTH DISORDERS IN THE CRIMINAL AND JUVENILE JUSTICE SYSTEMS, OR
25 ANY SUCCESSOR COMMITTEES. AT A MINIMUM, THE REPORT MUST INCLUDE
26 SUMMARY DATA THAT DOES NOT INCLUDE ANY PERSONALLY IDENTIFYING
27 INFORMATION AND:

1 (a) A SUMMARY OF PSYCHIATRIC MEDICATIONS REQUESTED AND
2 ADMINISTERED THROUGH THE PILOT PROGRAM;

3 (b) THE AVERAGE AMOUNT OF TIME OF CUSTODY FOR
4 RESPONDENTS WHO WERE ADMINISTERED MEDICATIONS THROUGH THE
5 PILOT PROGRAM;

6 (c) A SUMMARY LIST OF THE CRIMES WITH WHICH RESPONDENTS
7 WHO WERE ADMINISTERED MEDICATIONS THROUGH THE PILOT PROGRAM
8 WERE CHARGED;

9 (d) A SUMMARY OF DATA RELATED TO APPOINTMENTS AT MENTAL
10 HEALTH AGENCIES AFTER RELEASE FOR RESPONDENTS WHO WERE
11 ADMINISTERED MEDICATIONS THROUGH THE PILOT PROGRAM; AND

12 (e) ANY OTHER SUMMARY INFORMATION DETERMINED NECESSARY
13 BY THE DEPARTMENT.

14 (6) ON OR BEFORE DECEMBER 1, 2018, THE DEPARTMENT SHALL
15 PROMULGATE RULES AS NECESSARY TO CONSISTENTLY ENFORCE THE
16 PROVISIONS OF THIS SECTION, INCLUDING BUT NOT LIMITED TO:

17 (a) THE MINIMUM NECESSARY CONTENTS OF THE MEMORANDUM
18 OF AGREEMENT BETWEEN A JAIL AND A HOSPITAL;

19 (b) DISCIPLINARY ACTIONS THAT WILL OCCUR IF A JAIL THAT IS
20 PARTICIPATING IN THE PILOT PROGRAM IS OUT OF COMPLIANCE WITH THE
21 PARAMETERS OF THE PILOT PROGRAM ESTABLISHED PURSUANT TO THIS
22 SECTION; AND

23 (c) REGULATIONS FOR PSYCHIATRIC MEDICATIONS.

24 (7) THIS SECTION IS REPEALED, EFFECTIVE SEPTEMBER 1, 2022.

25 **SECTION 3.** In Colorado Revised Statutes, 27-65-111, **amend**
26 (1), (4), and (5) as follows:

27 **27-65-111. Hearing procedures - jurisdiction.** (1) Hearings A

1 HEARING before the court pursuant to section 27-65-107, 27-65-108, ~~or~~
2 27-65-109, ~~are~~ OR 27-65-132 IS conducted in the same manner as other
3 civil proceedings before the court. The burden of proof is on the person
4 or facility seeking to detain OR FORCIBLY MEDICATE the respondent. The
5 court or jury shall determine that the respondent is in need of care and
6 treatment only if the court or jury finds by clear and convincing evidence
7 that the person has a mental health disorder and, as a result of the mental
8 health disorder, is a danger to others or to himself or herself or is gravely
9 disabled.

10 (4) The court in which the petition is filed ~~under~~ PURSUANT TO
11 section 27-65-106 OR 27-65-132 or the certification is filed ~~under~~
12 PURSUANT TO section 27-65-107 ~~shall be~~ IS the court of original
13 jurisdiction and of continuing jurisdiction for any further proceedings
14 ~~under this article~~ PURSUANT TO THIS ARTICLE 65. When the convenience
15 of the parties and the ends of justice would be promoted by a change in
16 the court having jurisdiction, the court may order a transfer of the
17 proceeding to another county. Until further order of the transferee court,
18 if any, it ~~shall be~~ IS the court of continuing jurisdiction.

19 (5) (a) (I) ~~In the event that a respondent or a person found not~~
20 ~~guilty by reason of impaired mental condition pursuant to section~~
21 ~~16-8-103.5 (5), C.R.S., or by reason of insanity pursuant to section~~
22 ~~16-8-105 (4) or 16-8-105.5, C.R.S., refuses to accept medication, the~~
23 ~~court having jurisdiction of the action pursuant to subsection (4) of this~~
24 ~~section, the court committing the person or defendant to the custody of~~
25 ~~the department pursuant to section 16-8-103.5 (5), 16-8-105 (4), or~~
26 ~~16-8-105.5, C.R.S., or the court of the jurisdiction in which the~~
27 ~~designated facility treating the respondent or person is located shall have~~

1 IN THE EVENT THAT A RESPONDENT WHO IS SUBJECT TO PROCEEDINGS
2 PURSUANT TO SUBSECTION (4) OF THIS SECTION REFUSES TO ACCEPT
3 MEDICATION OR OTHER RECOMMENDED TREATMENTS, THE COURT HAVING
4 JURISDICTION OF THE ACTION PURSUANT TO SUBSECTION (4) OF THIS
5 SECTION HAS JURISDICTION AND VENUE TO ACCEPT A PETITION BY A
6 TREATING PHYSICIAN AND TO ENTER AN ORDER REQUIRING THAT THE
7 RESPONDENT OR PERSON ACCEPT SUCH MEDICATION OR TREATMENT OR,
8 IN THE ALTERNATIVE, THAT THE REQUESTED MEDICATION BE FORCIBLY
9 ADMINISTERED TO HIM OR HER. UPON THE FILING OF SUCH A PETITION, THE
10 COURT SHALL APPOINT AN ATTORNEY, IF ONE HAS NOT BEEN APPOINTED,
11 TO REPRESENT THE RESPONDENT OR PERSON AND HEAR THE MATTER
12 WITHIN TEN DAYS.

13 (II) IN THE EVENT THAT A PERSON WHO IS FOUND NOT GUILTY BY
14 REASON OF IMPAIRED MENTAL CONDITION PURSUANT TO SECTION
15 16-8-103.5 (5), OR BY REASON OF INSANITY PURSUANT TO SECTION
16 16-8-105 (4) OR 16-8-105.5, REFUSES TO ACCEPT MEDICATION, THE COURT
17 COMMITTING THE PERSON OR DEFENDANT TO THE CUSTODY OF THE
18 DEPARTMENT PURSUANT TO SECTION 16-8-103.5 (5), 16-8-105 (4), OR
19 16-8-105.5 HAS jurisdiction and venue to accept a petition by a treating
20 physician and to enter an order requiring that the respondent or person
21 accept such treatment or, in the alternative, that the medication be forcibly
22 administered to him or her. The court of the jurisdiction in which the
23 designated facility is located shall not exercise its jurisdiction without the
24 permission of the court that committed the person to the custody of the
25 department. Upon the filing of such a petition, the court shall appoint an
26 attorney, if one has not been appointed, to represent the respondent or
27 person and hear the matter within ten days.

1 (b) In any case brought under paragraph (a) of this subsection (5)
2 PURSUANT TO SUBSECTION (5)(a)(II) OF THIS SECTION in a court for the
3 county in which the treating facility is located, the county where the
4 proceeding was initiated pursuant to subsection (4) of this section or the
5 court committing the person to the custody of the department pursuant to
6 section 16-8-103.5 (5), 16-8-105 (4), or 16-8-105.5, ~~C.R.S.~~, shall either
7 reimburse the county in which the proceeding pursuant to this subsection
8 (5) was filed and in which the proceeding was held for the reasonable
9 costs incurred in conducting the proceeding or conduct the proceeding
10 itself using its own personnel and resources, including its own district or
11 county attorney, as the case may be.

12 (c) In the case of a defendant who is found incompetent to
13 proceed pursuant to section 16-8.5-103 ~~C.R.S.~~, and who refuses to accept
14 medication, the jurisdiction for the petition for involuntary treatment
15 procedures shall be IS as set forth in section 16-8.5-112. ~~C.R.S.~~

16 **SECTION 4. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.