

SENATE BILL NO. 468

INTRODUCED BY J. TREBAS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING INVOLUNTARY COMMITMENT LAWS; REVISING THE CRITERIA FOR COMMITMENT AND EMERGENCY DETENTION; ALLOWING ADDITIONAL PERSONS TO FILE COMMITMENT AND EMERGENCY DETENTION PETITIONS; EXTENDING THE PERIOD OF COMMITMENT AND RECOMMITMENT FOR COMMUNITY COMMITMENTS; REVISING THE DEFINITION OF "EMERGENCY SITUATION"; AND AMENDING SECTIONS 53-21-102, 53-21-121, 53-21-126, 53-21-127, 53-21-128, 53-21-129, AND 53-21-183, MCA."

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 chapter, 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 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.

1 (7) "Emergency situation" means:

2 (a) a situation in which any person is in ~~imminent~~ danger of death or bodily harm from the activity
3 of a person who appears to be suffering from a mental disorder and appears to require commitment; or

4 (b) a situation in which any person who appears to be suffering from a mental disorder and
5 appears to require commitment is:

6 (i) substantially unable to provide for the person's own basic needs of food, clothing, shelter,
7 health, or safety; or

8 (ii) at risk of significant psychiatric deterioration because the person is incapable of understanding
9 and expressing an understanding of the advantages and disadvantages of accepting treatment.

10 (8) "Friend of respondent" means any person willing and able to assist a person suffering from a
11 mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and
12 requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

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) intellectual disability; 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
22 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
23 facility, or a residential treatment center licensed or certified by the department that provides treatment to
24 children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility
25 within the 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;

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

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

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

4 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
5 psychiatric mental health nursing; or

6 (g) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric
7 mental health.

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

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

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

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

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

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

18 (14) "Patient" means a person committed by the court for treatment for any period of time or who is
19 voluntarily admitted for treatment for any period of time.

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

21 (16) "Professional person" means:

22 (a) a medical doctor;

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

25 (c) a licensed psychologist;

26 (d) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric
27 mental health; or

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

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

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

5 (19) "State hospital" means the Montana state hospital."
6

7 **Section 2.** Section 53-21-121, MCA, is amended to read:

8 **"53-21-121. Petition for commitment -- contents of -- notice of.** (1) The county attorney, upon the
9 written request of any person having direct knowledge of the facts, or any person with direct knowledge of the
10 facts may file a petition with the court alleging that there is a person within the county who is suffering from a
11 mental disorder and who requires commitment pursuant to this chapter.

12 (2) The petition must contain:

13 (a) the name and address of the person requesting or filing the petition and the person's interest in
14 the case;

15 (b) the name of the respondent and, if known, the address, age, sex, marital status, and
16 occupation of the respondent;

17 (c) the purported facts supporting the allegation of mental disorder, including a report by a mental
18 health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for
19 commitment;

20 (d) the name and address of every person known or believed to be legally responsible for the care,
21 support, and maintenance of the respondent for whom evaluation is sought;

22 (e) the name and address of the respondent's next of kin to the extent known to the county
23 attorney or other person filing the petition and to the person requesting that the county attorney file the petition;

24 (f) the name and address of any person whom the county attorney or person filing the petition
25 believes might be willing and able to be appointed as friend of respondent;

26 (g) the name, address, and telephone number of the attorney, if any, who has most recently
27 represented the respondent for whom evaluation is sought; if there is no attorney, there must be a statement as
28 to whether to the best knowledge of the person requesting or filing the petition the respondent for whom

1 evaluation is sought is indigent and unable to afford the services of an attorney;

2 (h) a statement of the rights of the respondent, which must be in conspicuous print and identified
3 by a suitable heading; and

4 (i) the name and address of the mental health facility to which it is proposed that the respondent
5 may be committed, if known.

6 (3) Notice of the petition must be hand-delivered to the respondent and to the respondent's
7 counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The
8 respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the
9 probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing
10 and the names of the respondent's counsel, professional person, and friend of respondent must be hand-
11 delivered, mailed, or sent by a facsimile transmission to the person or persons legally responsible for care,
12 support, and maintenance of the respondent, the next of kin identified in the petition, any other person identified
13 by the county attorney or person filing the petition as a possible friend of respondent other than the one named
14 as the friend of respondent, the director of the department or the director's designee, and the mental health
15 facility to which the respondent may be committed, if known. The notice may provide, other than as to the
16 respondent and the respondent's counsel, that no further notice will be given unless written request is filed with
17 the clerk of court."
18

19 **Section 3.** Section 53-21-126, MCA, is amended to read:

20 **"53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the
21 respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented
22 by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the
23 respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all
24 the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court
25 determines that the respondent is suffering from a mental disorder, the court shall then determine whether the
26 respondent requires commitment. In determining whether the respondent requires commitment and the
27 appropriate disposition under 53-21-127, the court shall consider the following:

28 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the

1 respondent's own basic needs of food, clothing, shelter, health, or safety;

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

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

6 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or
7 omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point
8 at which the respondent will become a danger to self or to others or will be unable to provide for the
9 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by
10 the past 3 years of the respondent's relevant medical history.

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

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

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

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

28 (b) the respondent has recently, because of a mental disorder and through an act or an omission,

1 caused self-injury or injury to others;

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

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

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

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

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

10 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the
11 point at which the respondent will become a danger to self or to others or will be unable to provide for the
12 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by
13 the past 3 years of the respondent's relevant medical history.

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

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

18

19 **Section 4.** Section 53-21-127, MCA, is amended to read:

20 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not
21 suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent
22 must be discharged and the petition dismissed.

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

28 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7),

1 the court shall:

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

4 (b) commit the respondent to a community facility, which may include a category D assisted living
5 facility, or a community program or to any appropriate course of treatment, which may include housing or
6 residential requirements or conditions as provided in 53-21-149, for a period of:

7 (i) ~~not more~~ less than 3 months or more than 6 months, depending on the person's treatment
8 needs; or

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

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

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

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

21 (4) ~~Except as provided in subsection (3)(b)(ii), a~~ A treatment ordered pursuant to this section may
22 not affect the respondent's custody or course of treatment for a period of more than ~~3~~ 6 months.

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

26 (6) (a) The court may authorize the chief medical officer of a facility or a physician designated by
27 the court to administer appropriate medication involuntarily if the court finds that involuntary medication is
28 necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be

1 involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by
2 the court approves it prior to the beginning of the involuntary administration and unless, if possible, a
3 medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review
4 is not possible, within 5 working days after the beginning of the involuntary administration. The medication
5 review committee must include at least one person who is not an employee of the facility or program.

6 (b) The patient and the patient's attorney or advocate, if the patient has one, must receive
7 adequate written notice of the date, time, and place of the review and must be allowed to appear and give
8 testimony and evidence.

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

12 (d) The court must receive regular reports on the involuntary administration of medication under
13 this subsection (6).

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

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

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

25 (a) a detailed statement of the facts upon which the court found the respondent to be suffering
26 from a mental disorder and requiring commitment;

27 (b) the alternatives for treatment that were considered;

28 (c) the alternatives available for treatment of the respondent;

- 1 (d) the reason that any treatment alternatives were determined to be unsuitable for the
2 respondent;
- 3 (e) the name of the facility, program, or individual to be responsible for the management and
4 supervision of the respondent's treatment;
- 5 (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was
6 chosen from among other alternatives;
- 7 (g) if the order commits the respondent to the Montana mental health nursing care center, a finding
8 that the respondent meets the admission criteria of the center and that the superintendent of the center has
9 issued a written authorization specifying a date and time for admission;
- 10 (h) if the order provides for an evaluation to determine eligibility for entering a category D assisted
11 living facility, a finding that indicates whether:
- 12 (i) the respondent meets the admission criteria;
- 13 (ii) there is availability in a category D assisted living facility; and
- 14 (iii) a category D assisted living facility is the least restrictive environment because the respondent
15 is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and
- 16 (i) if the order includes involuntary medication, the reason involuntary medication was chosen
17 from among other alternatives."

18

19 **Section 5.** Section 53-21-128, MCA, is amended to read:

20 **"53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks
21 prior to the end of the 3-month period of commitment to the state hospital, a behavioral health inpatient facility,
22 or the Montana mental health nursing care center or the period of commitment to a community facility or
23 program or a course of treatment provided for in 53-21-127, the professional person in charge of the patient at
24 the place of commitment may petition the district court in the county where the patient is committed for
25 extension of the commitment period unless otherwise ordered by the original committing court. The petition
26 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The
27 report must describe any tests and evaluation devices that have been employed in evaluating the patient, the
28 course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the

1 professional person.

2 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the
3 patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and
4 the patient's counsel. If any person notified requests a hearing prior to the termination of the previous
5 commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10
6 days, not including Saturdays, Sundays, and holidays, from the receipt of the request and notify the same
7 people, including the professional person in charge of the patient. When a hearing is requested less than 10
8 days prior to the termination of the previous commitment authority, the previous commitment is considered
9 extended until the hearing is held. The notice of hearing must include a notice of this extension. If a hearing is
10 not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

11 (c) Procedure on the petition for extension when a hearing has been requested must be the same
12 in all respects as the procedure on the petition for the original ~~3-month~~ commitment, except that the patient is
13 not entitled to a trial by jury. The hearing must be held in the district court having jurisdiction over the facility in
14 which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if any, must
15 be paid by the county that paid the same costs in the initial commitment proceedings.

16 (d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and
17 requiring commitment within the meaning of this part, the patient must be discharged and the petition
18 dismissed.

19 (e) (i) If the court finds that the patient continues to suffer from a mental disorder and to require
20 commitment, the court shall order commitment as set forth in 53-21-127. ~~However, Except as provided in~~
21 subsection (1)(e)(ii), an order extending the commitment period may not affect the patient's custody for more
22 than 6 months and may not commit the patient to a behavioral health inpatient facility.

23 (ii) A person's commitment to a community facility or program may be extended for a period of at
24 least 6 months and up to 1 year, depending on the person's treatment needs.

25 (f) In its order, the court shall describe what alternatives for treatment of the patient are available,
26 what alternatives were investigated, and why the investigated alternatives were not found suitable. The court
27 may not order continuation of an alternative that does not include a comprehensive, individualized plan of
28 treatment for the patient. A court order for the continuation of an alternative must include a specific finding that

1 a comprehensive, individualized plan of treatment exists.

2 (2) Prior to the end of the period of commitment to a community facility or program or course of
 3 treatment, a respondent may request that the treating provider petition the district court for an extension of the
 4 commitment order. The petition must be accompanied by a written report and evaluation of the respondent's
 5 mental and physical condition, an updated treatment plan, and a written statement by the respondent that an
 6 extension is desired. The extension procedure must follow the procedure required in subsections (1)(b) through
 7 ~~(1)(d)~~ (1)(f).

8 (3) Further extensions under subsection (1) or (2) may be obtained under the same procedure
 9 described in subsection (1). However, the patient's custody may not be affected for more than 1 year without a
 10 renewal of the commitment under the procedures set forth in subsection (1), including a statement of the
 11 findings required by subsection (1)."

12

13 **Section 6.** Section 53-21-129, MCA, is amended to read:

14 **"53-21-129. Emergency situation -- petition -- detention.** (1) (a) When an emergency situation as
 15 defined in 53-21-102 exists, a peace officer may take any person who appears to have a mental disorder ~~and~~
 16 into custody if the person appears:

17 (i) _____ to present an ~~imminent~~ a danger of death or bodily harm to the person or to others;

18 (ii) _____ to be at risk of psychiatric deterioration without immediate treatment; or

19 (iii) _____ who ~~appears~~ to have a mental disorder and to be substantially unable to provide for the
 20 person's own basic needs of food, clothing, shelter, health, or safety.

21 (b) _____ The person may be taken into custody only for sufficient time to contact a professional person
 22 for emergency evaluation. If possible, a professional person should be called prior to taking the person into
 23 custody.

24 (2) _____ If a family member, guardian, or other person with knowledge of the situation believes an
 25 emergency situation exists, the person may petition a court for an order seeking detention and evaluation of a
 26 person meeting the criteria in subsection (1)(a).

27 ~~(2)(3)~~ If the professional person agrees that the person detained is a danger to the person or to
 28 others and that an emergency situation as defined in 53-21-102 exists, then the person may be detained and

1 treated ~~until the next regular business day~~ for at least 48 hours and up to 72 hours. At that time, the
 2 professional person shall release the detained person or file findings with the county attorney who, if the county
 3 attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126
 4 in the county of the respondent's residence. In either case, the professional person shall file a report with the
 5 court explaining the professional person's actions.

6 ~~(3)(4)~~ The county attorney of a county may make arrangements with a federal, state, regional, or
 7 private mental facility or with a mental health facility in a county for the detention of persons held pursuant to
 8 this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have
 9 a bed available to detain the person at that facility, the person may be transported to the state hospital or to a
 10 behavioral health inpatient facility, subject to 53-21-193 and subsection ~~(4)(5)~~ of this section, for detention and
 11 treatment as provided in this part. This determination must be made on an individual basis in each case, and
 12 the professional person at the local facility shall certify to the county attorney that the facility does not have
 13 adequate room at that time.

14 ~~(4)(5)~~ Before a person may be transferred to the state hospital or to a behavioral health inpatient
 15 facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to
 16 transfer and shall state whether a bed is available for the person. If the professional person determines that a
 17 behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available,
 18 the county attorney shall direct the person to the appropriate facility to which the person must be transported for
 19 emergency detention."
 20

21 **Section 7.** Section 53-21-183, MCA, is amended to read:

22 **"53-21-183. Release conditioned on receipt of outpatient care.** (1) When, in the opinion of the
 23 professional person in charge of a mental health facility providing involuntary treatment, the committed person
 24 can be appropriately served by outpatient care prior to the expiration of the period of commitment, then
 25 outpatient care may be required as a condition for early release for a period that, when added to the inpatient
 26 treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental
 27 health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the
 28 designated outpatient facility shall agree in writing to assume the responsibility.

