

## SENATE BILL NO. 45

INTRODUCED BY D. WEINBERG, J. ESP

BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PROVISIONS FOR BEHAVIORAL HEALTH INPATIENT FACILITIES; PROVIDING FOR LICENSURE; PROVIDING FOR RULEMAKING AUTHORITY; AND AMENDING SECTIONS 53-21-102, 53-21-129, 53-21-193, AND 53-21-194, MCA."

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

**Section 1.** 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~~ facility or a distinct part of a facility of 16 beds or less ~~designated~~ licensed by the department that:

~~———(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing secure, 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.~~

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

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

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

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

(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.

(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.

(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:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) mental retardation; or

(iv) epilepsy.

(c) A mental disorder may co-occur with addiction or chemical dependency.

(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.

(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.

(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.

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

(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.

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

(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.

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

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

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

**Section 2.** 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 53-21-193 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) Before a person 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 whether a bed is available for the person. If the ~~Montana state hospital~~ professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, ~~if the county attorney~~ shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

**Section 3.** Section 53-21-193, MCA, is amended to read:

**"53-21-193. Commitment to behavioral health inpatient facilities -- preference -- voluntary treatment.** (1) If a respondent is committed to the state hospital under 53-21-127 or if 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~~ professional person shall inform the county attorney who shall inform the person who is responsible for transporting the individual as to the appropriate facility to which ~~the person shall transport~~ the individual is to be transported 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 and agree to accept transfer of the patient based on admission criteria 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 53-21-194. A court order for commitment or transfer must

include the transfer authority, and all conditions contained in the court order apply after a transfer.

(4) 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.

(5) If a bed is available, a behavioral health inpatient facility may admit a person for voluntary treatment."

**Section 4.** Section 53-21-194, MCA, is amended to read:

**"53-21-194. Department ~~contract with~~ licensure of behavioral health inpatient facilities -- rulemaking authority -- ~~rates and transfer criteria.~~** (1) The department may ~~contract with one or more~~ license behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title or to persons seeking treatment voluntarily.

(2) The department shall adopt rules:

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

(b) establishing criteria pursuant to subsection ~~(3)~~ (4) 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 rules for licensure must provide standards for the protection of the health and safety of persons committed to or detained in a behavioral health inpatient facility, including:

(a) requirements for medical stability;

(b) maximum length of stay;

(c) staffing levels and qualifications;

(d) building code classifications for occupancy; and

(e) security.

~~(3)~~(4) 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~~ or state hospital staff.

~~(4)~~(5) The department shall provide notice to the district courts and professional persons 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."

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