

HOUSE BILL NO. 154
INTRODUCED BY E. CLARK

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS GOVERNING COMMITMENT PROCEEDINGS FOR THE DEVELOPMENTALLY DISABLED TO ALLOW A COURT TO ORDER COMMUNITY TREATMENT AS AN OPTION; DEFINING THE ELEMENTS OF A COMMUNITY TREATMENT PLAN; AND AMENDING SECTIONS 53-20-102, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-128, 53-20-129, 53-20-132, 53-20-133, AND 53-20-141, MCA."

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

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

~~(1)~~(2) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.

(4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

~~(2)~~(5) "Community-based facilities" or "community-based services" means those facilities and services

that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

~~(3)~~(6) "Court" means a district court of the state of Montana.

~~(4)~~(7) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

- (a) has training and experience in psychometric testing and evaluation;
- (b) has experience in the field of developmental disabilities; and
- (c) is certified, as provided in 53-20-106, by the department of public health and human services.

~~(5)~~(8) "Developmental disability" means a disability that:

(a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation ~~and that;~~

(b) requires treatment similar to that required by mentally retarded individuals. ~~A developmental disability is a disability that;~~

(c) originated before the individual attained age 18, ~~that;~~

(d) has continued or can be expected to continue indefinitely; ~~and that~~

(e) results in the person having a substantial disability.

~~(6)~~(9) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

~~(7)~~(10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

~~(8)~~(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(9)~~(12) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

~~(10)~~(13) "Resident" means a person committed to a residential facility.

~~(11)~~(14) "Residential facility" or "facility" means the Montana developmental center.

~~(12)~~(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to

a residential facility or imposition of a community treatment plan is appropriate.

~~(13)~~(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and ~~in need of developmental disability services in~~ for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

~~(14)~~(17) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

~~(15)~~(18) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated ~~in~~ through voluntary use of community-based services

because of:

- (i) behaviors that pose an imminent risk of serious harm to self or others; or
- (ii) self-help deficits so severe as to require total care."

NEW SECTION. Section 2. Community treatment plan -- elements -- placement. A court may order a respondent to be placed in a community treatment plan as a less restrictive alternative to commitment to a residential facility. The plan may include but is not limited to requiring the respondent to:

- (1) participate in a specified set of community-based services;
- (2) participate in services addressing the risk to self or others, including but not limited to group or individual therapy, staff supervision, psychiatric care, or medication; and
- (3) abide by individualized restrictions on the respondent's behavior or other conditions of continued participation that the court finds necessary to protect the respondent or the public, including but not limited to residential requirements, restrictions on access to intoxicants or weapons, productive use of free time, limited financial independence, curfew, or authorization for providers to share information about the respondent with law enforcement.

Section 3. Section 53-20-118, MCA, is amended to read:

"53-20-118. Venue for hearing. (1) ~~Hearings~~ Except as provided in 53-20-129, hearings held pursuant to this part must be held in the district court for the district in which ~~the respondent resides or in which the residential facility is located to which the respondent is or is to be committed.;~~

- (a) the respondent resides; or

(b) the residential facility to which the respondent is committed or is to be committed is located.

(2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent resides."

Section 4. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment -- contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan.

(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 and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person; ~~and~~

(f) a description of the relief requested, whether commitment to a residential facility or imposition of a community treatment plan; and

~~(f)(g)~~ a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.

~~(3)(4)~~ A copy of the petition must be sent immediately to the residential facility screening team. Notice and a copy of the petition must be hand-delivered to the respondent, the respondent's parent or guardian, if any, and the respondent's counsel, if any, within 5 business days of filing."

Section 5. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or imposition of community treatment plan -- hearing. (1) A court may commit a person ~~may be committed to~~

a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) ~~If as a result of~~ After the screening required by 53-20-133, the residential facility screening team ~~concludes that the respondent who has been evaluated is seriously developmentally disabled and recommends that the respondent be committed to a residential facility for treatment and habilitation on an extended basis, the team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.~~

(3) At the request of the respondent, the respondent's parents or guardian, or the responsible person, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and if the parents request it or if a guardian is indigent and requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111.

(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if known;

(c) the responsible person;

(d) the respondent's advocate, if any;

(e) the county attorney;

(f) the residential facility;

(g) the attorney for the respondent, if any; and

(h) the attorney for the parents or guardian, if any.

(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. The request for a hearing must be made in writing within 15 days of service of the report.

(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (5).

(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

(8) Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:

(8)(a) If both the residential facility screening team and the court finds find that the respondent is seriously developmentally disabled and in need of commitment to a residential facility, # the court shall order the respondent committed to a residential facility for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, # the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.

(d) If either the residential screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, # the court shall dismiss the petition.

(9) (a) If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:

(i) issue an order for the commitment of committing the respondent to the residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4); or the court may

(iii) initiate its own inquiry as to whether the an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team

certifies that all services in the proposed plan meet the conditions in 53-20-133(4)(c) and (4)(d).

(10) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

~~(11) An order for commitment must be accompanied by findings of fact.~~

~~(12)~~(11) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

Section 6. Section 53-20-126, MCA, is amended to read:

"53-20-126. Maximum period of commitment to residential facility or treatment plan. The court order approving the commitment to a residential facility or the imposition of the community treatment plan must specify the maximum period of time for which the person is committed to the residential facility or for which a community treatment plan is imposed. The maximum period may not exceed 1 year."

Section 7. Section 53-20-128, MCA, is amended to read:

"53-20-128. Recommitment -- extension of community treatment plan. ~~(1) If the~~ The qualified mental retardation professional responsible for a resident's habilitation ~~determines that the resident continues to be seriously developmentally disabled and in need of commitment to a residential facility beyond the term of the current commitment order, the qualified mental retardation professional shall~~ or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney to file a petition for recommitment be filed or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) ~~The~~ A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing the recommendation of the qualified mental retardation professional ~~must be presented in a written report that includes~~ or case manager and a summary of the current habilitation plan or community treatment plan for the resident respondent.

(4) The ~~resident petition~~ must be screened reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional or case manager must be sent to:

(a) the court that issued the current order;

- (b) the residential screening team;
- (c) the resident;
- (d) the resident's parents or guardian or next of kin, if any;
- (e) the attorney who most recently represented the resident, if any;
- (f) the responsible person appointed by the court, if any; and
- (g) the resident's advocate, if any.

~~(6) If the residential facility screening team recommends that the resident be recommitted, the court may enter an order for recommitment without hearing unless a person notified as provided in subsection (5) requests that a hearing be held or the court determines that it would be in the best interest of the resident to hold a hearing. The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.~~

~~(7) If the court sets a hearing, the court shall provide notice to all of the persons notified pursuant to subsection (5).~~

~~(8)(7) A court may order a resident's recommitment to a residential facility if the court determines that the resident continues to be seriously developmentally disabled and in need of continued commitment to the residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require commitment to a residential facility or if all parties are willing for the resident to participate in a community-based program of habilitation, it shall refer the resident to the department of public health and human services to be considered for placement in community-based services according to 53-20-209. If the resident is either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or if that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.~~

~~(9)(8) The court may not order recommitment to a residential facility that does not have an individualized habilitation plan for the resident.~~

~~(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d).~~

~~(10) At a hearing, the court may inquire concerning the suitability of continuing a resident's commitment to a residential facility."~~

Section 8. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted ~~in~~ to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily harm.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission to a residential facility may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission to a residential facility by the county attorney of the county where the ~~person~~ respondent resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or attach the written report of a case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(5)(6)~~ The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.

~~(6)(7)~~ Once the report of the residential facility screening team is received by the court, continued placement in the residential facility or continued imposition of the temporary community treatment plan may not continue without an order of the court for emergency commitment or continued imposition of the community treatment plan.

~~(7)(8)~~ A court may order an emergency commitment or continue a temporary community treatment plan only when the residential facility screening team has recommended and the court determines that the emergency commitment or continued imposition of a community treatment plan is necessary to protect the respondent or others from death or serious bodily harm. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(8)(9)~~ An order for emergency commitment or continued imposition of a temporary community treatment plan may be entered without a hearing before the court, if the court finds that the record supports the order.

~~(9)(10)~~ An emergency commitment to a residential facility or imposition of a temporary community treatment plan may not continue for longer than 30 days after placement in the residential facility or imposition of a temporary community treatment plan unless a petition for an extended commitment to the residential facility

or for imposition of a community treatment plan as provided in 53-20-121 has been filed before the court.

~~(10) The residential facility screening team may recommend that the respondent under a petition for emergency commitment be committed by court order to the residential facility on an extended basis."~~

Section 9. Section 53-20-132, MCA, is amended to read:

"53-20-132. Court-ordered placement in community-based services prohibited except through statutory process. ~~Nothing in this~~ This part may not be construed as authorizing the placement of and delivery of services to persons with developmental disabilities in community-based services by court order, except by imposing a community treatment plan pursuant to this part. Placement of persons in voluntary community-based services is governed by 53-20-209."

Section 10. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team -- referral by court -- membership -- rules. (1) When the district court receives a petition for commitment to a residential facility or for imposition of a community treatment plan under this part, the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether ~~placement and habilitation in~~ commitment to a residential facility ~~are~~ or imposition of a community treatment plan is appropriate for the respondent.

(2) A court may not commit a respondent to a residential facility or impose a community treatment plan under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that ~~placement and habilitation in~~ commitment to a residential facility ~~are~~ or imposition of a community treatment plan is appropriate for the respondent.

(3) The residential facility screening team may not determine that ~~placement and habilitation in~~ commitment to a residential facility ~~are~~ or imposition of a community treatment plan is appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) ~~The residential facility screening team shall provide the court and the county attorney with the social and placement information relied upon by the residential facility screening team in making its determination. The residential facility screening team may not recommend commitment to a community treatment plan unless it finds that the proposed plan:~~

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

NEW SECTION. Section 11. Amendment to commitment order or treatment plan -- emergency amendment. (1) A community treatment plan ordered pursuant to 53-20-125 or 53-20-128 may be amended with the consensus of the respondent's individual treatment planning team, including the respondent, without further order of the court. The amended plan must meet the conditions set forth in 53-20-133(4).

(2) An order of commitment to a residential facility may be amended to an order imposing a community treatment plan with the consensus of the respondent's individual treatment planning team, including the respondent, and the court shall issue an order imposing the agreed-upon community treatment plan. The community treatment plan must meet the conditions set forth in 53-20-133(4).

(3) Any party may request amendment of a commitment ordered or a community treatment plan imposed under 53-20-125 or 53-20-128 by bringing the matter to the attention of the respondent's individual treatment planning team. If consensus is not reached, any party may request a hearing on a proposed amendment. The court shall request an evaluation of any proposed amendment by the residential facility screening team prior to the hearing.

(4) After a hearing or upon the agreement of the parties on an amendment of a commitment or an order imposing a community treatment plan, the court may make any order which is authorized in 53-20-125, including:

- (a) adding, removing, or modifying conditions of a community treatment plan;
- (b) substituting commitment to a residential facility for a community treatment plan; or
- (c) substituting imposition of a community treatment plan for commitment to a residential facility.

(5) Any community treatment plan imposed as a result of a request for amendment must meet the conditions set forth in 53-20-133(4). The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

(6) If the court finds probable cause to believe that the respondent or others are in imminent risk of death or serious bodily harm, the court may order a temporary amendment to a community treatment plan, for a period of up to 7 calendar days, without notice to the respondent. A hearing must be scheduled within the 7-day period of the temporary amendment. Any temporarily amended community treatment plan must meet the conditions set forth in 53-20-133(4). The court may not amend a community treatment plan for an extended period unless the residential facility screening team certifies that all services in the proposed amended plan meet the conditions of 53-20-133(4)(c) and (4)(d). The court may not order emergency commitment to a residential facility except through the process set forth in 53-20-129.

Section 12. Section 53-20-141, MCA, is amended to read:

"53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person ~~admitted~~ committed to a residential facility or for whom a community treatment plan has been imposed for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except ~~insofar as~~ to the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for the person for a period of more than 30 days ~~for an extended course of habilitation~~, the court ordering the ~~admission~~ commitment or imposing the community treatment plan may make an order stating specifically any legal rights that are denied ~~the respondent~~ and any legal disabilities that are imposed on ~~him~~ the respondent. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the admission commitment or expiration of the order imposing the community treatment plan if not ~~sooner~~ previously terminated by the court. A conservatorship or guardianship extending beyond the period of the admission commitment or order imposing a community treatment plan may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been ~~admitted~~ committed to a residential facility or for whom a community treatment plan has been imposed pursuant to this part ~~must is~~, upon the termination of the admission commitment or expiration of the order imposing the community treatment plan, ~~be~~ automatically restored to all of ~~his~~ the person's civil and legal rights that may have been lost when ~~he~~ the person was ~~admitted~~ committed or the community treatment plan was imposed. However, this subsection does not affect any guardianship or conservatorship created independently of the ~~admission~~ proceedings according to the provisions of Montana law

relating to the appointment of conservators and guardians generally. ~~A person who leaves a residential facility following a period of evaluation and habilitation must be given~~ Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified mental retardation professional or case manager in charge of the person's care shall give the person a written statement setting forth the substance of this subsection."

NEW SECTION. **Section 13. 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 14. Codification instruction.** [Sections 2 and 11] are intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, apply to [sections 2 and 11].

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