

**Amendment - 2nd Reading/2nd House-tan - Requested by: James Reavis - (H) Committee of the Whole**

- 2025

69th Legislature 2025

Drafter: Milly Allen,

SB0435.002.001

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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the report to the individual, the county attorney, and the office of the state public defender. The report must state:

(a) recommendations for further treatment, if any; and

(b) whether it is the opinion of the mental health professional that further commitment, including a petition for commitment under 53-21-121, may be necessary.

(5) During the course of the 72-hour hold, the individual may consent to take any medication to stabilize the individual's mental disorder but may not refuse any lifesaving medication considered necessary by a professional person as defined in 53-21-102.

(6) At any time during the 72-hour hold, the individual may be released if, in the opinion of the mental health professional, the individual no longer requires further treatment.

(7) On expiration of the 72-hour hold:

(a) the individual may be released with no further treatment recommendations;

(b) the individual may be referred to further care and treatment on a voluntary basis; or

(c) the county attorney may file a petition for commitment under 53-21-121.

**Section 2.** Section 53-21-119, MCA, is amended to read:

**"53-21-119. Waiver of rights -- right to counsel and right to treatment not waivable.** ~~(1) A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent, if a friend of respondent is appointed, acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.~~

~~(2) The right of the respondent to be physically present at a hearing may also be waived by the respondent's attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:~~

~~(a) (i) the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition; and~~

~~(ii) an alternative location for the hearing in surroundings familiar to the respondent would not~~

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

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

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

6 (2) A respondent's procedural right to be physically present at any hearing as provided in 53-21-  
7 115(2) and 53-21-116 may be waived by the court:

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

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

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

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

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

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

21 ~~(3)(4)~~ (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the  
22 minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian  
23 ad litem if there are no parents or guardian.

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

26

27 **SECTION 3. SECTION 53-21-129, MCA, IS AMENDED TO READ:**