

SENATE BILL NO. 476

INTRODUCED BY STONINGTON, E. CLARK

BY REQUEST OF THE HOUSE JOINT APPROPRIATIONS SUBCOMMITTEE ON HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING SCREENING BY A COMMUNITY MENTAL HEALTH CENTER OF THE EVALUATION OF A PERSON WHO IS THE SUBJECT OF AN INVOLUNTARY CIVIL COMMITMENT TO THE MONTANA STATE HOSPITAL; REQUIRING NOTICE OF A COMMITMENT PETITION TO BE GIVEN TO THE COMMUNITY MENTAL HEALTH CENTER; REQUIRING THE COMMUNITY MENTAL HEALTH CENTER TO REPORT REGARDING AVAILABILITY OF SERVICES, A TREATMENT PLAN, AND WILLINGNESS TO PROVIDE SERVICES; REQUIRING THE COURT TO STATE REASONS WHY RECOMMENDATIONS BY A COMMUNITY MENTAL HEALTH CENTER WERE NOT FOLLOWED; REQUIRING THAT THE COMMUNITY MENTAL HEALTH CENTERS REPORT CERTAIN INFORMATION WITHIN 5 DAYS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CREATE FINANCIAL INCENTIVES TO MINIMIZE UNNECESSARY INPATIENT ADMISSIONS TO THE MONTANA STATE HOSPITAL; AND AMENDING SECTIONS 53-21-121, 53-21-123, 53-21-127, 53-21-128, AND 53-21-202, MCA."

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

Section 1. Section 53-21-121, MCA, is amended to read:

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

(2) The petition must contain:

- (a) the name and address of the person requesting the petition and the person's interest in the case;
- (b) the name of the respondent and, if known, the address, age, sex, marital status, and occupation of the respondent;
- (c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127, and the need for commitment;
- (d) the name and address of every person known or believed to be legally responsible for the care,

support, and maintenance of the respondent for whom evaluation is sought;

(e) the name and address of the respondent's next of kin to the extent known to the county attorney and the person requesting the petition;

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

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

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

(3) ~~Notice~~ A notice and a copy of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. ~~Notice~~ A notice and a copy of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered ~~or~~ mailed, or sent by facsimile transmission to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, ~~and~~ any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, and the community mental health center serving the county in which the respondent resides. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 2. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing -- recommendation of professional person -- report by community mental health center. (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent must be examined by the professional person without unreasonable delay. The examination may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings in person or by phone and shall make a written report of the examination to the court, with copies to the respondent's attorney and the county attorney. If the professional person recommends commitment, the professional person's written report must contain a statement of the

professional person's recommendations to the court for disposition under 53-21-127.

(2) The following action must be taken based on the professional person's findings:

(a) If the professional person recommends dismissal, the professional person shall additionally notify counsel and the respondent must be released and the petition dismissed. However, the county attorney may, upon good cause shown, request the court to order an additional, but no more than one, examination by a different professional person for a period of no more than 4 hours.

(b) If the court finds that commitment proceedings should continue, the hearing must be held as scheduled.

(c) If the professional person recommends commitment to the state hospital, the county attorney shall provide notice of the hearing and a copy of the professional person's written report to the community mental health center serving the county in which the respondent resides.

(3) Prior to the posttrial disposition hearing for a respondent for whom a recommendation for commitment to the state hospital was made, the community mental health center serving the county in which the respondent resides shall report to the court, the county attorney, the respondent's attorney, the friend of the respondent, and the parties who have appeared or requested notice of the proceedings under 53-21-121(3) regarding whether the community mental health center:

(a) has services available or is able to arrange for services to serve the respondent appropriately in a community setting;

(b) has developed and submitted a recommended treatment plan that meets the respondent's needs for mental health treatment and support; and

(c) agrees to accept the respondent for treatment.

~~(3)~~(4) The court may not order further evaluation pending the hearing unless sound medical reasons require additional time for a complete evaluation. The reasons must be set forth in the order, along with the amount of additional time needed."

Section 3. 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.

(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 consider the community mental health center report, if a report is required under 53-21-123, and 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.

(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 and whether a community mental health center report was submitted as provided for in 53-21-123;

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

(d) the reason that any treatment alternatives, including any recommendations by a community mental health center, 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 4. 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) The petitioner shall provide a copy of the petition and the professional person's written report to the community mental health center serving the county in which the respondent resided at the time of initial commitment by mail, hand delivery, or facsimile transmission. Within 5 days of receiving the petition, including weekends and holidays unless the 5th day falls on a Saturday, Sunday, or holiday, the community mental health center shall report to the court, the petitioner's attorney, and the respondent's attorney regarding whether the community mental health center:

(i) has services available or is able to arrange for services to serve the respondent appropriately in a community setting;

(ii) has developed and submitted a recommended treatment plan that meets the respondent's needs for mental health treatment and support; and

(iii) agrees to accept the respondent for treatment.

(c) 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)~~(d) 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)~~(e) 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 5. Section 53-21-202, MCA, is amended to read:

"53-21-202. Duties of department. The department shall:

- (1) take cognizance of matters affecting the mental health of the citizens of the state;
- (2) initiate mental health care and treatment, prevention, and research as can best be accomplished by community-centered services. The means must be utilized to initiate and operate these services in cooperation with local agencies as established under this part.
- (3) collect and disseminate information relating to mental health;
- (4) prepare and maintain a comprehensive plan for the development of public mental health services in the state;
- (5) receive from agencies of the United States and other state agencies, persons or groups of persons, associations, firms, or corporations grants of money, receipts from fees, gifts, supplies, materials, and contributions for the development of mental health services within the state;
- (6) establish standards for mental health programs that receive funds from the department;
- (7) evaluate performance of programs that receive funds from the department in compliance with federal and state standards; ~~and~~
- (8) coordinate state and community resources to ensure comprehensive delivery of services to children with emotional disturbances and submit at least a biennial report to the governor and the legislature concerning the activities and recommendations of the department and service providers; and
- (9) create financial incentives through its contracts with community mental health centers for the purpose of minimizing unnecessary inpatient admissions to the Montana state hospital and create financial disincentives for inappropriate admissions to MAXIMIZING THE NUMBER OF PATIENTS SUCCESSFULLY TREATED IN COMMUNITY SETTINGS RATHER THAN AT the Montana state hospital."

NEW SECTION. **Section 6. Instructions to code commissioner -- coordination instruction.** If Senate Bill No. 347 is passed and approved, then the code commissioner is instructed to add the language contained in 53-21-202(9) from [this act] to [section 2 of Senate Bill No. 347].

- END -