

HB 898 INTRODUCED BY MENAHAN, ET AL.  
PROVIDE PATIENTS IN MENTAL HEALTH FACILITIES THE  
RIGHT TO CARE BY QUALIFIED STAFF IN SUFFICIENT  
NUMBERS TO ENSURE ADEQUATE TREATMENT

3/25 INTRODUCED  
3/25 REFERRED TO APPROPRIATIONS  
3/27 HEARING  
3/28 TABLED IN COMMITTEE

1 House BILL NO. 898  
 2 INTRODUCED BY Menahem Korman Lynch  
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING PATIENTS IN  
 5 MENTAL HEALTH FACILITIES THE RIGHT TO CARE BY QUALIFIED  
 6 STAFF IN SUFFICIENT NUMBERS TO ENSURE ADEQUATE TREATMENT;  
 7 ESTABLISHING MINIMUM STAFFING LEVELS NECESSARY TO PROVIDE  
 8 ADEQUATE CARE AND TREATMENT OF PATIENTS ADMITTED TO THE  
 9 MONTANA STATE HOSPITAL IN WARM SPRINGS; GRANTING THE  
 10 DEPARTMENT OF INSTITUTIONS RULEMAKING AUTHORITY;  
 11 APPROPRIATING FUNDS TO INCREASE STAFF AT THE MONTANA STATE  
 12 HOSPITAL; AMENDING SECTIONS 53-21-102 AND 53-21-106, MCA;  
 13 AND PROVIDING AN EFFECTIVE DATE."  
 14

15 WHEREAS, the federal courts have held that once a  
 16 person is committed to a mental health facility, such person  
 17 possesses an inviolable constitutional right to treatment;  
 18 and

19 WHEREAS, the federal courts have declared that this  
 20 right includes the right to receive care by qualified  
 21 professional staff in sufficient numbers to provide adequate  
 22 treatment; and

23 WHEREAS, the purpose of commitment to a mental health  
 24 facility is to provide treatment and not to provide  
 25 custodial care or isolation of the mentally ill; and

1 WHEREAS, care of the mentally ill at the Montana State  
 2 Hospital is insufficient to provide adequate care and  
 3 treatment; and

4 WHEREAS, the failure to provide adequate treatment to  
 5 the mentally ill cannot be legally justified by the lack of  
 6 staff and funding; and

7 WHEREAS, the state has an affirmative obligation to  
 8 provide a certain minimum quality of care and treatment that  
 9 will give each patient admitted to a state mental health  
 10 facility a reasonable opportunity to be cured or to improve  
 11 his mental condition.

12 THEREFORE, the Legislature of the State of Montana  
 13 finds it appropriate to enact legislation to require  
 14 qualified staff in sufficient numbers to provide adequate  
 15 treatment of patients in mental health facilities.  
 16

17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Section 53-21-102, MCA, is amended to read:  
 19 "53-21-102. Definitions. As used in this part, the  
 20 following definitions apply:

21 (1) "Board" or "mental disabilities board of visitors"  
 22 means the mental disabilities board of visitors created by  
 23 2-15-211.

24 (2) "Court" means any district court of the state of  
 25 Montana.



1 (3) "Department" means the department of institutions  
2 provided for in Title 2, chapter 15, part 23.

3 (4) "Direct care nursing staff" means professional and  
4 paraprofessional staff, including registered nurses,  
5 licensed practical nurses, psychiatric aides, and special  
6 duty aides who work directly with patients, as defined in  
7 the classification specification series for direct care  
8 nursing staff published by the department of administration  
9 personnel division.

10 ~~(4)~~(5) "Emergency situation" means a situation in  
11 which any person is in imminent danger of death or serious  
12 bodily harm from the activity of a person who appears to be  
13 seriously mentally ill.

14 ~~(5)~~(6) "Mental disorder" means any organic, mental, or  
15 emotional impairment which has substantial adverse effects  
16 on an individual's cognitive or volitional functions.

17 ~~(6)~~(7) "Mental health facility" or "facility" means a  
18 public hospital or a licensed private hospital which is  
19 equipped and staffed to provide treatment for persons with  
20 mental disorders or a community mental health center or any  
21 mental health clinic or treatment center approved by the  
22 department. No correctional institution or facility or jail  
23 is a mental health facility within the meaning of this part.

24 ~~(7)~~(8) "Next of kin" shall include but need not be  
25 limited to the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 (9) "Other mental health personnel" means professional  
3 and paraprofessional staff, including occupational  
4 therapists, recreational therapists, music therapists,  
5 rehabilitation aides, and vocational and educational  
6 instructors.

7 ~~(8)~~(10) "Patient" means a person committed by the court  
8 for treatment for any period of time or who is voluntarily  
9 admitted for treatment for any period of time.

10 ~~(9)~~(11) "Peace officer" means any sheriff, deputy  
11 sheriff, marshal, policeman, or other peace officer.

12 (12) "Physician" means a medical practitioner licensed  
13 by the board of medical examiners to practice medicine in  
14 the state of Montana.

15 (13) "Post analysis" means the method for determination  
16 of staffing levels needed to meet licensure criteria, the  
17 treatment needs of the patients, and the safety and security  
18 requirements at the state hospital through a work factor  
19 analysis of duty station full-time equivalent staff  
20 requirements for each work shift covering 24 hours a day, 7  
21 days a week.

22 ~~(10)~~(14) "Professional person" means:

23 (a) a medical doctor; or

24 (b) a person who has been certified, as provided for  
25 in 53-21-106, by the department.

1        (15) "Psychologist" means a treatment professional who  
 2 performs formal diagnostic testing, counseling, and  
 3 evaluation services based on the principles of the  
 4 discipline of psychology, as defined in the job  
 5 classification specification series for psychologists  
 6 published by the department of administration personnel  
 7 division.

8        ~~(11)~~(16) "Reasonable medical certainty" means  
 9 reasonable certainty as judged by the standards of a  
 10 professional person.

11        ~~(12)~~(17) "Respondent" means a person alleged in a  
 12 petition filed pursuant to this part to be seriously  
 13 mentally ill.

14        ~~(13)~~(18) "Friend of respondent" means any person  
 15 willing and able to assist a seriously mentally ill person  
 16 or person alleged to be seriously mentally ill in dealing  
 17 with legal proceedings, including consultation with legal  
 18 counsel and others. The friend of respondent may be the next  
 19 of kin, the person's conservator or legal guardian, if any,  
 20 representatives of a charitable or religious organization,  
 21 or any other person appointed by the court to perform the  
 22 functions of a friend of respondent set out in this part.  
 23 Only one person may at any one time be the friend of  
 24 respondent within the meaning of this part. In appointing a  
 25 friend of respondent, the court shall consider the

1 preference of the respondent. The court may at any time, for  
 2 good cause shown, change its designation of the friend of  
 3 respondent.

4        ~~(14)~~(19) "Seriously mentally ill" means suffering from  
 5 a mental disorder which has resulted in self-inflicted  
 6 injury or injury to others or the imminent threat thereof or  
 7 which has deprived the person afflicted of the ability to  
 8 protect his life or health. For this purpose, injury means  
 9 physical injury. No person may be involuntarily committed to  
 10 a mental health facility or detained for evaluation and  
 11 treatment because he is an epileptic, mentally deficient,  
 12 mentally retarded, senile, or suffering from a mental  
 13 disorder unless the condition causes him to be seriously  
 14 mentally ill within the meaning of this part.

15        (20) "Social worker" means a treatment professional who  
 16 prepares social histories and discharge plans, provides  
 17 counseling, maintains contact with patients' families,  
 18 coordinates services with other human service agencies, and  
 19 assists with treatment planning based on the principles of  
 20 the discipline of social work, as defined in the job  
 21 classification specification series for social workers  
 22 published by the department of administration personnel  
 23 division.

24        ~~(15)~~(21) "State hospital" means the Montana state  
 25 hospital."

1        NEW SECTION. Section 2. Right to have sufficient  
 2 number of qualified staff to provide adequate treatment. A  
 3 patient is entitled to care by qualified staff in numbers  
 4 sufficient to provide adequate treatment.

5        NEW SECTION. Section 3. Minimum staff requirements at  
 6 the state hospital in Warm Springs. (1) The department shall  
 7 provide qualified staff in sufficient numbers to administer  
 8 adequate care and treatment of patients admitted to the  
 9 state hospital in Warm Springs.

10        (2) The minimum staffing at the state hospital must be  
 11 at the staffing levels provided in [section 4]. In addition,  
 12 the staff must include a psychiatrist if the superintendent  
 13 of the state hospital is not a psychiatrist. The state  
 14 hospital must have one or more physicians, psychiatrists,  
 15 registered nurses, and other mental health personnel present  
 16 or available at the state hospital at all times. One or more  
 17 psychologists and social workers may be present on a  
 18 time-limited basis.

19        NEW SECTION. Section 4. Minimum staffing levels. (1)  
 20 Based upon an average daily patient population not in excess  
 21 of the number provided for in the appropriation to the  
 22 department for the fiscal year, the department shall  
 23 maintain the following minimum level of staff necessary to  
 24 provide adequate care and treatment of resident patients at  
 25 the state hospital in Warm Springs:

| <u>Personnel</u>         | <u>Full-time Equivalent Employees</u> |
|--------------------------|---------------------------------------|
| 2    Physicians          | 6                                     |
| 3    Psychologists       | 9                                     |
| 4    Social workers      | 14                                    |
| 5    Other mental health |                                       |
| 6    personnel           | 26.75                                 |

7        (2) In addition to the staffing levels established in  
 8 subsection (1), the department shall maintain an adequate  
 9 level of direct care nursing staff based on a post analysis  
 10 of staff requirements at the state hospital in Warm Springs  
 11 as follows:

| <u>Personnel</u>         | <u>Post Positions Required</u> |
|--------------------------|--------------------------------|
| 12    Registered nurses  | 29.24                          |
| 13    Licensed practical |                                |
| 14    nurses             | 44.82                          |
| 15    Special duty aides | 56.44                          |
| 16    Psychiatric aides  | 115.88                         |

17        NEW SECTION. Section 5. Failure to comply with  
 18 staffing requirements. (1) The director of the department  
 19 shall require the superintendent of the state hospital to  
 20 submit an annual report documenting compliance with the  
 21 requirements of [sections 3 and 4].  
 22

23        (2) If the state hospital fails to meet the minimum  
 24 standards required under [sections 3 and 4], the director of  
 25 the department shall require the superintendent of the state

1 hospital to submit to the department a line item budget of  
2 proposed expenditures for the state hospital.

3 (3) The director of the department may deny any  
4 portion or portions of the proposed expenditures for the  
5 state hospital and may redirect funds within the hospital  
6 budget to improve performance and bring the hospital into  
7 compliance with the minimum standards.

8 NEW SECTION. Section 6. Restriction on admissions to  
9 the state hospital -- authority to adopt rules. (1) If  
10 necessary, the department shall limit the number of  
11 admissions to the state hospital in Warm Springs to maintain  
12 the staffing levels required in [sections 3 and 4].

13 (2) In order to restrict admissions to the state  
14 hospital, the department may adopt rules to limit admissions  
15 to those patients who require care at the state hospital.  
16 Such patients include:

- 17 (a) patients who are seriously mentally ill;
- 18 (b) patients requiring admission to the state hospital  
19 because of an emergency situation as described in 53-21-129;
- 20 and
- 21 (c) any other patients who are so mentally ill as to  
22 require institutionalized care and treatment.

23 NEW SECTION. Section 7. Appropriation. There is  
24 appropriated from the general fund to the department of  
25 institutions for the biennium ending June 30, 1989, the

1 following sums to increase staffing levels at the Montana  
2 state hospital in Warm Springs in accordance with the  
3 provisions of this act:

|   |                |                |
|---|----------------|----------------|
| 4 | <u>FY 1988</u> | <u>FY 1989</u> |
| 5 | \$426,384      | \$424,773      |

6 Section 8. Section 53-21-106, MCA, is amended to read:  
7 "53-21-106. Certification of professional persons. (1)  
8 The department shall certify professional persons as defined  
9 in 53-21-102~~(10)(b)~~(14)(b) for the purpose of this part.

10 (2) The department, with reference to recognized  
11 national standards in the field of mental health, shall  
12 adopt standards and rules governing the certification of  
13 professional persons as defined in 53-21-102~~(10)(b)~~(14)(b).

14 (3) The rules for certification must address but are  
15 not limited to:

- 16 (a) the type of education that an individual has  
17 received, including degrees;
- 18 (b) the type of experience or training received by the  
19 individual;
- 20 (c) continuing education, training, instruction, and  
21 work experience necessary to maintain certification;
- 22 (d) an examination instrument to be used to determine  
23 an individual's proficiency and understanding of mental  
24 health laws, diagnosis, and treatment procedures;
- 25 (e) the procedure for categorical certification

1 qualifying the level of professional authority and  
2 responsibility of an individual; and

3 (f) specific procedures for certification,  
4 recertification, and revocation of certification."

5 NEW SECTION. Section 9. Codification instruction.

6 Sections 2 through 6 are intended to be codified as an  
7 integral part of Title 53, chapter 21, part 1, and the  
8 provisions of Title 53, chapter 21, part 1, apply to  
9 sections 2 through 6.

10 NEW SECTION. Section 10. Effective date. This act is  
11 effective July 1, 1987.

-End-