



EL PASO AND TELLER COUNTY COMBINED COURTS  
FOURTH JUDICIAL DISTRICT, STATE OF COLORADO

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CHIEF JUDGE ORDER 2023-5

RE: PROCEDURES FOR OBTAINING A COURT ORDER FOR RESTRICTIVE  
HOUSING IN JAILS PURSUANT TO C.R.S. § 17-26-301 ET SEQ.

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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 his capacity as Chief Judge of the Fourth Judicial District, enters the following Chief Judge Order 23-5.

The legislative declaration for C.R.S. § 17-26-301 et seq. states, “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). C.R.S. § 17-26-301 et seq. outlines procedures to be followed regarding the 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 set forth 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, 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 the findings that must be made in a court order to place 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 finds it important to establish a consistent procedure for the Fourth Judicial District, given that this procedure will impact the El Paso County Jail, as it meets the definition of “local jail” per C.R.S. § 17-26-302(2).

Accordingly, when the El Paso County Sheriff’s Office wants to hold an individual at the Criminal Justice Center in restrictive housing for more than fifteen days in a thirty-day time period, then it must obtain a court order under 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 a sworn affidavit

(“Affidavit”) with the court in El Paso County. The Petition should be filed as a public court document and should not include any medical or mental health information regarding the individual. The Affidavit should be filed in suppressed status and may contain medical or mental health information regarding the individual.<sup>1</sup>

2. The filing County Attorney must include a certificate of service indicating that the individual and, if represented, the individual’s counsel have been served with the Petition and the Affidavit.
3. When the Clerk’s Office receives that Petition, they will open a new civil (CV) case for the action, in which the County Attorney will be entered as a party to the proceeding.
4. 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 that 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 legislative declaration seeking to limit the use of restrictive housing, if the local jail determines that it needs to keep the individual in restrictive housing for a period longer than ordered by the court, then it must file a Renewed Petition and Affidavit.<sup>2</sup> This pleading shall be filed into the original CV case under the original case number.

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<sup>1</sup> The undersigned anticipates that these cases will contain protected mental health information and that it is likely that these individuals will have pending or recently resolved criminal cases. Accordingly, the undersigned finds that the Affidavit should be maintained in suppressed status. *See* Chief Justice Directive 05-01 § 3.08 (defining suppressed court records).

<sup>2</sup> If the circumstances have not changed for needing to keep the individual in restrictive housing, then the local jail may file only a Petition representing that there has been no change in circumstances from the

DONE AND SIGNED ON THIS 20<sup>th</sup> DAY OF JULY, 2023.

A handwritten signature in blue ink, appearing to read "William B. Bain", written over a horizontal line.

WILLIAM B. BAIN  
Chief Judge  
Fourth Judicial District

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original filing. If circumstances have changed or there is additional information the local jail believes the court should be apprised of, then the local jail shall file another suppressed Affidavit with the Petition.