MINUTES

MONTANA HOUSE OF REPRESENTATIVES
54th LEGISLATURE - REGULAR SESSION

SUBCOMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN LOREN L. SOFT**, on January 30, 1995, at 7:30 a.m.

ROLL CALL

Members Present:
Rep. Ellen Bergman (R)
Rep. Bill Carey (D)
Rep. Loren L. Soft (R)

Members Excused: None

Members Absent: None

Staff Present: John MacMaster, Legislative Council
Patti Borneman, Subcommittee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:
Working session to review HB 60, HB 41, HB 84, HB 94
Judiciary Committee **CHAIRMAN BOB CLARK** called for this subcommittee to clarify language in the bills and to review proposed amendments.

HB 60

Tape 1 of 3, Side A

Chairman's Introduction: **CHAIRMAN LOREN L. SOFT** introduced **REP. BETTY LOU KASTEN** who is the sponsor of this bill. She said that because of an oversight the first set of amendments--the first part of the bill--need to be attached, because "if we don't, we really don't have a bill." She said all the involved agencies got together and agreed that the second sheet of amendments presented by Pat Melby "could and should be included." She said that Montana Advocacy Council (MAP) came up with the current law that allows involuntary commitment to a mental facility. She asked **Dan Anderson, Department of Family Services** to describe further the necessity of this bill and the changes that would occur should it be passed.

Dan Anderson said the current involuntary commitment statute applies to both children and adults. He said the problem is that Montana State Hospital does not treat children. Under current

commitment statute, it does not necessarily lead to placement. "It leaves it sort of up in the air what a judge can do, where a judge can order a person to what agency would have responsibility if the judge did do that." Their proposal is to "route the commitment of a child through the court act, and specifically identify DFS as the custodial agency and then through an agreement with the DFS, we've agreed that the Managing Resources of Montana (MRM) program would actually pay for the psychiatric or mental health treatment that those kids would get." He said that MRM is the program DFS has for seriously emotionally disturbed children.

CHAIRMAN SOFT asked if that description was sufficient.

REP. KASTEN added that she believes that the current law is not meeting the needs of children, "because the courts do not have a place to place them." She said there is no state facility at present time.

REP. ELLEN BERGMAN asked if there ever was a facility to serve children.

REP. KASTEN replied that there was; Rivendell and Shodair Hospital.

Dan Anderson said that ten years ago the state hospital served children, then they started Montana Treatment Center which was state operated, then was subsequently sold to Rivendell in 1987, and the state was "out of the business."

REP. KASTEN said the legislation at that time called for "free-standing psychiatric outpatient facilities" funded through Medicaid and state funds. It was removed from the budget because "of the budget crunch last time and because of the escalating costs; we didn't think we were getting the bang for the buck." MRM was created after this new statute and is being expanded.

Dan Anderson answered a question about MRM saying that it can occasionally be inpatient care. The governor's budget [requested that they] move residential funds from DFS into the MRM program, "so that both outpatient and residential be funded under one program." Residential programs in the state are the Yellowstone Treatment Center, Shodair, Rivendell of Butte, some out of state, but they're reducing those. She hopes the committee will approve both sets of amendments and pass the bill.

CHAIRMAN SOFT suggested they discuss the second amendments and asked if they come first in the bill.

REP. KASTEN said they actually "intertwine" with the first set of amendments. She explained how the amendments would fit into the bill.

John MacMaster, Legislative Council Attorney, said the second Melby amendment is an amendment to **REP. KASTEN'S** amendment (Amendment 3). He read from the current code which defines youth in need and the intentions of the current statute. Discussion ensued on this topic. **EXHIBIT 1**

Dan Anderson said that parents are normally able to commit the child to a facility, but in cases when the child is "out of the control of the parents" which fits the definition of a "youth in need of supervision," that's when the state intervenes and makes a placement for the child.

Mr. MacMaster said a child could be committed under Title 53, if they don't voluntarily consent. If the child doesn't consent, he can be committed anyway. He said these are cases when a parent can have a youth committed under those provisions if the parent is going to pay all the expenses. He proposed that this be part of the bill. (53-21 questioned as the citation for involuntary commitment.)

CHAIRMAN SOFT said it came up before that this was not in the bill.

Dan Anderson said that Pat Melby also addressed the cases where a parent can pay for treatment but still needs the assistance of the state. He said it doesn't make sense, in those situations, for custody to be turned over to DFS.

Mr. MacMaster suggested that there is another procedure for voluntary commitment and that the amendment would fit better in a certain place on the bill. He reads the statute which said that there is a provision to commit a child regardless of whether he consents.

REP. BILL CAREY asked **Mr. MacMaster** if they addressed the notion that mental illness is not a criminal offense and is this being considered as important for this bill.

Mr. MacMaster said that the youth would not be charged with a crime, but said delinquent youth commit crimes for which an adult would be charged.

REP. CAREY said any criminal charge against the youth would not be for mental illness, and **Mr. MacMaster** said that was right. He defined a youth beyond the control of their parents as being youth that would probably be committed despite their consent.

REP. CAREY wondered if due process was an issue. "If the state intervenes to put a youth into private treatment, using this section; are there due process questions?" **Mr. MacMaster** did not think so, but described a situation with adults when it could. He said that the trade-off with the Youth Court Act (?) was that youth will not have some constitutional rights that adults have.

CHAIRMAN SOFT said that this is an important issue and referred to Melby's amendment, and asked if the amendment covered it.

Mr. Anderson said that youth court is not considered a criminal court, "but what they're looking at are the youth in need of supervision who is beyond the control of their parents." He agreed with **REP. CAREY** regarding the child's behavior and that they should not be penalized for having a mental illness that may have led to a crime.

REP. BERGMAN asked about parental responsibility to pay for treatment.

Mr. Anderson said that DFS will only take those youth who need a certain level of custody and they expect parents to pay, but if they cannot they involve them as much as they can. He said the Melby amendment states that if no public money is involved, then DFS doesn't get involved at all.

REP. KASTEN said that she would work with **Mr. MacMaster** on placement of the final wording for the amendment.

Mr. MacMaster made suggestions for this wording and placement. He said that the new amendments could be ready for review at another meeting of this subcommittee.

REP. KASTEN left the meeting at this point and thanked the committee for discussing the changes needed.

HB 41

CHAIRMAN SOFT said that HB 41 would be discussed and they would review the amendments proposed by **REP. LIZ SMITH.**

Mr. Anderson said the amendments have to do with establishment of guardianship for an individual who is involuntarily committed to a hospital. He passed out suggested changes to the statute governing the state's action in cases of this kind. **EXHIBIT 2** He said judges could order medication.

Tape 1 of 3 - Side B

Mr. Anderson said that there is potential for a patient's rights to be abused (i.e., medication they refuse to take), but thinks there are ways to protect the patient without having to go to court. He discussed proposed changes to the statute. He described the role of the Board of Visitors which is a state agency set up to oversee mental health treatment in mental health facilities. They are suggesting that every time medication is ordered by a judge, they report that information to the Board of Visitors. They are also suggesting that the Board of Visitors report annually to the governor. **Exhibit 2** He said that people "who are found a danger to self or others due to mental illness [who are

[who are committed to the state hospital, but then are allowed] to avoid treatment without having to return to court." He said he believes these amendments provide better safeguards to the patient because "there is genuine oversight for the process rather than relying on a guardian who may or may not be that involved with the treatment of the patient."

REP. LIZ SMITH said she checked with Judge Mizner who was not supportive of "the guardianship bill as stated in 41," but he has not seen the amendments. She would like to get the amendments to Judge Mizner for his feedback.

Kelly Moorse, Board of Visitors, said that one of their concerns with regard to the court hearing is that medical doctors do not present testimony which results in court orders that are given without consultation with a doctor.

Ms. Moorse introduced **Al Smith, attorney** for the **Board of Visitors**. He discussed rights given by the constitution and said that the amendments proposed for this bill have to do with involuntarily medicating people. He said they don't see any need for this bill. He said the figure of 130 days to establish guardianships is wrong. He cited cases that Dr. Maire (?) has had where "there was not a temporary guardianship issue, have taken an average of 36 days from the time that the petition is filed and those of the hearing is set out as a responsibility of the state hospital to do that." He said over half the guardianships in state hospitals are temporary; they take one day to get. He explained the process to establish this temporary guardianship. He said they have never been turned down in two and a half years. He said the capability to do it is already there. He said they are concerned about notification to the person prior to the hearing, and if they are given the right to determine the course of their treatment. He said they are concerned about respecting the right of the person to say what would be put into their body and how. He said that it wouldn't be right to be in a position where the state is telling doctors how to do their job.

REP. LIZ SMITH wanted to talk to Judge Mizner about this issue.

Al Smith said he talked to Judge Mizner and said that he believes the judge would support the current amendments.

Mr. Anderson said that it was correct that, in an emergency situation they can get a guardianship in a day, but he said the point is that "why should we have to get to that emergency situation? Why should people have to be untreated until it reaches that point?" He said on January 13 there were about 200 patients at the state hospital. Of the 108 who had guardianships, he had guardianship of 30 of them. He said "It doesn't make sense to have the administrator of the Mental Health Division be the guardians of the patients, when it's my staff who is proposing to medicate them." He suggested instead a process where the medical practitioner would consult with his colleagues, review the

proposed treatment, have the Board of Visitors review it, resulting in better oversight than a nonphysician who is the administrator of the agency. He said they should consider what the safeguards for the patient are.

CHAIRMAN SOFT asked **Mr. Anderson** if he meant that decisions would be made by the treatment team that is directly involved with the patient.

Al Smith replied that was true and described guardianships formed from members of the community and other patients. He said that it was important to consult with the patient to find out why they are refusing the medications. He cited Massachusetts cases where patients refusing medications do that to force meetings with the doctors to discuss their treatment. **Mr. Anderson** said that was true.

REP. SMITH asked if it was true that the treatment team is not just made up of doctors but is "interdisciplinary" and if identified as such in the bill, would it be more acceptable?

Mr. Smith said that medications are a medical decision, not a treatment team decision.

REP. SMITH said that the treatment team can make recommendations about whether or not a person should receive a medication, and could provide oversight from a "wholistic view."

Ms. Moorse said that "it is still a medical decision ... the prescribing of the medication is still the responsibility of the doctor. The treatment team may have input, but the final decision rests with the MD."

REP. CAREY said that the treatment team and peer review team are two different "entities" and asked **REP. SMITH** if she was asking about advocacy and safeguards for the patient.

REP. SMITH said she thought so, but understood that interdisciplinary teams are medically directed, but should work in concert with the treatment team, following a treatment plan.

CHAIRMAN SOFT asked how much "outside medical oversight review do we have at the hospital?" He gave examples of situations he is familiar with.

Mr. Anderson said that two of the units at the hospital are licensed as such--a nursing home and infirmary--but for physical oversight, he said they do not have any.

RICK DAY, Director of the Department of Corrections and Human Services described the ethics committee which involves a minister and attorney from the community. He said the peer review could involve more than another doctor on their staff.

Mr. Smith said that they support the idea of a guardianship and described how this is currently arranged and how time-consuming it is with court dates, etc.

CHAIRMAN SOFT said that in the future they may need to look at outside accreditation and standards to guide them.

REP. SMITH stated that the bill's language should be broadened to include the process of a "checkmate" review.

CHAIRMAN SOFT agreed with **Al Smith** that the bill should not be so cumbersome that it would be futile.

REP. SMITH commented that she envisioned the interdisciplinary team as the medical staff, nursing staff, social worker, clergy, and volunteer (a patient family member) and described how she thinks they would "all come together and document and sign off an approved treatment plan which then goes before the person who can either accept or reject it." She also talked about the guardian's involvement.

Mr. Anderson said he thought it acceptable to broaden the concept of peer review.

Mr. MacMaster asked if they would "broaden" it in the amendment by saying "at least one peer must not be a state employee."

Mr. Anderson asked if that would mean that there would have to be a doctor that is not a state employee.

Mr. MacMaster discussed with the panel the details of the amendment to be written to define the peer review team.

Tape 2 of 3, Side A

REP. SMITH discussed evaluation that is documented by a team of professionals, aside from peer review, she suggested they consider "interdisciplinary team." She discussed the inclusion of the concept of guardianship.

REP. ELLEN BERGMAN asked a question about the objective of the amendment.

CHAIRMAN SOFT explained that they are exploring the purpose of the treatment team and peer review and the consideration of an outside advocate or guardian for the patient to provide a "checks and balances" system.

REP. BERGMAN said that if they were committed to begin with, why a guardian wasn't set up to begin with.

Mr. Smith answered that there is a "legal presumption that everybody's competent."

REP. BERGMAN disagreed and said that didn't exist when they're committed to the state hospital.

Mr. Smith said that such commitment to the hospital does not strip them of these rights and many people who are committed are competent. He said the "basis for commitment is the person has a disorder and because of that they're dangerous to themselves or others." He said their mental illness does not mean they are incompetent. He said they are talking about the process of guardianship and when and where that should occur and doing away with delays in courts and burdening local communities.

Mr. Anderson concurred with **Mr. Smith's** definition of someone who is committed and said that while they may have the capacity to make choices, "apparently the choice they have made, which is to not voluntarily go in for treatment, is one which we as a community have decided we have to overrule and make that involuntary placement."

REP. SMITH asked about guardian's involvement in treatment team. She suggested that JCAH requirements and standards should be researched.

CHAIRMAN SOFT asked DCHS staff about role of guardian in relation to the treatment team. He asked if it would be workable for the treatment team to provide patient's input at the time of involuntary commitment. He said he thought the patient's involvement should be allowed anyway, whether they're talking about medication or not, but wondered if the guardian was not available, could a member of the staff suffice.

Ms. Moorse said that among those who spoke against guardianship at the time of commitment were the Montana Association of Counties, because it could mean additional costs to the county. She said that competency evaluation was an issue also considered.

Mr. Anderson described the ideal review process: "always include discussion with the patient and documentation of the patient's views on the matter."

Mr. Day said that the proposed amendments recognize problems at court proceedings when state hospitals ignore decisions made at proceedings. He said that due process exists in the current system and said that this legislation is trying to "provide those assurances but also provide recognition of the original court process as well."

CHAIRMAN SOFT asked **Mr. Anderson** if the amendments should be expanded to ensure the safeguards for the patient.

Mr. Day said that they would look at it again and clarify it.

CHAIRMAN SOFT agreed that the amendments should be reworked and returned to him. He said they would now discuss HB 93.

HB 93

CHAIRMAN SOFT said this bill concerns "the alternative sentence for sex offenders," providing a sex offender treatment program through the department of corrections and human services, amending sections MCA. He said the "primary concerns were the mixing of low intelligence sex offenders with seriously mentally ill patients," and the definition of limited intelligence, and a concern about "who or what determines successful completion of the sex offender treatment program."

Mr. Anderson said in relation to the mixing of these populations at the hospital that he depends on the clinical staff to develop a program and that while not ideal, since the two populations would still be mixed, they would have a "specialized sex offender treatment program."

CHAIRMAN SOFT asked about the suggested amendments and the panel got out their copies to review.

Mr. Anderson described the amendments and proposed changes in the language that would further define "seriously mentally ill" and said people were bothered by the vagueness of "limited intelligence." He said it "better nails down who the population is who we're talking about." Continued to "walk through" the amendments. He discussed further defining the rulemaking authority of the department of family services in this amendment.

CHAIRMAN SOFT said he had amendments suggested by **REP. SMITH** which pertain to placement in the state prison system. Asked if she wished to comment.

REP. SMITH replied that the current bill states "sentenced to the department of corrections, but that had a lot of loose ends on it."

CHAIRMAN SOFT reads the amendment: "And if this appropriate placement is determined to be in the state prison, they should then be committed under the state prison sentence law as provided by Title 45."

Mr. Day commented that the segment of the statute has nothing to do with the sexual offender section and said the last legislature gave the court the option of sentencing to the department, then the department places in the appropriate correctional institution.

Mr. MacMaster explained the law and read from MCA.

REP. SMITH said that her concern is that sex offenders who are sentenced to the department of corrections may not get the ongoing treatment they need because it's up to the judges to place them and "it's too relaxed for what people felt was

available for sex offenders in alternate sites." She asked what the other alternative would be.

Mr. Day said that **REP. MATT DENNY** is proposing legislation dealing with lifetime supervision of sex offenders and relates to another concern of his that this population has to meet a specific criteria. He said over 400 people have been sentenced to the department under this area, and said that judges have found it useful and about 260 of the 400 have been sent to Montana State Prison. He said the system is functioning adequately at present.

REP. SMITH said the concern is whether the security is there for the public, in terms of how sex offenders are sentenced.

Mr. Day added that there have not been "a whole bunch" of sex offenders sentenced to the DCHS.

REP. SMITH said that she is wondering if judges can be trusted not to do that.

Mr. Day said that the system is intended to give the judge the discretion to make a sentencing decision at the time, and "we feel pretty strongly that that should be left to the judge's discretion."

CHAIRMAN SOFT referred to an additional amendment pertaining to the active participation of the sex offender in an educational program.

REP. SMITH asked if this related to a parole request.

CHAIRMAN SOFT repeated the proposed amendment and added that there is a difference between actively participating in educational programs and just passively listening and being present.

Tape 2 of 3, Side B

Mr. MacMaster discussed the proposed amendment and rules pertaining to changing the law and what they are allowed to do.

Mr. Day said they cannot now enforce active participation of the sex offender.

REP. SMITH asked how the bill addresses the successful completion of a program by a sex offender.

Mr. Day explained the bill's focus on a specific sexual offender program for the seriously mentally ill or "those who are borderline DD and what we're talking about ... is really to deal with the broader sexual offender issue." He read from the bill and defined the meaning as allowing a judge to order participation in treatment, which is standard.

Mr. MacMaster further defined the law as saying that the prisoner must enroll in the prison program and said the bill is designed to do is to provide for treatment programs outside the prison.

Mr. Day agreed and said "such as at the state hospital." He said the "bill is designed to address a narrow clientele."

REP. CAREY said they wouldn't successfully complete the program unless they actively participated. There was agreement that this was true.

CHAIRMAN SOFT asked **Ms. Moorse** to join them to "walk through" the proposed amendments. He summarized the issues of this discussion.

Mr. Smith said their main concern is that people suffering from a mental disorder could be committed to the state hospital along with people who are sentenced to prison for a crime. He said there "should be some clear demarkation ... that there's a hospital for the mentally ill and ... a penal facility that's there for ... mental health treatment for those who are coming through the state prison system, as opposed to the hospital."

REP. SOFT commented on the need to address the physical setting at the state hospital and the separation of facilities for these two populations of people.

Mr. Anderson said it would be nice to have separate facilities, but they don't, and said that they have an area "in our secure treatment program which is under-utilized" with nursing staff and said that they are trying to provide some specialized treatment for this particular group of people without asking for new staff.

Mr. Smith said that the bill doesn't address the separation of facilities.

REP. CAREY told the chairman that it would help the subcommittee if language could be drafted by the Board of Visitors to reflect their concerns.

CHAIRMAN SOFT described the facility he's familiar with (Pine Hills?) where mixing occurs, but where separation and close monitoring is also maintained. He suggested the Board of Visitors work on an amendment to build in the needed safeguards.

Mr. Day said that he thinks the statute cannot describe the law in such detail and to emphasize instead the "common shared expertise and then deal on the practical matter ... with how we make sure the populations are treated."

CHAIRMAN SOFT said they would stay with the current amendments and that concluded discussion on HB 93.

HB 84

CHAIRMAN SOFT said they would now discuss HB 84 and summarized the concerns and issues of this bill: the language pertaining to the kind of facility and the power of the director to move patients from one facility to another. The full committee suggested they remove the word "institution" and replace it with "appropriate mental health facility."

REP. CAREY asked about the authority of a director to make a decision regarding movement of a patient. He asked what the intent would be.

REP. SMITH said that the intent was for alternative treatment other than institutionalization, so the word "facility" would connote other kinds of treatment rather than "institution."

Discussion about this aspect of the bill ensued.

Beda Lovitt, DCHS, said that the present statute is unclear about patient transfer by a director.

REP. SMITH understood the word "facility" to mean the Montana State Prison or the Warm Springs Psychiatric Hospital or Great Falls Regional Prison, etc.

CHAIRMAN SOFT suggested "correctional or mental health institution/facility."

Mr. MacMaster said that the use of facility or institution makes no difference to him.

Discussion about this wording continued among the panel.

CHAIRMAN SOFT spoke to the "20th century" nature of the word "facility" rather than "mental health institution." It was agreed to change the wording to "in an appropriate correctional or mental health facility." He then discussed wording on line 21 pertaining to recommendation of the treatment team and wording that should be changed. He said that the concern is that the director alone should not make a decision about the patient, but that the treatment team should be involved. He asked that they "insert, following the 1) upon the recommendation of the treatment team ..."

Mr. MacMaster said that the law does not "talk about a treatment team." He said they may be discussing something that does not exist in Title 46.

REP. SMITH asked if there was a definition in the codes about what a treatment team is.

Mr. MacMaster said there wasn't one in Title 46. After some discussion, he suggested an amendment.

CHAIRMAN SOFT said that the amendment should pertain to the treatment team's involvement as opposed to the department, in terms of recommendations for treatment.

Further discussion about the amendment ensued.

Ms. Lovitt reminded the panel that the person they are talking about is sentenced, albeit mentally ill.

Mr. MacMaster said the amendment would read as follows: "On recommendation of the professionals providing treatment to the defendant, the director can transfer..."

REP. CAREY asked if they would provide treatment and custody.

REP. SOFT said just treatment.

Mr. MacMaster said that existing law says that the department's director cannot transfer unless the treatment team recommends it. He cited line 18 and read "the judge shall sentence the defendant to be committed to the custody of the director ... to be placed in an appropriate correctional or mental health facility." He said that if they're going to address professional recommendation for transfer, it's appropriate to consider professional recommendation on where he's placed in the first place upon sentencing.

Mr. Day suggested "the director after consulting with the [treatment team] may subsequently transfer."

Tape 3 of 3, Side A (only about five minutes into this tape)

REP. SMITH said that a director, under current law, cannot override a parole board's decision and asked if that was right.

CHAIRMAN SOFT said they still need to review HB 117, HB 150 and HB 36 before the full committee does executive action on them. He summarized the questions they had about HB 150, wondering if it was too broad, and should be more specific. Other transport issues and line 22, subsection 2, custody issues on HB 117.

Discussion about a future meeting time to finish up this business.

ADJOURNMENT

Adjournment: 9:30 a.m.

REP. LOREN SOFT, Chairman

PATTI BORNEMAN, Secretary

LS/pb

HOUSE OF REPRESENTATIVES

Judiciary Subcommittee

ROLL CALL DATE 1/30/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Loren Soft, Chairman	✓		
Rep. Ellen Bergman	✓		
Rep. Bill Carey	✓		

for subcomm not edited

EXHIBIT 1
DATE 1/30/95
HB 60

Amendments to House Bill No. 60
First Reading Copy

Requested by Rep. Kasten
For the Committee on the Judiciary

Prepared by John MacMaster
January 4, 1995

1. Title, line 5.
Following: "ENTITLED: "AN ACT"
Insert: "PROVIDING THAT A YOUTH COURT COMMITMENT OF A SERIOUSLY MENTALLY ILL YOUTH IS TO THE DEPARTMENT OF FAMILY SERVICES RATHER THAN TO A MENTAL HEALTH FACILITY; PROVIDING THAT IF A MINOR FAILS TO AGREE TO VOLUNTARY COMMITMENT TO A MENTAL HEALTH FACILITY AND AT THE REQUEST OF THE PARENTS OR GUARDIAN THE COMMITTMENT PROCEEDING IS TURNED INTO AN INVOLUNTARY ONE, STATE FUNDS MAY NOT BE USED TO TREAT THE YOUTH AND THE PARENTS OR GUARDIAN MUST PAY THE FULL COST OF TREATMENT;"

2. Title, line 7.
Following: line 6
Insert: "41-5-523, 53-21-112,"
Following: "53-21-121"
Insert: ","

3. Page 1.
Following: line 10
Insert: "**Section 1.** Section 41-5-523, MCA, is amended to read:
"**41-5-523. Disposition -- commitment to department -- placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth 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 if the court determines that the youth is in need of placement in other than the youth's own home, provided that:
(i) the court shall determine whether continuation in the home would be contrary to the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal of the youth from the youth's home. The court shall include a determination in the order committing the youth to the department.
(ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge finds that the placement is necessary for the protection of the public. The court may order the department to notify the court within 5 working days before the proposed release of a youth from a youth correctional facility. Once a

youth is committed to the department for placement in a state youth correctional facility, the department is responsible for determining an appropriate date of release into an appropriate placement.

(iii) in the case of a youth adjudicated to be seriously mentally ill, as defined in 53-21-102, based on the testimony of a professional person, as defined in 53-21-102, the youth is entitled to all rights provided for adults under 53-21-114 through 53-21-119. The youth must receive treatment appropriate to the youth's mental health needs and consistent with the disposition alternatives in 53-21-127. The youth may not be committed to a state youth correctional facility. A youth adjudicated to be seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives in 53-21-127.

(c) order restitution by the youth or the youth's parents;

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

(e) require the performance of community service;

(f) require the youth, the youth's parents or guardians, or the persons having legal custody of the youth to receive counseling services;

(g) require the medical and psychological evaluation of the youth, the youth's parents or guardians, or the persons having legal custody of the youth;

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

(i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth and the community and that does not obligate funding from the department without the department's approval, except that a youth may not be placed by a youth court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential treatment facility.

~~(j) commit the youth to a mental health facility if, based upon the testimony of a professional person as defined in 53-21-102, the court finds 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. A youth adjudicated mentally ill or seriously mentally ill as defined in 53-21-102 may not be committed to a state youth correctional facility. A youth adjudicated to be mentally ill or seriously mentally ill after placement by the department in a state youth correctional facility must be moved to a more appropriate placement in response to the youth's mental health needs and consistent with the disposition alternatives available in 53-21-127.~~

~~(k)~~ (j) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

(2) When a youth is committed to the department, the department shall determine the appropriate placement and

rehabilitation program for the youth after considering the recommendations made under 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

(a) A youth in need of supervision or adjudicated delinquent for commission of an act that would not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

(b) A youth may not be held in a state youth correctional facility 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 52-5-126.

(c) A youth may not be placed in or transferred to a penal institution or other facility used for the execution of sentence of adults convicted of crimes.

(3) A youth placed by the department in a state youth correctional facility or other facility or program operated by the department or who signs an aftercare agreement under 52-5-126 must be supervised by the department. A youth who is placed in any other placement by the department, the youth court, or the youth court's juvenile probation officer must be supervised by the probation officer of the youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to the department. Supervision by the youth probation officer includes but is not limited to:

(a) submitting information and documentation necessary for the person, committee, or team that is making the placement recommendation to determine an appropriate placement for the youth;

(b) securing approval for payment of special education costs from the youth's school district of residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

(c) submitting an application to a facility in which the youth may be placed; and

(d) case management of the youth.

(4) The youth court may order a youth to receive a medical or psychological evaluation at any time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of the evaluation, except as provided in subsection (5). A county may contract with the department or other public or private agencies to obtain evaluation services ordered by the court.

(5) The youth court shall determine the financial ability of the youth's parents to pay the cost of an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order the youth's parents to pay all or part of the cost of the evaluation.

(6) The youth court may not order placement or evaluation of a youth at a state youth correctional facility unless the youth is found to be a delinquent youth or is alleged to have

committed an offense that is transferable to criminal court under 41-5-206.

(7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth is transferred to the district court under 41-5-206.

(8) An 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.

(9) Whenever the court commits a youth to the department, it shall transmit with the dispositional judgment copies of medical reports, social history material, education records, and any other clinical, predisposition, or other reports and information pertinent to the care and treatment of the youth.

(10) If a youth is committed to the department, the court shall examine the financial ability of the youth's parents or guardians to pay a contribution covering all or part of the costs for the care, commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health care.

(11) If the court determines that the youth's parents or guardians are financially able to pay a contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay an amount based on the uniform child support guidelines adopted by the department of social and rehabilitation services pursuant to 40-5-209.

(12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each modification of an existing order are enforceable by immediate or delinquency income withholding, or both, under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is nevertheless subject to withholding for the payment of the contribution without need for an amendment of the support order or for any further action by the court.

(b) A court-ordered exception from contributions under this section must be in writing and be included in the order. An exception from the immediate income withholding requirement may be granted if the court finds there is:

(i) good cause not to require immediate income withholding; or

(ii) an alternative arrangement between the department and the person who is ordered to pay contributions.

(c) A finding of good cause not to require immediate income withholding must, at a minimum, be based upon:

(i) a written determination and explanation by the court of the reasons why the implementation of immediate income withholding is not in the best interests of the child; and

(ii) proof of timely payment of previously ordered support in cases involving modification of contributions ordered under this section.

(d) An alternative arrangement must:

(i) provide sufficient security to ensure compliance with the arrangement;

(ii) be in writing and be signed by a representative of the department and the person required to make contributions; and

(iii) if approved by the court, be entered into the record

of the proceeding.

(13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay, the court may modify its order for the payment of contributions required under subsection (11).

(14) (a) If the court orders the payment of contributions under this section, the department shall apply to the department of social and rehabilitation services for support enforcement services pursuant to Title IV-D of the Social Security Act.

(b) The department of social and rehabilitation services may collect and enforce a contribution order under this section by any means available under law, including the remedies provided for in Title 40, chapter 5, parts 2 and 4."

Section 2. Section 53-21-112, MCA, is amended to read:

"**53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a minor who is 16 years of age or older may consent to receive mental health services to be rendered by:

(a) a facility that is not a state institution; or

(b) a person licensed to practice medicine or psychology in this state.

(2) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of a minor to a mental health facility but not to the state hospital.

(3) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment shall be for the same period of time as that for an adult. A minor voluntarily admitted shall have the right to be released within 5 days of ~~his~~ the minor's request as provided in 53-21-111(3). The minor ~~himself~~ personally may make such request. Unless there has been a periodic review and a voluntary readmission consented to by the minor ~~patient~~ and ~~his~~ the minor's counsel, voluntary admission terminates at the expiration of 1 year. Counsel shall be appointed for the minor at the minor's request or at any time ~~he~~ the minor is faced with potential legal proceedings.

(4) If, in any application for voluntary admission for any period of time to a mental health facility, a minor fails to join in the consent of ~~his~~ the minor's parents or guardian to the voluntary admission, then, at the request of the parents or guardian, the application for admission shall be treated as a petition for involuntary commitment. However, public funds may not be expended for treatment of the minor in a private facility and if the minor is treated in a public facility the parents or guardian must reimburse the public facility for the full cost of treatment, including prorated fixed capital and similar costs. Notice of the substance of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous location on any form or application used for the voluntary admission of a minor to a mental health facility. The notice shall be explained to the minor.""

Renumber: subsequent sections

Judiciary Subcommittee
Exhibit 2
1/30/95 HB 41

mitted to a mental health facility affected by this part may not be commenc unless it is approved by the mental disabilities board of visitors.

(3) The board shall at least annually inspect every mental health facili which is providing treatment and evaluation to any person pursuant to thi part. The board shall inspect the physical plant, including residential, recrea tional, dining, and sanitary facilities. It shall visit all wards and treatmen areas. The board shall inquire concerning all treatment programs bein implemented by the facility.

(4) The board shall annually insure that a treatment plan exists and i being implemented for each patient admitted or committed to a mental healt facility under this part. The board shall inquire concerning all use o restraints, isolation, or other extraordinary measures.

(5) The board may assist any patient at a mental health facility i resolving any grievance the patient may have concerning the patient's com mitment or course of treatment in the facility.

(6) The board shall employ and be responsible for full-time legal counse at the state hospital, whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed counsel periodically interview every patient and examine the patient's files and records. The board may employ additional legal counsel for representation of patients in a similar manner at any other mental health facility having inpatient capability.

(7) If the board believes that any facility is failing to comply with the provisions of this part in regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the professional person in charge of the facility and the director of the department, and if appropriate, after waiting a reasonable time for a response from the professional person, the board may notify the next of kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient involved, and the district court which has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the mental health facilities and treatment programs which it has inspected. The board shall also report annually to the governor on involuntarily administered medications in mental health facilities and the effectiveness of peer review procedures required in 53-21-145 in protecting patients from unnecessary o excessive medication.

History: En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 41, Ch. 112, L amd. Sec. 37, Ch. 349, L. 1993.

Compiler's Comments

1993 Amendment: Chapter 349 in (8), after "governor", deleted "and shall, as provided in 5-11-210, report to the legislature"; and made minor changes in style.

Cross-References

Procedural rights, 53-20-112.
Denial of legal rights, 53-20-141.
Protection and advocacy system — nation and authority, 53-21-169.

53-21-105. Certification of professional persons required. N son may act in a professional capacity —

the respondent. The court must make a separate finding, setting forth the reason therefor if the order includes a requirement of inpatient treatment or involuntary medication. The court may not order inpatient treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered treatment unless he is financially able.

(4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3), the court shall make findings of fact that treatment appropriate to the needs of the respondent is available. The court shall also indicate on the order the name of the facility that is to be responsible for the management and supervision of the respondent's treatment. No person may use physical force to administer medication. A court may use any legal means to enforce an order to take medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court. *(Terminates July 1, 1997—sec. 1, Ch. 541, L. 1989.)*

53-21-127. *(Effective July 1, 1997)* **Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not seriously mentally ill within the meaning of this part, he shall be discharged and the petition dismissed.

(2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

(i) commit the respondent to a facility for a period of not more than 3 months;

(ii) order the respondent to be placed in the care and custody of his relative or guardian or some other appropriate place other than an institution;

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

(b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a period of more than 3 months.

(c) In determining which of the above alternatives to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment. The court shall consider and shall describe in its order what alternatives for treatment of the respondent are available, what alternatives were investigated, and why the investigated alternatives were not deemed suitable. The court shall enter into the record a detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

(d) The court may authorize the facility to administer appropriate treatment involuntarily if the court finds that involuntary treatment is necessary to protect the respondent and the public and to permit effective treatment.

History: En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 486, L. 1975; amd. Secs. 5, 6, Ch. 548, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979; amd. Sec. 10, Ch. 376, L. 1987.

Cross-References

Mileage and expenses of Sheriff for delivery of mentally ill persons, 7-32-2144.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives shall have reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which he has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility shall have access to any available individual or service that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting his rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation.

History: En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 3, Ch. 579, L. 1991.

Cross-References

Freedom of religion, Art. II, sec. 5, Mont. Const.

Right of privacy, Art. II, sec. 10, Mont. Const.

Adult rights, Art. II, sec. 14, Mont. Const.

53-21-143. Right not to be fingerprinted. No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

History: En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.

53-21-144. Rights concerning photographs. (1) A person admitted to a mental health facility may be photographed upon admission for identification and the administrative purposes of the facility. Such photographs shall be confidential and shall not be released by the facility except pursuant to court order.

(2) No other nonmedical photographs shall be taken or used without consent of the patient or, if applicable, the patient's legal guardian.

History: En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 4, Ch. 579, L. 1991.

53-21-145. Right to be free from unnecessary or excessive medication. (1) Patients have a right to be free from unnecessary or excessive medication. No medication shall be administered unless at the written order of a physician. The attending physician shall be responsible for all medication given or administered to a patient. The use of medication shall not exceed standards of use that are advocated by the United States food and drug

administration. Notation of each individual's medication shall be kept in his medical records. The department of health and environmental sciences shall adopt rules governing attending physician review of the drug regimen of each patient under his care in a mental health facility, except that the drug regimen of inpatients in hospitals shall be reviewed no less than weekly. Except in the case of outpatients, all prescriptions shall be written with a termination date, which shall not exceed 30 days. Medication shall not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

(2) Medication which is administered involuntarily under a court order must be approved by the chief medical officer of the mental health facility and must be subject to a peer review procedure. All use of medication on an involuntary basis must be reported to the mental disabilities board of visitors.

History: En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319; amd. Sec. 1, Ch. 429, L. 1987.

53-21-146. Right to be free from physical restraint and isolation. Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.

History: En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320; amd. Sec. 5, Ch. 579, L. 1991.

53-21-147. Right not to be subjected to experimental research. (1) Patients have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give consent, and of the patient's guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project must be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, the patient's next of kin, if known, the patient's legal guardian, if any, the attorney who most recently represented the patient, and the friend of respondent appointed by the court.

(2) The proposed research must have been reviewed and approved by the mental disabilities board of visitors before consent may be sought. Prior to approval, the board shall determine that the research complies with the

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

Judiciary Subcommittee DATE 1/30/95

BILL NO. HB 60, 41, HB 84, 94 SPONSOR(S)

PLEASE PRINT PLEASE PRINT PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Al Smith, P.O. Box 177 Warm Springs 59756	Board of Visitors		
Kelly Moorse Capitol station Helena	Board of Visitors		
David Hemion	Mental Health Assoc.		
KATHY STANDARD	MERIWETHER LEWIS INSTITUTE		
Andrée Larose	Montana Advocacy Prog.		
Marty Onishuk	Mon AMI		
PAT POPE	MERIWETHER LEWIS INSTITUTE		
Sharon Bakerson	MAC=M		
Wendy Reeser-Lentz	M.A.C.eM		
Connie Griffin	MACeM		

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993
wp:vissbcom.man
CS-14