

**CHIEF JUDGE ORDER 2023-04
STATE OF COLORADO
FIRST JUDICIAL DISTRICT**

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

Pursuant to the authority granted to chief judges of the judicial districts of the State of Colorado by Chief Justice Directive 95-01, the court enters the following order regarding the procedures for obtaining a court order for restrictive housing in the jails within the First Judicial District pursuant to C.R.S. § 17-26-301, *et seq.*

In C.R.S. § 17-26-301(2), the General Assembly declared 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.” Thus, C.R.S. § 17-26-301, *et seq.*, 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 set out 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 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 court finds it necessary to establish a consistent procedure for the First Judicial District and the Jefferson County Jail (the "Jail"), which is a "local jail" as defined in C.R.S. § 17-26-302(2).

Accordingly, when the Jail seeks to hold certain individuals in restrictive housing for more than fifteen days in a thirty-day time 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's Office (on behalf of the Jail) will initiate a new action by filing a Petition for Extension of Restrictive Housing ("Petition") and a sworn affidavit ("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 suppressed status and can contain medical and/or mental health information regarding the individual.¹
2. The County Attorney's Office 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 the Petition, it will open a new civil case for the action, and the new civil case will be assigned to the division which presides over the case in which the individual is being detained.
4. After the court enters its order on the Petition, the court will set a review within twenty-one-days.
5. If there are no further filings after twenty-one days, the case will be closed.

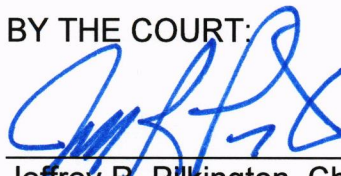
While the statute mandates that the Jail needs a court order to hold an individual in restrictive housing for more than fifteen days in a thirty-day time period without a written court order, it is silent for how long beyond fifteen days the Jail may hold the individual

¹ The court 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 court finds that the Affidavit should be maintained in suppressed status. See Chief Justice Directive 05-01 § 3.08 (defining suppressed court records).

in restrictive housing once it receives the court order. Given the legislative declaration seeking to end and prohibit the use of restrictive housing of inmates with certain health conditions, if the Jail determines that it needs to keep the individual in restrictive housing for longer than ordered by the court, then it must file another Petition and Affidavit within the existing civil case prior to the expiration of the order.²

August 15, 2023 (nunc pro tunc July 1, 2023).

BY THE COURT:



Jeffrey R. Pilkington, Chief Judge
First Judicial District

² If the circumstances have not changed for needing to keep the individual in restrictive housing, the Jail need only file a Petition representing that there has been no change in circumstances from the original filing. If circumstances have changed and/or there is additional information of which the Jail believes the court should be apprised, then the Jail shall file another suppressed Affidavit with the Petition.