

HOUSE BILL NO. 633

INTRODUCED BY RUSSELL, HANSEN, BOHARSKI, SQUIRES, DOWELL

IN THE HOUSE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 18, 1993	COMMITTEE RECOMMEND BILL DO PASS. REPORT ADOPTED.
FEBRUARY 19, 1993	PRINTING REPORT.
FEBRUARY 20, 1993	SECOND READING, DO PASS.
FEBRUARY 22, 1993	ENGROSSING REPORT.
FEBRUARY 23, 1993	THIRD READING, PASSED. AYES, 97; NOES, 3.
FEBRUARY 24, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 23, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 25, 1993	SECOND READING, CONCURRED IN.
MARCH 26, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 0.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 27, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 House BILL NO. 633 - LC 1079/01
 2 INTRODUCED BY Russell Schlegel
 3 Steven Doucet
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAWS
 5 RELATING TO THE DETENTION OF MENTALLY ILL PERSONS IN JAIL;
 6 CLARIFYING THE DEFINITION OF "MENTAL DISORDER"; ALLOWING
 7 DETENTION IN JAIL OF A PERSON INTOXICATED BY DRUGS OR
 8 ALCOHOL WHO IS ACCUSED OF A MINOR MISDEMEANOR OFFENSE UNTIL
 9 A SCREENING FOR SERIOUS MENTAL ILLNESS CAN BE PERFORMED;
 10 AMENDING SECTIONS 53-21-102 AND 53-21-138, MCA; AND
 11 PROVIDING AN EFFECTIVE DATE."

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

14 **Section 1.** Section 53-21-102, MCA, is amended to read:

15 "53-21-102. (Temporary) Definitions. As used in this
 16 part, the following definitions apply:

17 (1) "Board" or "mental disabilities board of visitors"
 18 means the mental disabilities board of visitors created by
 19 2-15-211.

20 (2) "Court" means any district court of the state of
 21 Montana.

22 (3) "Department" means the department of corrections
 23 and human services provided for in Title 2, chapter 15, part
 24 23.

25 (4) "Emergency situation" means a situation in which

1 any person is in imminent danger of death or serious bodily
 2 harm from the activity of a person who appears to be
 3 seriously mentally ill.

4 (5) "Friend of respondent" means any person willing and
 5 able to assist a mentally ill person, a person alleged to be
 6 mentally ill, a seriously mentally ill person, or a person
 7 alleged to be seriously mentally ill in dealing with legal
 8 proceedings, including consultation with legal counsel and
 9 others. The friend of respondent may be the next of kin, the
 10 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) "Mental disorder" means any organic, mental, or
 21 emotional impairment which has substantial adverse effects
 22 on an individual's cognitive or volitional functions. The
 23 term does not include:

- 24 (a) addiction to drugs or alcohol; or
 25 (b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof of injury but which:

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

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

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

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

(e) poses a significant risk of the person's becoming seriously mentally ill; ~~within the meaning of this section;~~

or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

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

(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.

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

(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.

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

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

(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 the person's life or health. For this purpose, injury means physical injury. No A person may not be involuntarily committed to a mental health facility or detained for evaluation and treatment because he the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering from a mental disorder unless the condition causes him the person to be seriously mentally ill within the meaning of this part.

(16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

53-21-102. (Effective July 1, 1997) Definitions. As used in this part, the following definitions apply:

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

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

(3) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

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

(5) "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.

(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

(a) addiction to drugs or alcohol; or

(b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any

1 mental health clinic or treatment center approved by the
2 department. No A correctional institution or facility or
3 jail is not a mental health facility within the meaning of
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17 (12) "Reasonable medical certainty" means reasonable
18 certainty as judged by the standards of a professional
19 person.

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21 filed pursuant to this part to be seriously mentally ill.

22 (14) "Seriously mentally ill" means suffering from a
23 mental disorder which has resulted in self-inflicted injury
24 or injury to others or the imminent threat thereof of injury
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4 detained for evaluation and treatment because he the person
5 is an epileptic, mentally deficient, mentally retarded,
6 senile, or suffering from a mental disorder unless the
7 condition causes him the person to be seriously mentally ill
8 within the meaning of this part.

9 (15) "State hospital" means the Montana state hospital."

10 **Section 2.** Section 53-21-138, MCA, is amended to read:

11 "53-21-138. (Effective July 1, 1993) Diversion of
12 certain mentally ill persons from jail. (1) The sheriff or
13 administrator of a jail in each county shall require
14 screening of inmates to identify persons accused of minor
15 misdemeanor offenses who appear to be seriously mentally
16 ill, as defined in 53-21-102.

17 (2) If as a result of screening and observation it is
18 believed that an inmate is seriously mentally ill, the
19 sheriff or administrator of the jail shall:

20 (a) request services from a crisis intervention program
21 established by the department as provided for in 53-21-139;

22 (b) refer the inmate to the nearest community mental
23 health center, as defined in 53-21-212; or

24 (c) transfer the inmate to a private mental health
25 facility or hospital equipped to provide treatment and care

1 of persons who are seriously mentally ill.

2 (3) As used in this section, the term "minor
3 misdemeanor offense" includes but is not limited to a
4 nonserious misdemeanor, such as criminal trespass to
5 property, loitering, vagrancy, disorderly conduct, and
6 disturbing the public peace.

7 (4) A person intoxicated by drugs or alcohol who is
8 accused of a minor misdemeanor offense may be detained in a
9 jail until the level of intoxication is reduced to the point
10 that screening for serious mental illness can be performed."

11 NEW SECTION. Section 3. Effective date. [This act] is
12 effective July 1, 1993.

-End-

APPROVED BY COMMITTEE
ON JUDICIARY

1 House BILL NO. 633 in 5th reading
2 INTRODUCED BY Frank S. Sullivan
3 William Dowell
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAWS
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8 ALCOHOL WHO IS ACCUSED OF A MINOR MISDEMEANOR OFFENSE UNTIL
9 A SCREENING FOR SERIOUS MENTAL ILLNESS CAN BE PERFORMED;
10 AMENDING SECTIONS 53-21-102 AND 53-21-138, MCA; AND
11 PROVIDING AN EFFECTIVE DATE."
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13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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18 means the mental disabilities board of visitors created by
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20 (2) "Court" means any district court of the state of
21 Montana.
22 (3) "Department" means the department of corrections
23 and human services provided for in Title 2, chapter 15, part
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25 (4) "Emergency situation" means a situation in which

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2 harm from the activity of a person who appears to be
3 seriously mentally ill.

4 (5) "Friend of respondent" means any person willing and
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6 mentally ill, a seriously mentally ill person, or a person
7 alleged to be seriously mentally ill in dealing with legal
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9 others. The friend of respondent may be the next of kin, the
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(b) is treatable, with a reasonable prospect of success and consistent with the least restrictive course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be committed;

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9 jail until the level of intoxication is reduced to the point
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11 NEW SECTION. Section 3. Effective date. [This act] is
12 effective July 1, 1993.

-End-

1 House BILL NO. 633 : in E. House, 1/21/01
 2 INTRODUCED BY Frank S. Sullivan
 3 Richard Dowell

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9 (15) "State hospital" means the Montana state hospital."

10 **Section 2.** Section 53-21-138, MCA, is amended to read:

11 "53-21-138. (Effective July 1, 1993) Diversion of
12 certain mentally ill persons from jail. (1) The sheriff or
13 administrator of a jail in each county shall require
14 screening of inmates to identify persons accused of minor
15 misdemeanor offenses who appear to be seriously mentally
16 ill, as defined in 53-21-102.

17 (2) If as a result of screening and observation it is
18 believed that an inmate is seriously mentally ill, the
19 sheriff or administrator of the jail shall:

20 (a) request services from a crisis intervention program
21 established by the department as provided for in 53-21-139;

22 (b) refer the inmate to the nearest community mental
23 health center, as defined in 53-21-212; or

24 (c) transfer the inmate to a private mental health
25 facility or hospital equipped to provide treatment and care

1 of persons who are seriously mentally ill.

2 (3) As used in this section, the term "minor
3 misdemeanor offense" includes but is not limited to a
4 nonserious misdemeanor, such as criminal trespass to
5 property, loitering, vagrancy, disorderly conduct, and
6 disturbing the public peace.

7 (4) A person intoxicated by drugs or alcohol who is
8 accused of a minor misdemeanor offense may be detained in a
9 jail until the level of intoxication is reduced to the point
10 that screening for serious mental illness can be performed."

11 NEW SECTION. Section 3. Effective date. [This act] is
12 effective July 1, 1993.

-End-

1 HOUSE BILL NO. 633

2 INTRODUCED BY RUSSELL, HANSEN, BOHARSKI, SQUIRES, DOWELL

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THE LAWS
5 RELATING TO THE DETENTION OF MENTALLY ILL PERSONS IN JAIL;
6 CLARIFYING THE DEFINITION OF "MENTAL DISORDER"; ALLOWING
7 DETENTION IN JAIL OF A PERSON INTOXICATED BY DRUGS OR
8 ALCOHOL WHO IS ACCUSED OF A MINOR MISDEMEANOR OFFENSE UNTIL
9 A SCREENING FOR SERIOUS MENTAL ILLNESS CAN BE PERFORMED;
10 AMENDING SECTIONS 53-21-102 AND 53-21-138, MCA; AND
11 PROVIDING AN EFFECTIVE DATE."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14 **Section 1.** Section 53-21-102, MCA, is amended to read:15 "53-21-102. (Temporary) Definitions. As used in this
16 part, the following definitions apply:17 (1) "Board" or "mental disabilities board of visitors"
18 means the mental disabilities board of visitors created by
19 2-15-211.20 (2) "Court" means any district court of the state of
21 Montana.22 (3) "Department" means the department of corrections
23 and human services provided for in Title 2, chapter 15, part
24 23.

25 (4) "Emergency situation" means a situation in which

1 any person is in imminent danger of death or serious bodily
2 harm from the activity of a person who appears to be
3 seriously mentally ill.

4 (5) "Friend of respondent" means any person willing and
5 able to assist a mentally ill person, a person alleged to be
6 mentally ill, a seriously mentally ill person, or a person
7 alleged to be seriously mentally ill in dealing with legal
8 proceedings, including consultation with legal counsel and
9 others. The friend of respondent may be the next of kin, the
10 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) "Mental disorder" means any organic, mental, or
21 emotional impairment which has substantial adverse effects
22 on an individual's cognitive or volitional functions. The
23 term does not include:

24 (a) addiction to drugs or alcohol; or25 (b) drug or alcohol intoxication.

(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any mental health clinic or treatment center approved by the department. No A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(8) "Mentally ill" means suffering from a mental disorder which has not resulted in self-inflicted injury or injury to others or the imminent threat thereof of injury but which:

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

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

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

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

(e) poses a significant risk of the person's becoming seriously mentally ill, ~~within the meaning of this section,~~

or will, if untreated, predictably result in further serious deterioration in the mental condition of the person. Predictability may be established by the patient's medical history.

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

(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.

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

(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.

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

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

(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

1 or which has deprived the person afflicted of the ability to
 2 protect his the person's life or health. For this purpose,
 3 injury means physical injury. No A person may not be
 4 involuntarily committed to a mental health facility or
 5 detained for evaluation and treatment because he the person
 6 is an epileptic or is mentally deficient, mentally retarded,
 7 senile, or suffering from a mental disorder unless the
 8 condition causes him the person to be seriously mentally ill
 9 within the meaning of this part.

10 (16) "State hospital" means the Montana state hospital.
 11 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

12 53-21-102. (Effective July 1, 1997) Definitions. As
 13 used in this part, the following definitions apply:

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 15 means the mental disabilities board of visitors created by
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