



# Montana Legislative Services Division

---

## Office of Research and Policy Analysis

March 27, 2008

TO: Law and Justice Interim Committee Members

FROM: Sheri Heffelfinger, Legislative Research Analyst

RE: Kendra's Law and Involuntary Commitment to Outpatient Treatment

At the February 28-29, 2008, meeting of the Law and Justice Interim Committee, Senator Jent noted that information previously sent to committee members included a summary of Kendra's Law (see mailing dated January 2, 2008, another copy provided with attached reading materials), which was enacted by the New York state legislature in 1999. The Committee directed that Kendra's Law be placed on the agenda for the April 10-11, 2008. This memorandum and the attachments provide you with research and reading materials related to Kendra's Law and the issue of involuntary commitment to outpatient treatment in Montana.

### Background

- Kendra's Law is the popular name given to mental health statutes that authorize a court to order certain mentally ill persons to involuntarily receive outpatient mental health treatment, including the involuntary administration of medications. This involuntary commitment to outpatient treatment is often referred to as Assisted Outpatient Treatment (AOT).
- The target population is seriously mentally ill individuals who do not meet the strict criteria for involuntary commitment to an institution (such as the Montana State Hospital), but who are in a deteriorating condition, have a history of multiple hospitalizations or violence, and are unlikely to comply with treatment plans without close supervision and court-imposed sanctions.
- A 2005 report evaluating the effectiveness of Kendra's Law in New York pointed to significant improvements, such as drastically reduced hospitalization, homelessness, arrest, and incarceration, as a result of the law. However, critics fault the study for not using a control group.
- New York revised and reauthorized Kendra's Law in 2005, but still did not make the law permanent. A new study is being conducted and is due in 2009.

### Controversy

- Involuntary commitment to outpatient treatment is controversial. Proponents include the national non-profit Treatment Advocacy Center and the National Alliance for the Mentally Ill (NAMI). Opponents include disabilities and civil rights organizations, such as the New York Association of Psychiatric Rehabilitation Services, the ACLU, and, in general, the Montana Advocacy Program (now called Disabilities Rights Montana).

- One of the key factors in the debate is the extent to which a person can be forced to comply with the court-ordered treatment. In New York's law, a person who fails to comply is subject to detention and commitment to a hospital or institution for up to 72 hours.
- A few articles presenting proponent and opponent perspectives on Kendra's Law are attached.

### **Montana situation**

- In 2001, Montana enacted SB 466, by Senator Mignon Waterman, which made Montana one of 42 states that now have some statutory framework for AOT. SB 466 was debated and significantly amended from its original version. Ultimately, the bill received overwhelming approval by both the senate (47 to 1 on second reading) and the house (99 to 1 on second reading). The final amended version of SB 466 is included with the attached reading materials.
- The Montana State Hospital has been experiencing an "overflow" of patients. It is licensed to house a maximum of 189 patients, but has been averaging about 209 patients since last summer. According to an article in the *Missoulian*, admission rates have doubled in recent years. Governor Schweitzer recently announced a plan to mitigate the overflow by allowing DPHHS to arrange for local care contracts without competitive bidding. (See the March 27, 2008, *Missoulian* article, which is included with the attached reading materials.)
- The key statutory language in Montana's laws that authorize the courts to involuntarily commit a person to a community treatment program is in section 53-21-127(3)(b), MCA. Additionally, section 53-21-151, MCA, states what actions the court may take if the person fails to comply with the court-ordered community treatment plan. (See the extract of MCA statutes related to Kendra's Law, which is included with the attached reading materials.)
- A recent Montana Supreme Court decision related to involuntary commitment proceedings, *In the Matter of the Mental Health of A.S.B.*, encapsulates many of the legal issues and arguments and provides a window into the situations that lead to involuntary commitments. A copy of the opinion is provided in the attached reading materials.
- Further research is needed to determine the extent to which section 53-21-127(3)(b), MCA, is actually used by Montana courts as an alternative to involuntary commitment to the Montana State Hospital. However, a preliminary review of case law indicates the statute is rarely used. The key obstacles are likely to be enforcement concerns, long waiting lists, funding constraints (which affect not only how mental health services are paid for, but funding for intensive supervision by courts and case managers), the shortage

of mental health professionals in many areas, and the lack of support services, such as housing and transportation.

## **Reading materials**

The following materials are attached:

### Background

- "An Explanation of Kendra's Law", Office of Mental Health, New York State, May 2006.
- "State Standards for Assisted Treatment: State by State Chart", Treatment Advocacy Center, May 2007.

### Controversy

- "Should officials force care on the mentally ill?", MSNBC.com, Dec. 29, 2007.
- "Assisted outpatient treatment: Results from New York's Kendra's Law", Treatment Advocacy Center Briefing Paper, March 30, 2005.
- NAMI Public Policy Platform extract, Dec. 2007.
- "A Misguided Alternative to Fixing Our Mental Health System", by Harvey Rosenthal, Executive Director, New York Association for Psychiatric Rehabilitation Services, Jan. 2000.
- "Ethical Considerations in the Treatment of Mental Illness in the 21st Century: A Changing Perspective" by Paul Meyer, Executive Director, Western Montana Community Mental Health Center, *Montana Policy Review*, Summer 2004.

### Montana

- Final amended version of SB 466, by Senator Waterman, 2001 Session.
- "Patient overflow plan at Warm Springs to begin", by Mike Dennison, *Missoulian*, March 27, 2008.
- MCA Sections Related to Kendra's Law.
- Montana Supreme Court Opinion: *In the Matter of the Mental Health of A.S.B.*, DA 06-0687, 2008 MT 82, Decided on March 11, 2008.

cl0429 8091shma.