

VOLUME NO. 37

OPINION NO. 106

MENTAL HEALTH - Involuntary commitment; COMMITMENT - Voluntary, avoidance of involuntary procedure; JURISDICTION - Involuntary commitment proceedings; REVISED CODES OF MONTANA, 1947 - Sections 38-1303; 38-1305.

HELD: A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission under section 38-1303, R.C.M. 1947.

25 January 1978

Keith D. Haker, Esq.  
Custer County Attorney  
Custer County Courthouse  
Miles City, Montana 59301

Dear Mr. Haker:

You have requested my opinion on the following question:

May a person who is alleged to be a seriously mentally ill person in a petition for involuntary commitment avoid the involuntary commitment by committing himself under the provisions of section 38-1303, R.C.M. 1947?

Section 38-1305 contains the procedures for involuntary commitment of persons who are seriously mentally ill. A petition is filed in the district court by the County Attorney. Among other provisions the petition must contain a statement of facts including the allegation of mental illness. Upon the filing of the petition, the clerk of the court shall immediately notify a judge who must immediately make a determination, based on the petition, that probable cause exists that the person is seriously mentally ill. If the court determines that probable cause does exist, the Court shall order an examination of the person and a hearing shall be held within five days to determine the merits of the petition. Section 38-1305(7) provides that the trial shall be governed by the Montana Rules of Civil Procedure.

Section 38-1303, R.C.M. 1947, provides in pertinent part:

Voluntary Admission--Cost of Admission (1)  
Nothing in this chapter may be construed in any way as limiting the right of any person to make voluntary application for admission at any time to any mental health facility or professional person...

(3) An application for voluntary admission shall give the facility the right to detain the applicant for no more than five days, excluding weekends and holidays, past his written request for release.

Your question is whether by virtue of the above-quoted provisions a person may avoid the involuntary commitment procedures by making application for voluntary admission under that section.

Pursuant to Rule 4, Montana Rules of Civil Procedure, the Court acquires personal jurisdiction upon the filing of an action and service upon the defendant. Sowerwine v. Sowerwine, 145 Mont. 81, 399 P.2d 233 (1965). Nothing in chapter 38 provides that the court loses jurisdiction upon application by the defendant for voluntary admission. It is

my opinion that the court retains jurisdiction over the question of involuntary commitment irrespective of an application for voluntary admission. Cf. In re the Matter of G., 26 Or.App. 197, 552 P.2d 574 (1976).

The statutes pertinent to this question were amended by the 45th Montana Legislative Session. Prior to 1977, section 38-1305 read in pertinent part:

The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination.

That provision was repealed by Laws of Montana (1977), chapter 546, section 5. At this time there is not a provision that requires dismissal of the petition upon application for voluntary treatment. In the construction of statutory amendments, it is presumed that the Legislature, in passing the amendment, intended to make some change in existing law, and therefore endeavor should be made to give effect to the amendment. Department of Revenue v. American Smelting and Refining Co., 34 St.Rprt. 603 (1977); Pilgeram v. Hass, 118 Mont. 431, 167 P.2d 339 (1946). It is my opinion that it was the intent of the Legislature to remove the requirement that a petition for involuntary commitment be dismissed whenever the individual involved makes application for voluntary treatment. However, the parties must keep in mind the purpose of the chapter as outlined in section 38-1301. A person should be placed in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care.

THEREFORE IT IS MY OPINION:

A person subject to court jurisdiction under a petition for involuntary mental commitment may not avoid the involuntary procedure solely by making an application for voluntary admission under section 38-1303, R.C.M. 1947.

Very truly yours,

MIKE GREELY  
Attorney General