

**Unofficial Draft Copy**

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Drafter: Sue O'Connell, 406-444-3597

67th Legislature

HJR 39-2v2

1                                   \*\*\*\* BILL NO. \*\*\*\*  
2                                   INTRODUCED BY \*\*\*\*  
3                                   BY REQUEST OF THE \*\*\*\*  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND  
6 HUMAN SERVICES TO PROVIDE REPORTS OF ALLEGED ABUSE AND NEGLECT AT THE MONTANA  
7 STATE HOSPITAL TO THE STATE ADVOCACY AND PROTECTION ORGANIZATION; AMENDING  
8 SECTIONS 53-21-107, 53-21-166, AND 53-21-169, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE  
9 DATE."  
10

11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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13           **Section 1.** Section 53-21-107, MCA, is amended to read:

14           **"53-21-107. Abuse and neglect of persons admitted to mental health facility prohibited --**

15 **reporting -- investigations.** (1) Any form of abuse or neglect of a person admitted to a mental health facility is  
16 prohibited.

17           (2) Each mental health facility shall publish policies and procedures that define the facility's guidelines  
18 for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect.

19           (3) Each allegation of abuse or neglect must be reported as follows:

20           (a) Any employee of the mental health facility with knowledge of the allegation shall immediately  
21 report the allegation to the professional person in charge of the facility.

22           (b) The professional person in charge of the mental health facility shall report the allegation by the  
23 end of the next business day, in writing, to the board.

24           (c) When the allegation of abuse or neglect may constitute a criminal act, the professional person in  
25 charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement  
26 authority.

27           (4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or neglect  
28 that in no way deters or discourages an individual from reporting the allegations.

1 (5) Investigations of allegations of abuse or neglect must be initiated by the professional person in  
2 charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of  
3 the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the  
4 efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of  
5 an alleged criminal act.

6 (6) The investigation of each allegation of abuse or neglect must be concluded within the minimum  
7 period of time necessary to gather the information relative to each allegation and to come to a conclusion  
8 following the initial report of the allegation.

9 (7) Each mental health facility shall document the following in writing regarding each allegation of  
10 abuse or neglect:

11 (a) details of each allegation of abuse or neglect, including the names of any facility staff against  
12 whom the allegation is made;

13 (b) a description of the rationale for conducting the investigation with either in-house or outside  
14 personnel;

15 (c) details of the process of the investigation of each allegation of abuse or neglect;

16 (d) details of the conclusions of the investigation; and

17 (e) details of corrective action taken.

18 (8) Mental health facilities shall provide a copy of the written report described in subsections (7)(a)  
19 through (7)(e) within 5 working days of the completion of each investigation to the director of the department  
20 and to the board.

21 (9) (a) For each allegation of abuse or neglect involving the Montana state hospital, the director of the  
22 department shall report the following information to the state protection and advocacy program for individuals  
23 with mental illness authorized under 42 U.S.C. 10805(b)(2) to investigate reports of abuse and neglect :

24 (i) within 5 working days of the incident, the details of the reported allegation; and

25 (ii) within 5 working days of the completion of the investigation into the report, the written record created  
26 pursuant to subsection (7).

27 (b) The director may not redact any information provided pursuant to this subsection (9). "  
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1           **Section 2.** Section 53-21-166, MCA, is amended to read:

2           **"53-21-166. Records to be confidential -- exceptions.** All information obtained and records  
3 prepared in the course of providing any services under this part to individuals under any provision of this part  
4 are confidential and privileged matter and must remain confidential and privileged after the individual is  
5 discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be  
6 disclosed only:

7           (1) in communications between qualified professionals in the provision of services or appropriate  
8 referrals;

9           (2) when the recipient of services designates persons to whom information or records may be  
10 released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing  
11 persons to whom records or information may be disclosed. However, this section may not be construed to  
12 compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal  
13 information that has been given to the physician, psychologist, social worker, nurse, attorney, or other  
14 professional person in confidence by members of a patient's family.

15           (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical  
16 assistance to which a recipient may be entitled;

17           (4) for research if the department has promulgated rules for the conduct of research. Rules must  
18 include but are not limited to the requirement that all researchers shall sign an oath of confidentiality.

19           (5) to the courts as necessary for the administration of justice;

20           (6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to  
21 whom the record or information pertains and the custodian of the record or information pursuant to the rules of  
22 civil procedure;

23           (7) to members of the mental disabilities board of visitors or their agents when necessary to perform  
24 their functions as set out in 53-21-104; ~~and~~

25           (8) to the state protection and advocacy program for individuals with mental illness when necessary to  
26 comply with 53-21-107(9); and

27           ~~(8)(9)~~ to the mental health ombudsman when necessary to perform the ombudsman functions as  
28 provided in 2-15-210."

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**Section 3.** Section 53-21-169, MCA, is amended to read:

**"53-21-169. Protection and advocacy system -- designation and authority.** (1) A protection and advocacy system for individuals with a significant mental illness or emotional impairment is designated by the governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851 must have as its primary goals:

(a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C. 10802 as individuals with a significant mental illness or emotional impairment; and

(b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally ill individuals.

(2) Pursuant to 42 U.S.C. 10801 and 10802, the protection and advocacy system may:

(a) investigate incidents of abuse and neglect of mentally ill individuals;

(b) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

(c) have access to all mentally ill individuals and all facilities, wards, and living quarters as necessary to fulfill the goals described in subsection (1); and

(d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to records, including:

(i) reports prepared by the staff of a mental health care and treatment facility;

(ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a facility and that describe the incidents and the steps taken to investigate the reports; ~~and~~

(iii) reports provided by the director of the department pursuant to 51-21-107(9); and

~~(iii)(iv)~~ discharge planning records.

(3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C. 10806.

(4) The protection and advocacy system described in this section is independent of any public or private agency that provides treatment or services to the mentally ill."



