## HOUSE BILL 223

INTRODUCED BY J. HAMMOND, MOHAR, REAM, BENGTSON BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

## IN THE HOUSE

January 13, 1983	Introduced and referred to Committee on Human Services.
January 26, 1983	Committee recommend bill do pass. Report adopted.
January 27, 1983	Bill printed and placed on members' desks.
January 28, 1983	Second reading, do pass.
January 29, 1983	Considered correctly engrossed.
January 31, 1983	Third reading, passed. Transmitted to Senate.
	IN THE SENATE
February 1, 1983	Introduced and referred to Committee on Public Health, Welfare and Safety.
February 1, 1983 March 4, 1983	to Committee on Public Health, Welfare and
•	to Committee on Public Health, Welfare and Safety. Committee recommend bill be concurred in. Report
March 4, 1983	to Committee on Public Health, Welfare and Safety. Committee recommend bill be concurred in. Report adopted. Second reading, concurred

March 9, 1983

Returned to House.

## March 10, 1983

## Sent to enrolling.

Reported correctly enrolled.

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2140 BILL NO. 223 1 INTRODUCED BY Haumond z BY\_REQUEST OF THE DEPARTMENT OF INSTITUTIONS 3 cam Bengtoon Mattac A BILL FOR AN ACT ENTITLED: "AN ACT TO INCREASE THE TIME 5 6 PERIGD FOR INVOLUNTARY COMMITMENT OF ALCOHOLICS TO 40 DAYS: 7 AMENDING SECTION 53-24-302, MCA.\*

9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 10 Section 1. Section 53-24-302, MCA, is amended to read: 11 \*53-24-302. Involuntary commitment of alcoholics. (1) 12 A person may be committed to the custody of the department by the district court upon the petition of his spouse or 13 14 guardian, a relative, the certifying physician, or the chief 15 of any approved public treatment facility. The petition 16 shall allege that the person is an alcoholic who habitually 17 lacks self-control as to the use of alcoholic beverages and 18 that he has threatened, attempted, or inflicted physical 19 harm on another and that unless committed is likely to 20 inflict physical harm on another or is incapacitated by 21 alcohol. A refusal to undergo treatment does not constitute 22 evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a 23 24 licensed physician who has examined the person within 2 days before submission of the petition unless the person whose 25

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

(2) Upon filing the petition, the court shall fix a 8 9 date for a hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice 10 11 of the hearing, including the date fixed by the court, shall 12 be served on the petitioner, the person whose commitment is 13 sought, his next of kin other than the petitioner, a parent or his legal guardian if he is a minor, the administrator in 14 15 charge of the approved public treatment facility to which he 16 has been committed for emergency care, and any other person 17 the court believes advisable. A copy of the petition and 18 certificate shall be delivered to each person notified.

19 (3) At the hearing the court shall hear all relevant 20 testimony, including, if possible, the testimony of at least 21 one licensed physician who has examined the person whose 22 commitment is sought. The person shall have a right to have 23 a licensed physician of his own choosing examine him and 24 testify on his behalf. If he has no funds with which to pay 25 such physician, the reasonable costs of one such examination

> -2- INTRODUCED BILL HBADS

1 and testimony shall be paid by the county. The person shall 2 be present unless the court believes that his presence is з likely to be injurious to him. He shall be advised of his 4 right to counsel, and if he is unable to hire his own 5 counsel, the court shall appoint an attorney to represent 6 him at the expense of the county. The court shall examine 7 the person in open court or, if advisable, shall examine the 8 person in chambers. If he refuses an examination by a 9 licensed physician and there is sufficient evidence to 10 believe that the allegations of the petition are true or if 11 the court believes that more medical evidence is necessary, 12 the court may make a temporary order committing him to the 13 department for a period of not more than 5 days for purposes 14 of a diagnostic examination.

15 (4) If after hearing all relevant evidence, including 16 the results of any diagnostic examination by the department. 17 the court finds that grounds for involuntary commitment have 18 been established by clear and convincing evidence, it shall 19 make an order of commitment to the department. It may not 20 order commitment of a person unless it determines that the 21 department is able to provide adequate and appropriate 22 treatment for him and the treatment is likely to be 23 beneficial.

24 (5) A person committed under this section shall remain
25 in the custody of the department for treatment for a period

1 of 38 40 days unless sooner discharged. At the end of the 39 2 40-day period, he shall automatically be discharged unless 3 before expiration of the period the department obtains a court order from the district court of the committing 4 district for his recommitment upon the grounds set forth in 5 6 subsection (1) for a further period of 90 days unless sconer 7 discharged. If a person has been committed because he is an 8 alcoholic likely to inflict physical harm on another, the 9 department shall apply for recommitment if after examination 10 it is determined that the likelihood still exists.

(6) A person recommitted under subsection (5) who has 11 12 not been discharged by the department before the end of the 13 90-day period shall be discharged at the expiration of that 14 period unless before expiration of the period the department 15 obtains a court order from the district court of the 16 committing district on the grounds set forth in subsection 17 (1) for recommitment for a further period not to exceed 90 18 days. If a person has been committed because he is an 19 alcoholic likely to inflict physical harm on another, the 20 department shall apply for recommitment if after examination 21 it is determined that the likelihood still exists. Only two Z2 recommitment orders under subsections (5) and (6) are 23 permitted.

24 (7) Upon the filing of a petition for recommitment
25 under subsection (5) or (6), the court shall fix a date for

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1 hearing no later than 10 days after the date the petition 2 was filed. A copy of the petition and of the notice of 3 hearing, including the date fixed by the court, shall be served on the petitioner, the person whose commitment is 4 sought, his next of kin other than the petitioner, the 5 6 original petitioner under subsection (1) if different from 7 the petitioner for recommitment, one of his parents or his legal quardian if he is a minor, and any other person the 8 9 court believes advisable. At the hearing the court shall 10 proceed as provided in subsection (3).

11 (8) A person committed to the custody of the 12 department for treatment shall be discharged at any time 13 before the end of the period for which he has been committed 14 if either of the following conditions is met:

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

19 (b) in case of an alcoholic committed on the grounds 20 of incapacity and the need of treatment, that the incapacity 21 no longer exists, further treatment will not be likely to 22 bring about significant improvement in the person's 23 condition, or treatment is no longer adequate or 24 appropriate.

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t or recommitment is sought of his right to contest the 2 application, be represented by counsel at every stage of any 3 proceedings relating to his commitment and recommitment, and 4 have counsel appointed by the court or provided by the court 5 if he wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs 6 7 the assistance of counsel, the court shall require, by 8 appointment if necessary, counsel for him regardless of his 9 wishes. The person whose commitment or recommitment is 10 sought shall be informed of his right to be examined by a licensed physician of his choice. If the person is unable to 11 12 obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician. 13

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

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

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

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(9) The court shall inform the person whose commitment

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48th Legislature

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Poproved by Comm. On Human Services

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

19 (3) At the hearing the court shall hear all relevant 20 testimony, including, if possible, the testimony of at least 21 one licensed physician who has examined the person whose 22 commitment is sought. The person shall have a right to have 23 a licensed physician of his own choosing examine him and 24 testify on his behalf. If he has no funds with which to pay 25 such physician, the reasonable costs of one such examination

-2- SECOND READING

1 and testimony shall be paid by the county. The person shall be present unless the court believes that his presence is Z 3 likely to be injurious to him. He shall be advised of his 4 right to counsel, and if he is unable to hire his own counsely the court shall appoint an attorney to represent 5 him at the expense of the county. The court shall examine 6 7 the person in open court or, if advisable, shall examine the 8 person in chambers. If he refuses an examination by a 9 licensed physician and there is sufficient evidence to 10 believe that the allegations of the petition are true or if 11 the court believes that more medical evidence is necessary, 12 the court may make a temporary order committing him to the 13 department for a period of not more than 5 days for purposes 14 of a diagnostic examination.

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24 (5) A person committed under this section shall remain25 in the custody of the department for treatment for a period

1 of 30 40 days unless sooner discharged. At the end of the 30 2 40-day period, he shall automatically be discharged unless 3 before expiration of the period the department obtains a 4 court order from the district court of the committing 5 district for his recommitment upon the grounds set forth in subsection (1) for a further period of 90 days unless sooner 6 discharged. If a person has been committed because he is an 7 8 alcoholic likely to inflict physical harm on another, the department shall apply for recommitment if after examination 9 10 it is determined that the likelihood still exists.

11 (6) A person recommitted under subsection (5) who has not been discharged by the department before the end of the 12 13 90-day period shall be discharged at the expiration of that 14 period unless before expiration of the period the department 15 obtains a court order from the district court of the 16 committing district on the grounds set forth in subsection 17 (1) for recommitment for a further period not to exceed 90 days. If a person has been committed because he is an 18 alcoholic likely to inflict physical harm on another, the 19 20 department shall apply for recommitment if after examination 21 it is determined that the likelihood still exists. Only two 22 recommitment orders under subsections (5) and (6) are 23 permitted.

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11 (B) A person committed to the custody of the 12 department for treatment shall be discharged at any time 13 before the end of the period for which he has been committed 14 if either of the following conditions is met:

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19 (b) in case of an alcoholic committed on the grounds 20 of incapacity and the need of treatment, that the incapacity 21 no longer exists, further treatment will not be likely to 22 bring about significant improvement in the person's 23 condition, or treatment is no longer adequate or 24 appropriate.

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(9) The court shall inform the person whose commitment

or recommitment is sought of his right to contest the 1 Z application, be represented by counsel at every stage of any proceedings relating to his commitment and recommitment, and 3 4 have counsel appointed by the court or provided by the court if he wants the assistance of counsel and is unable to 5 6 obtain counsel. If the court believes that the person needs 7 the assistance of counsel, the court shall require, by appointment if necessary, counsel for him regardless of his 8 9 wishes. The person whose commitment or recommitment is 10 sought shall be informed of his right to be examined by a 11 licensed physician of his choice. If the person is unable to 12 obtain a licensed physician and requests examination by a 13 physician, the court shall employ a licensed physician. (10) If a private treatment facility agrees with the 14

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USB BILL NO. 223 INTRODUCED BY HUMMON

BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS cam Bensteen Matter

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(6) A person recommitted under subsection (5) who has 11 12 not been discharged by the department before the end of the 13 90-day period shall be discharged at the expiration of that 14 period unless before expiration of the period the department 15 obtains a court order from the district court of the 16 committing district on the grounds set forth in subsection (1) for recommitment for a further period not to exceed .90 17 18 days. If a person has been committed because he is an alcoholic likely to inflict physical harm on another, the 19 20 department shall apply for recommitment if after examination it is determined that the likelihood still exists. Only two 21 recommitment orders under subsections (5) and (6) are 22 23 permitted.

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-End-

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