

MCA SECTIONS RELATED TO KENDRA'S LAW: INVOLUNTARY COMMITMENT TO ASSISTED OUTPATIENT TREATMENT

Compiled by Sheri Heffelfinger, LSD, for the
Law and Justice Interim Committee
April 10-11, 2008, Meeting

53-21-102. Definitions. As used in this part, 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.

53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

- (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;
- (b) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;
- (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; and

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

(4) The professional person may testify as to the ultimate issue of whether the respondent is suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied by evidence from the professional person or others that:

(a) the respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;

(b) the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions; or

(d) (i) the respondent's mental disorder:

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

(B) is treatable, with a reasonable prospect of success;

(C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for treatment; and

(ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

(5) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue.

(6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis of chemical dependency may satisfy criteria for commitment under this part.

53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

(2) If it is determined that the respondent is suffering from a mental disorder and requires commitment within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing must be held within 5 days (including Saturdays, Sundays, and

holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent.

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral health inpatient facility for a period of not more than 3 months;

(b) commit the respondent to a community facility or program or to any appropriate course of treatment, which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

(i) not more than 3 months; or

(ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

(c) commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months if the following conditions are met:

(i) the respondent meets the admission criteria of the center as described in 53-21-411 and established in administrative rules of the department; and

(ii) the superintendent of the center has issued a written authorization specifying a date and time for admission.

(4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

(5) In determining which of the alternatives in subsection (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment, as provided in subsection (3)(b), and may not require

commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing care center.

(8) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

- (a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;
- (b) the alternatives for treatment that were considered;
- (c) the alternatives available for treatment of the respondent;
- (d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;
- (e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;
- (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;
- (g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission; and
- (h) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

53-21-149. Conditions of treatment in community facility, program, or course of treatment. If the court orders a disposition under 53-21-127(3)(b), the court may order the following conditions for treatment in a community facility or program, or may order a course of treatment, including but not limited to:

- (1) following a treatment plan developed pursuant to 53-21-150 that may include case management services, medication, short-term inpatient treatment, chemical dependency treatment, assertive community treatment, or a combination, as set forth by the designated community facility or program or the individual responsible for the management and supervision of the respondent's treatment; or
- (2) specific residential or housing requirements that may include being under the care or custody of a relative or guardian.

53-21-150. Treatment plan -- provider choice. (1) Stabilizing treatment must be provided during the development of a treatment plan.

(2) If the court orders a treatment plan under this section as a condition of a commitment for treatment in a community facility, program, or course of treatment, the chief medical officer of the facility or program at which the respondent has been ordered to receive outpatient treatment and at which the respondent is treated as an outpatient or the chief medical officer's designee shall submit a treatment plan, including any outpatient treatment recommendations that the respondent is required to follow, to the clerk of district court as soon as practical. However, the plan must be submitted no later than 30 days after the respondent has been ordered to receive treatment as an outpatient.

(3) A treatment plan must be developed with the respondent and the friend of respondent or respondent's family, if family involvement is determined by the court in consultation with the mental health professional to be in the best interests of the respondent.

(4) The clerk of district court shall send a copy of the proposed treatment plan to the court, to the respondent, to the friend of respondent, and to the respondent's attorney of record, who may relay the respondent's objections to the treatment plan, if any, and provide alternative treatment recommendations to the court.

(5) The court may accept the treatment plan or require a revised treatment plan that is approved by a mental health professional.

53-21-151. Notification of noncompliance of condition for treatment plan -- response. (1) If the respondent has been ordered to follow a treatment plan and the respondent does not substantially comply with the treatment plan developed pursuant to the order for treatment pursuant to a commitment to a community facility or program or course of treatment, the chief medical officer or designee shall promptly notify the court upon becoming aware of substantial noncompliance that is likely to result in at least one of the conditions in 53-21-126(1) and shall provide supporting documentation.

(2) The court may take reasonable steps to ensure compliance with the court's outpatient treatment order, including but not limited to the following:

(a) directing that the friend of respondent remind the respondent of the respondent's treatment obligations and attempt to persuade the noncompliant respondent to comply with the treatment plan;

(b) presenting the respondent to the mental health facility or program for treatment, including administration of medication pursuant to 53-21-127(6); or

(c) directing the treating provider to work with the respondent to bring about compliance with the treatment plan.

53-21-152. Department funding responsibility. The department shall develop a separate funding category and procedure for payment for services that are court-ordered for a commitment to a community facility or program or course of treatment. However, nothing in this chapter obligates the department to pay for services ordered under 53-21-127 unless the respondent is eligible for mental health services under the public mental health system funded by the department, the service is one that the department has included in its mental health program, and the department determines that the mental health service is medically necessary for the respondent.

STATUTES ON COURT-ORDERED CONDITIONAL RELEASE

53-21-182. Court-ordered release to alternative placement or treatment. At any time during the patient's commitment, the court may, on its own initiative or upon application of the professional person in charge of the patient, the patient, the patient's next of kin, the patient's attorney, a third party responsible for payment for the care of the patient, or the friend of respondent appointed by the court, order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy or other appropriate placement or treatment.

53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, except as provided in 53-21-198, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional

person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

(4) This section and 53-21-195 through 53-21-198 do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.