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INTRODUCED BY *Christians* SENATE BILL NO. 168

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO NEEDS OF MENTAL HEALTH PATIENTS; REQUIRING THE APPOINTMENT OF A COMMUNITY SERVICES SCREENER IN MENTAL HEALTH COMMITMENT PROCEEDINGS; REQUIRING AN EXAMINATION AND REPORT BY THE SCREENER; REQUIRING AN ASSESSMENT BY A MENTAL HEALTH FACILITY OF FINANCIAL NEEDS OF PATIENTS TO BE DISCHARGED; REQUIRING REFERRAL TO A COUNTY WELFARE DEPARTMENT; AND AMENDING SECTIONS 53-21-102, 53-21-106, 53-21-123, 53-21-127, AND 53-21-188, MCA."

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) "Community services screener" means a professional person who has been designated by the department to determine whether community-based services can adequately serve an individual.

~~(2)~~(3) "Court" means any district court of the state of Montana.

~~(3)~~(4) "Department" means the department of corrections and human services provided for in Title 2, chapter 15, part 23.

~~(4)~~(5) "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)~~(6) "Friend of respondent" means any person 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

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

5 ~~(6)~~(7) "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)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
 10 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community  
 11 mental health center or any mental health clinic or treatment center 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)~~(9) "Mentally ill" means suffering from a mental disorder ~~which~~ that has not resulted in  
 14 self-inflicted injury or injury to others or the imminent threat of injury but ~~which~~ that:

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

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

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

23 (e) 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)~~(10) "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)~~(11) "Patient" means a person committed by the court for treatment for any period of time or  
 29 who is voluntarily admitted for treatment for any period of time.

30 ~~(11)~~(12) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace

1 officer.

2 ~~(12)~~(13) "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)~~(14) "Reasonable medical certainty" means reasonable certainty as judged by the standards of  
6 a professional person.

7 ~~(14)~~(15) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally  
8 ill or seriously mentally ill.

9 ~~(15)~~(16) "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)~~(17) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch.  
17 541, L. 1989.)

18 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following  
19 definitions 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) "Community services screener" means a professional person who has been designated by the  
23 department to determine whether community-based services can adequately serve an individual.

24 ~~(2)~~(3) "Court" means any district court of the state of Montana.

25 ~~(3)~~(4) "Department" means the department of corrections and human services provided for in Title  
26 2, chapter 15, part 23.

27 ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death  
28 or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

29 ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a seriously mentally ill  
30 person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation

1 with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator  
2 or legal guardian, if any, representatives of a charitable or religious organization, or any other person  
3 appointed by the court to perform the functions of a friend of respondent set out in this part. Only one  
4 person may at any one time be the friend of respondent within the meaning of this part. In appointing a  
5 friend of respondent, the court shall consider the preference of the respondent. The court may at any time,  
6 for good cause shown, change its designation of the friend of respondent.

7 ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
8 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

9 (a) addiction to drugs or alcohol; or

10 (b) drug or alcohol intoxication.

11 ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
12 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community  
13 mental health center or any mental health clinic or treatment center approved by the department. A  
14 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

15 ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
16 brothers and sisters of a person.

17 ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or  
18 who is voluntarily admitted for treatment for any period of time.

19 ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace  
20 officer.

21 ~~(11)~~(12) "Professional person" means:

22 (a) a medical doctor; or

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

24 ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards of  
25 a professional person.

26 ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously  
27 mentally ill.

28 ~~(14)~~(15) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in  
29 self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person  
30 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.

1 A person may not be involuntarily committed to a mental health facility or detained for evaluation and  
2 treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from  
3 a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of  
4 this part.

5 ~~(15)~~(16) "State hospital" means the Montana state hospital."

6

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

8 **"53-21-106. (Temporary) Certification of professional persons.** (1) The  
9 department shall certify professional persons, as defined in 53-21-102, for the purpose of this part.

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

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

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

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

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

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

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

21 (f) specific procedures for certification, recertification, and revocation of certification. (Terminates  
22 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

23 **53-21-106. (Effective July 1, 1997) Certification of professional persons.**

24 (1) The department shall certify professional persons as defined in 53-21-102~~(10)(b)~~ for the purpose of  
25 this part.

26 (2) The department, with reference to recognized national standards in the field of mental health,  
27 shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

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

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

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

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

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

5 (e) the procedure for categorical certification qualifying the level of professional authority and  
6 responsibility of an individual; and

7 (f) specific procedures for certification, recertification, and revocation of certification."  
8

9 **Section 3.** Section 53-21-123, MCA, is amended to read:

10 **"53-21-123. (Temporary) Examination of respondent following initial hearing**  
11 **-- ~~recommendation~~ recommendations of professional person and community services**  
12 **screeener.** (1) Following the initial hearing, whether before a judge or justice of the peace, the  
13 respondent ~~shall~~ must be examined by the professional person and by a community services screener  
14 without unreasonable delay. The examination by the community services screener must include a  
15 determination of whether or not available community-based services are able to meet the treatment needs  
16 of the respondent. The examination by the professional person may not exceed a period of 4 hours. The  
17 professional person and the community services screener shall immediately notify the county attorney of  
18 ~~his~~ the findings in person or by phone, and each shall make a written report ~~of his examination~~ to the court,  
19 with copies to the respondent's attorney and the county attorney.

20 (2) The following action ~~shall~~ must be taken based on the professional person's findings:

21 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally  
22 notify counsel and the respondent, if ~~he~~ the respondent has been detained, ~~shall~~ must be released and the  
23 petition dismissed. However, the county attorney may, upon good cause shown, request the court to order  
24 an additional, but no more than one, examination by a different professional person for a period of no more  
25 than 4 hours.

26 (b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing  
27 ~~shall~~ must be held as scheduled.

28 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
29 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
30 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

1           **53-21-123. (Effective July 1, 1997) Examination of respondent following**  
 2 **initial hearing -- ~~recommendation~~ recommendations of professional person and**  
 3 **community services screener.** (1) Following the initial hearing, whether before a judge or justice  
 4 of the peace, the respondent ~~shall~~ must be examined by the professional person and by a community  
 5 services screener without unreasonable delay. The examination by the community services screener must  
 6 include a determination of whether or not available community-based services are able to meet the  
 7 treatment needs of the respondent. The examination by the professional person may not exceed a period  
 8 of 4 hours. The professional person and the community services screener shall immediately notify the  
 9 county attorney of ~~his~~ the findings in person or by phone, and each shall make a written report ~~of his~~  
 10 ~~examination~~ to the court, with copies to the respondent's attorney and the county attorney.

11           (2) The following action ~~shall~~ must be taken based on the professional person's findings:

12           (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally  
 13 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county  
 14 attorney may, upon good cause shown, request the court to order an additional, but no more than one,  
 15 examination by a different professional person for a period of no more than 4 hours.

16           (b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing  
 17 ~~shall~~ must be held as scheduled.

18           (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
 19 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
 20 along with the amount of additional time needed."

21  
 22           **Section 4.** Section 53-21-127, MCA, is amended to read:

23           **"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that  
 24 the respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the  
 25 respondent must be discharged and the petition dismissed.

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

- 1 (i) commit the respondent to a facility for a period of not more than 3 months;
- 2 (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some
- 3 other appropriate place other than an institution;
- 4 (iii) order outpatient therapy; or
- 5 (iv) make some other appropriate order for treatment.

6 (b) ~~No treatment~~ Treatment ordered pursuant to this subsection may not affect the respondent's

7 custody for a period of more than 3 months.

8 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall

9 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit

10 effective treatment. The court shall consider and shall describe in its order what alternatives for treatment

11 of the respondent are available, what alternatives were investigated, and why the investigated alternatives

12 were not ~~deemed~~ considered suitable. If the court does not accept the recommendations of the community

13 services screener, the court shall state in the record why the recommendations were not accepted. The

14 court shall enter into the record a detailed statement of the facts upon which it found the respondent to

15 be seriously mentally ill.

16 (3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill

17 within the meaning of this part, the court shall order that ~~he~~ the respondent receive treatment for a period

18 of no more than 30 days. The court shall choose the least restrictive course of treatment reasonably

19 available to the respondent. The court must make a separate finding, setting forth the reason ~~therefor~~

20 the order includes a requirement of inpatient treatment or involuntary medication. The court may not order

21 inpatient treatment in the Montana state hospital at Warm Springs under this subsection ~~(3)~~. The

22 respondent may not be required to pay for court-ordered treatment unless ~~he is~~ financially able.

23 (4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3),

24 the court shall make findings of fact that treatment appropriate to the needs of the respondent is available.

25 The court shall also indicate on the order the name of the facility that is to be responsible for the

26 management and supervision of the respondent's treatment. ~~No~~ A person may not use physical force to

27 administer medication. A court may use any legal means to enforce an order to take medication, including

28 immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court.

29 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

30 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it



1 is determined that the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the  
 2 respondent must be discharged and the petition dismissed.

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

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

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

11 (iii) order outpatient therapy; or

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

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

15 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
 16 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
 17 effective treatment. The court shall consider and shall describe in its order what alternatives for treatment  
 18 of the respondent are available, what alternatives were investigated, and why the investigated alternatives  
 19 were not ~~deemed~~ considered suitable. If the court does not accept the recommendations of the community  
 20 services screener, the court shall state in the record why the recommendations were not accepted. The  
 21 court shall enter into the record a detailed statement of the facts upon which it found the respondent to  
 22 be seriously mentally ill."  
 23

24 **Section 5.** Section 53-21-188, MCA, is amended to read:

25 **"53-21-188. Maintenance of indigent patients on discharge.** (1) Prior to the  
 26 discharge of a committed patient from a mental health facility, the ~~professional person in charge of the~~  
 27 ~~facility shall notify the welfare department of the county from which the patient was committed. The~~  
 28 ~~county welfare department shall at once ascertain whether the discharged patient is in financial need~~ the  
 29 facility shall make an assessment of the patient's financial needs. If the assessment indicates that the  
 30 patient may be in financial need upon discharge from the facility, the patient, upon consent, must be

1 referred to the welfare department of the county in which the patient will be discharged.

2 (2) If the patient is found by the county welfare department to be ~~in~~ eligible for and applies for  
3 financial ~~need~~ assistance, the county welfare department shall properly care for and maintain the discharged  
4 patient under the laws of this state relating to public assistance until the patient is able to ~~care for himself~~  
5 provide self-care or until another provision has been made for care of the patient."

6 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0168, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill relating to needs of mental health patients; requiring the appointment of a community services screener in mental health commitment proceedings; requiring an examination and report by the screener; requiring an assessment by a mental health facility of financial needs of patients to be discharged; and requiring referral to a county welfare department.

ASSUMPTIONS:

1. Using FY94 data, the Department of Corrections and Human Services (DCHS) assumes that Community Mental Health Centers (CMHC) would continue to do the majority of commitment evaluations at no additional costs in FY96 and FY97.

FISCAL IMPACT:

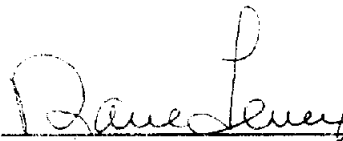
No Fiscal Impact

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

Additional costs for which counties could be liable are estimated at \$24,225 per year. For calculating increased cost to counties, DCHS projected 3 hours for each screening evaluation at a rate of \$85 per hour. There were 95 civil involuntary commitment evaluations in FY94 that were not completed by CMHC staff. (95 X 3 X \$85 = \$24,225)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

All petitions for civil involuntary commitment to Montana State Hospital (MSH) would be screened for appropriateness and need by a professional person designated by DCHS. The expected result will be a minor reduction in admissions to MSH.

 1-23-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1/24/95  
CHRIS CHRISTIAENS, PRIMARY SPONSOR      DATE

Fiscal Note for SB0168, as introduced

SB 168