

Access to Mental Health Care in Indiana: Diverting Some of Most Vulnerable From Criminal Legal System by Emergency Detention

Article

Amundsen Davis Health Care Alert

July 6, 2023

During the 2023 legislative session, the Indiana General Assembly passed HEA 1006, which combines and modifies the emergency and immediate detention processes. The changes permit police and health care providers to seek immediate psychiatric help for an individual in crisis for up to 14 days, equipping local crisis intervention teams with a valuable treatment option for a person in crisis as opposed to pursuing criminal charges and incarceration in the county jail. The new law took effect on July 1, 2023 and has implications for both law enforcement and behavioral health providers. Key provisions of the law are addressed below.

Police Officers' Contact With An Individual In Crisis

When a police officer determines a person is (i) mentally ill (which includes temporary impairment as a result of alcohol or drug use), (ii) either dangerous or gravely disabled, and (iii) in need of hospitalization and treatment, the officer may do one or more of the following:

- Apprehend and transport the person to the "nearest appropriate facility" (but not a state institution).
- Charge the person with an offense, if applicable.

If the police officer transports a person to a facility, the officer must submit a written statement that explains the basis for which immediate psychiatric help is needed. The statement must be filed in the individual's records at the facility and with the court if actions relating to a charge are pursued by the prosecutor. The new law does not define *facility*, but reasonable interpretations would mean it includes community mental health centers, mental health clinics, hospitals and non-state psychiatric hospitals. If clinically appropriate, a physician may authorize and begin a mental health or substance use disorder treatment plan using accepted clinical care guidelines, including medication, for the detained

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individual.

Psychiatric Facility Seeking Detention

Without court approval, an individual may be detained for no more than 48 hours from the time of admission to a facility (excluding Saturdays, Sundays, and legal holidays). If, within the 48-hour period, the facility files an application for further detention ("Application") with a court, the individual may be detained for up to 72 hours. The Application must include a physician's attestation that the individual has been examined by a physician, an advanced practice registered nurse, or a physician assistant, and the applicant believes there is probable cause that the individual is mentally ill and either dangerous or gravely disabled and requires continuing involuntary detention to receive care and treatment.

Final Hearing

If the court approves the Application, the individual may be held up to 14 days from the time of the initial admission (excluding Saturdays, Sundays and legal holidays) pending a final hearing. In contrast, the repealed immediate detention statute authorized the detention for up to 24 hours, during which the facility had to file an application for an emergency detention to extend the detention for an additional 72 hours of care. Under the new law, the final hearing will determine whether the person is (i) mentally ill and either dangerous or gravely disabled and (ii) in need of temporary or regular commitment. If the court reviews the application and finds there is no probable cause to detain the individual, there will be no hearing and the individual must be released.

If a hearing is held, an individual may not be found in need of temporary or regular commitment unless there is testimony from the physician who signed the attestation in the application for detention or from another physician who personally examined the individual. The testimony may be waived by the individual.

Law enforcement and health care providers alike will need to acquaint themselves with the requirements of the new law and adopt compliant policies and procedures.

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