Office of Research & Policy Analysis

# PRESENTATION OUTLINE:

## Precommitment Process and Costs (HJR 50) - Progress Report, Summary of Montana Statutes, Comparison with Oregon Diversion Program, Staff Analysis So Far

Prepared by
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for the
***Law and Justice Interim Committee***

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**Last meeting:**

Ideas presented in testimony to Committee at April meeting:

→ Revision of commitment statutes

→ Regional Crisis Centers

→ Voluntary 14-day diversion similar to Oregon

Committee asked staff to work with stakeholders to develop a bill draft to address:

→ Crisis stabilization services

→ Revision of commitment statutes, particularly with respect to voluntary diversion similar to Oregon statutes and as suggested in various testimony

Committee also asked staff to develop options for:

→ State to share costs with counties

**Progress so far:**

→ Spoke mostly individually with:

- county attorneys (Leo Gallaghar, Mike Menehan)
  -- want less adversarial process
  -- want intermediate option, not an all or nothing process

- advocates (DRM, NAMI-MT)
  -- must balance two perspectives, liberty interests, live-saving treatment

- providers (Billings Clinic, Western MT Community MH - WCMH)
  -- need to be financially viable
  -- hospitals aren't getting paid for pre-petition emergency holds
  -- can't build capacity if funding to support is not there

- state agency staff
  -- MSH over capacity, recently contracted for long-term beds
  -- AMDD functions within a medicaid system, fee for service model of paying for services based on eligibility criteria
  -- licensure concerns, building codes, staffing
  -- BHIF idea stalled

→ Cost-sharing options - staff identified generic options - left stakeholders to offer their ideas - each option has pros and cons

- Matching funds
  - e.g., state will match county dollars spent on....

- Block grants
  - e.g., counties can apply for block grants to develop ....

- Cap county costs, state pick up costs after cap
  - e.g, state will pay all precommitment costs after (certain number of days, certain dollar amount).

- Divide responsibility based on specific services
  - e.g., state will fund professional evaluation costs during emergency holds, if county will fund per diem rates

→ One stakeholder idea:

- Statewide insurance pool - would need more info. gathering
  - e.g., counties and state contribute to a self-insurance program, contribution amounts based on actuarial assessment of risks and costs over time, insurance pool pays costs, amortizes debt over time

→ Need more study and guidance from Committee before developing a bill draft

**Montana Precommitment Process and Statutes**
**Comparison with Oregon 14-day Diversion**

OUTLINE

**STEP 1 - Initial Response**

Peace officer takes into custody
Professional person evaluates
- crisis response teams

Beds for initial screening:
- jail
- emergency room
- Billings Clinic (but voluntary)
- develop other options?

Funding
- 72 hr presumptive eligibility?

**STEP 2 - Emergency Detention/ Hold**

Professional person initiates hold

Secure beds for hold
- hospital psych unit
- MSH
- alternatives?
  secure 24 hr supervision
  appropriate staff
  appropriate licensure

  - WCMH, Paul Meyer
    - Butte being completed
    - Bozeman planned

  - BHIFs ?

Funding
- Providers, 72 hr program?

MSH may say no to an emergency hold, but rare in practice.

MCA Sections

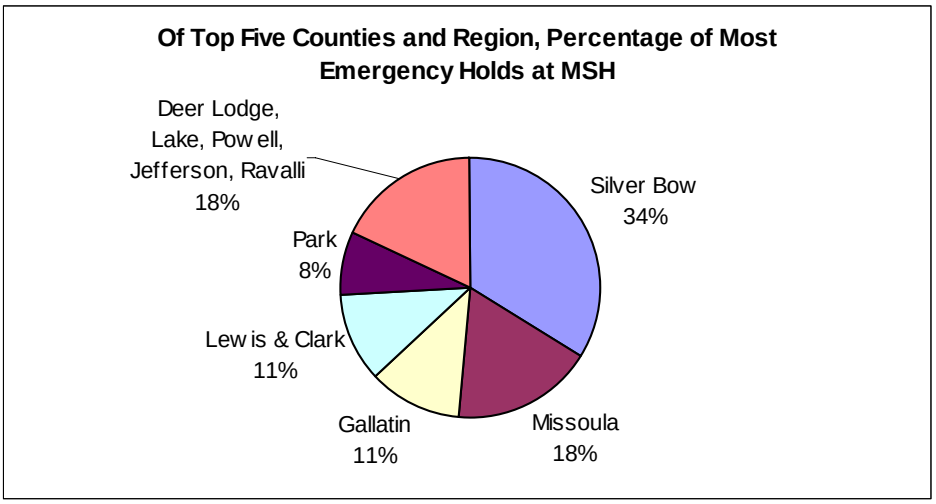
**53-21-129. Emergency situation -- petition -- detention.**

(1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify to the county attorney that the facility does not have adequate room at that time. .....

***45% of admissions to the MSH are for emergency holds/detentions initiated under this section 53-21-129, MCA.***




**In Oregon:**

- Community Mental Health Program Director, doctor, judge, or any two people, may file papers in court to start process.

- Judge, CMHP director, or doctor orders a "precommitment hold" at:
  - hospital
  - non-hospital facility
  - jail only if charged with crime or serious danger to hospital staff or property

**STEP 3 - Petition/initial appearance**

Professional person notifies county attorney and court of emergency hold, need to commit

County attorney files petition

Judge
- considers petition
- may dismiss (or not)
- may appoint counsel

Respondent may object, get own eval, exercise other rights

Judge sets date for hearing, must not be on same day, but must be within 5 days unless defense counsel requests extension

**53-21-122. Petition for commitment -- filing of -- initial hearing on.**

... (2) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the

In Oregon:
Respondent in precommitment hold no longer than 5 days

Within 3 days, CMHP director certifies to court if respondent is eligible for 14-day diversion, court appoints attorney, if attorney and respondent agree to diversion, no hearing date set, i.e., hearing suspended.

During 14-day commitment, respondent may request hearing, doctor may request hearing if treatment refused, transfer respondent to secure hold, hearing must be held within 5 days.

respondent. .....

**STEP 4 - Court-ordered detention**

Judge sets hearing date, court-ordered detention pending hearing begins

Least restrictive setting

Respondent may exercise rights, own evaluation, jury trial (which must be within 7 days) -- see 53-21-120, MCA

Respondent may not be detained in jail

Beds
- MSH
- Alternatives?
  - secure 24 hr supervision
  - appropriate staff
  - appropriate licensure
    - WMCMHC, Paul Meyer
      - Butte
      - (Bozeman)
    - BHIFs ?

Funding
- Counties as payer of last resort

**53-21-124. Detention of respondent pending hearing or trial -- jail prohibited.** (1) The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the respondent may then request a detention hearing, which must be held immediately.

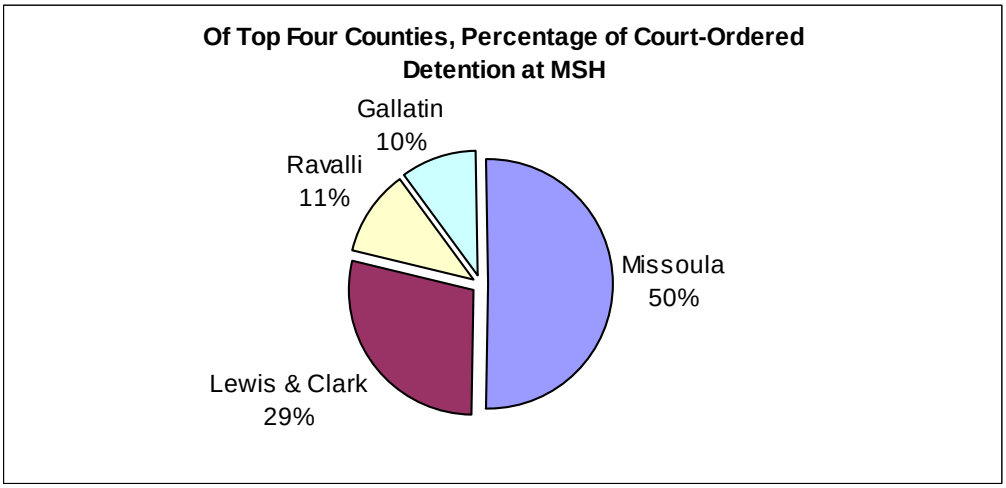
(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to ensure the respondent's presence and ensure the safety of the respondent and of others as provided in 53-21-120.

(3) If the respondent is detained, the respondent has the right to be examined additionally by a professional person of the respondent's choice, which may not depend on the respondent's ability to pay, and the respondent must be informed of this right. Unless objection is made by counsel for the respondent, the respondent must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility.

***18% of all MSH admissions are court-ordered detentions under section 53-21-124, MCA.***

***Emergency holds and court-ordered detention in total account for 63% of all MSH admissions.***




Oregon's 14-day diversion:

- ☞ Provides voluntary alternative
- ☞ Offers less adversarial process
- ☞ Expedites treatment rather than causing court-room delays
- ☞ BUT...NEED SERVICE CAPACITY

Review of services needed:

☞ Four types of service levels:

→ Initial response and first-level screening

→ Short-term: Emergency hold and court-ordered detention beds

→ Medium-term: e.g., 14-day commitment beds such as Oregon

→ Longer-term: e.g. 90-day commitment to MSH

Initial response and screening

→ Most smaller areas, initial screening may be in jail

→ Jail diversion programs needed

- Billings Clinic is only model in state
- Crisis Response Teams are in some communities - such as in Helena and the mental health center has Care House, but St. Peter's has no psych unit now, dependence on MSH
- No statewide effort for jail diversion

→ Committee could consider options for statewide support, state funding for:

- Kentucky Network Program
- Regional "Billings Clinics", video conferencing equipment in jails and/or local hospital ERs
- Other ideas? Could look at other states, further info. available from GAINS center, Pittsburgh conference material, etc.

Short-term: Emergency hold and court-ordered detention

→ Hospital psych units (Billings, Kalispell, Great Falls, Missoula)

→ Montana State Hospital

→ WCMH developing crisis center beds with secure wing (Butte, Bozeman)

→ Committee could consider options for statewide support, funding for:

- Partnership with hospitals for acute care psych beds
- Partnership with community mental health centers for secure beds as "wing" of crisis center

Mid-term: Such as 14-day diversion program

→ Nothing currently available outside of MSH

→ BHIF idea stalled and questionable - being looked at by contract study

→ Stakeholder interest in 6 regional crisis centers

- 3-4 beds for initial screening like Billings Clinic
- 3-4 beds for emergency holds/detention
- 3-4 beds for 14-day diversion

Funding:

- one idea of cost of $1m to $2m to build, $1m to $2m to operate per year
- sources kicked around: county mental health levy, alcohol tax, statewide levy, insurance pool
- how is WCMH (Paul Meyer) funding Butte and Bozeman idea?

Overview of Committee Options:

→ Continue to study, establish focus (prioritize), more next meeting...or next interim

- initial response and screening - jail diversion - look at statewide approaches
- short-term emergency hold/detention beds
- crisis centers - to include 14-day diversion program
- statutory revisions
  -- incorporate a 14-day diversion
  -- reorder and recodify

→ Suspend further study pending final report from contracted mental health study due in October

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