

SENATE BILL NO. 435

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO MENTALLY ILL INDIVIDUALS; PROVIDING FOR A 72-HOUR MENTAL HEALTH HOLD; PROVIDING FOR A WAIVER OF PHYSICAL PRESENCE AT HEARINGS; AND AMENDING SECTIONS 53-21-119, 53-21-129, 53-21-132, AND 53-21-140, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. 72-hour mental health hold. (1) (a) An individual may be placed in a mental health facility as defined in 53-21-102 or a crisis stabilization facility as described in 53-21-1403 for a period up to 72 hours at the written request of a mental health professional as defined in 53-21-102 if the individual, as a result of a mental disorder, meets one or more of the following criteria:

(i) the individual is unable to provide for the individual's own basic needs of food, clothing, shelter, health, or safety;

(ii) the individual causes injury to the individual's self or to others; or

(iii) the individual is an imminent threat to the individual's self or to others.

(b) The 72-hour period begins at the time when the individual is first detained.

(c) The county attorney and the office of the state public defender must be immediately notified of the individual detained and of the facts justifying the detention.

(2) The county may authorize transportation to an appropriately licensed facility within the state if there is not an appropriate mental health facility or crisis stabilization facility within the county where the individual is located or the individual's county of residence.

(3) A mental health professional shall evaluate the individual as soon as possible after the individual is admitted for care. The evaluation must occur within the first 24 hours of the 72-hour hold.

(4) The mental health professional shall write a report of the evaluation and shall provide a copy of

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~~prevent the adverse effects on the respondent's mental condition; or~~

~~(b) the respondent has voluntarily expressed a desire to waive the respondent's presence at the hearing.~~

(1) A respondent's right to counsel and the right to treatment provided for in this part may not be waived.

(2) A respondent's procedural right to be present at any hearing as provided in 53-21-115(2) and 53-21-116 may be waived by the court:

(a) at the request of the respondent, on a finding supported by facts that the respondent voluntarily expresses a desire to waive the respondent's presence at the hearing;

(b) at the request of the respondent's counsel, with the concurrence of the professional person and the friend of the respondent, if any, on a finding supported by facts that the presence of the respondent at the hearing is likely to seriously adversely affect the respondent's mental health condition; or

(c) at the request of the county attorney, with the concurrence of the professional person and the friend of the respondent, if any, on a finding supported by facts that the presence of the respondent at the hearing is likely to seriously adversely affect the respondent's mental health condition.

(3) The respondent's rights may otherwise be waived:

(a) by the respondent, if the court finds the respondent is capable of making an intentional or knowing decision; or

(b) by the respondent's counsel and the friend of the respondent, if any, acting together, if a record is based on the reasons for the waiver.

~~(3)(4)~~ (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the court shall appoint a guardian ad litem for the minor."

Section 3. Section 53-21-129, MCA, is amended to read:

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1 **"53-21-129. Emergency situation -- petition -- detention -- exception.** (1) When an emergency
2 situation as defined in 53-21-102 exists, a peace officer or emergency care provider as defined in 50-6-202 may
3 take any person who appears to have a mental disorder and to present an imminent danger of death or bodily
4 harm to the person or to others or who appears to have a mental disorder and to be substantially unable to
5 provide for the person's own basic needs of food, clothing, shelter, health, or safety into custody only for
6 sufficient time to contact a professional person for emergency evaluation. If possible, a professional person
7 should be called prior to taking the person into custody.

8 (2) ~~If~~ Except as provided in subsection (5), if the professional person agrees that the person
9 detained is a danger to the person or to others and that an emergency situation as defined in 53-21-102 exists,
10 then the person may be detained and treated until the next regular business day. At that time, the professional
11 person shall release the detained person or file findings with the county attorney who, if the county attorney
12 determines probable cause to exist, shall file the petition provided for in 53-21-121 through 53-21-126 in the
13 county of the respondent's residence. In either case, the professional person shall file a report with the court
14 explaining the professional person's actions.

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

23 (4) Before a person may be transferred to the state hospital or to a behavioral health inpatient
24 facility under this section, the state hospital or the behavioral health inpatient facility must be notified prior to
25 transfer and shall state whether a bed is available for the person. If the professional person determines that a
26 behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available,
27 the county attorney shall direct the person to the appropriate facility to which the person must be transported for

emergency detention.

(5) If the professional person determines that the person meets the requirements for a 72-hour mental health hold prescribed in [section 1], then the requirements of [section 1] apply."

Section 4. Section 53-21-132, MCA, is amended to read:

"53-21-132. Cost of examination and commitment. (1) The cost of psychiatric precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid pursuant to subsection (2)(a). The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by 7-32-2144.

(2) (a) The costs of precommitment psychiatric detention, precommitment psychiatric examination, and precommitment psychiatric treatment of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to 53-21-123 must be billed to the following entities in the listed order of priority:

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

(b) The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of ~~two-way~~ electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of ~~two-way~~ electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

(3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and