EXHIBIT 1
DATE 1-19-07
HB 154

HB 154, Revising Laws Governing Commitment Proceedings

PROPOSED AMENDMENT 1, requested by Disability Services Division and Montana Advocacy Program

Section 4. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment -- contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; ~~and~~

(f) a description of the relief requested, whether commitment to a residential facility or imposition of a community treatment plan; and

~~(f)~~(g) a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.

~~(3)~~(4) ~~A copy of the petition must be sent immediately to the residential facility screening team. Notice and a copy of the petition must be hand-delivered to the respondent, the respondent's parent or guardian, if any, and the respondent's counsel, if any, within 5 business days of filing.~~" **The county attorney must immediately mail a copy of the petition to the residential facility screening team, the respondent's parent or guardian, if any, and the respondent's counsel. The county attorney must ensure that the petition is promptly hand-delivered to respondent.**

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PROPOSED AMENDMENT 2, requested by Disability Services Division and Montana Advocacy Program

NEW SECTION, Appointment of counsel

Upon receipt of a petition for commitment, recommitment or emergency commitment, the court shall order the state office of public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or imposition of community treatment plan -- hearing. (1) A court may commit a person ~~may be committed~~ to a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) ~~If as a result of~~ After the screening required by 53-20-133, the residential facility screening team ~~concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team~~ shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.

~~**(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.**~~

(Balance of statute omitted.)

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PROPOSED AMENDMENT 3, requested by Disability Services Division and Montana Advocacy Program

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted ~~in~~ to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily harm.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission to a residential facility may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission to a residential facility by the county attorney of the county where the ~~person~~ respondent resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or attach the written report of a case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(5)~~(6) The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.

~~(6)~~(7) Once the report of the residential facility screening team is received by the court, continued placement in the residential facility or continued imposition of the temporary community treatment plan may not continue without an order of the court for emergency commitment or continued imposition of the community treatment plan.

~~(7)~~(8) A court may order an emergency commitment or continue a temporary community treatment plan only when the residential facility screening team has recommended and the court determines that the emergency commitment or continued imposition of a community treatment plan is necessary to

protect the respondent or others from death or serious bodily ~~harm~~ **injury, as defined in 45-2-101(66)**. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(8)~~(9) An order for emergency commitment or continued imposition of a temporary community treatment plan may be entered without a hearing before the court, if the court finds that the record supports the order.

~~(9)~~(10) An emergency commitment to a residential facility or imposition of a temporary community treatment plan may not continue for longer than 30 days after placement in the residential facility or imposition of a temporary community treatment plan unless a petition for an extended commitment to the residential facility or for imposition of a community treatment plan as provided in 53-20-121 has been filed ~~before the court~~.

~~(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis.~~"