

SENATE BILL NO. 473

INTRODUCED BY M. WATERMAN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTES RELATING TO THE MENTAL DISABILITIES BOARD OF VISITORS; PROVIDING DEFINITIONS; INCREASING THE MEMBERSHIP OF THE BOARD AND SPECIFYING REQUIREMENTS FOR MEMBERSHIP; STAGGERING TERMS OF BOARD MEMBERS; REQUIRING THE BOARD TO ADOPT FACILITY INSPECTION SCHEDULES; PROVIDING THAT BOARD INSPECTIONS MAY NOT BE PRECLUDED BY OTHER LICENSING OR ACCREDITATION PROCESSES; PROHIBITING ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; PROVIDING FOR REPORTING AND INVESTIGATING ALLEGATIONS OF ABUSE AND NEGLECT IN A MENTAL HEALTH FACILITY; AND AMENDING SECTIONS 2-15-211, 53-21-102, AND 53-21-104, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1.** Section 2-15-211, MCA, is amended to read:

**"2-15-211. Mental disabilities board of visitors -- composition -- allocation.** (1) The governor shall appoint a mental disabilities board of visitors.

(2) (a) The board shall consist of five ~~six~~ persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three of whom may not be professional persons and at least one of whom must be a representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or persons with developmental disabilities. who possess qualifications necessary to carry out the responsibilities of the board defined in 53-20-104 and 53-21-104.

(b) The members of the board must meet the following requirements:

(i) one person must possess skills, knowledge, and experience relative to the treatment and welfare of adults with serious disabling mental illnesses;

(ii) one person must possess skills, knowledge, and experience relative to the treatment and welfare of children with serious emotional disturbances;

(iii) one person must possess skills, knowledge, and experience relative to the treatment and welfare of adults with developmental disabilities;



1 (iv) one person must be a consumer of mental health services or a family member of a consumer  
 2 of mental health services; and

3 (v) one person must be a consumer of developmental disabilities services or a family member of  
 4 a person with developmental disabilities.

5 (c) The members of the board must also meet the following requirements:

6 (i) at least one board member must be a professional person in the field of mental health  
 7 treatment;

8 (ii) at least one board member must be a professional person in the field of developmental  
 9 disabilities treatment; and

10 (iii) no more than three board members may be professional persons in the fields of mental health  
 11 treatment and developmental disabilities treatment.

12 (d) ~~No one may be a~~ A member of the board ~~who is~~ may not be a full-time agent or employee of  
 13 the department of public health and human services or a mental health facility affected by Title 53, chapter  
 14 20, part 1, and Title 53, chapter 21, part 1, except this prohibition does not affect any employee of a  
 15 state college or university.

16 (e) Board members serve for 2-year terms. The terms are staggered so that one-half of the terms  
 17 expire June 30 of each year.

18 (3) The mental disabilities board of visitors is attached to the governor for administrative purposes.  
 19 It may employ staff for the purpose of carrying out its duties as set out in Title 53, chapter 20, part 1, and  
 20 Title 53, chapter 21, part 1."

21

22 **SECTION 2. SECTION 53-21-102, MCA, IS AMENDED TO READ:**

23 **"53-21-102. Definitions.** As used in this part, the following definitions apply:

24 (1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal  
 25 mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment  
 26 in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving  
 27 treatment in a mental health facility.

28 ~~(1)~~(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of  
 29 visitors created by 2-15-211.

30 ~~(2)~~(3) "Commitment" means an order by a court requiring an individual to receive treatment for

1 a mental disorder.

2 ~~(3)~~(4) "Court" means any district court of the state of Montana.

3 ~~(4)~~(5) "Department" means the department of public health and human services provided for in  
4 2-15-2201.

5 ~~(5)~~(6) "Emergency situation" means a situation in which any person is in imminent danger of death  
6 or bodily harm from the activity of a person who appears to be suffering from a mental disorder and  
7 appears to require commitment.

8 ~~(6)~~(7) "Friend of respondent" means any person willing and able to assist a person suffering from  
9 a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and  
10 requiring commitment in dealing with legal proceedings, including consultation with legal counsel and  
11 others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any,  
12 representatives of a charitable or religious organization, or any other person appointed by the court to  
13 perform the functions of a friend of respondent set out in this part. Only one person may at any one time  
14 be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court  
15 shall consider the preference of the respondent. The court may at any time, for good cause, change its  
16 designation of the friend of respondent.

17 ~~(7)~~(8) "Mental disorder" means any organic, mental, or emotional impairment that has substantial  
18 adverse effects on an individual's cognitive or volitional functions. The term does not include:

19 (a) addiction to drugs or alcohol;

20 (b) drug or alcohol intoxication;

21 (c) mental retardation; or

22 (d) epilepsy.

23 ~~(8)~~(9) "Mental health facility" or "facility" means ~~a public hospital or a licensed private hospital~~  
24 ~~that is equipped and staffed to provide treatment for persons with mental disorders or a community mental~~  
25 ~~health center or any mental health clinic or treatment center approved by the department~~ the state  
26 hospital, the Montana mental health nursing care center, or a hospital, a mental health center, a residential  
27 treatment facility, or a residential treatment center licensed or certified by the department that provides  
28 treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a  
29 mental health facility within the meaning of this part.

30 (10) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person

1 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory  
 2 responsibilities to protect patients from abuse and neglect.

3 (b) The term includes but is not limited to:

4 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

5 (ii) failure to follow a prescribed plan of care and treatment; or

6 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or  
 7 intention.

8 ~~(9)~~(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
 9 brothers and sisters of a person.

10 ~~(10)~~(12) "Patient" means a person committed by the court for treatment for any period of time or  
 11 who is voluntarily admitted for treatment for any period of time.

12 ~~(11)~~(13) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace  
 13 officer.

14 ~~(12)~~(14) "Professional person" means:

15 (a) a medical doctor; or

16 (b) a person who has been certified, as provided for in 53-21-106, by the department.

17 ~~(13)~~(15) "Reasonable medical certainty" means reasonable certainty as judged by the standards  
 18 of a professional person.

19 ~~(14)~~(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be  
 20 suffering from a mental disorder and requiring commitment.

21 ~~(15)~~(17) "State hospital" means the Montana state hospital."  
 22

23 **Section 3.** Section 53-21-104, MCA, is amended to read:

24 **"53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an  
 25 independent board of inquiry and review ~~to assure~~ that is responsible to ensure that the treatment of all  
 26 persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane ~~and decent,~~  
 27 is consistent with established clinical and other professional standards, and meets the requirements set  
 28 forth in this part.

29 (2) The board shall review all plans for experimental research involving persons admitted to a  
 30 mental health facility to ~~assure~~ ensure that ~~the~~ each research project is humane and not unduly hazardous

1 and that it complies with the principles of the statement on the use of human subjects for research of the  
2 American association on mental deficiency and with the principles for research involving human subjects  
3 required by the United States department of health, ~~education, and welfare~~ and human services. An  
4 activity considered to be an experimental research project involving and that involves a person or persons  
5 admitted to a mental health facility affected by this part may not be commenced unless it is approved by  
6 the mental disabilities board of visitors.

7 (3) (a) The board shall at least annually inspect every mental health facility which is providing that  
8 provides treatment and or evaluation to any person pursuant to this part. The board shall inspect the  
9 physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and  
10 treatment areas. The board shall inquire concerning all treatment programs being implemented by the  
11 facility.

12 (b) The board shall annually establish a schedule for the inspection of mental health facilities that  
13 enables the board to meet its obligation under subsection (1).

14 (c) The board's authority to inspect mental health facilities may not be waived or precluded by  
15 other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the  
16 prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

17 (d) The board shall produce a written report of each inspection of a mental health facility that must  
18 include specific recommendations for improvements that the board concludes are necessary in order for  
19 the inspected facility to meet the requirements in this part.

20 (e) The board shall provide a draft of each written report WITHIN 30 CALENDAR DAYS OF THE  
21 COMPLETION OF EACH MENTAL HEALTH FACILITY INSPECTION to the professional person in charge of the inspected  
22 facility for review prior to publication.

23 (f) The professional person in charge of the inspected facility shall provide a written response to  
24 the board's written report within 30 calendar days of receipt of the report. The response must include one  
25 of the following for each recommendation:

26 (i) a specific plan for implementation of the recommended action; or

27 (ii) a specific rationale that explains why the recommendation cannot be implemented.

28 (g) The board shall include the inspected facility's written response in the board's final published  
29 written report.

30 (h) The board shall include in subsequent inspections an assessment of each facility's

1 implementation of the recommendations.

2 (i) The board shall report in writing to the director of the department and the governor when it  
 3 determines that a mental health facility has not EITHER implemented written recommendations OR PROVIDED  
 4 A SPECIFIC RATIONALE THAT EXPLAINS WHY ANY RECOMMENDATIONS CANNOT BE IMPLEMENTED.

5 (4) (a) The board shall annually insure, by applying a sampling process during a scheduled  
 6 inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and  
 7 is being implemented for each patient admitted or committed to a the mental health facility being inspected  
 8 under this part.

9 (b) The board shall inquire concerning all, during a scheduled inspection of a mental health facility,  
 10 shall REVIEW ALL ASPECTS OF THE TREATMENT OF PERSONS ADMITTED TO MENTAL HEALTH FACILITIES AND review the  
 11 use of special treatment procedures THAT INVOLVE BEHAVIOR CONTROL, including but not limited to the use  
 12 of ANY TYPE OF mechanical restraints, isolation, or other extraordinary measures: locked and unlocked  
 13 seclusion OR ISOLATION, time out, or any other procedure involving physical control.

14 (c) The board shall ensure that the use of special treatment procedures DESCRIBED IN SUBSECTION  
 15 (4)(B) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor  
 16 and other mental health professionals, is implemented only when other less restrictive measures have  
 17 failed, and is implemented to the least extent necessary to protect the safety and health of the affected  
 18 individual or others in the immediate environment.

19 (d) The board may exercise the prerogative to inquire about and ensure the existence and  
 20 implementation of treatment plans and discharge plans for any person admitted to a mental health facility  
 21 and to inquire about and ensure the appropriate use of special treatment procedures DESCRIBED IN  
 22 SUBSECTION (4)(B) with any person admitted to a mental health facility independent of its facility inspection  
 23 schedule.

24 (5) The board may assist any patient person who is receiving or who has received treatment at  
 25 a mental health facility in resolving any grievance the patient person may have concerning the patient's  
 26 commitment person's admission or course of treatment in the facility.

27 (6) The board shall employ and be is responsible for full-time legal counsel at the state hospital,  
 28 whose responsibility is to act on behalf of all patients at the institution state hospital. The board shall  
 29 insure ensure that there is are sufficient legal staff and facilities to insure ensure availability to all patients  
 30 and shall require that the appointed counsel periodically interview every patient and examine the patient's

1 files and records. The board may employ additional legal counsel for representation of patients in a similar  
2 manner at any other mental health facility having inpatient capability.

3 (7) (a) If the board believes that any facility is failing to comply with the provisions of this part  
4 in regard to its physical facilities or its treatment of any patient person, it shall report its findings ~~at once~~  
5 in writing to the professional person in charge of the facility and the director of the department, ~~and if~~  
6 ~~appropriate, after waiting a reasonable time for a response from the professional person,~~

7 (b) The professional person in charge of the facility shall submit a written response to the board  
8 within 10 working days that includes a specific plan to implement corrective action.

9 (c) If the problem is not appropriately resolved to the satisfaction of the board within 15 working  
10 days of the written notice provided for in subsection (7)(a), the board ~~may~~ shall notify the next of kin or  
11 guardian of any patient person involved, the friend of respondent appointed by the court for any patient  
12 person involved, ~~and~~ the district court ~~which~~ that has jurisdiction over the facility, ~~and the governor.~~

13 (8) THE BOARD SHALL PUBLISH STANDARDS FOR ITS INSPECTIONS OF MENTAL HEALTH FACILITIES.

14 ~~(8)~~(9) The board shall report annually to the governor concerning:

15 (a) the status of the mental health facilities and treatment programs ~~which~~ that it has inspected  
16 since the last annual report; and

17 (b) occurrences of the administration of medications ~~involuntarily administered to patients~~ against  
18 the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review  
19 procedure required by 53-21-127(2) in protecting ~~patients~~ persons from unnecessary or excessive  
20 medication."

21

22 NEW SECTION. Section 4. Abuse and neglect of persons admitted to mental health facility  
23 prohibited -- reporting -- investigations. (1) Any form of ~~mistreatment, neglect, or abuse~~ OR NEGLECT of  
24 a person admitted to a mental health facility is prohibited.

25 (2) EACH MENTAL HEALTH FACILITY SHALL PUBLISH POLICIES AND PROCEDURES THAT DEFINE THE FACILITY'S  
26 GUIDELINES FOR DETECTING, REPORTING, INVESTIGATING, DETERMINING THE VALIDITY, AND RESOLVING ALLEGATIONS OF  
27 ABUSE OR NEGLECT.

28 ~~(2)~~(3) Each allegation of ~~mistreatment,~~ abuse, or neglect must be reported as follows:

29 (a) Any employee of the mental health facility with knowledge of the allegation shall immediately  
30 report the allegation to the professional person in charge of the facility.

1 (b) The professional person in charge of the mental health facility shall report the allegation ~~within~~  
 2 ~~24 hours~~ BY THE END OF THE NEXT BUSINESS DAY, in writing, to the board.

3 (c) When the allegation of ~~mistreatment~~, abuse, or neglect may constitute a criminal act, the  
 4 professional person in charge of the mental health facility shall immediately report the allegation to the  
 5 appropriate law enforcement authority.

6 ~~(3)(4)~~ Each mental health facility shall provide a mechanism for reporting allegations of  
 7 ~~mistreatment~~, abuse, or neglect that in no way deters or discourages an individual from reporting the  
 8 allegations.

9 ~~(4)(5)~~ Investigations of allegations of ~~mistreatment~~, abuse, or neglect must be initiated by the  
 10 professional person in charge of the facility ~~within 24 hours of~~ AS SOON AS POSSIBLE AFTER the initial report  
 11 of the incident, BUT NOT LATER THAN BY THE END OF THE NEXT BUSINESS DAY. INITIATION OF EACH INVESTIGATION MAY  
 12 NOT BE DELAYED IN ANY WAY THAT ADVERSELY AFFECTS THE EFFICACY OF THE INVESTIGATION. However, the  
 13 investigation must be initiated immediately when there is a report of an alleged criminal act.

14 ~~(5)(6)~~ The investigation of each allegation of ~~mistreatment~~, abuse, or neglect must be concluded  
 15 within ~~10 working days of~~ THE MINIMUM PERIOD OF TIME NECESSARY TO GATHER THE INFORMATION RELATIVE TO EACH  
 16 ALLEGATION AND TO COME TO A CONCLUSION FOLLOWING the initial report of the allegation.

17 ~~(6)(7)~~ Each mental health facility shall document the following in writing regarding each allegation  
 18 of ~~mistreatment~~, abuse, or neglect:

19 (a) details of each allegation of ~~mistreatment~~, abuse, or neglect, including the names of any facility  
 20 staff against whom the allegation is made;

21 (b) a description of the rationale for conducting the investigation with either in-house or outside  
 22 personnel;

23 (c) details of the process of the investigation of each allegation of ~~mistreatment~~, abuse, or neglect;

24 (d) details of the conclusions of the investigation; and

25 (e) details of corrective action taken.

26 ~~(7)(8)~~ Mental health facilities shall provide a copy of the written report described in subsections  
 27 ~~(6)(a) (7)(A)~~ through ~~(6)(e) (7)(E)~~ within 5 working days of the completion of each investigation to the  
 28 director of the department and to the board.

29

30 NEW SECTION. Section 5. Codification instruction. [Section ~~3~~ 4] is intended to be codified as an

- 1 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to
- 2 [section ~~3~~ 4].
- 3 - END -