

SENATE BILL NO. 170
INTRODUCED BY D. MAHLUM

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE STATE RATHER THAN THE COUNTY OF RESIDENCE TO PAY ALL EXPENSES RELATED TO THE INVOLUNTARY COMMITMENT OF A MENTALLY ILL PERSON; AMENDING SECTIONS 53-21-113, 53-21-116, 53-21-118, 53-21-120, 53-21-128, 53-21-132, AND 53-21-198, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

Section 1. Section 53-21-113, MCA, is amended to read:

"53-21-113. Costs of committing a patient already voluntarily admitted -- transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced must be paid by the ~~county of the patient's residence at the time of admission~~ state.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 must be provided by the local office of public assistance located in the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the local office of public assistance may seek reimbursement. If no one else is available to transport the person, the sheriff shall transport the person."

Section 2. Section 53-21-116, MCA, is amended to read:

"53-21-116. Right to be present at hearing or trial -- appointment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present at any hearing or trial. If the person ~~has no~~ does not have an attorney, the judge shall appoint ~~one~~ an attorney to represent the person at either the hearing or the trial, or both; ~~who~~ The appointed attorney must be compensated ~~from the public funds of the county where the respondent resides~~ by the state."

Section 3. Section 53-21-118, MCA, is amended to read:

"53-21-118. Right to examination by professional person of own choosing. (1) The respondent, ~~his~~ the respondent's attorney, or the friend of respondent appointed by the court may secure a professional person

of ~~his own~~ the respondent's, the respondent's attorney, or the friend of respondent's choice to examine the respondent and to testify at the hearing before the court or jury as to the results of ~~his~~ the professional person's examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who ~~will~~ must be compensated ~~from the public funds of the county where the respondent resides~~ by the state."

Section 4. Section 53-21-120, MCA, is amended to read:

"53-21-120. Detention to be in least restrictive environment -- preference for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; ~~in this respect~~ In determining the least restrictive environment, the prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the ~~individual~~ person may be sent to the state hospital until time of trial if arrangements can be made to return ~~him~~ the person to trial. The trial must be held within 30 days. The ~~county of residence~~ state shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

(3) A person may not be detained pursuant to this part in a jail or other correctional facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being ~~utilized~~ used to detain."

Section 5. 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 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~~ state.

(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 6. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid by the ~~county in which the person resides at the time that the person is committed~~ state. The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) The ~~county of residence~~ state shall also pay all precommitment expenses, including transportation to a mental health facility, incurred in connection with the detention, examination, and precommitment custody of the respondent. ~~However, the county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state.~~ The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

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

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

Section 7. Section 53-21-198, MCA, is amended to read:

"53-21-198. Extension of conditions of release -- hearing. (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under 53-21-127 or 53-21-128,

but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

(a) continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and

(b) the deterioration will predictably result in the necessity of further inpatient care for the patient. Predictability may be established by the patient's medical history.

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. 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 has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) 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, if any, and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention ordered under 53-21-127 or 53-21-128, 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 extending the conditions of release for a period not to exceed 6 months.

(4) Procedure on the petition for extension is the same in all respects as the procedure for hearing on a rehospitalization petition pursuant to 53-21-197. However, in an extension proceeding, the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the county that paid the same costs in the initial commitment proceeding state.

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. 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 considered suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative must include a specific finding that a

comprehensive, individualized plan of treatment exists.

(6) Further extensions may be obtained under the same procedure described in this section. However, the patient's custody may not be affected for more than 1 year without a renewal of the extension under the procedures set forth in this section, including a hearing and a statement of the findings required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided in subsection (1)."

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2003.

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