

HOUSE BILL NO. 330

INTRODUCED BY K. SULLIVAN

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A HEARING PRIOR TO A WAIVER OF RIGHTS IN AN INVOLUNTARY COMMITMENT PROCEEDING; AND AMENDING SECTION 53-21-119, MCA."

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

Section 1. Section 53-21-119, MCA, is amended to read:

"53-21-119. Waiver of rights. (1) A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent, if a friend of respondent is appointed, acting together if a record is made of the reasons for the waiver. There must be a hearing before the court can accept a waiver of the person's rights. The right to be physically present at the hearing may be waived as provided in subsection (2). The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by the respondent's attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) (i) the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition; and

(ii) an alternative location for the hearing in surroundings familiar to the respondent would not prevent the adverse effects on the respondent's mental condition; or

(b) the respondent has voluntarily expressed a desire to waive the respondent's presence at the hearing.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the court shall appoint a guardian ad litem for the minor."

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