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As of: September 1, 2006 (4:24pm)

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**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act including the condition of being gravely disabled in the definition of "emergency situation" for the purposes of involuntary commitment of persons with mental illness; amending "emergency situation" to reflect the commitment criteria; defining gravely disabled; and amending sections 53-21-102, 53-21-126, 53-21-127, and 53-21-129, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102, MCA, is amended to read:

"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 licensed facility of 16 beds or less designated by the department that:

(a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to

Unofficial Draft Copy

As of: September 1, 2006 (4:24pm)

LCCF07

persons with mental illness and co-occurring chemical dependency;
and

(b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.

(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, who appears to be suffering from a mental disorder and appears to require commitment:

(a) is substantially unable to provide for a person's own basic needs of food, clothing, shelter, health, or safety;

(b) through an act or omission has caused self-injury or injury to others;

(c) presents an imminent danger of death or bodily harm threat of self-injury or injury to others from the activity of a the person who appears to be suffering from a mental disorder and appears to require commitment; or

(d) is gravely disabled.

(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) "Gravely disabled" means a condition in which a person, who as a result of a mental disorder is unable to recognize the need for treatment and if untreated, will predictably result in deterioration of the persons's mental condition to the point at which the person will become a danger to self or others or will be unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety.

~~(9)~~(10) (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)~~(11) "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)~~(12) "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)~~(13) (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:

Unofficial Draft Copy

As of: September 1, 2006 (4:24pm)

LCCF07

(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)~~(14) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(14)~~(15) "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)~~(16) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(16)~~(17) "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; or

(c) a person who has been certified, as provided for in 53-21-106, by the department.

~~(17)~~(18) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(18)~~(19) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(19)~~(20) "State hospital" means the Montana state hospital."

Unofficial Draft Copy

As of: September 1, 2006 (4:24pm)

LCCF07

{ *Internal References to 53-21-102:*

39-51-2111 x x	41-5-1504 x x	41-5-1504x x	41-5-1504 xx
41-5-1512 x x	41-5-1512 x x	45-5-206 x x	46-14-206 xx
46-14-221 x x	46-14-221 x x	46-14-312 x x	53-20-130 xx
53-21-105 x x	53-21-106 x x	53-21-106 x x	53-21-138 xx
53-21-411 x x	53-21-601 x x	72-5-408 x	72-5-408 x
72-5-415 x }			

Section 2. Section 53-21-126, MCA, is amended to read:

"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~~ respondent, 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~~ is gravely disabled.

(2) Predictability In determining whether a respondent is gravely disabled, predictability may be established by the respondent's relevant medical history.

~~(2)~~(3) 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)~~(4) 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)~~(5) 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)~~(6) 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)~~(7) 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."

{ *Internal References to 53-21-126:*

41-5-1504 x x	41-5-1504 x x	41-5-1504 x x	41-5-1512xx
53-21-114 x x	53-21-127 x x	53-21-127 xx	53-21-127xx
53-21-129 x x	53-21-140 x x	53-21-151xx}	

Section 3. Section 53-21-127, MCA, is amended to read:

"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)~~(2), 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;

Unofficial Draft Copy

As of: September 1, 2006 (4:24pm)

LCCF07

(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."

{ *Internal References to 53-21-127:*

2-16-503 x	27-2-401 x	27-8-204 x	37-3-323x
37-6-311 x	37-11-321 x	37-12-322 x	41-5-1504x
53-21-104 x	53-21-121 x	53-21-123 x	53-21-126x
53-21-128 x	53-21-128 x	53-21-132 x	53-21-140x
53-21-149 x	53-21-151 x	53-21-152 x	53-21-181x
53-21-193 x	53-21-195 x	53-21-195 x	53-21-197x
53-21-197 x	53-21-198 x	53-21-198 x	53-21-198x
53-21-414 x	70-19-413 x	70-29-113 x	70-29-210x
70-29-328x			

Section 4. Section 53-21-129, MCA, is amended to read:

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

(1) ~~When an emergency situation exists, a~~ 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 and is in an emergency situation~~ 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

Unofficial Draft Copy

As of: September 1, 2006 (4:24pm)

LCCF07

local facility shall certify to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

{*Internal References to 53-21-129:*
53-21-193 x}

- END -

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