



ADMINISTRATIVE ORDER
STATE OF COLORADO
EIGHTH JUDICIAL DISTRICT

PROCEDURE FOR OBTAINING A COURT ORDER REGARDING
RESTRICTIVE HOUSING IN JAILS PURSUANT TO CRS §17-26-301

ORDER 2023-3

Pursuant to the authority granted to chief judges of the judicial districts of the State of Colorado by Chief Justice Directive 95-01, the undersigned, in her capacity as Chief Judge of the Eighth Judicial District, enters the following Administrative Order 2023-3. C.R.S. § 17-26-301 impacts the Larimer County Jail, and thus, the undersigned implements the following procedures for issuing orders with respect to restrictive housing.

The legislative declaration contained within C.R.S. § 17-26-301 includes that “due to the substantial negative impacts of placing juveniles and adults with specific health conditions in restrictive housing, the state must take immediate steps to end and prohibit the use of restrictive housing of juveniles and adults with specific health conditions in Colorado jails.” C.R.S. § 17-26-301(2). Thus, C.R.S. § 17-26-301, outlines procedures to be followed regarding placement of certain individuals in restrictive housing in a local jail. A local jail is defined as “a jail or an adult detention center of a county or city and county with a capacity of more than four hundred beds.” C.R.S. § 17-26-302(2). When an individual meets certain conditions as outlined in C.R.S. § 17-26-303, “the local jail shall

not hold the individual in restrictive housing for more than fifteen days in a thirty-day time period **without a written court order.**” C.R.S. § 17-26-303(2)(i)(I) (emphasis added). Accordingly,

(II) If a local jail wants to hold an individual placed in restrictive housing pursuant to subsection (2)(a) of this section for more than fifteen days in a thirty-day period, the local jail must obtain a written court order. A court shall grant the court order if the court finds by clear and convincing evidence that:

- (A) The individual poses an imminent danger to himself or herself or others;
- (B) No alternative less-restrictive placement is available;
- (C) The jail has exhausted all other placement alternatives; and
- (D) No other options exist, including release from custody.

C.R.S. § 17-26-303(2)(i)(II).

While the statute describes legal findings a court must make to authorize placement of an individual in restrictive housing, the statute is silent as to the administrative aspects of case management for a restrictive housing order. Thus, the undersigned establishes a consistent procedure for the Eighth Judicial District.

Accordingly, when the Larimer County Jail wants to hold certain individuals in restrictive housing for more than fifteen days in a thirty-day period, it must obtain a court order pursuant to C.R.S. § 17-26-303(2)(i)(I)-(II) through the following procedure:

1. The County Attorney will initiate a new action by filing a Petition for Extension of Restrictive Housing (“Petition”) and an Affidavit with the court. The Petition should be filed as a public court document and should not include any medical and/or mental health information regarding the individual. The Affidavit should be filed in a suppressed status and can contain medical and/or mental health information regarding the individual¹

¹ The Affidavit may contain sensitive mental health and medical information. To protect the privacy of individuals, the Affidavit will be placed in a suppressed status but can be modified by a Court when appropriate. See CJD 05-01 § 3.08 (defining suppressed court records).

2. The filing must include a certificate of service indicating the individual and, if known to be represented, the individual's counsel has been served with the Petition and the Affidavit.
3. When the Clerk's Office receives the Petition with the Affidavit, they will open a new civil (CV) case for the action, in which the Custodian of the Local Jail will be entered as a party to the proceeding.
4. Once the court is satisfied the statutory requirements have been met, the court shall enter an order extending restrictive housing. After the court enters its order on the Petition, the court will set a twenty-one-day review.
5. If there are no further filings after twenty-one days, then the case will be closed.

While the statute mandates the local jail needs a court order to hold an individual in restrictive housing for more than fifteen days in a thirty-day period, it is silent as to how long beyond fifteen days the local jail may hold the individual in restrictive housing once it receives the court order. Given the intent of the legislative declaration is to prevent and prohibit the overuse of restrictive housing of inmates with certain health conditions, if the local jail determines it needs to keep the individual in restrictive housing for longer than ordered by the court, it must file another Petition and Affidavit within the existing CV case prior to the expiration of the order.²

Dated July 7th, 2023.

BY THE COURT:



Susan Blanco
Chief Judge
Eighth Judicial District

² If the circumstances have not changed since the original Petition and Affidavit were filed, the jail may file a request to extend the restrictive housing order representing there has been no change in circumstances from the original filing without an additional Affidavit. If circumstances have changed and warrant notifying the court, then the jail shall file a request to extend the restrictive housing order with an updated Affidavit attached.