

HOUSE BILL NO. 185

INTRODUCED BY WHALEN, BLAYLOCK, GOULD

IN THE HOUSE

JANUARY 14, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
JANUARY 16, 1989	FIRST READING.
FEBRUARY 6, 1989	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 7, 1989	PRINTING REPORT.
FEBRUARY 8, 1989	SECOND READING, DO PASS.
FEBRUARY 9, 1989	ENGROSSING REPORT.
FEBRUARY 10, 1989	THIRD READING, PASSED. AYES, 95; NOES, 0.
	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 11, 1989	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 15, 1989	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 17, 1989	SECOND READING, CONCURRED IN.
MARCH 20, 1989	THIRD READING, CONCURRED IN. AYES, 46; NOES, 1.
	RETURNED TO HOUSE.

MARCH 21, 1989

IN THE HOUSE

RECEIVED FROM SENATE.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 185
2 INTRODUCED BY Whalen
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE
5 DETENTION OF A PERSON IN A JAIL OR OTHER CORRECTIONAL
6 FACILITY PENDING A MENTAL HEALTH COMMITMENT HEARING;
7 REQUIRING PUBLIC MENTAL HEALTH FACILITIES TO IDENTIFY
8 APPROPRIATE MENTAL HEALTH PLACEMENTS FOR A PERSON DETAINED
9 IN A JAIL OR OTHER CORRECTIONAL FACILITY; REQUIRING RAPID
10 TRANSFER TO AN APPROPRIATE PLACEMENT; AND AMENDING SECTIONS
11 53-21-120 AND 53-21-124, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 **Section 1.** Section 53-21-120, MCA, is amended to read:

15 "53-21-120. (Temporary) Detention to be in least
16 restrictive environment -- preference for mental health
17 facility -- court relief -- prehearing detention of mentally
18 ill person prohibited. (1) A person detained pursuant to
19 this part shall be detained in the least restrictive
20 environment required to protect the life and physical safety
21 of the person detained or members of the public; in this
22 respect, prevention of significant injury to property may be
23 considered.

24 (2) Whenever possible, a person detained pursuant to
25 this part shall be detained in a mental health facility and

1 in the county of residence. If the person detained demands
2 a jury trial and trial cannot be held within 7 days, the
3 individual may be sent to the state hospital until time of
4 trial if arrangements can be made to return him to trial.
5 Such trial must be held within 30 days. The county of
6 residence shall pay the cost of travel and professional
7 services associated with the trial. No person may be
8 detained in any hospital or other medical facility which is
9 not a mental health facility unless such hospital or
10 facility has agreed in writing to admit the person.

11 (3) A Except as provided in 53-21-124, a person may
12 not be detained pursuant to this part in a jail or other
13 correctional facility only-if-no-mental-health-facility-is
14 available-or-if-the-available-mental-health--facilities--are
15 inadequate-to-protect-the-person-detained-and-the-public--As
16 soon--as--a--mental-health-facility-becomes-available-or-the
17 situation-has-changed-sufficiently-that-an-available--mental
18 health-facility-is-adequate-for-the-protection-of-the-person
19 detained--and--the-public;--then-the-detained-person-shall-be
20 transferred-from-the-jail-or-correctional--facility--to--the
21 mental-health-facility.

22 (4) A person detained prior to involuntary commitment
23 may apply to the court for immediate relief with respect to
24 the need for detention or the adequacy of the facility being
25 utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

53-21-120. (Effective July 1, 1989) Detention to be in least restrictive environment -- preference for mental health facility -- court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

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residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A Except as provided in 53-21-124, a person may not be detained pursuant to this part in a jail or other correctional facility only if no mental health facility is available or if the available mental health facilities are inadequate to protect the person detained and the public. As soon as a mental health facility becomes available or the situation has changed sufficiently that an available mental health facility is adequate for the protection of the person detained and the public, then the detained person shall be transferred from the jail or correctional facility to the mental health facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain."

Section 2. Section 53-21-124, MCA, is amended to read:

"53-21-124. Detention of respondent pending hearing or trial. (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention.

1 Counsel shall be orally notified immediately. Counsel for
2 the respondent may then request a detention hearing, which
3 shall be held forthwith.

4 (2) In the event of detention, the respondent shall be
5 detained in the least restrictive setting necessary to
6 assure his presence and assure his safety and the safety of
7 others as provided in 53-21-120. He A respondent may be
8 detained in a jail or other correctional facility only if no
9 appropriate public mental health facility is immediately
10 available for placement anywhere in the state. When the
11 respondent is detained in a jail or other correctional
12 facility, the jail or other facility shall immediately
13 notify the nearest public mental health facility, as defined
14 in 53-21-201, that a person detained in the jail or
15 correctional facility is in need of an appropriate
16 placement. Upon notification, the public mental health
17 facility shall identify an appropriate placement for the
18 respondent, in accordance with the requirements of
19 53-21-120. Until a placement is identified, the public
20 mental health facility shall report on the status of the
21 placement to the jail or correctional facility every 12
22 hours, including weekends and holidays. When an appropriate
23 placement has been identified, the court must be promptly
24 notified and the respondent must be transferred to that
25 facility within 4 hours.

1 (3) If the respondent is detained, he shall have the
2 right to be examined additionally by a professional person
3 of his choice. Unless objection is made by counsel for the
4 respondent, he shall continue to be evaluated and treated by
5 the professional person pending the hearing."

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB185, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

"An act restricting the detention of a person in a jail or other correctional facility pending a mental health commitment hearing; requiring public mental health facilities to identify appropriate mental health placements for a person detained in a jail or other correctional facility; requiring rapid transfer to an appropriate placement; and amending Section 53-21-120 and 53-21-124, MCA."

ASSUMPTIONS:

1. Currently, mentally ill people are held in local jails for a few days if hospitals won't admit them due to the patient's behavior or lack of resources.
2. HB185 requires trying to find a mental health facility anywhere in the state to house the person in preference to jail.
3. No additional costs to Montana State Hospital unless an evaluation or assessment on the patient was required. Most of mentally ill people held in jails are admitted to Montana State Hospital.

 1/21/89
RAY SHACKLEFORD, BUDGET DIRECTOR DATE
OFFICE OF BUDGET AND PROGRAM PLANNING

TIMOTHY J. WHALEN, PRIMARY SPONSOR DATE

Fiscal Note for HB185, as introduced

HB 185

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 185

INTRODUCED BY WHALEN, BLAYLOCK, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT RESTRICTING THE DETENTION OF A PERSON IN A JAIL OR OTHER CORRECTIONAL FACILITY PENDING A MENTAL HEALTH COMMITMENT HEARING; REQUIRING PUBLIC MENTAL HEALTH FACILITIES TO IDENTIFY APPROPRIATE MENTAL HEALTH PLACEMENTS FOR A PERSON DETAINED IN A JAIL OR OTHER CORRECTIONAL FACILITY; REQUIRING RAPID TRANSFER TO AN APPROPRIATE PLACEMENT; AND AMENDING SECTIONS 53-21-120 AND 53-21-124, MCA."

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

Section 1. Section 53-21-120, MCA, is amended to read:

"53-21-120. (Temporary) Detention to be in least restrictive environment -- preference for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part shall be detained in a mental health facility and

in the county of residence. If the person detained demands a jury trial and trial cannot be held within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be made to return him to trial. Such trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. No person may be detained in any hospital or other medical facility which is not a mental health facility unless such hospital or facility has agreed in writing to admit the person.

(3) A Except as provided in 53-21-124, a person may not be detained pursuant to this part in a jail or other correctional facility only-if-no-mental-health-facility-is available-or-if-the-available-mental-health--facilities--are inadequate-to-protect-the-person-detained-and-the-public-As soon--as--a--mental-health-facility-becomes-available-or-the situation-has-changed-sufficiently-that-an-available--mental health-facility-is-adequate-for-the-protection-of-the-person detained--and--the-public-then-the-detained-person-shall-be transferred-from-the-jail-or-correctional--facility--to--the mental-health-facility.

(4) A person detained prior to involuntary commitment may apply to the court for immediate relief with respect to the need for detention or the adequacy of the facility being utilized to detain.

(5) No detention may be ordered under this part for a person concerning whom a petition has been filed under 53-21-121(1)(b).

(6) No person may be involuntarily committed to a mental health facility or detained for evaluation and treatment because he is an epileptic, mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him to be seriously mentally ill within the meaning of this part. (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

53-21-120. (Effective July 1, 1989) Detention to be in least restrictive environment -- preference for mental health facility -- court relief. (1) A person detained pursuant to this part shall be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

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Section 2. Section 53-21-124, MCA, is amended to read:

"53-21-124. Detention of respondent pending hearing or trial. (1) The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention.

1 Counsel shall be orally notified immediately. Counsel for
2 the respondent may then request a detention hearing, which
3 shall be held forthwith.

4 (2) In the event of detention, the respondent shall be
5 detained in the least restrictive setting necessary to
6 assure his presence and assure his safety and the safety of
7 others as provided in 53-21-120. He A respondent may be
8 detained in a jail or other correctional facility only if no
9 appropriate public mental health facility is immediately
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11 respondent is detained in a jail or other correctional
12 facility, the jail or other facility shall immediately
13 notify the REGIONAL CENTRAL OFFICE OF THE nearest public
14 mental health facility, as defined in 53-21-201, that a
15 person detained in the jail or correctional facility is in
16 need of an appropriate placement. Upon notification, the
17 public mental health facility shall identify an appropriate
18 placement for the respondent, in accordance with the
19 requirements of 53-21-120. Until a placement is identified,
20 the public mental health facility shall report on the status
21 of the placement to the jail or correctional facility WITHIN
22 every 12--hours 12-HOUR PERIOD, including weekends and
23 holidays. When an appropriate placement has been identified,
24 the court must be promptly notified and the respondent must
25 be transferred to that facility within-4-hours AS SOON AS

1 REASONABLY PRACTICAL.

2 (3) If the respondent is detained, he shall have the
3 right to be examined additionally by a professional person
4 of his choice. Unless objection is made by counsel for the
5 respondent, he shall continue to be evaluated and treated by
6 the professional person pending the hearing."

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Counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith.

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(3) If the respondent is detained, he shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing."

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