

House Bill 795

In The House

February 17, 1981	Introduced and referred to Committee on Judiciary.
February 23, 1981	Committee recommend bill do pass as amended.
February 24, 1981	Bill printed and placed on members' desks.
February 25, 1981	Motion pass consideration until 47th legislative day.

1 HOUSE BILL NO. 795  
2 INTRODUCED BY Cooper

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE LAW  
5 PERTAINING TO THE INVOLUNTARY COMMITMENT OF ALCOHOLICS;  
6 ALLOWING THE CERTIFYING PHYSICIAN'S TESTIMONY TO BE  
7 SUBMITTED BY AFFIDAVIT AND ALLOWING THE TAKING OF HIS  
8 DEPOSITION; AND AMENDING SECTION 53-24-302, MCA."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 53-24-302, MCA, is amended to read:

12 "53-24-302. Involuntary commitment of alcoholics. (1)

13 A person may be committed to the custody of the department  
14 by the district court upon the petition of his spouse or  
15 guardian, a relative, the certifying physician, or the chief  
16 of any approved public treatment facility. The petition  
17 shall allege that the person is an alcoholic who habitually  
18 lacks self-control as to the use of alcoholic beverages and  
19 that he has threatened, attempted, or inflicted physical  
20 harm on another and that unless committed is likely to  
21 inflict physical harm on another or is incapacitated by  
22 alcohol. A refusal to undergo treatment does not constitute  
23 evidence of lack of judgment as to the need for treatment.  
24 The petition shall be accompanied by a certificate of a  
25 licensed physician who has examined the person within 2 days

1 before submission of the petition unless the person whose  
2 commitment is sought has refused to submit to a medical  
3 examination, in which case the fact of refusal shall be  
4 alleged in the petition. The certificate shall set forth the  
5 physician's findings in support of the allegations of the  
6 petition. A physician employed by the admitting facility or  
7 the department is not eligible to be the certifying  
8 physician.

9 (2) Upon filing the petition, the court shall fix a  
10 date for a hearing no later than 10 days after the date the  
11 petition was filed. A copy of the petition and of the notice  
12 of the hearing, including the date fixed by the court, shall  
13 be served on the petitioner, the person whose commitment is  
14 sought, his next of kin other than the petitioner, a parent  
15 or his legal guardian if he is a minor, the administrator in  
16 charge of the approved public treatment facility to which he  
17 has been committed for emergency care, and any other person  
18 the court believes advisable. A copy of the petition and  
19 certificate shall be delivered to each person notified.

20 (3) At the hearing the court shall hear all relevant  
21 ~~testimony, including, if possible, the testimony of at least~~  
22 ~~one licensed physician who has examined the person whose~~  
23 ~~commitment is sought. The testimony of the certifying~~  
24 ~~physician may be presented by a signed affidavit. The person~~  
25 ~~whose commitment is sought may depose the certifying~~

1 ~~physician and the person shall have a right to~~ ~~may~~ have a  
 2 licensed physician of his own choosing examine him and  
 3 testify on his behalf. If he has no funds with which to pay  
 4 such physician, the reasonable costs of one such examination  
 5 and testimony shall be paid by the county. The person shall  
 6 be present unless the court believes that his presence is  
 7 likely to be injurious to him. He shall be advised of his  
 8 right to counsel, and if he is unable to hire his own  
 9 counsel, the court shall appoint an attorney to represent  
 10 him at the expense of the county. The court shall examine  
 11 the person in open court or, if advisable, shall examine the  
 12 person in chambers. If he refuses an examination by a  
 13 licensed physician and there is sufficient evidence to  
 14 believe that the allegations of the petition are true or if  
 15 the court believes that more medical evidence is necessary,  
 16 the court may make a temporary order committing him to the  
 17 department for a period of not more than 5 days for purposes  
 18 of a diagnostic examination.

19 (4) If after hearing all relevant evidence, including  
 20 the results of any diagnostic examination by the department,  
 21 the court finds that grounds for involuntary commitment have  
 22 been established by clear and convincing evidence, it shall  
 23 make an order of commitment to the department. It may not  
 24 order commitment of a person unless it determines that the  
 25 department is able to provide adequate and appropriate

1 treatment for him and the treatment is likely to be  
 2 beneficial.

3 (5) A person committed under this section shall remain  
 4 in the custody of the department for treatment for a period  
 5 of 30 days unless sooner discharged. At the end of the  
 6 30-day period, he shall automatically be discharged unless  
 7 before expiration of the period the department obtains a  
 8 court order from the district court of the committing  
 9 district for his recommitment upon the grounds set forth in  
 10 subsection (1) for a further period of 90 days unless sooner  
 11 discharged. If a person has been committed because he is an  
 12 alcoholic likely to inflict physical harm on another, the  
 13 department shall apply for recommitment if after examination  
 14 it is determined that the likelihood still exists.

15 (6) A person recommitted under subsection (5) who has  
 16 not been discharged by the department before the end of the  
 17 90-day period shall be discharged at the expiration of that  
 18 period unless before expiration of the period the department  
 19 obtains a court order from the district court of the  
 20 committing district on the grounds set forth in subsection  
 21 (1) for recommitment for a further period not to exceed 90  
 22 days. If a person has been committed because he is an  
 23 alcoholic likely to inflict physical harm on another, the  
 24 department shall apply for recommitment if after examination  
 25 it is determined that the likelihood still exists. Only two

1 recommitment orders under subsections (5) and (6) are  
2 permitted.

3 (7) Upon the filing of a petition for recommitment  
4 under subsection (5) or (6), the court shall fix a date for  
5 hearing no later than 10 days after the date the petition  
6 was filed. A copy of the petition and of the notice of  
7 hearing, including the date fixed by the court, shall be  
8 served on the petitioner, the person whose commitment is  
9 sought, his next of kin other than the petitioner, the  
10 original petitioner under subsection (1) if different from  
11 the petitioner for recommitment, one of his parents or his  
12 legal guardian if he is a minor, and any other person the  
13 court believes advisable. At the hearing the court shall  
14 proceed as provided in subsection (3).

15 (8) A person committed to the custody of the  
16 department for treatment shall be discharged at any time  
17 before the end of the period for which he has been committed  
18 if either of the following conditions is met:

19 (a) in case of an alcoholic committed on the grounds  
20 of likelihood of infliction of physical harm upon another,  
21 that he is no longer in need of treatment or the likelihood  
22 no longer exists; or

23 (b) in case of an alcoholic committed on the grounds  
24 of incapacity and the need of treatment, that the incapacity  
25 no longer exists, further treatment will not be likely to

1 bring about significant improvement in the person's  
2 condition, or treatment is no longer adequate or  
3 appropriate.

4 (9) The court shall inform the person whose commitment  
5 or recommitment is sought of his right to contest the  
6 application, be represented by counsel at every stage of any  
7 proceedings relating to his commitment and recommitment, and  
8 have counsel appointed by the court or provided by the court  
9 if he wants the assistance of counsel and is unable to  
10 obtain counsel. If the court believes that the person needs  
11 the assistance of counsel, the court shall require, by  
12 appointment if necessary, counsel for him regardless of his  
13 wishes. The person whose commitment or recommitment is  
14 sought shall be informed of his right to be examined by a  
15 licensed physician of his choice. If the person is unable to  
16 obtain a licensed physician and requests examination by a  
17 physician, the court shall employ a licensed physician.

18 (10) If a private treatment facility agrees with the  
19 request of a competent patient or his parent, sibling, adult  
20 child, or guardian to accept the patient for treatment, the  
21 department may transfer him to the private treatment  
22 facility.

23 (11) A person committed under this section may at any  
24 time seek to be discharged from commitment by writ of habeas  
25 corpus or other appropriate means.

HB 795

LC 2239/01

1           (12) The venue for proceedings under this section is  
2 the place in which person to be committed resides or is  
3 present."

-End-

Approved by Committee  
on Judiciary

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 6 ALLOWING A PETITION TO BE SUBMITTED WITH A CERTIFICATE OF A  
 7 CERTIFIED ALCOHOLISM COUNSELOR; ALLOWING THE CERTIFYING  
 8 PHYSICIAN'S TESTIMONY TO BE SUBMITTED BY AFFIDAVIT AND  
 9 ALLOWING THE TAKING OF HIS DEPOSITION; AND AMENDING SECTION  
 10 53-24-302, MCA."

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 25 evidence of lack of judgment as to the need for treatment.

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 2 licensed physician OR A CERTIFIED ALCOHOLISM COUNSELOR who  
 3 has examined the person within 2 days before submission of  
 4 the petition unless the person whose commitment is sought  
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 6 case the fact of refusal shall be alleged in the petition.  
 7 The certificate shall set forth the physician's OR CERTIFIED  
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 24 testimony ~~including, if possible, the testimony of at least~~  
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1 ~~commitment is sought. The testimony of the certifying~~  
 2 ~~physician may be presented by a signed affidavit. The person~~  
 3 ~~whose commitment is sought may depose the certifying~~  
 4 ~~physician and the person shall have a right to~~ may HOWEVER,  
 5 THE PERSON WHOSE COMMITMENT IS SOUGHT HAS THE RIGHT TO  
 6 SUBPOENA THE CERTIFYING PHYSICIAN AND have a licensed  
 7 physician of his own choosing examine him and testify on his  
 8 behalf. If he has no funds with which to pay such physician,  
 9 the reasonable costs of one such examination and testimony  
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HB 0795/02

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