



AN ACT PROVIDING THAT A RESPONDENT IN AN INVOLUNTARY COMMITMENT CASE MAY AGREE TO SHORT-TERM INPATIENT TREATMENT IN LIEU OF FACING A COMMITMENT HEARING; AMENDING COURT PROCESS AND PROFESSIONAL EXAMINATION PROVISIONS; SPECIFYING SHORT-TERM INPATIENT TREATMENT PARAMETERS AND PATIENT RIGHTS; PROVIDING FOR A REPORT; AMENDING SECTIONS 53-21-102, 53-21-122, 53-21-123, 53-21-162, AND 53-21-1001, MCA; AND PROVIDING AN EFFECTIVE DATE.

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

Section 1. Section 53-21-102, MCA, is amended to read:

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

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

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Court" means any district court of the state of Montana.

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

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

commitment.

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

(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in

psychiatric mental health nursing.

(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

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

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

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

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

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

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

(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

(16) "Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist; or

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

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

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

(19) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(2) The judge shall consider the petition. If the judge finds no probable cause, the petition must be

dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 5 and 6]. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 5 and 6]. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 3. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing -- recommendation of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the

respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney.

(2) (a) The professional person shall include in the report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for under [sections 5 and 6].

(b) If the professional person recommends commitment, the professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127.

~~(2)~~(3) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the professional person recommends diversion from involuntary commitment to short-term inpatient treatment, the court shall suspend the commitment hearing unless the county attorney or the respondent's attorney objects within 24 hours of receiving notice of the professional person's recommendation.

(c) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

~~(3)~~(4) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

Section 4. Section 53-21-162, MCA, is amended to read:

"53-21-162. Establishment of patient treatment plan -- patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility, except as provided in [section 6].

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate

professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission, except as provided in [section 6]. Each individualized treatment plan must contain:

- (a) a statement of the nature of the specific problems and specific needs of the patient;
 - (b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;
 - (c) a description of treatment goals, with a projected timetable for their attainment;
 - (d) a statement and rationale for the plan of treatment for achieving these goals;
 - (e) a specification of staff responsibility for attaining each treatment goal;
 - (f) criteria for release to less restrictive treatment conditions; and
 - (g) a notation of any therapeutic tasks and labor to be performed by the patient.
- (3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

- (a) at the time of any transfer within the facility;
- (b) at the time of discharge;
- (c) upon any major change in the patient's condition;
- (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;
- (e) no less than every 90 days; and
- (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

- (ii) the objectives of treatment;
- (iii) the nature and significant possible adverse effects of recommended treatments;
- (iv) the reasons why a particular treatment is considered appropriate;
- (v) the reasons why access to certain visitors may not be appropriate; and
- (vi) any appropriate and available alternative treatments, services, or providers of mental health services;

and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c)."

Section 5. Short-term inpatient treatment -- process -- placement -- length -- conditions for proceeding with commitment hearing. (1) When a commitment hearing has been suspended pursuant to 53-21-123(3)(b) so that the respondent may be diverted to short-term inpatient treatment, the professional person who conducted the examination shall, with the concurrence of the county attorney, recommend to the court an appropriate placement in a mental health facility with available short-term treatment beds.

(2) Short-term inpatient treatment may not exceed 14 days, except pending a commitment hearing scheduled pursuant to subsection (5).

(3) Subject to the provisions of this section, a respondent may be released before completing 14 days of treatment if the professional person responsible for the respondent's treatment plan determines that the respondent no longer requires inpatient treatment. However, the county attorney and the respondent's attorney must be notified at least 24 hours before a respondent is released.

(4) When a respondent is released, the professional person shall notify the court and the court shall

dismiss the commitment petition.

(5) The court must be notified and shall proceed with a commitment hearing within 5 business days of receiving notice of any of the following circumstances:

(a) the professional person responsible for the respondent's treatment plan determines that the respondent should not be released after 14 days of treatment because, in the professional person's judgment, an emergency situation would exist if the respondent were released;

(b) the respondent refuses treatment;

(c) the respondent's attorney requests the respondent's release before the 14-day treatment period is completed; or

(d) the county attorney objects to the respondent's release within 24 hours of being notified of the respondent's pending release as required in subsection (3).

Section 6. Treatment and discharge plan -- safety -- rights. (1) For each respondent admitted as an inpatient to a mental health facility for short-term inpatient treatment pursuant to [sections 5 and 6], the provisions of 53-21-162 and 53-21-180 apply, except as follows:

(a) the comprehensive physical and mental examination and review of behavioral status must be completed within 24 hours of admission;

(b) the individualized treatment plan must be implemented no later than 3 days after the admission; and

(c) a discharge plan must be developed prior to discharge.

(2) Short-term inpatient treatment must be provided in a manner that considers the safety of the respondent, other patients, staff, and the general public.

(3) A respondent in a mental health facility for short-term inpatient treatment is entitled to all of the rights and protections provided in part 1 of this chapter.

Section 7. Section 53-21-1001, MCA, is amended to read:

"53-21-1001. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.

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

~~(3)~~(2) "Licensed mental health center" means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.

~~(4)~~(3) "Service area" means a region of the state as defined by the department by rule within which mental health services are administered.

~~(5)~~(4) "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to collaborate with the department for the planning and oversight of mental health services within a service area."

Section 8. Report. Upon request, the department shall report to the law and justice interim committee established in 5-5-226 on the use of the short-term inpatient treatment process established in [sections 5 and 6].

Section 9. Codification instruction. [Sections 5 and 6] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 5 and 6].

Section 10. Effective date. [This act] is effective July 1, 2009.

- END -

I hereby certify that the within bill,
HB 0132, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2009.

President of the Senate

Signed this _____ day
of _____, 2009.

HOUSE BILL NO. 132

INTRODUCED BY R. STOKER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

AN ACT PROVIDING THAT A RESPONDENT IN AN INVOLUNTARY COMMITMENT CASE MAY AGREE TO SHORT-TERM INPATIENT TREATMENT IN LIEU OF FACING A COMMITMENT HEARING; AMENDING COURT PROCESS AND PROFESSIONAL EXAMINATION PROVISIONS; SPECIFYING SHORT-TERM INPATIENT TREATMENT PARAMETERS AND PATIENT RIGHTS; PROVIDING FOR A REPORT; AMENDING SECTIONS 53-21-102, 53-21-122, 53-21-123, 53-21-162, AND 53-21-1001, MCA; AND PROVIDING AN EFFECTIVE DATE.