

HOUSE BILL NO. 56

INTRODUCED BY B. THOMAS

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "~~AN ACT PROVIDING THAT A GUARDIAN OF AN INCAPACITATED PERSON MAY GIVE INFORMED CONSENT TO ADMISSION OR CONTINUED INPATIENT STATUS OF THE WARD AT FOR INVOLUNTARY COMMITMENT TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER AND TO ADMINISTRATION OF MEDICATION IF THE WARD DOES NOT REFUSE; PROVIDING FOR DIRECT ADMISSION TO THE MONTANA MENTAL HEALTH NURSING CARE CENTER UNDER CERTAIN CONDITIONS; AND AMENDING SECTIONS 53-21-127, 53-21-128, AND 53-21-414 AND 72-5-321, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

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

SECTION 1. SECTION 53-21-127, MCA, IS AMENDED TO READ:

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

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

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

- (a) commit the respondent to the state hospital for a period of not more than 3 months; ~~or~~
- (b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 6 months; or
- (c) commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months, if the following conditions are met:

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

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

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

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

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

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

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

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

(b) the alternatives for treatment that were considered;

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

- (d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;
- (e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;
- (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;
- (g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission; and
- ~~(g)~~(h) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

SECTION 2. SECTION 53-21-128, MCA, IS AMENDED TO READ:

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

(b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the previous commitment authority, the court shall immediately set a time and place for a hearing on a date not more than 10 days from the receipt of the request and notify the same people, including the professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months.

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

county that paid the same costs in the initial commitment proceedings.

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment as set forth in 53-21-127(3). However, an order may not affect the patient's custody for more than 6 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

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

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

Section 3. Section 53-21-414, MCA, is amended to read:

"53-21-414. Admissions to mental health nursing care center. (1) The Montana mental health nursing care center may admit patients on a voluntary basis according to admission criteria and procedures established in administrative rules ~~and, under the circumstances specified in 72-5-321, pursuant to the authority of a guardian~~ BY INVOLUNTARY COMMITMENT PURSUANT TO 53-21-127(3)(C)).

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department of public health and human services to the Montana mental health nursing care center if the patient meets the admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or entity may petition the district court for a hearing to review whether the

transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128 applies to extensions of involuntary commitment of patients to the center.

(3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily transferred to the center have the rights provided in this chapter."

~~Section 2.~~ Section 72-5-321, MCA, is amended to read:

~~"72-5-321. Powers and duties of guardian of incapacitated person. (1) The powers and duties of a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to report the condition of the incapacitated person and of the estate that has been subject to his the limited guardian's possession and control, as required by the court or by court rule:~~

~~(2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting his the full guardian's ward that a parent has respecting his the parent's unemancipated minor child, except that a guardian is not liable to third persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the foregoing, a full guardian has the following powers and duties, except as limited by order of the court:~~

~~(a) To the extent that it is consistent Except when it is inconsistent with the terms of any order by a court of competent jurisdiction relating to detention or commitment of the ward, he the full guardian is entitled to custody of the person of his the ward and may establish the ward's place of abode within or without residence inside or outside of this state:~~

~~(b) If entitled to custody of his the ward, he shall make provision the full guardian shall provide for the care, comfort, and maintenance of his the ward and, whenever appropriate, arrange for his the ward's training and education. Without regard to custodial rights of the ward's person, he shall the full guardian shall take reasonable care of his the ward's clothing, furniture, vehicles, and other personal effects and commence initiate protective proceedings if other property of his the ward is in need of protection.~~

~~(c) A full guardian may give any consents or approvals that may be necessary to enable the ward to receive medical or other professional care, counsel, treatment, or service:~~

~~(d) If no a conservator for the estate of the ward has not been appointed, a full guardian may:~~

~~(i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the welfare of the ward to perform his the person's duty;~~

~~(ii) receive money and tangible property deliverable to the ward and apply the money and property for~~

support, care, and education of the ward; but he, ~~However, the full guardian~~ may not use funds from his ~~the~~ ward's estate for room and board which he, his spouse, parent, or child has furnished ~~to~~ the ward unless a charge for the service is approved by order of the court made upon notice to at least one of the next of kin of the incompetent ward, if notice is possible. He ~~The full guardian~~ must ~~shall~~ exercise care to conserve any excess for the ward's needs.

~~———— (e) Unless waived by the court, a full guardian is required to report the condition of his the ward and of the estate which that has been subject to his the full guardian's possession or control annually for the preceding year. A copy of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request under 72-5-318.~~

~~———— (f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess of those funds expended to meet current expenses for support, care, and education of the ward must be paid to the conservator for management as provided in this code, and the full guardian must shall account to the conservator for funds expended.~~

~~———— (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court shall order the guardian to file the report and give good cause for his the failure to file a timely report.~~

~~———— (4) Any full guardian of one for whom a conservator also has been appointed shall control the custody and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control those aspects of the custody and care of the ward over which he the limited guardian is given authority by the order establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums for his the guardian's services and for room and board furnished to the ward as agreed upon between him the guardian and the conservator, provided if the amounts agreed upon are reasonable under the circumstances. The full guardian or limited guardian authorized to oversee such certain aspects of the incapacitated person's care may request the conservator to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.~~

~~———— (5) No Except as provided in 72-5-322 or in subsection (6) of this section, a full guardian or limited guardian may not involuntarily commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation a ward who is himself unwilling or unable to give informed consent to such the commitment, except as provided in 72-5-322, or treatment unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed.~~

~~———— (6) If a court of competent jurisdiction has found the ward to be incapacitated because of a mental disease or defect, including dementia, but not in need of intensive psychiatric care, such as that which is provided~~

~~at the state hospital, the court may authorize a guardian to give informed consent on behalf of the ward to admission or continued inpatient status of the ward at the Montana mental health nursing care center if the ward does not refuse admission or continued inpatient status. If a court of competent jurisdiction has found the ward to be incapacitated because of a mental disease or defect, including dementia, and the court finds that it is necessary to protect the ward or the public or to facilitate effective treatment of the mental disease or defect, the court may authorize a guardian to give informed consent on behalf of the ward to administration of medications, including psychotropic medications, if the ward does not refuse the administration of medication.~~

~~—— (7) This chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and 21."~~

~~—— NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.~~

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