



National Alliance on Mental Illness

NAMI Montana

STATE SENATE
COMMITTEE ON
3/11/13
HB16

Please Support House Bill 16

- 1. Decades of legal precedent ensure HB 16 will only be used to provide emergency detentions for persons in danger of serious physical harm because they have symptoms of mental illness that prevent them from meeting their essential needs of health or safety.**

The recommended change in Montana's "Emergency Detention" standard fit firmly within existing Constitutional law on civil commitments. This law is based upon the United State Supreme Court's holding in *O'Connor v. Donaldson* that a "State cannot constitutionally confine without more a non-dangerous individual who is capable of surviving safely in freedom by himself or with the help of willing and responsible family members or friends. *O'Connor v. Donaldson*, 422 U.S. 563, 576, 95 S.Ct. 2486, 2494 (1975).

Montana has a basic needs commitment standards in Section 53-21-126(4), but Montana's courts have not developed a significant amount of case law on specifics of that standard. However, basic needs commitment standards have been well litigated for decades in other states and those cases are instructive in the direction that the Montana Supreme Court will likely interpret this statute.

- Washington - The Supreme Court of Washington determined that a State seeking to commit someone under an basic needs standard "must present recent, tangible evidence of failure or inability to provide for such essential human needs as food, clothing, shelter, and medical treatment which presents a high probability of serious physical harm within the near future unless adequate treatment is afforded. Furthermore, the failure or inability to provide for these essential needs must be shown to arise as a result of mental disorder and not because of other factors." *In re Labelle*, 107 Wn.2d 196; 728 P.2d 138 (1986).
- Oregon - The Oregon Court of Appeals recently made an in-depth description of their basic needs civil commitment process in *State vs. D.M.*, 245 Or.App. 466 (2011). In order to commit a person on the ground that the person is unable to provide for his or her basic needs, the state must prove, by clear and convincing evidence, that, because of a mental disorder, the person is unable to secure basic self-care, and, as a result, the person "probably would not survive in the near future." *State v. Bunting*, 112 Or.App. 143, 146, 826 P.2d 1060 (1992). 78 A person's ability to provide for his or her basic needs is assessed at the time of the commitment hearing " 'in the light of existing, as opposed to future or potential, conditions.' " *State v. C. A. J.*, 230 Or.App. 224, 231 n.5, 213 P.3d 1279 (2009) (*quoting State v. Headings*, 140 Or.App. 421, 426, 914 P.2d 1129

(1996)). A "basic needs" commitment must be based on "more than evidence of speculative threats to safe survival." *A. M.-M.*, 236 Or.App. at 605, 238 P.3d 407. The Oregon Court of Appeals has specifically held that evidence of homelessness is not, in and of itself, sufficient to support a basic needs commitment, nor is evidence that a person has schizophrenia and has suffered discomfort or minor injuries as a result of delusions. See, *State v. Baxter*, 138 Or.App. 94, 906 P.2d 849 (1995).

2. The Fiscal Note's determination that HB 16 will not dramatically increase the commitments at the Montana State Hospital is supported by third-party research of hospitalization rates at states that have broadened their commitment laws.

House Bill 16's Fiscal Note estimates that expanding the Emergency Detention standards would add three emergency detentions per week for a total of 156 emergency detentions per year. That increase in emergency detentions would cost the state between \$75,300 and \$77,576 per year which would be offset by between \$139,282 and \$143,492 in annual payments from the counties. This estimated expenditure is higher than the fiscal note for a similar bill in the 2011 Legislature which estimated expanding the Emergency Detention Standards would cost the state between \$61,780 and \$64,276 per year. The difference in this estimate appears to be that the current Fiscal Note expects to keep all Emergency Detentions for four days, where the previous Fiscal Note expected to keep them for three days.

The additional of three emergency detentions per week is not a large increase for a hospital licensed for 189 beds. The Fiscal Note's assumption that broadening the Emergency Detention Criteria would have minimal impact on the number of commitments to the state hospital is supported by Dr. Robert Miller's study "Need-for-Treatment Criteria for Involuntary Civil Commitment: Impact in Practice."¹ Dr. Miller analysis reveals that North Carolina, Alaska, Kansas, Texas and Colorado actually decreased their inpatient admissions while expanding their civil commitment criteria.² Dr. Miller points out that if "the goals of early intervention are realized, there should ultimately be a lowering of hospital census figures because of shorter stays."³

The new standards may also open up additional savings. The process of getting 156 people who are in mental illness crisis into treatment will likely be other savings throughout the system. For instance, a number of the offenders on the State's forensic unit may have qualified for an expanded emergency detention before they committed their offense. If even one offender is prevented from committing a felony crime that would lead them to spend a year in the Montana State Hospital, that savings could free up enough bed days to pay for the program. (\$507.29 per day x 365 days in a year = \$185,160.85)

¹ Robert D. Miller, M.D., Ph.D., "Need-for-Treatment Criteria for Involuntary Civil Commitment: Impact in Practice," *Am. J. Psychiatry* 1992; 149: 1380-1384.

² *Id.* at 1383.

³ *Id.*