

## 1 SENATE BILL NO. 52

2 INTRODUCED BY B. KEENAN

3 BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

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5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR PRIOR AUTHORIZATION FOR EMERGENCY  
6 DETENTION AT MONTANA STATE HOSPITAL; PROVIDING FOR THE DEVELOPMENT OF LOCAL PLANS  
7 TO PREVENT INAPPROPRIATE ADMISSIONS TO THE STATE HOSPITAL; AND AMENDING SECTIONS  
8 53-21-124 AND 53-21-129, MCA."

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

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12 NEW SECTION. **Section 1. Prior authorization for emergency detention in state hospital --**  
13 **certification by professional person.** (1) Upon examination by a professional person to determine whether  
14 a person requires an emergency detention at Montana state hospital pursuant to 53-21-124 or 53-21-129, the  
15 professional person shall consult with the superintendent or the superintendent's designee to determine whether  
16 the person proposed to be detained meets the emergency detention criteria adopted by rule pursuant to  
17 subsection (5) and whether the state hospital is the least restrictive and most appropriate placement for  
18 treatment of the respondent.

19 (2) If the superintendent or the superintendent's designee determines that detention of the person at  
20 the state hospital is appropriate and agrees to accept the person for treatment, the professional person shall  
21 certify to the peace officer who has the person in custody pursuant to 53-21-129, the county attorney, and the  
22 court considering detention pursuant to 53-21-124 that the conditions for detention at the state hospital have  
23 been met.

24 (3) Subject to subsection (4), if the superintendent or the superintendent's designee determines that  
25 detention of the person at the state hospital is not appropriate, the professional person shall certify to the peace  
26 officer who has the person in custody pursuant to 53-21-129, the county attorney, and the court considering  
27 detention pursuant to 53-21-124 that the conditions for detention at the state hospital have not been met. The  
28 superintendent or the superintendent's designee shall work with the professional person, the department of  
29 public health and human services, the peace officer who has the person in custody, the county attorney, the  
30 person's attorney, and the court to find an appropriate alternative placement for the person to be detained.

1 (4) If detention is required pursuant to 53-21-129 but an appropriate alternative placement for the  
2 person cannot be found pursuant to subsection (3), the peace officer may transport the person for emergency  
3 detention at the state hospital.

4 (5) The department shall adopt rules that specify the criteria for appropriate emergency detention at the  
5 state hospital based upon the type, level, and duration of care that is provided at the state hospital. The  
6 department shall ensure that the rules reflect the provisions in the Emergency Medical Treatment and Active  
7 Labor Act, as provided in 42 U.S.C. 1395dd, and relevant federal rules and regulations.

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9 **NEW SECTION. Section 2. Development of local plans to prevent inappropriate detentions at**  
10 **state hospital.** The department of public health and human services shall facilitate community-based efforts  
11 by parties to develop plans for services and funding that divert emergency detention from the state hospital  
12 whenever possible. The parties may include but are not limited to mental health professionals, licensed mental  
13 health centers, inpatient treatment facilities, county commissioners, county attorneys, defense counsel,  
14 consumers of mental health services, family members of consumers, relevant state agencies or programs, and  
15 other interested parties

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17 **Section 3.** Section 53-21-124, MCA, is amended to read:

18 **"53-21-124. Detention of respondent pending hearing or trial -- requirements for detention at**  
19 **state hospital -- jail prohibited.** (1) The court may not order detention of a respondent pending the hearing  
20 unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must  
21 be orally notified immediately. Counsel for the respondent may then request a detention hearing, which must  
22 be held immediately.

23 (2) In the event of detention, the respondent must be detained in the least restrictive setting necessary  
24 to ensure the respondent's presence and ensure the safety of the respondent and of others as provided in  
25 53-21-120. The respondent must be detained in the respondent's county of residence if possible. The court may  
26 not order detention of a respondent at the state hospital until after receipt and consideration of the certification  
27 of the professional person as provided in [section 1].

28 (3) If the respondent is detained, the respondent has the right to be examined additionally by a  
29 professional person of the respondent's choice, which may not depend on the respondent's ability to pay, and  
30 the respondent must be informed of this right. Unless objection is made by counsel for the respondent, the

1 respondent must continue to be evaluated and treated by the professional person pending the hearing.

2 (4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to  
3 determine whether the respondent should be committed to a mental health facility."

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5 **Section 4.** Section 53-21-129, MCA, is amended to read:

6 **"53-21-129. Emergency situation -- ~~petition--~~ detention -- requirements for detention at state**

7 **hospital.** (1) When an emergency situation exists, a peace officer may take any person who appears to have  
8 a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into  
9 custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a  
10 professional person should be called prior to taking the person into custody.

11 (2) If the professional person agrees that the person detained is a danger to the person or to others  
12 because of a mental disorder and that an emergency situation exists, then the peace officer may take the person  
13 into custody and provide for the treatment of the person may be detained and treated until the close of business  
14 on the next regular business day. At that time, the professional person shall The person may not be detained  
15 at the state hospital unless the professional person has provided the certification required by [section 1]. The  
16 peace officer shall release the detained person or file findings with the county attorney who, if in custody at or  
17 before the close of business on the next regular business day, unless the county attorney determines probable  
18 cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the  
19 respondent's residence. In either case, has filed a petition under this part and the court has issued an order of  
20 detention pursuant to 53-21-124. Regardless of whether the person is detained, the professional person shall  
21 file a report with the court on the next regular business day. The report must contain the certification described  
22 in [section 1] and explaining explain the professional person's actions.

23 (3) The county attorney of a county ~~may~~ shall make arrangements with a one or more federal, state,  
24 regional, or private mental ~~facility or with a mental health facility in a county~~ health facilities or hospitals for the  
25 detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not,  
26 at the time of the emergency, have a bed available to detain the person at that facility, the person may be  
27 transported to the state hospital, subject to the provisions of [section 1], or to a behavioral health inpatient facility,  
28 subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This  
29 determination must be made on an individual basis in each case, and the professional person at the local facility  
30 shall certify to the county attorney that the facility does not have adequate room at that time.

