

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 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 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 PHYSICALLY 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:

"53-21-129. Emergency situation -- petition -- detention -- exception. (1) When an emergency situation as defined in 53-21-102 exists, a peace officer or emergency care provider as defined in 50-6-202 may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily

1 harm to the person or to others or who appears to have a mental disorder and to be substantially unable to
2 provide for the person's own basic needs of food, clothing, shelter, health, or safety into custody only for
3 sufficient time to contact a professional person for emergency evaluation. If possible, a professional person
4 should be called prior to taking the person into custody.

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

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

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

26 (5) If the professional person determines that the person meets the requirements for a 72-hour
27 mental health hold prescribed in [section 1], then the requirements of [section 1] apply."
28

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

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

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

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

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

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

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

23 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and
24 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public mental
25 health program funds.

26 (4) A community service provider that is a private, nonpublic provider may not be required to treat
27 or treat without compensation a person who has been committed."
28

Section 5. Section 53-21-140, MCA, is amended to read:

"53-21-140. Use of two-way electronic audio-video communication. (1) A respondent's right to be present at a hearing, as provided in 53-21-115(2) and 53-21-116, is satisfied by:

(a) the respondent's physical appearance before the court; or

(b) in the discretion of the court, by electronic audio-video communication.

(2) For purposes of this chapter, :

(a) electronic audio-video communication must allow all participants to be observed and heard simultaneously; and

(b) a hearing that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard by all present simultaneously, is considered to be a hearing in open court.

~~(2) — Whenever the law requires that a respondent or patient in any of the hearings provided for in subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the respondent or patient, the respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately, and so that the respondent or patient and counsel are both present during the two-way electronic audio-video communication. A respondent or patient may request that counsel from the board be present, for consulting purposes only, if the respondent or patient is located at the state hospital.~~

~~(3) — At the discretion of the court, the following hearings may be conducted through two-way electronic audio-video communication:~~

~~(a) — the initial hearing provided for in 53-21-122;~~

~~(b) — the detention hearing provided for in 53-21-124;~~

~~(c) — the trial or hearing on a petition provided for in 53-21-126;~~

~~(d) — a hearing on posttrial disposition as provided for in 53-21-127;~~

~~(e) — a hearing on the extension of a commitment period as provided for in 53-21-128;~~

~~(f) — a hearing on rehospitalization of a person conditionally released from an inpatient treatment~~

1 facility as provided for in 53-21-197;

2 (g) ~~_____ a hearing on an extension of the conditions of release as provided for in 53-21-198.~~

3 (4) ~~_____ This section does not abrogate a person's rights under 53-21-115, 53-21-116, or 53-21-117. A~~
4 ~~respondent or patient, the respondent's or patient's counsel, and a friend of respondent or patient, if any, must~~
5 ~~be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a~~
6 ~~hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of respondent~~
7 ~~or patient, acting together, may waive any of the rights, as provided under 53-21-119.~~

8 (5) ~~_____ A two-way electronic audio-video communication may not be used:~~

9 (a) ~~_____ in an initial hearing provided for in 53-21-122 if the professional person objects; or~~

10 (b) ~~_____ in a hearing referred to in subsections (3)(b) through (3)(g) if a respondent or patient, the~~
11 ~~respondent's or patient's counsel, or the professional person objects."~~

12
13 NEW SECTION. Section 6. Codification instruction. [Section 1] is intended to be codified as an
14 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 1].

15
16 NEW SECTION. Section 7. Saving clause. [This act] does not affect rights and duties that matured,
17 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

18 - END -