

HOUSE BILL NO. 365

INTRODUCED BY M. MENAHAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE STATUTES RELATED TO INVOLUNTARY
5 COMMITMENTS; PROVIDING FOR THE WAIVER OF THE RIGHT OF THE RESPONDENT TO BE
6 PHYSICALLY PRESENT AT A HEARING WITH A CONCURRENCE OF THE RESPONDENT'S ATTORNEY
7 AND THE PROFESSIONAL PERSON; ALLOWING EMERGENCY DETENTION OF A PERSON IF THE
8 PERSON IS SUBSTANTIALLY UNABLE TO PROVIDE FOR THE PERSON'S OWN BASIC NEEDS; AND
9 AMENDING SECTIONS 53-21-119 AND 53-21-129, MCA."

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

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13 **Section 1.** Section 53-21-119, MCA, is amended to read:

14 **"53-21-119. Waiver of rights.** (1) A person may waive the person's rights, or if the person is not capable
15 of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend
16 of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be
17 waived. The right to treatment provided for in this part may not be waived.

18 (2) The right of the respondent to be physically present at a hearing may also be waived by the
19 respondent's attorney and the friend of respondent, if a friend of respondent is appointed, with the concurrence
20 of the professional person ~~and the judge upon a finding supported by facts that if:~~

21 (a) (i) the presence of the respondent at the hearing would be likely to seriously adversely affect the
22 respondent's mental condition; and

23 ~~(b)(ii)~~ (ii) an alternative location for the hearing in surroundings familiar to the respondent would not prevent
24 the adverse effects on the respondent's mental condition; or

25 (b) the respondent voluntarily expresses a desire to waive the respondent's presence at the hearing.

26 (3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's
27 rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem
28 if there are no parents or guardian.

29 (b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the
30 court shall appoint a guardian ad litem for the minor."

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Section 2. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and appears to present an imminent danger of death or bodily harm to the person or to others or to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others or is substantially unable to provide for the person's own basic needs because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

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

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

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