

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 42

OPINION NO. 59

FAMILY SERVICES, DEPARTMENT OF - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;

MENTAL HEALTH - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;

YOUTH COURT - Procedures to be followed by Youth Court and Department of Family Services when committing seriously mentally ill and mentally ill youth;

MONTANA CODE ANNOTATED - Sections 41-5-103, 41-5-206, 41-5-523, 41-5-527, 53-21-101 to 53-21-198, 53-21-506.

HELD: Section 41-5-523, MCA, of the Montana Youth Court Act does not authorize the Youth Court or the Department of Family Services to commit mentally ill or seriously mentally ill youth to a mental health treatment facility without following the commitment procedures set out in sections 53-21-101 to 198, MCA. The statutes do not preclude commitment of youth to private mental health facilities.

29 January 1988

Gene Huntington, Director
Department of Family Services
P.O. Box 8005
Helena MT 59604

Dear Mr. Huntington:

You have requested my opinion on the following questions:

1. Is the Department of Family Services required to follow the involuntary commitment procedures set out in sections 53-21-101 to 198, MCA, when youth are committed to the Department under section 41-5-523(1)(b), MCA?

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2. If a youth is not committed to the Department of Family Services, may the Youth Court order placement of seriously mentally ill and mentally ill youth in Rivendell or other private mental health facilities under section 41-5-523(1)(c) and (j), MCA?

Section 41-5-523, MCA, as it was codified in 1985, listed the Youth Court's disposition options and contained the following pertinent provisions protecting the due process rights of seriously mentally ill and mentally ill juveniles facing commitment:

Disposition of delinquent youth and youth in need of supervision. (1) If a youth is found to be delinquent or in need of supervision, the court may enter its judgment making the following disposition:

- (a) place the youth on probation;
- (b) place the youth for substitute care into a youth care facility as defined in 41-3-1102 or a home approved by the court;
- (c) place the youth in a private agency responsible for the care and rehabilitation of such a youth;
- (d) transfer legal custody to the department of institutions; provided, however, that in the case of a youth in need of supervision, such transfer of custody does not authorize the department of institutions to place the youth in a state youth correctional facility and such custody may not continue for a period of more than 6 months without a subsequent court order after notice and hearing;
- (e) such further care and treatment or evaluation that the court considers beneficial to the youth; or
- (f) order restitution by the youth.

....

(3) At any time after a youth has been taken into custody, the court may request that the youth be evaluated at the Montana youth treatment center, for a period not to exceed 60 days, for the sole purpose of advising the

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court as to whether the youth is seriously mentally ill, as defined in 53-21-102, but the court must first find that reasonable grounds exist to believe that the youth is suffering from a mental disorder as defined in 53-21-102.

....

(5) If the court determines that a delinquent youth or youth in need of supervision is in need of treatment at the Montana youth treatment center, the court must first determine, based on testimony of a professional person, as defined in 53-21-102, that the youth is seriously mentally ill as defined in 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119.

(6) Upon a finding of serious mental illness, the court may commit a delinquent youth to the department of institutions and recommend that the youth be placed at the Montana youth treatment center. Upon release or discharge from the center, if the court order has not expired or if the youth is less than 21 years of age, he must be retained under the supervision of the department until the expiration of the court order or until he attains the age of 21. [Emphasis supplied.]

In a special session of the 49th Legislative Assembly in June 1986, the Legislature authorized the sale of the Montana Youth Treatment Center to Rivendell of Billings, Inc., and eliminated subsections (3), (5), and (6) of section 41-5-523, MCA (1985). In the 1987 regular session of the Legislature, subsection (1)(c) was eliminated and (1)(e) modified and listed as (1)(j) in the revision of section 41-5-523, MCA, which now reads:

Disposition of delinquent youth and youth in need of supervision. (1) if a youth is found to be delinquent or in need of supervision, the youth court may enter its judgment making any of the following dispositions:

(a) place the youth on probation;

(b) commit the youth to the department. The department shall thereafter determine the appropriate placement, supervision, and rehabilitation program for the youth after

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considering the recommendation of the youth placement committee as provided in 41-5-527; provided, however, that:

(i) in the case of a youth in need of supervision, such commitment does not authorize the department to place the youth in a state youth correctional facility. The court shall determine whether continuation in the home would be contrary to the welfare of the child and whether reasonable efforts have been made to prevent or eliminate the need for removal of the child from his home. The court shall include such determination in the order committing the youth to the department.

(ii) in the case of a delinquent youth who is a serious juvenile offender, the judge may specify that the youth be placed in physical confinement in an appropriate facility only if the judge finds that such confinement is necessary for the protection of the public;

(iii) a youth may not be held in physical confinement for a period of time in excess of the maximum period of imprisonment that could be imposed on an adult convicted of the offense or offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the power of the department to enter into an aftercare agreement with the youth pursuant to 53-30-226.

(iv) a youth is under the supervision of a youth probation officer, except that a youth placed in a youth correctional facility is supervised by the department;

(c) order such further care and treatment or evaluation that does not obligate funding from the department without the department's approval;

(d) order restitution by the youth or his parents;

(e) impose a fine as authorized by law if the violation alleged would constitute a criminal offense if committed by an adult;

(f) require the performance of community service;

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(g) require the youth, his parents, his guardians, or the persons having legal custody of the youth to receive counseling services;

(h) require the medical and psychological evaluation of the youth, his parents, his guardians, or the persons having legal custody of the youth;

(i) require the parents, guardians, or other persons having legal custody of the youth to furnish such services as the court may designate; or

(j) such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community.

(2) At any time after the youth has been taken into custody, the court may, with the consent of the youth in the manner provided in 41-5-303 for consent by a youth to a waiver of his constitutional rights or after the youth has been adjudicated delinquent or in need of supervision, order the youth to be evaluated by the department for a period not to exceed 45 days. The department shall determine the place and manner of evaluation.

(3) No evaluation of a youth may be performed at the Montana state hospital unless such youth is transferred to the district court under 41-5-206.

(4) No youth may be committed or transferred to a penal institution or other facility used for the execution of sentence of adult persons convicted of crimes.

(5) Any order of the court may be modified at any time. In the case of a youth committed to the department, an order pertaining to the youth may be modified only upon notice to the department and subsequent hearing.

(6) Whenever the court vests legal custody in an agency, institution, or department, it must transmit with the dispositional judgment copies of a medical report and such other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth. [Emphasis supplied.]

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Section 41-5-103(5), MCA, explains that "department" means the Department of Family Services.

The 1987 amendment eliminated the Youth Court's dispositional alternative of committing delinquent youth to the Department of Institutions and replaced it with the direction that the youth be committed to the Department of Family Services (hereinafter "the Department"). Under the 1987 enactment, the Department, not the Youth Court, is charged with the responsibility of determining "the appropriate placement, supervision, and rehabilitation program for the youth after considering the recommendation of the youth placement committee." § 41-5-523(1)(b), MCA. Also remaining is the Youth Court's dispositional option in section 41-5-523(1)(j) of ordering "such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community."

Both the amended 1987 version of section 41-5-523, MCA, and the new section 41-5-527, MCA (listing the responsibilities of the youth placement committee), are silent as to the specific authority of the Youth Court and the Department's youth placement committee to recommend placement at Rivendell or any other private agency responsible for the care and rehabilitation of seriously mentally ill and mentally ill youth. These statutes are also silent as to the procedural due process requirements of Title 53, chapter 21, previously referred to in section 41-5-523, MCA (1985).

Although silent on the subjects of the due process rights of seriously mentally ill and mentally ill youth and the dispositional option of placing these youth in a private agency, the statutory revision cannot preclude the exercise of due process and does not preclude the option of placing youth in a private agency.

First, on the subject of due process, the courts have repeatedly recognized that civil commitment for any purpose constitutes a significant deprivation of liberty that requires due process protection. It is beyond dispute that a minor has a protectible liberty interest in being free from the restraints of commitment in a psychiatric hospital, and that the State's role in the commitment process necessitates invocation of federal and state due process protections. Secretary of Public Welfare v. Institutionalized Juveniles, 442 U.S. 640 (1979), Parham v. J.R., 442 U.S. 584 (1979); Addington v. Texas, 441 U.S. 418 (1978); Specht v. Patterson, 386 U.S. 605 (1967).

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The United States Supreme Court's recognition of a youth's due process rights prompted it to outline the following minimal procedural protections:

We conclude that the risk of error inherent in the parental care is sufficiently great that some kind of inquiry should be made by a "neutral factfinder" to determine whether the statutory requirements for admission are satisfied. See Goldberg v. Kelly, 397 U.S. 254, 271 (1970); Morrissey v. Brewer, 408 U.S. 471, 489 (1972). That inquiry must carefully probe the child's background using all available sources, including, but not limited to, parents, schools, and other social agencies. Of course, the review must also include an interview with the child. It is necessary that the decisionmaker have the authority to refuse to admit any child who does not satisfy the medical standards for admission. Finally, it is necessary that the child's continuing need for commitment be reviewed periodically by a similarly independent procedure.

Parham v. J.R., 442 U.S. at 646-47. The procedural protections discussed in Parham are minimum standards, and are not found in section 41-5-523, MCA (1987). Montana's procedural protections require more than Parham, and are found in Title 53 of the Montana Code Annotated, in the statutes of chapter 21 pertaining to the treatment of all mentally ill individuals. In its statement of purpose, § 53-21-101, MCA, the Legislature set out the following:

The purpose of this part is to:

(1) secure for each person who may be seriously mentally ill or suffering from a mental disorder such care and treatment as will be suited to the needs of the person and to insure that such care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

....

(4) assure that due process of law is accorded any person coming under the provisions of this part. [Emphasis supplied.]

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Further, in light of the constitutional guarantee in the Fourteenth Amendment of the United States Constitution and in article II, section 17 of the Montana Constitution that no person shall be deprived of life, liberty, or property without due process of law, it is clear that the involuntary commitment statutes of Title 53, chapter 21, MCA, apply to all persons, both youth and adult. (This assertion is supported by section 53-21-112, MCA, where it is provided that if a minor fails to join in the consent of his parents or guardian for voluntary commitment, then the application for admission shall be treated as a petition for involuntary commitment. Even more clear is the provision listing eleven specific rights "[i]n addition to any other rights which may be guaranteed by the constitution of the United States and of this state" had by "any person who is involuntarily detained or against whom a petition is filed." § 53-21-115, MCA.) Therefore, it is clear a youth may not be involuntarily placed in a mental health facility without being afforded due process.

As to the issue of whether the Youth Court or the Department of Family Services may place a mentally ill or seriously mentally ill youth in a private psychiatric facility for treatment, it is clear that while this option is not specifically addressed in sections 41-5-523 and 41-5-527, MCA, it is certainly not precluded by the statutory changes. This conclusion is supported by sections 41-5-523(3) and 53-21-506, MCA, which prohibit commitment of youth to the Montana State Hospital for purposes other than temporary or evaluation-oriented care, unless "other appropriate inpatient psychiatric treatment space is not available," or the youth's case is transferred to the district court under section 41-5-206, MCA. § 53-21-506(2)(c), MCA. The statute does not address all available psychiatric care options for youth, it merely defines the parameters for admission into the state mental hospital.

The statutory definition of a mental health facility supports the conclusion that both the district and youth courts may consider the option of placement in a private psychiatric facility. A mental health facility is defined as "a public hospital or a licensed private hospital which is equipped and staffed to provide" mental health treatment. § 53-21-102(6), MCA. The district court, upon making the determination that a person is mentally ill or seriously mentally ill, is given the choice of committing the person to a mental health facility or of making "some other appropriate order for treatment." § 53-21-127(2)(a), MCA. The Youth Court is also given this flexibility. Under sections 41-5-523(1)(c) and (j), MCA, the Youth Court

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may enter judgment for "such further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community." § 41-5-523(1)(j), MCA. Of course, when a mentally ill or seriously mentally ill youth is to be committed by the court to either a private or a public mental health treatment facility, the commitment proceedings must be in accordance with Title 53, chapter 21, MCA.

THEREFORE, IT IS MY OPINION:

Section 41-5-523, MCA, of the Montana Youth Court Act does not authorize the Youth Court or the Department of Family Services to commit mentally ill or seriously mentally ill youth to a mental health treatment facility without following the commitment procedures set out in sections 53-21-101 to 198, MCA. The statutes do not preclude commitment of youth to private mental health facilities.

Very truly yours,

MIKE GREELY
Attorney General