EXHIBIT 1
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HB

COMMITMENT LAWS FOR PEOPLE WITH DEVELOPMENTAL DISABILITIES

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for the
Children, Families, Health, and Human Services Interim Committee

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Background

In August 2008, the Montana Supreme Court overturned a District Court order that recommitted a developmentally disabled woman to the Montana Developmental Center (MDC) in Boulder for 12 months. The woman, T.P., had agreed to a 90-day involuntary commitment at MDC but challenged her subsequent year-long recommitment. The Supreme Court overturned the recommitment, saying the District Court lacked the evidence needed to support its finding that T.P.'s actions made her a threat to herself or anyone else and thus required further commitment.

In agreeing with the majority opinion of the court, Justice James Nelson suggested that the Legislature review the commitment laws to ensure procedural and substantive due process for people facing a commitment or recommitment proceeding. In making the suggestion, Justice Nelson stated: "I have grave concerns about a statutory scheme that allows the State to deprive a person of his or her liberty and dignity on the basis of oral and written hearsay; on documents not in evidence; on the testimony of persons who have no direct knowledge of matters and incidents about which they are testifying; on reports which contain undefined, confusing, inconsistently used, and purely subjective terminology; and where the person who is the subject of the proceeding may not even be present."

The Children, Families, Health, and Human Services Interim Committee discussed Justice Nelson's suggestion at its September 2009 meeting and authorized staff to work with interested parties on potential changes.

Overview of the Commitment Process

Only a person who is seriously developmentally disabled, as defined in 53-20-101, MCA, may be committed to MDC or ordered into a community treatment plan. To meet that definition, a person must be developmentally disabled, impaired in cognitive functioning, and unable to be safely and effectively habilitated through voluntary use of community services because of behaviors that pose an imminent risk of serious harm to the person or to others.

In general, the commitment process set out Title 53, chapter 20, involves the following steps:

- Any person who believes someone is seriously developmentally disabled and in need of commitment may ask that the county attorney file a petition for commitment. The petition must say whether commitment would be to MDC or for imposition of a community treatment plan.

- The court must order the appointment of an attorney, and the petition must be sent to the respondent's parents or guardian, the respondent's attorney, and the Residential Facility Screening Team (RFST) established in law.

- Administrative rules require the RFST to review the following materials to determine if the respondent is seriously developmentally disabled and in need of commitment:

  ✓ the person's diagnosis, social history, medical history, and current status or situation, including legal status;

  ✓ a comprehensive psychological evaluation that includes information about the person's behavior;

  ✓ the person's current and recommended treatment plan;

  ✓ a narrative of current problems and attempted solutions; and

  ✓ additional reports that are available or obtained, as needed.

- After conducting its review, the RFST files a written report and a recommendation with the court. The report includes the factual basis for the recommendation and describes any tests or evaluation device used to evaluate the respondent.

  ✓ The RFST must find whether the respondent is seriously develomentally disabled and if so, whether the respondent is in need of commitment or that commitment is appropriate.

  ✓ If the team recommends commitment, it may indicate the length of commitment it feels is appropriate. It also may indicate whether the person should be committed to MDC or to a community treatment program, if one is available.

- The RFST recommendation must be provided to the county attorney; the respondent; the respondent's parent, guardian, or next of kin, if known; the respondent's attorney; the attorney for the parent or guardian; the responsible party; and the respondent's advocate, if any.

- The respondent or other identified parties must request a hearing on the RFST recommendation within 15 days if they want to contest the recommendation.

- Based on the RFST report and after a hearing, if one is requested, the court will either dismiss the commitment petition if the RFST recommends against commitment or proceed with the commitment process.

- The court may order a commitment without further hearings if the RFST has recommended commitment and the respondent or other parties do not request a hearing within 15 days of receiving the report.

- Even if the RFST recommends commitment, the court may dismiss the petition if it finds that the respondent is not seriously developmentally disabled or that commitment is not in the respondent's best interest.

- A person may be committed for a maximum of one year. A recommitment process must be initiated if a case manager or qualified mental retardation professional responsible for the person's treatment believes the person should remain committed beyond that time.

Historical Commitment Data

The following table shows the number of commitment and recommitment petitions filed and granted in the past three years.

	2007	2008	2009
Commitment Petitions Filed	22	19	13
Commitments Ordered	18	16	12
Recommitment Petitions Filed	49	50	36
Recommitments Ordered	42	44	32

Source: Department of Public Health and Human Services

Stakeholder Discussions

Committee staff met twice with stakeholders to discuss the commitment laws and possible revisions to them. The stakeholders represented:

- Disability Rights Montana, an advocacy organization for people with disabilities;

- the Lewis and Clark County Attorney's Office, which files many of the commitment petitions; and

- the Department of Public Health and Human Services, which operates MDC and also handles petitions for recommitment to the facility.

In addition, representatives of the Office of Public Defender, which represents respondents in commitment proceedings, were invited to attend.

At the initial meeting on Oct. 26, 2009, Disability Rights Montana offered 10 proposed amendments to deal with issues it has raised in court challenges to commitment or recommitment proceedings. Participants reviewed the proposals and discussed the pros and cons of most of them.

The group met again on Dec. 16, 2009, and reached agreement on proceeding with seven of the proposed revisions suggested by Disability Rights Montana. They agreed that three of the proposals should not be pursued because consensus on the issues did not exist. In addition, DPHHS representatives suggested three additional changes that were supported by participants.

Although representatives of the Lewis and Clark County Attorney's Office and the Office of Public Defender were not present at the Dec. 16 meeting, they received information about the decisions reached at that time and were given an opportunity to review and comment on this report.

Key Concerns and Proposed Revisions

The issues that participants agreed should be clarified or revised are listed below, along with the reason each change was proposed and the action that participants agreed to recommend to the Committee:

- **Clearly require that the court dismiss a petition for commitment if the RFST does not recommend commitment.**

  Concern Addressed: There have been isolated incidences of a court committing someone despite an RFST determination that commitment is not necessary.

  Recommended Change: Amend 53-20-125(7), MCA, to state that a court may not order a commitment on the basis of information in the RFST report unless the RFST has recommended commitment.

- **Require an initial hearing on a commitment petition** by the next business day after the filing of a petition for initial commitment, similar to the requirement for commitment petitions for people with mental illness (Title 53, chapter 21).

  Concern Addressed: Current law does not contain a requirement for an initial hearing. The law also requires a hearing later in the process *only* if the respondent or another interested party specified in law requests a hearing, meaning a person may be committed without any court hearing on the matter.

  Recommended Change: Create a requirement for an initial hearing that would include the following provisions:

  ✓ the hearing could be held by video means;

  ✓ the hearing would include notification of the rights of the respondent, appointment of an attorney and a responsible person, referral of the matter to the RFST, and a scheduling order by the court setting a date and time for the commitment hearing; and

  ✓ the county in which the commitment petition was filed would pay the costs of transportation for the initial hearing, if not held by video means.

- **Modify the procedural rights language in 53-20-112, MCA, to incorporate the language of the statutes it references.**

  Concern Addressed: Current law states that a respondent in commitment proceeding has all the rights given in 53-21-115 through 53-21-118, MCA, to a mentally ill person who is the subject of a commitment proceeding. Because the rights specified in those statutes are only mentioned by reference, procedural oversights in a proceeding for a developmentally disabled person may occur. The rights outlined in the chapter 21 statutes include the right to:

  ✓ receive reasonable notice of hearings or other proceedings;

  ✓ be present at a hearing;

  ✓ cross-examine witnesses and offer evidence; and

  ✓ be represented by an attorney.

Recommended Change: Amend 53-20-112, MCA, to incorporate the specific language contained in 53-21-115 through 53-21-118, MCA, with changes as needed to make it appropriate for chapter 20. For example, the chapter 21 term "friend of respondent" would not be included because it isn't used in chapter 20.

- **Clarify that the rules of evidence apply in contested proceedings.**

  Concern Addressed: While the RFST report is used to determine whether to dismiss or continue with a commitment procedure, the contents of the report have sometimes been considered as part of the record in making a decision about whether a commitment is necessary. However, the report often contains second- or third-hand information that is based on what someone told the team or another person about the respondent's behavior. If the information is used in a court hearing as evidence without direct substantiation or without the opportunity for the respondent to rebut the information, it amounts to hearsay and should not be admissible under the rules of evidence that govern the commitment proceedings.

  Recommended Change: Amend 53-20-125, MCA, to:

  ✓ clearly state that the court could rely on the RFST report if the petition is not challenged and a hearing is waived but that the report's use in a contested case must comply with the rules of civil procedure and rules of evidence; and

  ✓ revise subsection (6) so that the second sentence reads: "The rules of civil procedure *and rules of evidence* apply *in a contested proceeding*."

- **Clarify that the commitment period begins with the date of a person's admission** to MDC or a community treatment program, rather than the date of the court order.

  Concern Addressed: A person may be committed under an emergency admission many weeks before a court has reviewed a commitment petition and issued an order. Thus some individuals may end up in MDC or in a required community treatment program for a longer period than authorized in the final commitment order.

  Recommended Change: Amend 53-20-126, MCA, to clearly state that the commitment period begins with the date of admission.

- **Explicitly state that the court may not order a commitment that exceeds the length of time recommended by the RFST.**

  Concern Addressed: Without this clarification, a judge may issue a commitment order that exceeds the length of commitment recommended by the RFST.

  Recommended Change: Amend 53-20-126, MCA, to include this language.

- **Remove outdated language related to lack of an attorney.**

  Concern Addressed: The existing statutes contain an obsolete reference to a respondent's lack of an attorney. With the creation of the Office of Public Defender, all respondents in a commitment proceeding have an attorney.

  Recommended Change: Amend 53-20-126, MCA, to remove the outdated reference.

- **Allow a member of the RFST to provide testimony via video means.**

  Concern Addressed: An RFST member may be required to provide testimony if a hearing is held on a commitment petition. The hearings are sometimes held a substantial distance from the person's work place or residence.

  Recommended Change: Amend 53-20-116, MCA, to allow video testimony.

- **Clarify the emergency admission and commitment statutes.**

  Concern Addressed: The provisions of 53-20-129, MCA, could create confusion because the language is unclear and does not provide clear timelines for some steps.

  Recommended Change: Amend 53-20-129, MCA, to more clearly state who is responsible for each step of the emergency commitment process; clarify the appropriate timeframes; and remove the requirement that a DD professional *initiate* an emergency admission and instead clarify that only a DD professional may *recommend* an emergency admission.

Meeting participants also discussed clarifying the duties of the "responsible person" who may be appointed by a court to represent the interests of a person named in a commitment petition. DPHHS suggested amending the statutes to indicate that a

responsible person's duties are those of a guardian ad litem. Participants were open to this idea but did not have time to review how it would affect all of the statutes in which a responsible party is listed as having a right to information or a duty to perform an action. If CFHHS authorizes the drafting of a bill, this issue could be given further review.

Items for Committee Consideration

To complete action on this item, the Committee should decide whether it wants to authorize drafting of a committee bill to clarify the commitment statutes for people with developmental disabilities.

If the committee chooses to authorize drafting of a bill, it also should decide whether to include all of the recommendations or to exclude some of the proposed changes.

After a bill is drafted, a review of the draft would be scheduled for a future committee meeting, along with an additional public comment period on the bill draft.

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