

House BILL NO. 519

INTRODUCED BY

Brainard

M. Jenny

BY REQUEST OF THE JUDICIAL UNIFICATION AND FINANCE COMMISSION

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT THE STATE, RATHER THAN COUNTIES, PAY THE COSTS ASSOCIATED WITH CIVIL COMMITMENT OF THE SERIOUSLY MENTALLY ILL; PROVIDING THAT THOSE COSTS BE PAID FROM THE STATE GENERAL FUND; AND AMENDING SECTIONS 53-21-113, 53-21-120, 53-21-128, 53-21-132, AND 53-21-198, MCA."

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

Section 1. Section 53-21-113, MCA, is amended to read:

"53-21-113. Costs of committing a patient already voluntarily admitted -- transportation costs for voluntary admission. (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time that the involuntary proceedings are commenced ~~shall~~ must be borne by the ~~county of the patient's residence at the time of admission~~ state from the state general fund.

(2) The costs of transportation to a mental health facility under 53-21-111 and 53-21-112 ~~shall~~ must be provided by the ~~welfare department of the county of the patient's residence~~ state from the state general fund. However, if protective proceedings under Title 72, chapter 5, have been or are initiated with respect to the person, the ~~welfare department~~ state may seek reimbursement. If no one else is available to transport ~~him~~ the person, the sheriff shall transport the person."

Section 2. 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 must 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 must 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

1 within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be
2 made to return ~~him~~ the individual to trial. The trial must be held within 30 days. The ~~county of residence~~
3 state shall pay from the state general fund the cost of travel and professional services associated with the
4 trial. A person may not be detained in any hospital or other medical facility that is not a mental health
5 facility unless the hospital or facility has agreed in writing to admit the person.

6 (3) A person may not be detained pursuant to this part in a jail or other correctional facility.

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

9 (5) Detention may not be ordered under this part for a person concerning whom a petition has been
10 filed under 53-21-121(1)(b).

11 (6) A person may not be involuntarily committed to a mental health facility or detained for
12 evaluation and treatment because ~~he~~ the person is an epileptic or is mentally deficient, mentally retarded,
13 senile, or suffering from a mental disorder unless the condition causes ~~him~~ the person to be seriously
14 mentally ill within the meaning of this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

15 **53-21-120. (Effective July 1, 1997) Detention to be in least restrictive environment -- preference**
16 **for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited.** (1) A person
17 detained pursuant to this part must be detained in the least restrictive environment required to protect the
18 life and physical safety of the person detained or members of the public; in this respect, prevention of
19 significant injury to property may be considered.

20 (2) Whenever possible, a person detained pursuant to this part must be detained in a mental health
21 facility and in the county of residence. If the person detained demands a jury trial and trial cannot be held
22 within 7 days, the individual may be sent to the state hospital until time of trial if arrangements can be
23 made to return ~~him~~ the person to trial. The trial must be held within 30 days. The ~~county of residence~~ state
24 shall pay from the state general fund the cost of travel and professional services associated with the trial.
25 A person may not be detained in any hospital or other medical facility that is not a mental health facility
26 unless the hospital or facility has agreed in writing to admit the person.

27 (3) A person may not be detained pursuant to this part in a jail or other correctional facility.

28 (4) A person detained prior to involuntary commitment may apply to the court for immediate relief
29 with respect to the need for detention or the adequacy of the facility being ~~utilized~~ used to detain."
30

1 **Section 3.** Section 53-21-128, MCA, is amended to read:

2 **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month
3 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be
4 followed:

5 (a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person
6 in charge of the patient at the place of detention may petition the district court in the county where the
7 patient is detained for extension of the detention period unless otherwise ordered by the original committing
8 court. The petition ~~shall~~ must be accompanied by a written report and evaluation of the patient's mental
9 and physical condition. The report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have
10 been employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the
11 patient, and the future course of treatment anticipated by the professional person.

12 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
13 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
14 court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the
15 previous detention authority, the court shall immediately set a time and place for a hearing on a date not
16 more than 10 days from the receipt of the request and notify the same people, including the professional
17 person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment
18 for a period not to exceed 6 months.

19 (c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the
20 same in all respects as the procedure on the petition for the original 3-month commitment, except that the
21 patient is not entitled to trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction
22 over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and
23 witness fees, if any, ~~shall~~ must be paid by the ~~county that paid the same costs in the initial commitment~~
24 proceedings state from the state general fund.

25 (d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of
26 this part, ~~he~~ the patient must be discharged and the petition dismissed. If the court finds that the
27 patient continues to suffer from serious mental illness, the court shall order commitment, custody in
28 relatives, outpatient therapy, or other order as set forth in 53-21-127(2), except that ~~no~~ an order may not
29 affect ~~his~~ the patient's custody for more than 6 months. In its order, the court shall describe what
30 alternatives for treatment of the patient are available, what alternatives were investigated, and why the

1 investigated alternatives were not ~~deemed~~ considered suitable. The court ~~shall~~ may not order continuation
2 of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the
3 patient. A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a
4 comprehensive, individualized plan of treatment exists.

5 (2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this
6 subsection (2) must be followed:

7 (a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under
8 53-21-127(3), the professional person in charge of the respondent's care may petition the court for
9 extension of the treatment period. The petition must be accompanied by a written report and evaluation
10 of the respondent's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation
11 devices ~~which~~ that have been employed in evaluating the respondent, the course of treatment ~~which~~ that
12 has been undertaken for the respondent, and the future course of treatment anticipated by the professional
13 person.

14 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
15 the respondent, ~~his~~ the respondent's next of kin, if reasonably available, the friend of respondent appointed
16 by the court, if any, and the respondent's counsel. If any person so notified requests a hearing prior to the
17 termination of the previous detention authority, the court shall immediately set a time and place for a
18 hearing on a date not more than 5 days from the receipt of the request and notify the same people,
19 including the professional person in charge of the respondent. If a hearing is not requested, the court shall
20 enter an order of treatment for a period not to exceed 30 days.

21 (c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the
22 same in all respects as the procedure on the petition under 53-21-121(1)(b) for the original treatment,
23 except that the respondent is not entitled to trial by jury. The hearing ~~shall~~ must be held in the district court
24 for the county in which the treatment is being supervised unless otherwise ordered by the court. Court
25 costs and witness fees, if any, ~~shall~~ must be paid by the ~~county that paid the same costs in the initial~~
26 proceedings state from the state general fund.

27 (d) If upon the hearing the court finds the respondent not mentally ill within the meaning of this
28 part, the petition ~~shall~~ must be dismissed. If the court finds that the respondent continues to be mentally
29 ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its order, the
30 court shall describe what alternatives for treatment of the respondent are available, what alternatives were

1 investigated, and why the investigated alternatives were not considered suitable. The court may not order
2 continuation of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment
3 for the respondent. A court order for the continuation of an alternative ~~shall~~ must include a specific finding
4 that a comprehensive, individualized plan of treatment exists.

5 (3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained
6 under the same procedure described in subsection (1), ~~except~~ that the patient's custody may not be
7 affected for more than 1 year without a renewal of the commitment under the procedures set forth in
8 subsection (1), including a statement of the findings required by subsection (1).

9 (4) The period of treatment provided for in 53-21-127(3) may be extended only once under this
10 section. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

11 **53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less
12 than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2),
13 the professional person in charge of the patient at the place of detention may petition the district court in
14 the county where the patient is detained for extension of the detention period unless otherwise ordered by
15 the original committing court. The petition ~~shall~~ must be accompanied by a written report and evaluation
16 of the patient's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation
17 devices ~~which~~ that have been employed in evaluating the patient, the course of treatment ~~which~~ that has
18 been undertaken for the patient, and the future course of treatment anticipated by the professional person.

19 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
20 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
21 court, and the patient's counsel. If any person so notified requests a hearing prior to the termination of the
22 previous detention authority, the court shall immediately set a time and place for a hearing on a date not
23 more than 10 days from the receipt of the request and notify the same people, including the professional
24 person in charge of the patient. If a hearing is not requested, the court shall enter an order of commitment
25 for a period not to exceed 6 months.

26 (c) Procedure on the petition for extension when a hearing has been requested ~~shall~~ must be the
27 same in all respects as the procedure on the petition for the original 3-month commitment, ~~except~~ that
28 the patient is not entitled to trial by jury. The hearing ~~shall~~ must be held in the district court having jurisdiction
29 over the facility in which the patient is detained unless otherwise ordered by the court. Court costs and
30 witness fees, if any, ~~shall~~ must be paid by the ~~county that paid the same costs in the initial commitment~~

1 ~~proceedings~~ state from the state general fund.

2 (d) If upon the hearing the court finds the patient not seriously mentally ill within the meaning of
 3 this part, ~~he shall~~ the patient must be discharged and the petition dismissed. If the court finds that the
 4 patient continues to suffer from serious mental illness, the court shall order commitment, custody in
 5 relatives, outpatient therapy, or other order as set forth in 53-21-127(2), except that ~~an~~ an order may not
 6 affect ~~his~~ the patient's custody for more than 6 months. In its order, the court shall describe what
 7 alternatives for treatment of the patient are available, what alternatives were investigated, and why the
 8 investigated alternatives were not ~~deemed~~ considered suitable. The court ~~shall~~ may not order continuation
 9 of an alternative ~~which~~ that does not include a comprehensive, individualized plan of treatment for the
 10 patient. A court order for the continuation of an alternative ~~shall~~ must include a specific finding that a
 11 comprehensive, individualized plan of treatment exists.

12 (2) Further extensions may be obtained under the same procedure described in subsection (1),
 13 except that the patient's custody may not be affected for more than 1 year without a renewal of the
 14 commitment under the procedures set forth in subsection (1), including a statement of the findings required
 15 by subsection (1)."

16
 17 **Section 4.** Section 53-21-132, MCA, is amended to read:

18 **"53-21-132. Cost of examination and commitment.** (1) The cost of the examination, committal,
 19 and taking a person who is seriously mentally ill to a mental health facility must be paid by the ~~county in~~
 20 ~~which he resides at the time he is adjudged to be seriously mentally ill~~ state from the state general fund.
 21 The sheriff must be allowed the actual expenses incurred in taking a person who is seriously mentally ill
 22 to the facility, as provided by 7-32-2144.

23 (2) The ~~county of residence~~ state shall also pay all precommitment expenses, including
 24 transportation to a mental health facility, incurred in connection with the detention, examination, and
 25 precommitment custody of the respondent. The fact that a person is examined, hospitalized, or receives
 26 medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party
 27 from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment."

28
 29 **Section 5.** Section 53-21-198, MCA, is amended to read:

30 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be

1 extended by the district court beyond the expiration date of the order committing the patient under
2 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear
3 and convincing evidence that:

4 (a) continuation of the conditions of release is necessary to prevent the deterioration of the
5 patient's mental disorder; and

6 (b) the deterioration will predictably result in the necessity of further inpatient care for the person.
7 Predictability may be established by the patient's medical history.

8 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under
9 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the
10 professional person responsible for the patient's case may petition the court for extension of the conditions
11 of release. The petition must be accompanied by a written report and evaluation of the patient's mental
12 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been
13 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,
14 and the future course of treatment anticipated by the professional person.

15 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to
16 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the
17 court, if any, and the patient's counsel. If any person so notified requests a hearing prior to the end of the
18 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place
19 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,
20 including the professional person in charge of the patient. If a hearing is not requested, the court shall
21 enter an order extending the conditions of release for a period not to exceed 6 months.

22 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing
23 on a rehospitalization petition pursuant to 53-21-197, except that in an extension proceeding, the finding
24 required is that set forth in subsection (1) of this section. The hearing must be held in the district court for
25 the county in which the patient is residing. Court costs and witness fees, if any, must be paid by the
26 ~~county that paid the same costs in the initial commitment proceeding~~ state from the state general fund.

27 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been
28 made, the conditions of release may not be extended. If the court finds that the required showing has been
29 made, the court may extend the conditions of release as recommended by the professional person. In its
30 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives

1 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court
2 may not order continuation of an alternative that does not include a comprehensive, individualized plan of
3 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative
4 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

5 (6) Further extensions may be obtained under the same procedure described in this section, except
6 that the patient's custody may not be affected for more than 1 year without a renewal of the extension
7 under the procedures set forth in this section, including a hearing and a statement of the findings required
8 by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation provided
9 in subsection (1)."

10

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0519, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill providing that the state general fund, rather than counties, pay the costs associated with civil commitment of the seriously mentally ill.

ASSUMPTIONS:

1. The Department of Corrections and Human Services (DCHS) assumes the state general fund cost will be general fund expenditure of the Mental Health Division.
2. DCHS estimates the costs associated with an involuntary commitment is \$3,263 and that there will be 240 involuntary commitments per year (\$783,120).
3. The transportation costs associated with a voluntary admission is \$108 and there will be 16 voluntary admissions per year (\$1,728).
4. Costs associated with a court-ordered or an emergency detention is \$1,853 and there will be 69 per year (\$127,857). Currently the detention costs associated with this bill are reimbursed to DCHS from the counties.
5. There will be 7 independent evaluations for recommitments per year at a cost of \$500 (\$3,500).
6. DCHS will be responsible for the cost of second opinions completed in the communities and estimates there will be 24 at a minimum cost of \$180 per year (\$4,320 or higher).
7. DCHS will receive the general fund appropriation for the cost of these civil commitments.

FISCAL IMPACT:

Expenditures:

	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenses	794,708	794,708

Revenues:

General Fund County Reimbursement	(127,857)	(127,857)
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Net Impact on General Fund Balance:

Total General Fund Cost (01)	(922,565)	(922,565)
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LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Shifting commitment costs to the state may have the following impacts:

1. Reduced incentive to avoid commitments may lead to some increase in admissions to Montana State Hospital (MSH).
2. Without financial liability, counties will have less incentive to be sure that commitments are completed as economically as possible. This could result in substantially increased detention costs and use of "second opinion" evaluations.
3. Court-ordered detention would be at no cost to counties and counties would have no incentive to limit either the number or duration of such detention orders.
4. Counties that have invested heavily in developing services both to prevent commitments and reduce costs, would have no financial incentive to continue those services.

 2.18.95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MATT BRAINARD, PRIMARY SPONSOR DATE

Fiscal Note for HB0519, as introduced

HB519