

# HJR 39: COMMITMENT OF PERSONS WITH DEMENTIA OVERVIEW OF INVOLUNTARY COMMITMENT LAWS

## BACKGROUND

House Joint Resolution 39 requested a study of the use of involuntary commitment for people with Alzheimer's disease or other dementias. This briefing paper provides an overview of the involuntary commitment procedure.

## INVOLUNTARY COMMITMENT: PURPOSES AND PLACEMENTS

State law allows a judge to require a person – under certain circumstances and without the person's consent – to receive mental health treatment in a designated facility or program. The involuntary commitment process is set out in Title 53, chapter 21, part 1, of the Montana Code Annotated. The purposes of the involuntary commitment laws are established in 53-21-101, MCA:

- to provide appropriate, humane care and treatment for people with a mental disorder who are in need of commitment;
- to accomplish that goal in a community setting whenever possible and in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate; and
- to ensure due process of law for people in need of commitment.

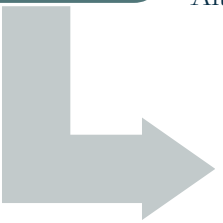
State law allows for community-based commitments. However, most commitments are to the Montana State Hospital at Warm Springs. That facility has 174 licensed hospital beds, 42 group home beds, and 54 designated forensic beds for evaluation and treatment of people who have committed crimes and are awaiting trial. Most individuals with dementia are housed and treated in the 60-bed Spratt Unit.

The Legislature also expressed its intent – in Title 53, chapter 21, part 4 – for geriatric Montanans who don't need intensive psychiatric care to be treated in nursing homes in the community. And 53-21-411, MCA, establishes the Mental Health Nursing Care Center at Lewistown as the state facility for people with mental illness who need nursing care. It can serve about 90 people.

# BASIC STEPS OF THE COMMITMENT PROCESS

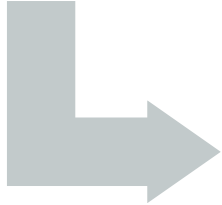
## Precommitment Actions

- Notification to the county attorney that a person with a **mental disorder** is in need of **commitment**
- County attorney reviews and may file a commitment petition
- Judge reviews and dismisses the petition or initiates commitment proceedings
- Standard of proof: probable cause
- Alternative: In an **emergency situation**, law enforcement detains person for evaluation



## Commitment Hearings

- **Professional person** appointed at initial hearing to conduct evaluation
- Based on evaluation, judge dismisses petition or schedules hearing or trial
- Based on hearing or trial, judge dismisses petition or holds disposition hearing
- Standard of proof: reasonable medical certainty for mental disorder; beyond a reasonable doubt for physical facts; clear and convincing evidence for all other matters



## Commitment Options

- Montana State Hospital or a **behavioral health inpatient facility**
- Montana Mental Health Nursing Care Center
- Community facility, including a **Category D assisted living facility**
- Community program
- Commitment length: 90 days, with option for additional 90-day extensions

Bold-Faced Term	Summary of Statutory Definition	Statutory Citation
Behavioral health inpatient facility	A secure facility of 16 beds or less that can provide inpatient psychiatric services.*	53-21-102(2)
Category D assisted living facility	A facility serving people with mental disorders who may be a temporary danger to self or others and who need help with two or more activities of daily living.*	50-5-226(5) 50-5-227(3)(d)
Commitment	A court order requiring an individual to receive treatment for a mental disorder.	53-21-102(4)
Emergency situation	An instance in which, because of a mental disorder, a person has caused injury to self or others, poses an imminent threat of injury to self or others, or cannot provide for basic needs.	53-21-102(7)
Mental disorder	Any organic, mental, or emotional impairment that substantially adversely affects a person's cognitive or volitional functions. Exceptions: drug or alcohol intoxication or addiction, epilepsy, or intellectual disability.	53-21-102(9)
Professional person	A licensed physician, a psychologist, a nurse practitioner or physician assistant with a clinical specialty in psychiatric mental health, or, by rule, a licensed clinical social worker or licensed clinical professional counselor certified by DPHHS to serve in that capacity.	53-21-102(16) 53-21-106

\* = No facilities currently licensed.