

SENATE BILL NO. 348
INTRODUCED BY B. KEENAN

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT WITH AND REGULATE BEHAVIORAL HEALTH INPATIENT FACILITIES; ALLOWING THE MONTANA STATE HOSPITAL TO DIRECT THAT A PERSON WITH MENTAL DISORDERS WHO HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL BE TRANSFERRED TO A BEHAVIORAL HEALTH INPATIENT FACILITY WHEN A BED IS AVAILABLE; REVISING HEARING PROVISIONS FOR EXTENSION OF A COMMITMENT; PERMITTING A COUNTY ATTORNEY TO HAVE A PERSON WHO APPEARS TO HAVE A MENTAL DISORDER AND IS IN IMMINENT DANGER OF DEATH OR BODILY HARM TRANSPORTED TO A BEHAVIORAL HEALTH INPATIENT FACILITY IF A BED IS AVAILABLE; PERMITTING TRANSFER OF PERSONS SUFFERING FROM MENTAL DISORDERS TO BE DIVERTED FROM DETENTION CENTERS TO BEHAVIORAL HEALTH INPATIENT FACILITIES IF A BED IS AVAILABLE; AMENDING SECTIONS 53-21-102, 53-21-120, 53-21-127, 53-21-128, 53-21-129, AND 53-21-138, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Commitment to behavioral health inpatient facilities -- preference. (1)

If a respondent is committed to the state hospital under 53-21-127 or a person in an emergency situation requires detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the Montana state hospital shall direct the person who is responsible for transporting the individual to the appropriate facility to which the person shall transport the individual for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to [section 2]. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(3) The court may not order commitment of the respondent or transfer of an individual to a behavioral

health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

NEW SECTION. Section 2. Department contract with behavioral health inpatient facilities -- rulemaking authority -- rates and transfer criteria. (1) The department may contract with one or more behavioral health inpatient facilities to provide intensive psychiatric care to persons involuntarily committed or detained under this title.

(2) The department shall adopt rules:

(a) governing the number, geographic distribution, capacity, and qualifications of behavioral health inpatient facilities;

(b) setting the reimbursement rates for medicaid or other state-funded programs, to the extent authorized by the department's budget authority; and

(c) establishing criteria pursuant to subsection (3) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals and state hospital staff.

(4) The department shall provide notice to the district courts of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer.

Section 3. Section 53-21-102, MCA, is amended to read:

"53-21-102. Definitions. As used in this part, 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 licensed mental health facility of 16 beds or less designated by the department that:

(a) may be a freestanding facility or a distinct part of another licensed health care facility and that is capable of providing intensive inpatient psychiatric services, including services to persons with mental illness and

co-occurring chemical dependency; and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

~~(2)~~(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

~~(3)~~(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

~~(4)~~(5) "Court" means any district court of the state of Montana.

~~(5)~~(6) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(6)~~(7) "Emergency situation" means a situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment.

~~(7)~~(8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

~~(8)~~(9) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

~~(a)~~(i) addiction to drugs or alcohol;

~~(b)~~(ii) drug or alcohol intoxication;

~~(c)~~(iii) mental retardation; or

~~(d)~~(iv) epilepsy.

~~(9)~~(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children

or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(10)~~(11) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(11)~~(12) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

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

- (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
- (ii) failure to follow a prescribed plan of care and treatment; or
- (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(12)~~(13) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(13)~~(14) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(14)~~(15) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(15)~~(16) "Professional person" means:

- (a) a medical doctor;
- (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing; or
- (c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(16)~~(17) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(17)~~(18) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(18)~~(19) "State hospital" means the Montana state hospital."

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, 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 the trial cannot be held within 7 days, subject to the provisions in [section 1], the individual may be sent to the state hospital or a behavioral health inpatient facility until the 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 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 to detain."

Section 5. 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) subject to the provisions of [section 1], commit the respondent to the state hospital or to a behavioral health inpatient facility 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.

(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 at a behavioral health inpatient facility.

(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; and

(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives."

Section 6. 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 a behavioral health inpatient facility 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, not including Saturdays, Sundays, and holidays, from the receipt of the request and notify the same people, including the professional person in charge of the patient. When a hearing is requested less than 10 days prior to the termination of the previous commitment authority, the previous commitment is considered extended until the hearing is held. The notice of hearing must include a notice of this extension. 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 that the patient is not entitled to a 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 extending the commitment period may not affect the patient's custody for more than 6 months and may not commit the patient to a behavioral health inpatient facility. 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 7. Section 53-21-129, MCA, is amended to read:

"53-21-129. Emergency situation -- petition -- detention. (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file

the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to [section 1] and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) ~~However, before~~ Before a person is may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state ~~that~~ whether a bed is available for the person. If the Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

Section 8. Section 53-21-138, MCA, is amended to read:

"53-21-138. Diversion of certain persons suffering from mental disorders from detention center.

(1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in 53-21-102.

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

(a) request services from a crisis intervention program established by the department, as provided for in 53-21-139;

(b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

(c) subject to [section 1] and subsection (3) of this section, transfer the inmate to a private mental health facility, a behavioral health inpatient facility, or a hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) The facility must be notified, and the facility shall state that a bed is available before a person may be transferred under this section.

~~(3)~~(4) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a

nonserious misdemeanor, such as criminal trespass to property, loitering, vagrancy, disorderly conduct, and disturbing the public peace.

~~(4)~~(5) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed."

NEW SECTION. **Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 1 and 2].

NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Effective date.** [This act] is effective July 1, 2003.

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