

HOUSE BILL NO. 517

INTRODUCED BY J. ESSMANN

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO GUARDIANSHIP; REVISING
5 LAWS RELATING TO THE COMMITMENT OF INCAPACITATED PERSONS; PROVIDING ADMISSION
6 ALTERNATIVES FOR INCAPACITATED PERSONS WITH CERTAIN CONDITIONS; AMENDING SECTIONS
7 53-21-102, 72-5-321, AND 72-5-324, MCA; AND PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 53-21-102, MCA, is amended to read:

12 **"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

13 (1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or
14 maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility
15 that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health
16 facility.

17 (2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less
18 licensed by the department that is capable of providing secure, inpatient psychiatric services, including services
19 to persons with mental illness and co-occurring chemical dependency.

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

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

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

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

26 (7) "Emergency situation" means:

27 (a) a situation in which any person is in imminent danger of death or bodily harm from the activity of a
28 person who appears to be suffering from a mental disorder and appears to require commitment; or

29 (b) a situation in which any person who appears to be suffering from a mental disorder and appears to
30 require commitment is substantially unable to provide for the person's own basic needs of food, clothing, shelter,

1 health, or safety.

2 (8) "Friend of respondent" means any person willing and able to assist a person suffering from a mental
3 disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring
4 commitment in dealing with legal proceedings, including consultation with legal counsel and others.

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

7 (b) The term does not include:

8 (i) addiction to drugs or alcohol;

9 (ii) drug or alcohol intoxication;

10 (iii) intellectual disability; ~~or~~

11 (iv) epilepsy; or

12 (v) major neurocognitive disorder, as defined in the fifth edition of the diagnostic and statistical manual
13 of mental disorders adopted by the American psychiatric association.

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

15 (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care
16 center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment facility,
17 or a residential treatment center licensed or certified by the department that provides treatment to children or
18 adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the
19 meaning of this part.

20 (11) "Mental health professional" means:

21 (a) a certified professional person;

22 (b) a physician licensed under Title 37, chapter 3;

23 (c) a professional counselor licensed under Title 37, chapter 23;

24 (d) a psychologist licensed under Title 37, chapter 17;

25 (e) a social worker licensed under Title 37, chapter 22; or

26 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
27 psychiatric mental health nursing.

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

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

2 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

3 (ii) failure to follow a prescribed plan of care and treatment; or

4 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

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

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

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

10 (16) "Professional person" means:

11 (a) a medical doctor;

12 (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
13 psychiatric mental health nursing;

14 (c) a licensed psychologist; or

15 (d) 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
17 professional person.

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

20 (19) "State hospital" means the Montana state hospital."
21

22 **Section 2.** Section 72-5-321, MCA, is amended to read:

23 **"72-5-321. Powers and duties of guardian of incapacitated person.** (1) The powers and duties of
24 a limited guardian are those specified in the order appointing the guardian. The limited guardian is required to
25 report the condition of the incapacitated person and of the estate that has been subject to the guardian's
26 possession and control, as required by the court or by court rule.

27 (2) A full guardian of an incapacitated person has the same powers, rights, and duties respecting the
28 ward that a parent has respecting an unemancipated minor child, except that a guardian is not liable to third
29 persons for acts of the ward solely by reason of the parental relationship. In particular and without qualifying the
30 foregoing, a full guardian has the following powers and duties, except as limited by order of the court:

1 (a) To the extent that it is consistent with the terms of any order by a court of competent jurisdiction
2 relating to detention or commitment of the ward, the full guardian is entitled to custody of the person of the ward
3 and may establish the ward's place of residence within or outside of this state.

4 (b) If entitled to custody of the ward, the full guardian shall make provision for the care, comfort, and
5 maintenance of the ward and whenever appropriate arrange for the ward's training and education. Without regard
6 to custodial rights of the ward's person, the full guardian shall take reasonable care of the ward's clothing,
7 furniture, vehicles, and other personal effects and commence protective proceedings if other property of the ward
8 is in need of protection.

9 (c) A full guardian may give any consents or approvals that may be necessary to enable the ward to
10 receive medical or other professional care, counsel, treatment, or service. This subsection (2)(c) does not
11 authorize a full guardian to consent to the withholding or withdrawal of life-sustaining treatment or to a do not
12 resuscitate order if the full guardian does not have authority to consent pursuant to the Montana Rights of the
13 Terminally Ill Act, Title 50, chapter 9, or to the do not resuscitate provisions of Title 50, chapter 10. A full guardian
14 may petition the court for authority to consent to the withholding or withdrawal of life-sustaining treatment or to
15 a do not resuscitate order. The court may not grant that authority if it conflicts with the ward's wishes to the extent
16 that those wishes can be determined. To determine the ward's wishes, the court shall determine by a
17 preponderance of evidence if the ward's substituted judgment, as applied to the ward's current circumstances,
18 conflicts with the withholding or withdrawal of life-sustaining treatment or a do not resuscitate order.

19 (d) If a conservator for the estate of the ward has not been appointed, a full guardian may:

20 (i) institute proceedings to compel any person under a duty to support the ward or to pay sums for the
21 welfare of the ward to perform that person's duty;

22 (ii) receive money and tangible property deliverable to the ward and apply the money and property for
23 support, care, and education of the ward. However, the full guardian may not use funds from the ward's estate
24 for room and board that the full guardian, the full guardian's spouse, parent, or child has furnished the ward
25 unless a charge for the service is approved by order of the court made upon notice to at least one of the next of
26 kin of the incompetent ward, if notice is possible. The full guardian must exercise care to conserve any excess
27 for the ward's needs.

28 (e) Unless waived by the court, a full guardian is required to report the condition of the ward and of the
29 estate which has been subject to the full guardian's possession or control annually for the preceding year. A copy
30 of the report must be served upon the ward's parent, child, or sibling if that person has made an effective request

1 under 72-5-318.

2 (f) If a conservator has been appointed, all of the ward's estate received by the full guardian in excess
3 of those funds expended to meet current expenses for support, care, and education of the ward must be paid to
4 the conservator for management as provided in this chapter, and the full guardian must account to the
5 conservator for funds expended.

6 (3) Upon failure, as determined by the clerk of court, of the guardian to file an annual report, the court
7 shall order the guardian to file the report and give good cause for the guardian's failure to file a timely report.

8 (4) Any full guardian of one for whom a conservator also has been appointed shall control the custody
9 and care of the ward. A limited guardian of a person for whom a conservator has been appointed shall control
10 those aspects of the custody and care of the ward over which the limited guardian is given authority by the order
11 establishing the limited guardianship. The full guardian or limited guardian is entitled to receive reasonable sums
12 for the guardian's services and for room and board furnished to the ward as agreed upon between the guardian
13 and the conservator, provided the amounts agreed upon are reasonable under the circumstances. The full
14 guardian or limited guardian authorized to oversee the incapacitated person's care may request the conservator
15 to expend the ward's estate by payment to third persons or institutions for the ward's care and maintenance.

16 (5) ~~A~~ Except as provided in subsection (6), a full guardian or limited guardian may not involuntarily
17 commit for mental health treatment or for treatment of a developmental disability or for observation or evaluation
18 a ward who is unwilling or unable to give informed consent to commitment, except as provided in 72-5-322,
19 unless the procedures for involuntary commitment set forth in Title 53, chapters 20 and 21, are followed. This
20 chapter does not abrogate any of the rights of mentally disabled persons provided for in Title 53, chapters 20 and
21 21.

22 (6) If the court has found that a ward has a primary diagnosis of a major neurocognitive disorder, as
23 defined in the fifth edition of the diagnostic and statistical manual of mental disorders adopted by the American
24 psychiatric association, and because of this disorder the ward is unwilling or unable to give informed consent to
25 treatment, a full guardian or limited guardian may admit the ward for stabilization and treatment to a hospital,
26 skilled nursing facility, or another appropriate treatment facility other than the Montana state hospital.

27 ~~(6)(7)~~ Upon the death of a full guardian's or limited guardian's ward, the full guardian or limited guardian,
28 upon an order of the court and if there is no personal representative authorized to do so, may make necessary
29 arrangements for the removal, transportation, and final disposition of the ward's physical remains, including burial,
30 entombment, or cremation, and for the receipt and disposition of the ward's clothing, furniture, and other personal

1 effects that may be in the possession of the person in charge of the ward's care, comfort, and maintenance at
2 the time of the ward's death."

3
4 **Section 3.** Section 72-5-324, MCA, is amended to read:

5 **"72-5-324. Termination of appointment -- how effected -- certain liabilities and obligations not**
6 **affected.** (1) (a) Except as provided in subsection (1)(b), the authority and responsibility of a guardian for an
7 incapacitated person terminates upon the death of the guardian or ward, the determination of incapacity of the
8 guardian, or upon removal or resignation as provided in 72-5-325. Testamentary appointment under an informally
9 probated will terminates if the will is later denied probate in a formal proceeding.

10 (b) The guardian's authority and responsibility for an incapacitated person who dies while the person is
11 a ward of the guardian terminate when the guardian has completed arrangements for the final disposition of the
12 ward's physical remains and personal effects, as provided in 72-5-321~~(6)~~(7).

13 (2) Termination does not affect the guardian's liability for prior acts or the guardian's obligation to account
14 for funds and assets of the ward."

15
16 NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2015.

17 - END -