

1 HOUSE BILL NO. 561

2 INTRODUCED BY J. HAMILTON

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING INVOLUNTARY COMMITMENT LAWS; REVISING
5 PROCESSES FOR THE RESPONDENT'S WAIVER OF THE RIGHT TO BE PRESENT AT HEARINGS AND
6 OTHER RIGHTS OTHER THAN THE RIGHT TO COUNSEL AND THE RIGHT TO TREATMENT; PROVIDING
7 THAT THE USE OF ELECTRONIC AUDIO-VIDEO COMMUNICATION SATISFIES THE RESPONDENT'S
8 RIGHT TO BE PRESENT AT HEARINGS; AND AMENDING SECTIONS 53-21-119, 53-21-132, AND 53-21-
9 140, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
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~~
15 ~~capable of making an intentional and knowing decision, these rights may be waived by the person's counsel~~
16 ~~and friend of respondent, if a friend of respondent is appointed, acting together if a record is made of the~~
17 ~~reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part~~
18 ~~may not be waived.~~

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

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

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

26 ~~(b) the respondent has voluntarily expressed a desire to waive the respondent's presence at the~~
27 ~~hearing.~~

28 (1) A respondent's right to counsel and the right to treatment provided for in this part may not be

1 waived.

2 (2) A respondent's procedural right to be present at any hearing as provided in 53-21-115(2) and 53-
3 21-116 may be waived by the court:

4 (a) at the request of the respondent, upon a finding supported by facts that the respondent has
5 voluntarily expressed a desire to waive the respondent's presence at the hearing;

6 (b) at the request of the respondent's attorney, with the concurrence of the professional person and
7 the friend of the respondent, if any, upon a finding supported by facts that the presence of the respondent at the
8 hearing would be likely to seriously adversely affect the respondent's mental health condition; or

9 (c) at the request of the county attorney, with the concurrence of the professional person and the
10 friend of the respondent, if any, upon a finding supported by facts that the presence of the respondent at the
11 hearing would be likely to seriously adversely affect the respondent's mental health condition.

12 (3) The respondent's rights may otherwise be waived:

13 (a) by the respondent, if the court finds the respondent is capable of making an intentional or knowing
14 decision; or

15 (b) by the respondent's attorney and friend of the respondent, if any, acting together, if a record is
16 made of the reasons for the waiver.

17 ~~(3)(4)~~ (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the
18 minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian
19 ad litem if there are no parents or guardian.

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

22

23 **Section 2.** Section 53-21-132, MCA, is amended to read:

24 **"53-21-132. Cost of examination and commitment.** (1) The cost of psychiatric precommitment
25 examination, detention, treatment, and taking a person who is suffering from a mental disorder and who
26 requires commitment to a mental health facility must be paid pursuant to subsection (2)(a). The sheriff must be
27 allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

28 (2) (a) The costs of precommitment psychiatric detention, precommitment psychiatric examination,

1 and precommitment psychiatric treatment of the respondent and any cost associated with testimony during an
 2 involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the
 3 following entities in the listed order of priority:

4 (i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private
 5 insurance carrier, if any;

6 (ii) a public assistance program, such as medicaid, for a qualifying respondent; or

7 (iii) the county of residence of the respondent in an amount not to exceed the amount paid for the
 8 service by a public assistance program.

9 (b) The county of residence is not required to pay costs of treatment and custody of the respondent
 10 after the respondent is committed pursuant to this part. Precommitment costs related to the use of ~~two-way~~
 11 electronic audio-video communication in the county of commitment must be paid by the county in which the
 12 person resides at the time that the person is committed. The costs of the use of ~~two-way~~ electronic audio-video
 13 communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the
 14 state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical,
 15 psychological, or other mental health treatment pursuant to this part does not relieve a third party from a
 16 contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

17 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and
 18 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental
 19 health program funds.

20 (4) A community service provider that is a private, nonpublic provider may not be required to treat or
 21 treat without compensation a person who has been committed."

22

23 **Section 3.** Section 53-21-140, MCA, is amended to read:

24 **"53-21-140. Use of ~~two-way~~ electronic audio-video communication.** (1) A respondent's right to be
 25 present at a hearing as provided in 53-21-115(2) and 53-21-116 may be satisfied by:

26 (a) the respondent's physical appearance before the court; or

27 (b) in the discretion of the court, by electronic audio-video communication.

28 (2) For purposes of this chapter;

1 (a) electronic audio-video communication must allow all participants to be observed and heard
 2 simultaneously; and

3 (b) a hearing that is conducted by the use of two-way electronic audio-video communication, allowing
 4 all of the participants to be observed and heard simultaneously by all present, is considered to be a hearing in
 5 open court.

6 ~~(2) Whenever the law requires that a respondent or patient in any of the hearings provided for in~~
 7 ~~subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either~~
 8 ~~by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video~~
 9 ~~communication. The audio-video communication must operate so that the respondent or patient, the~~
 10 ~~respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each~~
 11 ~~other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately,~~
 12 ~~and so that the respondent or patient and counsel are both present during the two-way electronic audio-video~~
 13 ~~communication. A respondent or patient may request that counsel from the board be present, for consulting~~
 14 ~~purposes only, if the respondent or patient is located at the state hospital.~~

15 ~~(3) At the discretion of the court, the following hearings may be conducted through two-way electronic~~
 16 ~~audio-video communication:~~

17 ~~(a) the initial hearing provided for in 53-21-122;~~

18 ~~(b) the detention hearing provided for in 53-21-124;~~

19 ~~(c) the trial or hearing on a petition provided for in 53-21-126;~~

20 ~~(d) a hearing on posttrial disposition as provided for in 53-21-127;~~

21 ~~(e) a hearing on the extension of a commitment period as provided for in 53-21-128;~~

22 ~~(f) a hearing on rehospitalization of a person conditionally released from an inpatient treatment facility~~
 23 ~~as provided for in 53-21-197;~~

24 ~~(g) a hearing on an extension of the conditions of release as provided for in 53-21-198.~~

25 ~~(4) This section does not abrogate a person's rights under 53-21-115, 53-21-116, or 53-21-117. A~~
 26 ~~respondent or patient, the respondent's or patient's counsel, and a friend of respondent or patient, if any, must~~
 27 ~~be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a~~
 28 ~~hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of respondent~~

1 ~~or patient, acting together, may waive any of the rights, as provided under 53-21-119.~~

2 ~~(5) A two-way electronic audio-video communication may not be used:~~

3 ~~(a) in an initial hearing provided for in 53-21-122 if the professional person objects; or~~

4 ~~(b) in a hearing referred to in subsections (3)(b) through (3)(g) if a respondent or patient, the~~
5 ~~respondent's or patient's counsel, or the professional person objects."~~

6 ~~- END -~~