

HOUSE BILL 473

Introduced by Bradley, et al.

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| 1/27 | Introduced |
| 1/28 | Referred to Judiciary |
| 2/14 | Hearing |
| 2/15 | Tabled in Committee |

1 *House* BILL NO. *473*
 2 INTRODUCED BY *Brown Addy Smith*
 3 *Nanko Zuyatt O'Connell Ms. Lavinia Best Connolly*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CLARIFY THE RIGHTS *Ream*
 5 OF PATIENTS UNDER THE MENTAL HEALTH CODE; AND AMENDING
 6 SECTIONS 53-21-102, 53-21-106, 53-21-142, AND 53-21-144,
 7 MCA."
 8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 10 **Section 1.** Section 53-21-102, MCA, is amended to read:
 11 "53-21-102. (Temporary) Definitions. As used in this
 12 part, the following definitions apply:
 13 (1) "Board" or "mental disabilities board of visitors"
 14 means the mental disabilities board of visitors created by
 15 2-15-211.
 16 (2) "Court" means any district court of the state of
 17 Montana.
 18 (3) "Department" means the department of institutions
 19 provided for in Title 2, chapter 15, part 23.
 20 (4) "Emergency situation" means a situation in which
 21 any person is in imminent danger of death or serious bodily
 22 harm from the activity of a person who appears to be
 23 seriously mentally ill.
 24 (5) "Forensic unit" means a separately designated
 25 building at the state hospital used to house, assess, and

1 treat only persons sent to the hospital in connection with a
 2 criminal proceeding or convicted prisoners transferred from
 3 a correctional institution.

4 {5}(6) "Friend of respondent" means any person willing
 5 and able to assist a mentally ill person, a person alleged
 6 to be mentally ill, a seriously mentally ill person, or a
 7 person alleged to be seriously mentally ill in dealing with
 8 legal proceedings, including consultation with legal counsel
 9 and others. The friend of respondent may be the next of kin,
 10 the person's conservator or legal guardian, if--any, a
 11 representative of a charitable or religious organization, or
 12 any other person appointed by the court to perform the
 13 functions of a friend of respondent set out in this part.
 14 Only one person may at any one time be the friend of
 15 respondent within the meaning of this part. In appointing a
 16 friend of respondent, the court shall consider the
 17 preference of the respondent. The court may at any time, for
 18 good cause shown, change its designation of the friend of
 19 respondent.

20 {6}(7) "Mental disorder" means any organic, mental, or
 21 emotional impairment which has substantial adverse effects
 22 on an individual's cognitive or volitional functions.

23 {7}(8) "Mental health facility" or "facility" means a
 24 public hospital or a licensed private hospital which is
 25 equipped and staffed to provide treatment for persons with

1 mental disorders or a community mental health center or any
2 mental health clinic or treatment center approved by the
3 department. No correctional institution or facility or jail
4 is a mental health facility within the meaning of this part.

5 ~~{8}~~{9} "Mentally ill" means suffering from a mental
6 disorder which has not resulted in self-inflicted injury or
7 injury to others or the imminent threat thereof of injury
8 but which:

9 (a) has resulted in behavior that creates serious
10 difficulty in protecting the person's life or health even
11 with the available assistance of family, friends, or others;

12 (b) is treatable, with a reasonable prospect of
13 success and consistent with the least restrictive course of
14 treatment as provided in 53-21-127(3), at or through the
15 facility to which the person is to be committed;

16 (c) has deprived the person of the capacity to make an
17 informed decision concerning treatment;

18 (d) has resulted in the person's refusing or being
19 unable to consent to voluntary admission for treatment; and

20 (e) poses a significant risk of the person's becoming
21 seriously mentally ill, within the meaning of this section,
22 or will, if untreated, predictably result in further serious
23 deterioration in the mental condition of the person.
24 Predictability may be established by the patient's medical
25 history.

1 ~~{9}~~{10} "Next of kin" shall include but need not be
2 limited to the spouse, parents, adult children, and adult
3 brothers and sisters of a person.

4 ~~{10}~~{11} "Patient" means a person committed by the
5 court for treatment for any period of time or who is
6 voluntarily admitted for treatment for any period of time.

7 ~~{11}~~{12} "Peace officer" means any sheriff, deputy
8 sheriff, marshal, policeman, or other peace officer.

9 ~~{12}~~{13} "Professional person" means:

10 (a) a medical doctor; or

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

13 ~~{13}~~{14} "Reasonable medical certainty" means
14 reasonable certainty as judged by the standards of a
15 professional person.

16 ~~{14}~~{15} "Respondent" means a person alleged in a
17 petition filed pursuant to this part to be mentally ill or
18 seriously mentally ill.

19 ~~{15}~~{16} "Seriously mentally ill" means suffering from
20 a mental disorder which has resulted in self-inflicted
21 injury or injury to others or the imminent threat thereof of
22 injury or which has deprived the person afflicted of the
23 ability to protect his life or health. For this purpose,
24 injury means physical injury. No person may be
25 involuntarily committed to a mental health facility or

1 detained for evaluation and treatment because he is an
2 epileptic or is mentally deficient, mentally retarded,
3 senile, or suffering from a mental disorder unless the
4 condition causes him to be seriously mentally ill within the
5 meaning of this part.

6 ~~(16)~~(17) "State hospital" means the Montana state
7 hospital. (Terminates July 1, 1989--sec. 18, Ch. 376, L.
8 1987.)

9 53-21-102. (Effective July 1, 1989) Definitions. As
10 used in this part, the following definitions apply:

11 (1) "Board" or "mental disabilities board of visitors"
12 means the mental disabilities board of visitors created by
13 2-15-211.

14 (2) "Court" means any district court of the state of
15 Montana.

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

18 (4) "Emergency situation" means a situation in which
19 any person is in imminent danger of death or serious bodily
20 harm from the activity of a person who appears to be
21 seriously mentally ill.

22 (5) "Forensic unit" means a separately designated
23 building at the state hospital used to house, assess, and
24 treat only persons sent to the hospital in connection with a
25 criminal proceeding or convicted prisoners transferred from

1 a correctional institution.

2 (6) "Friend of respondent" means any person willing and
3 able to assist a seriously mentally ill person or person
4 alleged to be seriously mentally ill in dealing with legal
5 proceedings, including consultation with legal counsel and
6 others. The friend of respondent may be the next of kin, the
7 person's conservator or legal guardian, a representative of
8 a charitable or religious organization, or any other person
9 appointed by the court to perform the functions of a friend
10 of respondent set out in this part. Only one person may at
11 any one time be the friend of respondent within the meaning
12 of this part. In appointing a friend of respondent, the
13 court shall consider the preference of the respondent. The
14 court may at any time, for good cause shown, change its
15 designation of the friend of respondent.

16 ~~(5)~~(7) "Mental disorder" means any organic, mental, or
17 emotional impairment which has substantial adverse effects
18 on an individual's cognitive or volitional functions.

19 ~~(6)~~(8) "Mental health facility" or "facility" means a
20 public hospital or a licensed private hospital which is
21 equipped and staffed to provide treatment for persons with
22 mental disorders or a community mental health center or any
23 mental health clinic or treatment center approved by the
24 department. No correctional institution or facility or jail
25 is a mental health facility within the meaning of this part.

~~{7}~~(9) "Next of kin" shall include but need not be limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

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

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

~~{10}~~(12) "Professional person" means:

(a) a medical doctor; or

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

~~{11}~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~{12}~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously mentally ill.

~~{13}~~-"Friend--of--respondent"--means-any-person-willing and-able-to-assist-a-seriously-mentally-ill-person-or-person alleged-to-be-seriously-mentally-ill-in-dealing-with-legal proceedings--including--consultation-with-legal-counsel-and others--The-friend-of-respondent-may-be-the-next-of-kin--the person's---conservator---or---legal---guardian---if---any-- representatives--of--a-charitable-or-religious-organization--

or-any-other-person-appointed-by-the-court--to--perform--the functions--of--a--friend-of-respondent-set-out-in-this-part-- Only-one-person-may--at--any--one--time--be--the--friend--of respondent--within-the-meaning-of-this-part--in-appointing-a friend--of--respondent--the--court---shall---consider---the preference-of-the-respondent--The-court-may-at-any-time--for good--cause--shown--change-its-designation-of-the-friend-of respondent--

~~{14}~~(15) "Seriously mentally ill" means suffering from a mental disorder which has resulted in self-inflicted injury or injury to others or the imminent threat thereof of injury or which has deprived the person afflicted of the ability to protect his life or health. For this purpose, injury means physical injury. 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.

~~{15}~~(16) "State hospital" means the Montana state hospital."

Section 2. Section 53-21-106, MCA, is amended to read:

"53-21-106. (Temporary) Certification of professional persons. (1) The department shall certify professional persons as defined in 53-21-102~~{12}~~(b)(13)(b) for the

1 purpose of this part.

2 (2) The department, with reference to recognized
3 national standards in the field of mental health, shall
4 adopt standards and rules governing the certification of
5 professional persons.

6 (3) The rules for certification must address but are
7 not limited to:

8 (a) the type of education that an individual has
9 received, including degrees;

10 (b) the type of experience or training received by the
11 individual;

12 (c) continuing education, training, instruction, and
13 work experience necessary to maintain certification;

14 (d) an examination instrument to be used to determine
15 an individual's proficiency and understanding of mental
16 health laws, diagnosis, and treatment procedures;

17 (e) the procedure for categorical certification
18 qualifying the level of professional authority and
19 responsibility of an individual; and

20 (f) specific procedures for certification,
21 recertification, and revocation of certification.

22 (Terminates July 1, 1989--sec. 18, Ch. 376, L. 1987.)

23 53-21-106. (Effective July 1, 1989) Certification of
24 professional persons. (1) The department shall certify
25 professional persons as defined in 53-21-102~~(10)(b)~~(12)(b)

1 for the purpose of this part.

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

6 (3) The rules for certification must address but are
7 not limited to:

8 (a) the type of education that an individual has
9 received, including degrees;

10 (b) the type of experience or training received by the
11 individual;

12 (c) continuing education, training, instruction, and
13 work experience necessary to maintain certification;

14 (d) an examination instrument to be used to determine
15 an individual's proficiency and understanding of mental
16 health laws, diagnosis, and treatment procedures;

17 (e) the procedure for categorical certification
18 qualifying the level of professional authority and
19 responsibility of an individual; and

20 (f) specific procedures for certification,
21 recertification, and revocation of certification."

22 **Section 3.** Section 53-21-142, MCA, is amended to read:

23 "53-21-142. Rights of persons admitted to facility.
24 Patients admitted to a mental health facility, whether
25 voluntarily or involuntarily, shall have the following

1 rights:

2 (1) Patients have a right to privacy and dignity.

3 (2) Patients have a right to the least restrictive
4 conditions necessary to achieve the purposes of commitment.
5 Patients' movements on the mental health facility grounds
6 may not be restricted without an individualized finding that
7 restrictions are necessary to achieve the purposes of
8 commitment. The finding must be documented in each patient's
9 records and signed by a qualified mental health
10 professional. Patients' freedom of movement may not be
11 restricted on the basis of a unit-wide policy.

12 (3) Patients shall have the same rights to visitation
13 and reasonable access to private telephone communications as
14 patients at any public hospitals except to the extent that
15 the professional person responsible for formulation of a
16 particular patient's treatment plan writes an order imposing
17 special restrictions. The written order must be renewed
18 after each periodic review of the treatment plan if any
19 restrictions are to be continued. Patients shall have an
20 unrestricted right to visitation with attorneys, with
21 spiritual counselors, and with private physicians and other
22 professional persons.

23 (4) Patients shall have an unrestricted right to send
24 sealed mail. Patients shall have an unrestricted right to
25 receive sealed mail from their attorneys, private physicians

1 and other professional persons, the mental disabilities
2 board of visitors, courts, and government officials.
3 Patients shall have a right to receive sealed mail from
4 others except to the extent that a professional person
5 responsible for formulation of a particular patient's
6 treatment plan writes an order imposing special restrictions
7 on receipt of sealed mail. The written order must be renewed
8 after each periodic review of the treatment plan if any
9 restrictions are to be continued.

10 (5) Patients have an unrestricted right to have access
11 to letter-writing materials, including postage, and have a
12 right to have staff members of the facility assist persons
13 who are unable to write, prepare, and mail correspondence.

14 (6) Patients have a right to wear their own clothes
15 and to keep and use their own personal possessions,
16 including toilet articles, except insofar as such clothes or
17 personal possessions may be determined by a professional
18 person in charge of the patient's treatment plan to be
19 dangerous or otherwise inappropriate to the treatment
20 regimen. The facility has an obligation to supply an
21 adequate allowance of clothing to any patients who do not
22 have suitable clothing of their own. Patients shall have the
23 opportunity to select from various types of neat, clean, and
24 seasonable clothing. ~~Such--clothing~~ Clothing shall be
25 considered the patient's throughout his stay at the

1 facility. The facility shall make provision for the
2 laundering of patient clothing.

3 (7) Patients have the right to keep and be allowed to
4 spend a reasonable sum of their own money.

5 (8) Patients have the right to religious worship.
6 Provisions for such worship shall be made available to all
7 patients on a nondiscriminatory basis. No individual shall
8 be required to engage in any religious activities.

9 (9) Patients have a right to regular physical exercise
10 several times a week. Moreover, it shall be the duty of the
11 facility to provide facilities and equipment for such
12 exercise. Patients have a right to be outdoors at regular
13 and frequent intervals in the absence of contrary medical
14 considerations.

15 (10) Patients have the right to be provided, with
16 adequate supervision, suitable opportunities for interaction
17 with members of the opposite sex except to the extent that a
18 professional person in charge of the patient's treatment
19 plan writes an order stating that such interaction is
20 inappropriate to the treatment regimen.

21 (11) Patients have a right to receive prompt and
22 adequate medical treatment for any physical ailments. In
23 providing medical care, the mental health facility shall
24 take advantage of whatever community-based facilities are
25 appropriate and available and shall coordinate the patient's

1 treatment for mental illness with his medical treatment.

2 (12) Patients have a right to a diet that will provide
3 at a minimum the recommended daily dietary allowances as
4 developed by the national academy of sciences. Provisions
5 shall be made for special therapeutic diets and for
6 substitutes at the request of the patient or the friend of
7 respondent in accordance with the religious requirements of
8 any patient's faith. Denial of a nutritionally adequate diet
9 ~~shall~~ may not be used as punishment.

10 (13) Patients have a right to a humane psychological
11 and physical environment within the mental health
12 facilities. These facilities shall be designed to afford
13 patients with comfort and safety, promote dignity, and
14 ensure privacy. The facilities shall be designed to make a
15 positive contribution to the efficient attainment of the
16 treatment goals set for the patient. In order to assure the
17 accomplishment of this goal:

18 (a) regular housekeeping and maintenance procedures
19 which will ensure that the facility is maintained in a safe,
20 clean, and attractive condition shall be developed and
21 implemented;

22 (b) there must be special provision made for geriatric
23 and other nonambulatory patients to assure their safety and
24 comfort, including special fittings on toilets and
25 wheelchairs. Appropriate provision shall be made to permit

1 nonambulatory patients to communicate their needs to the
2 facility staff.

3 (c) pursuant to an established routine maintenance and
4 repair program, the physical plant of every facility shall
5 be kept in a continuous state of good repair and operation
6 in accordance with the needs of the health, comfort, safety,
7 and well-being of the patients;

8 (d) every facility must meet all fire and safety
9 standards established by the state and locality. In
10 addition, any hospital shall meet such provisions of the
11 life safety code of the national fire protection association
12 as are applicable to hospitals. Any hospital shall meet all
13 standards established by the state for general hospitals
14 insofar as they are relevant to psychiatric facilities.

15 (14) Voluntary and civilly committed patients have a
16 right not to be transferred into the forensic unit of the
17 state hospital."

18 **Section 4.** Section 53-21-144, MCA, is amended to read:

19 "53-21-144. Rights concerning photographs. (1) A
20 person admitted to a mental health facility may be
21 photographed upon admission for identification and the
22 administrative purposes of the facility. Such photographs
23 shall be confidential and ~~shall~~ may not be released by the
24 facility except pursuant to court order.

25 (2) No other nonmedical photographs shall be taken or

1 used without consent of the patient, the patient's legal
2 guardian, or the friend of respondent appointed by the
3 court."

-End-