HOUSE BILL NO. 132

INTRODUCED BY R. STOKER

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A RESPONDENT IN AN INVOLUNTARY COMMITMENT CASE MAY AGREE TO SHORT-TERM INPATIENT TREATMENT IN LIEU OF FACING A COMMITMENT HEARING; AMENDING COURT PROCESS AND PROFESSIONAL EXAMINATION PROVISIONS; REVISING PAYMENT RESPONSIBILITIES FOR PRECOMMITMENT COSTS AND PROVIDING NEW STATE FUNDING RESPONSIBILITIES; SPECIFYING SHORT-TERM INPATIENT TREATMENT PARAMETERS AND PATIENT RIGHTS; REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO CONTRACT FOR SHORT-TERM INPATIENT TREATMENT ~~BEDS~~; REQUIRING RULEMAKING; ~~PROVIDING AN APPROPRIATION;~~ PROVIDING FOR IMPLEMENTATION AND A REPORT; AMENDING SECTIONS 53-21-102, 53-21-113, 53-21-122, 53-21-123, 53-21-132, 53-21-162, AND 53-21-1001, MCA; AND PROVIDING ~~AN~~ EFFECTIVE ~~DATE~~ DATES."

WHEREAS, the 2007 Legislature passed House Joint Resolution No. 26, requesting an interim legislative study to examine diversion of mentally ill adults from the justice system, and House Joint Resolution No. 50, requesting an interim legislative study to examine county precommitment costs related to involuntary commitment proceedings; and

WHEREAS, these studies were assigned to the Law and Justice Interim Committee; and

WHEREAS, this bill is one in a package of bills recommended by the Law and Justice Interim Committee to address diversion of mentally ill adults from the justice system to appropriate treatment; and

WHEREAS, the Law and Justice Interim Committee found that mental health professionals, county attorneys, public defenders, and advocates for the mentally ill have a common interest in a viable alternative to a frustrating, all-or-nothing, adversarial precommitment process that can result in a mentally ill person receiving no access to inpatient treatment unless involuntarily committed;

WHEREAS, under section 426.237 of Oregon's Revised Statutes, Oregon provides a voluntary 14-day diversion alternative to involuntary commitment; and

WHEREAS, voluntary inpatient treatment is preferable to and more effective than involuntary commitment and many respondents facing involuntary commitment could be effectively treated in a 14-day inpatient treatment setting and would have a strong incentive to agree to the treatment; and

WHEREAS, the daily census at the Montana state hospital is consistently over its licensed capacity of 189 beds;

WHEREAS, the Law and Justice Interim Committee found that because the state is responsible for costs when a person is involuntarily committed, the state should be responsible for the cost of a short-term inpatient treatment alternative aimed at reducing involuntary commitments to the state hospital; and

WHEREAS, state contracting for short-term inpatient treatment beds would provide dedicated beds for treatment closer to home and help relieve county costs for transportation to the state hospital.

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~~ chapter, 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 facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(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;

(c) a licensed psychologist; or

(d) 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 53-21-113, MCA, is amended to read:

"53-21-113. Costs of committing a patient already voluntarily admitted -- transportation costs for voluntary admission. (1) ~~The~~ Except as provided in [section 9], 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.

(2) ~~The~~ Except as provided in [section 9], 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 3. Section 53-21-122, MCA, is amended to read:

"53-21-122. Petition for commitment -- filing of -- initial hearing on. (1) The petition must be filed with the clerk of court, who shall immediately notify the judge.

(2) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 7 through 10]. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 47-1-201, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in [sections 7 through 10]. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge."

Section 4. Section 53-21-123, MCA, is amended to read:

"53-21-123. Examination of respondent following initial hearing -- recommendation of

professional person. (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.

(2) (a) The professional person shall include in the report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for under [sections 7 through 10].

(b) 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)~~(3) 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 professional person recommends diversion from involuntary commitment to short-term inpatient treatment, the court shall suspend the commitment hearing unless the county attorney or the respondent's attorney objects within 24 hours of receiving notice of the professional person's recommendation.

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

~~(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 5. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of psychiatric 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 pursuant to subsection (2)(a). The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) (a) ~~The~~ Except as provided in [section 9], the costs of precommitment psychiatric detention, precommitment psychiatric examination, and precommitment psychiatric treatment of the respondent and any

cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the following entities in the listed order of priority:

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

(b) The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is admitted to a mental health facility for short-term inpatient treatment pursuant to [sections 7 through 10] or 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 6. Section 53-21-162, MCA, is amended to read:

"53-21-162. Establishment of patient treatment plan -- patient's rights. (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility, except as provided in [section 8].

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission, except as provided in [section 8]. Each individualized treatment plan must contain:

(a) a statement of the nature of the specific problems and specific needs of the patient;

(b) a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;

(c) a description of treatment goals, with a projected timetable for their attainment;

(d) a statement and rationale for the plan of treatment for achieving these goals;

(e) a specification of staff responsibility for attaining each treatment goal;

(f) criteria for release to less restrictive treatment conditions; and

(g) a notation of any therapeutic tasks and labor to be performed by the patient.

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

(a) at the time of any transfer within the facility;

(b) at the time of discharge;

(c) upon any major change in the patient's condition;

(d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;

(e) no less than every 90 days; and

(f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services;

and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c)."

NEW SECTION. **Section 7. Short-term inpatient treatment -- process -- placement -- length -- conditions for proceeding with commitment hearing.** (1) When a commitment hearing has been suspended pursuant to 53-21-123(3)(b) so that the respondent may be diverted to short-term inpatient treatment, the professional person who conducted the examination shall refer the respondent to the department for appropriate placement in a mental health facility with available short-term treatment beds.

(2) Short-term inpatient treatment may not exceed 14 days, except pending a commitment hearing scheduled pursuant to subsection (5).

(3) Subject to the provisions of this section, a respondent may be released before completing 14 days of treatment if the professional person responsible for the respondent's treatment plan determines that the respondent no longer requires inpatient treatment. However, the county attorney and the respondent's attorney must be notified at least 24 hours before a respondent is released.

(4) When a respondent is released, the professional person shall notify the court and the court shall dismiss the commitment petition.

(5) The court must be notified and shall proceed with a commitment hearing within 5 business days of receiving notice of any of the following circumstances:

(a) the professional person responsible for the respondent's treatment plan determines that the respondent should not be released after 14 days of treatment because, in the professional person's judgment, an emergency situation would exist if the respondent were released;

(b) the respondent refuses treatment;

(c) the respondent's attorney requests the respondent's release before the 14-day treatment period is completed; or

(d) the county attorney objects to the respondent's release within 24 hours of being notified of the respondent's pending release as required in subsection (3).

NEW SECTION. **Section 8. Treatment and discharge plan -- safety -- rights.** (1) For each respondent admitted as an inpatient to a mental health facility for short-term inpatient treatment pursuant to [sections 7 through 10], the provisions of 53-21-162 and 53-21-180 apply, except as follows:

(a) the comprehensive physical and mental examination and review of behavioral status must be completed within 24 hours of admission;

(b) the individualized treatment plan must be implemented no later than 3 days after the admission; and

(c) a discharge plan must be developed prior to discharge.

(2) Short-term inpatient treatment must be provided in a manner that considers the safety of the respondent, other patients, staff, and the general public.

(3) A respondent in a mental health facility for short-term inpatient treatment is entitled to all of the rights and protections provided in part 1 of this chapter.

NEW SECTION. **Section 9. Contracting -- data collection and analysis -- payment of costs.** (1) The department shall contract with a mental health facility in each service area, as defined in 53-21-1001, for ~~up to three beds dedicated to~~ short-term inpatient treatment under [sections 7 through 10].

(2) A contract for short-term inpatient treatment ~~beds~~ must require the contractor to collect and report fiscal and program data in the time and manner prescribed by the department to support program evaluation and measure progress on performance goals. The department shall establish baseline data on commitments to the state hospital from each county and analyze what effect diversion to short-term inpatient treatment has on state hospital commitments. WHEN CONTRACTING, THE DEPARTMENT SHALL CONSIDER COUNTY STRATEGIC PLANS DEVELOPED PURSUANT TO 53-21-138 AND 53-21-139 THAT INCORPORATE SHORT-TERM INPATIENT TREATMENT AS AN ALTERNATIVE TO INVOLUNTARY COMMITMENT TO THE STATE HOSPITAL.

(3) Except as provided in subsection (4), short-term inpatient treatment costs are not a precommitment cost under 53-21-132 and must be paid by the department and billed to the following entities in the following order of priority:

(a) the respondent or the respondent's private insurance carrier, if any; or

(b) a public assistance program, such as medicaid, for a qualifying respondent.

(4) Costs to transport a respondent to a mental health facility for short-term inpatient treatment are a precommitment cost under 53-21-132.

NEW SECTION. **Section 10. Rulemaking.** The department shall adopt rules to implement the provisions of [sections 7 through 10].

Section 11. Section 53-21-1001, MCA, is amended to read:

"53-21-1001. Definitions. As used in this part, the following definitions apply:

(1) "Community mental health center" means a licensed mental health center that provides comprehensive public mental health services in a multicounty region under contract with the department, counties, or one or more service area authorities.

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

~~(3)~~(2) "Licensed mental health center" means an entity licensed by the department of public health and human services to provide mental health services and has the same meaning as mental health center as defined in 50-5-101.

~~(4)~~(3) "Service area" means a region of the state as defined by the department by rule within which mental health services are administered.

~~(5)~~(4) "Service area authority" means an entity, as provided for in 53-21-1006, that has incorporated to collaborate with the department for the planning and oversight of mental health services within a service area."

~~NEW SECTION. **Section 12. Appropriation.** (1) There are appropriated from the general fund to the department of public health and human services the following amounts:~~

~~(a) for fiscal year 2010, $1.7 million;~~

~~(b) for fiscal year 2011, $1.7 million.~~

~~(2) The money appropriated in this section may be used only for the purposes of [section 9].~~

NEW SECTION. **Section 12. Implementation -- report.** (1) Contracting under [section 9] may be implemented in phases. However, it is the legislature's intent that contracted beds in at least one service area be operational by no later than ~~July 1, 2010,~~ SEPTEMBER 1, 2009, and that full implementation be completed by

no later than July 1, ~~2012~~ 2010.

(2) ~~As soon as possible after July 1, 2010,~~ UPON REQUEST, the department shall report to the law and justice interim committee established in 5-5-226 on the implementation status of contracting under [section 9].

NEW SECTION. **Section 13. Codification instruction.** [Sections 7 through 10] are intended to be codified as an integral part of Title 53, chapter 21, and the provisions of Title 53, chapter 21, apply to [sections 7 through 10].

NEW SECTION. **SECTION 14. COORDINATION INSTRUCTION.** IF BOTH HOUSE BILL NO. 645 AND [THIS ACT] ARE PASSED AND APPROVED AND IF HOUSE BILL NO. 645 DOES NOT INCLUDE LINE ITEM FUNDING FOR A COMMUNITY MENTAL HEALTH CRISIS SERVICES DEMONSTRATION PROJECT FOR THE PURPOSES OF [THIS ACT], THEN [THIS ACT] IS VOID.

NEW SECTION. **Section 15. Effective ~~date~~ DATES.** ~~[This act]~~ (1) EXCEPT AS PROVIDED IN SUBSECTION (2), [THIS ACT] is effective July 1, 2009.

(2) [SECTIONS 10 AND 14 AND THIS SECTION] ARE EFFECTIVE ON PASSAGE AND APPROVAL.

- END -