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INTRODUCED BY Josh House BILL NO. 532 L. Smith ORR Anderson

A BILL FOR AN ACT ENTITLED: "AN ACT REDEFINING "MENTALLY ILL" FOR PURPOSES OF THE MENTAL ILLNESS TREATMENT LAW; CLARIFYING PROVISIONS RELATED TO THE INVOLUNTARY ADMINISTRATION OF MEDICATION; AMENDING SECTIONS 53-21-102 AND 53-21-127, MCA; AND PROVIDING A TERMINATION DATE."

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

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

**"53-21-102. (Temporary) 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~~ a person who is willing and able to assist a mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a 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, a representative 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~~ that has substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

1 (a) addiction to drugs or alcohol; or

2 (b) drug or alcohol intoxication.

3 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~  
4 that is equipped and staffed to provide treatment for persons with mental disorders or a community mental  
5 health center or any mental health clinic or treatment center that is approved by the department. A  
6 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

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

9 (a) (i) has two or more times within the previous 3 years resulted in the person's being placed in  
10 a hospital or mental health facility pursuant to a judicial determination of mental illness or serious mental  
11 illness; and

12 (ii) results in symptoms or behavior substantially similar to those that preceded and precipitated one  
13 or more of the placements referred to in subsection (8)(a)(i); or

14 ~~(a) (b) (i)~~ has resulted in behavior that creates serious difficulty in providing for basic personal  
15 needs or protecting the person's life or health so that the person is not receiving the care that is necessary  
16 for health and safety, even with the available assistance of family, friends, or others;

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

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

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

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

26 (9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
27 brothers and sisters of a person.

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

30 (11) "Peace officer" means ~~any~~ a sheriff, deputy sheriff, marshal, ~~police man~~ police officer, or other

1 peace officer.

2 (12) "Professional person" means:

3 (a) a medical doctor; or

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

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

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

9 (15) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in  
10 self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person  
11 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.  
12 A person may not be involuntarily committed to a mental health facility or detained for evaluation and  
13 treatment because the person is an epileptic or is mentally deficient, mentally retarded, senile, or suffering  
14 from a mental disorder unless the condition causes the person to be seriously mentally ill within the  
15 meaning of this part.

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

18 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
19 apply:

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

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

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

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

27 (5) "Friend of respondent" means ~~any~~ a person who is willing and able to assist a seriously  
28 mentally ill person or person alleged to be seriously mentally ill in dealing with legal proceedings, including  
29 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's  
30 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other

1 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only  
2 one person may at any one time be the friend of respondent within the meaning of this part. In appointing  
3 a friend of respondent, the court shall consider the preference of the respondent. The court may at any  
4 time, for good cause shown, change its designation of the friend of respondent.

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

7 (a) addiction to drugs or alcohol; or

8 (b) drug or alcohol intoxication.

9 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~  
10 that is equipped and staffed to provide treatment for persons with mental disorders or a community mental  
11 health center or any mental health clinic or treatment center that is approved by the department. A  
12 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

13 (8) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
14 brothers and sisters of a person.

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

17 (10) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~police man~~ police officer, or other  
18 peace officer.

19 (11) "Professional person" means:

20 (a) a medical doctor; or

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

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

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

26 (14) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in  
27 self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person  
28 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.  
29 A person may not be involuntarily committed to a mental health facility or detained for evaluation and  
30 treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from

1 a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of  
2 this part.

3 (15) "State hospital" means the Montana state hospital."  
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5 **Section 2.** Section 53-21-127, MCA, is amended to read:

6 "53-21-127. (Temporary) Posttrial disposition. (1) If, upon trial, it is determined that the  
7 respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the person  
8 must be discharged and the petition must be dismissed.

9 (2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously  
10 mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The  
11 disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless the  
12 fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation  
13 and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

14 (i) commit the respondent to a facility for a period of not more than 3 months;

15 (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some  
16 other appropriate place other than an institution;

17 (iii) order outpatient therapy; or

18 (iv) make some other appropriate order for treatment.

19 (b) ~~No treatment~~ ordered pursuant to this subsection may not affect the respondent's custody for  
20 a period of more than 3 months.

21 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
22 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
23 effective treatment. The court shall consider and shall describe in its order what alternatives for treatment  
24 of the respondent are available, what alternatives were investigated, and why the investigated alternatives  
25 were not ~~deemed~~ considered suitable. The court shall enter into the record a detailed statement of the  
26 facts upon which it found the respondent to be seriously mentally ill.

27 (3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill  
28 within the meaning of this part, the court shall order that ~~he~~ the respondent receive treatment for a period  
29 of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably  
30 available to the respondent. The court ~~must~~ shall make a separate finding, setting forth the reason ~~therefor~~

1 for the finding if the order includes a requirement of inpatient treatment or involuntary medication. If an  
 2 involuntary medication finding and order have been made, medication may be involuntarily administered  
 3 and a public or private mental health facility may use whatever means are reasonably necessary to properly  
 4 administer the medication. The court may not order inpatient treatment in the Montana state hospital at  
 5 Warm Springs under this subsection (3). The respondent may not be required to pay for court-ordered  
 6 treatment unless ~~he~~ the respondent is financially able.

7 (4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3),  
 8 the court shall make findings of fact that treatment appropriate to the needs of the respondent is available.  
 9 The court shall also indicate on the order the name of the facility that is to be responsible for the  
 10 management and supervision of the respondent's treatment. ~~No person may use physical force to~~  
 11 ~~administer medication.~~ A court may use any legal means to enforce an order to take medication, including  
 12 immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court.  
 13 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

14 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
 15 the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the person must be  
 16 discharged and the petition must be dismissed.

17 (2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part,  
 18 the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ must be held within 5 days  
 19 (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday),  
 20 during which time the court may order further evaluation and treatment of the respondent. At the  
 21 conclusion of the disposition hearing, the court shall:

22 (i) commit the respondent to a facility for a period of not more than 3 months;

23 (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some  
 24 other appropriate place other than an institution;

25 (iii) order outpatient therapy; or

26 (iv) make some other appropriate order for treatment.

27 (b) ~~No treatment~~ ordered pursuant to this subsection may not affect the respondent's custody for  
 28 a period of more than 3 months.

29 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
 30 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit

1 effective treatment. The court shall consider and shall describe in its order what alternatives for treatment  
2 of the respondent are available, what alternatives were investigated, and why the investigated alternatives  
3 were not ~~deemed~~ considered suitable. The court shall enter into the record a detailed statement of the  
4 facts upon which it found the respondent to be seriously mentally ill."

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6 NEW SECTION. **Section 3. Termination.** [This act] terminates July 1, 1997.

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