

HOUSE BILL NO. 612

INTRODUCED BY B. BECK

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO INVOLUNTARY COMMITMENT; CLARIFYING THE USE OF INVOLUNTARY MEDICATION; ALLOWING FOR COMMITMENT TO INPATIENT TREATMENT IF AN OUTPATIENT TREATMENT PROGRAM IS NOT FOLLOWED; AMENDING SECTIONS 53-21-102, 53-21-126, 53-21-127, 53-21-149, 53-21-151, AND 53-21-198, MCA; AND PROVIDING AN IMMEDIATE 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, 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 inpatient or outpatient 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, including a situation involving:

(a) threats or attempts to commit suicide or self-inflict other physical injury;

1 (b) evidence of an inability to provide for the person's own basic needs of food, clothing, shelter, health,
2 or safety; or

3 (c) behavior that has caused physical injury to another person or causes another person to reasonably
4 fear the other person is likely to be physically injured.

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

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

15 (b) The term does not include:

16 (i) addiction to drugs or alcohol;

17 (ii) drug or alcohol intoxication;

18 (iii) mental retardation; or

19 (iv) epilepsy.

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

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

26 (11) "Mental health professional" means:

27 (a) a certified professional person;

28 (b) a physician licensed under Title 37, chapter 3;

29 (c) a professional counselor licensed under Title 37, chapter 23;

30 (d) a psychologist licensed under Title 37, chapter 17;

1 (e) a social worker licensed under Title 37, chapter 22; or

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

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

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

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

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

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

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

13 (14) "Patient" means a person committed by the court for inpatient or outpatient treatment for any period
14 of time, including an order for treatment pursuant to 53-21-127(6), or who is voluntarily admitted for treatment for
15 any period of time.

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

17 (16) "Professional person" means:

18 (a) a medical doctor;

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

21 (c) a licensed psychologist; or

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

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

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

27 (19) "State hospital" means the Montana state hospital."
28

29 **Section 2.** Section 53-21-126, MCA, is amended to read:

30 **"53-21-126. Trial or hearing on petition -- procedures -- standards for commitment.** (1) The

1 respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2),
2 and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the
3 determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At
4 the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from
5 a mental disorder. If the court determines that the respondent is suffering from a mental disorder; the court shall
6 then determine whether the respondent requires commitment. In determining whether the respondent requires
7 commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

8 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the
9 respondent's own basic needs of food, clothing, shelter, health, or safety;

10 (b) whether the respondent has recently, because of a mental disorder and through an act or an
11 omission, caused self-injury, or injury to others;

12 (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to
13 others because of the respondent's acts or omissions; and

14 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or
15 omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point
16 at which the respondent ~~will~~ may become a danger to self or to others or ~~will~~ may be unable to provide for the
17 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by
18 the respondent's relevant medical history, observable behavior, or the judgment of the mental health professional.
19 Acts and omissions include the respondent's inability or unwillingness to comply with recommended treatment.

20 (2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt
21 with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However,
22 the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of
23 self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to
24 be material and relevant as to the respondent's ~~present~~ current condition.

25 (3) The professional person appointed by the court must be present for the trial and subject to
26 cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried
27 by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental
28 disorder and requires commitment. The written report of the professional person that indicates the professional
29 person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay
30 matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the

1 public for the protection of the respondent.

2 (4) The professional person may testify ~~as to~~ on the ultimate issue of whether the respondent is suffering
3 from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence
4 from the professional person or others that:

5 (a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's
6 own basic needs of food, clothing, shelter, health, or safety;

7 (b) the respondent has recently, because of a mental disorder and through an act or an omission, caused
8 self-injury or injury to others;

9 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others
10 because of the respondent's acts or omissions; or

11 (d) (i) the respondent's mental disorder:

12 (A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the
13 respondent's life or health;

14 (B) is treatable, with a reasonable prospect of success;

15 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for
16 treatment; and

17 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point
18 at which the respondent ~~will~~ may become a danger to self or to others or ~~will~~ may be unable to provide for the
19 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by
20 the respondent's relevant medical history, observable behavior, or the professional person's judgment. Acts and
21 omissions include the respondent's inability or unwillingness to comply with recommended treatment.

22 (5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may
23 order a change of venue.

24 (6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis
25 of chemical dependency may satisfy criteria for commitment under this part."

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27 **Section 3.** Section 53-21-127, MCA, is amended to read:

28 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering
29 from a mental disorder or does not require commitment within the meaning of this part, the respondent must be
30 discharged and the petition dismissed.

1 (2) If it is determined that the respondent is suffering from a mental disorder and requires commitment
2 within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must
3 be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday,
4 Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

5 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court
6 shall:

7 (a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral
8 health inpatient facility for a period of not more than 3 months;

9 (b) commit the respondent to a community facility or program or to any appropriate course of treatment,
10 which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

11 (i) not more than 3 months; or

12 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the
13 community rather than a more restrictive placement in the state hospital if a respondent has been previously
14 involuntarily committed for inpatient treatment in a mental health facility and the court determines that the
15 admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as
16 provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

17 (c) commit the respondent to the Montana mental health nursing care center for a period of not more
18 than 3 months if the following conditions are met:

19 (i) the respondent meets the admission criteria of the center as described in 53-21-411 and established
20 in administrative rules of the department; and

21 (ii) the superintendent of the center has issued a written authorization specifying a date and time for
22 admission.

23 (4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect
24 the respondent's custody or course of treatment for a period of more than 3 months.

25 (5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least
26 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

27 (6) (a) The court may authorize the chief medical officer of a facility or a physician designated by the
28 court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary;

29 (i) to protect the respondent or the public; or to facilitate effective treatment

30 (ii) because the respondent is not complying with a recommended treatment program.

1 **(b)** Medication may not be involuntarily administered to a patient unless the chief medical officer of the
2 facility or a physician designated by the court approves it prior to the beginning of the involuntary administration
3 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary
4 administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary
5 administration.

6 **(c)** The medication review committee must include at least one person who is not an employee of the
7 facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive
8 adequate written notice of the date, time, and place of the review and must be allowed to appear and give
9 testimony and evidence.

10 **(d)** The involuntary administration of medication must be ~~again~~ reviewed by the committee 14 days and
11 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered.

12 **(e)** The mental disabilities board of visitors and the director of the department of public health and human
13 services must be fully informed of the matter within 5 working days after the beginning of the involuntary
14 administration. The director shall report to the governor on an annual basis.

15 **(7)** Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this
16 chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require
17 commitment only to a community facility or program or an appropriate course of treatment, as provided in
18 subsection (3)(b), and may not require commitment at the state hospital, a behavioral health inpatient facility, or
19 the Montana mental health nursing care center.

20 **(8)** In ordering commitment pursuant to this section, the court shall make the following findings of fact:

21 **(a)** a detailed statement of the facts upon which the court found the respondent to be suffering from a
22 mental disorder and ~~requiring~~ meeting the commitment criteria provided for in 53-21-126;

23 **(b)** the alternatives for treatment that were considered;

24 **(c)** the alternatives available for treatment of the respondent;

25 **(d)** the reason that any treatment alternatives were determined to be unsuitable for the respondent;

26 **(e)** the name of the facility, program, or individual to be responsible for the management and supervision
27 of the respondent's treatment;

28 **(f)** if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen
29 from among other alternatives;

30 **(g)** if the order commits the respondent to the Montana mental health nursing care center, a finding that

1 the respondent meets the admission criteria of the center and that the superintendent of the center has issued
2 a written authorization specifying a date and time for admission; and

3 (h) if the order includes involuntary medication, the reason involuntary medication was chosen from
4 among other alternatives."

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6 **Section 4.** Section 53-21-149, MCA, is amended to read:

7 **"53-21-149. Conditions of treatment in community facility, program, or course of treatment.** If the
8 court orders a disposition under 53-21-127(3)(b), the court may order the following conditions for treatment in a
9 community facility or program, or may order a course of treatment, including but not limited to:

10 (1) following a treatment plan developed pursuant to 53-21-150 that may include case management
11 services, medication, short-term inpatient treatment, chemical dependency treatment, assertive community
12 treatment, involuntary administration of medication pursuant to 53-21-127(6), or a combination, as set forth by
13 the designated community facility or program or the individual responsible for the management and supervision
14 of the respondent's treatment; or

15 (2) specific residential or housing requirements that may include being under the care or custody of a
16 relative or guardian."

17

18 **Section 5.** Section 53-21-151, MCA, is amended to read:

19 **"53-21-151. Notification of noncompliance of condition for treatment plan -- response.** (1) If the
20 respondent has been ordered to follow a treatment plan and the respondent does not substantially comply with
21 the treatment plan developed pursuant to the order for treatment pursuant to a commitment to a community facility
22 or program or course of treatment, the chief medical officer or designee shall promptly notify the court upon
23 becoming aware of substantial noncompliance that is likely to result in at least one of the conditions in
24 53-21-126(1) and shall provide supporting documentation.

25 (2) The court may take reasonable steps to ensure compliance with the court's outpatient treatment
26 order, including but not limited to the following:

27 (a) directing that the friend of respondent remind the respondent of the respondent's treatment
28 obligations and attempt to persuade the noncompliant respondent to comply with the treatment plan;

29 (b) presenting the respondent to the mental health facility or program for treatment, including
30 administration of medication pursuant to 53-21-127(6); or

1 (c) directing the treating provider to work with the respondent to bring about compliance with the
2 treatment plan.

3 (3) If the court receives notification pursuant to subsection (1) and believes that a respondent is unlikely
4 to comply with the outpatient treatment order, the court may commit the respondent to an inpatient mental health
5 facility."

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7 **Section 6.** Section 53-21-198, MCA, is amended to read:

8 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be extended
9 by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128,
10 but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

11 (a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's
12 mental disorder; and

13 (b) the deterioration ~~will~~ may predictably result in the necessity of further inpatient care for the patient.
14 Predictability may be established by the patient's medical history or observable behavior.

15 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127
16 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person
17 responsible for the patient's case may petition the court for extension of the conditions of release. The petition
18 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report
19 must describe any tests and evaluation devices that have been employed in evaluating the patient, the course
20 of treatment that has been undertaken for the patient, and the future course of treatment anticipated by the
21 professional person.

22 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the
23 patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, if any,
24 and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention
25 ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place for a hearing on a date
26 not more than 10 days from the receipt of the request and notify the same people, including the professional
27 person in charge of the patient. If a hearing is not requested, the court shall enter an order extending the
28 conditions of release for a period not to exceed 6 months.

29 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on
30 a rehospitalization petition pursuant to 53-21-197. However, in an extension proceeding, the finding required is

1 that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which
2 the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs
3 in the initial commitment proceeding.

4 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been made,
5 the conditions of release may not be extended. If the court finds that the required showing has been made, the
6 court may extend the conditions of release as recommended by the professional person. In its order, the court
7 shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and
8 why the investigated alternatives were not considered suitable. The court may not order continuation of an
9 alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required
10 by 53-21-162. A court order for the continuation of an alternative must include a specific finding that a
11 comprehensive, individualized plan of treatment exists.

12 (6) Further extensions may be obtained under the same procedure described in this section. However,
13 the patient's custody may not be affected for more than 1 year without a renewal of the extension under the
14 procedures set forth in this section, including a hearing and a statement of the findings required by subsection
15 (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1)."

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17 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

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