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As of: August 13, 2010 (4:43pm)

LC0046

**** Bill No. ****

Introduced By *****

By Request of the Children, Families, Health, and Human Services
Interim Committee

A Bill for an Act entitled: "An Act requiring an initial hearing on a petition to commit a person with developmental disability; clarifying procedural rights in commitment proceedings; making appointment of a responsible person optional; clarifying the maximum commitment period; and amending sections 53-20-102, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-121, 53-20-125, 53-20-126, and 53-20-129, MCA."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

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(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

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

(3) "Case manager" means a person who is responsible for service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department.

(4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

(5) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(6) "Court" means a district court of the state of Montana.

(7) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

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(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(8) "Developmental disability" means a disability that:

(a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation;

(b) requires treatment similar to that required by mentally retarded individuals;

(c) originated before the individual attained age 18;

(d) has continued or can be expected to continue indefinitely; and

(e) results in the person having a substantial disability.

(9) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

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

(12) "Qualified mental retardation professional" means a

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professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(13) "Resident" means a person committed to a residential facility.

(14) "Residential facility" or "facility" means the Montana developmental center.

(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to a residential facility or imposition of a community treatment plan is appropriate.

(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and for whom the petition requests commitment to a residential facility or imposition of a community treatment plan.

(17) "Responsible person" means a person willing and able to ~~assume responsibility for~~ assist a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled in proceedings under this part, including consultation with legal counsel and others.

(18) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated through

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voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others."

{Internal References to 53-20-102:

45-5-501x	45-5-501x	45-5-502x	45-5-502x
46-14-101x	46-14-206x	46-14-221x	46-14-221x
46-14-301x	46-14-312x	46-16-221x	46-16-226x
50-5-101x	52-3-202x	52-3-803x	53-20-220x
87-2-126x	90-5-101x}		

Section 2. Section 53-20-112, MCA, is amended to read:

"53-20-112. Procedural rights -- appointment of counsel.

~~(1) A respondent has all the rights accorded to a person subject to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of a person who suffers from a mental disorder and who requires commitment, as provided in 53-21-115 through 53-21-118.~~

(1) In addition to any other rights that may be guaranteed by the constitution of the United States and this state, by the laws of this state, or by this part, a respondent has the following rights:

(a) the right to receive notice reasonably in advance of any hearing or other court proceeding concerning the person;

(b) the right to be to be present at any hearing;

(c) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;

(d) the right to be represented by counsel;

(e) the right to view and copy all petitions concerning the person that are on file with the court; and

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(f) the right, during any hearing:

(i) to remain silent;

(ii) to be dressed in the respondent's own clothes; and

(iii) to be proceeded against according to the rules of evidence.

(2) (a) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in 47-1-201, to assign counsel for the respondent.

(b) The respondent may secure an attorney of the respondent's own choice and at the respondent's own expense to represent the respondent.

(3) (a) A respondent may secure a professional of the respondent's choice to evaluate whether the respondent is seriously developmentally disabled and to testify at any court proceeding as to the results of the evaluation.

(b) The respondent's attorney or the responsible person appointed by the court may secure a professional of the person's choice for the evaluation if the respondent:

(i) has not made a separate request for an evaluation; and

(ii) joins in the request for the evaluation.

(c) If the respondent is unable to secure a professional because of financial reasons, the court shall appoint a professional other than the person requesting the commitment to perform the evaluation. The county in which the respondent resides shall pay the costs of the evaluation.

(d) The court shall allow the respondent a reasonable choice

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of a professional who is qualified to perform the evaluation provided for in this subsection (3).

~~(2)~~(4)(a) In addition, the parents or guardian of a respondent has the right to:

~~(a)~~(i) be present at any hearing held pursuant to this part;

~~(b)~~(ii) be represented by counsel in any hearing;

~~(c)~~(iii) offer evidence and cross-examine witnesses in any hearing; and

~~(d)~~(iv) have the respondent ~~examined~~ evaluated by a professional of the parents' or guardian's choice when a professional is reasonably available unless the person chosen is objected to by the respondent or by a responsible person appointed by the court.

~~(3) (b) Upon receipt of a petition for commitment, recommitment, or emergency commitment, the court shall order the office of the state public defender, provided for in 47-1-201, to assign counsel for the respondent. If the parents are indigent and the parents request it or if the guardian is indigent and the guardian requests it, the court shall order the office of state public defender to assign counsel for the parents or guardian pending a determination of indigence pursuant to 47-1-111."~~

{Internal References to 53-20-112:
47-1-104x 47-1-104x}

Section 3. Section 53-20-113, MCA, is amended to read:

"53-20-113. Waiver of rights -- exceptions. (1)(a) ~~Except~~

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as otherwise provided in this section, a respondent may waive the respondent's procedural rights provided that a record is made of the waiver and the waiver is knowingly and intentionally made.

(b) If a respondent is unable to knowingly and intentionally waive the respondent's procedural rights, the rights may be waived by the respondent's counsel and the respondent's parents, guardian, and responsible person acting together if a record is made of the reasons for the waiver.

(2) The right to counsel in ~~a~~ any hearing held ~~pursuant to 53-20-125~~ under this part may not be waived.

(3) The right to habilitation provided for in this part may not be waived.

~~(4) A respondent may knowingly and intentionally waive the respondent's rights only with the concurrence of the respondent's counsel, if any, or, if the respondent has no counsel, or the respondent's parents, guardian, or other responsible person appointed by the court."~~

{Internal References to 53-20-113: None.}

Section 4. Section 53-20-114, MCA, is amended to read:

"53-20-114. Appointment of responsible person. (1) ~~In~~ If the court finds in a proceeding under this part that the respondent would benefit from the assistance of a responsible person and the respondent does not object, the court ~~shall~~ may appoint a responsible person. ~~to protect the interests of the respondent if the court determines:~~ In making the appointment, the court must determine:

(a) that a conflict of interest may exist between the respondent and the respondent's parents or guardian;

(b) that the parents or guardian are unable to protect the interests of the respondent; or

(c) that the respondent has no parent or guardian.

(2) The responsible person may not be an employee of a residential facility.

(3) Only one person may be the responsible person within the meaning of this part.

(4) In appointing a responsible person, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of who is the responsible person.

(5) The appointment of the responsible person must terminate at the time of the resident's discharge from the residential facility. The appointment of the responsible person may not terminate during any period of conditional release from the facility."

{*Internal References to 53-20-114: None.*}

Section 5. Section 53-20-116, MCA, is amended to read:

"53-20-116. Residential facility screening team member -- testimony at hearing. (1) In a hearing held pursuant to this part, a member of the residential facility screening team may be required to testify with regard to a determination or recommendation made by the residential facility screening team.

(2) The residential facility screening team member may

testify by two-way electronic audio-video communication."

{*Internal References to 53-20-116: None.*}

Section 6. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment -- contents of -- initial hearing. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person;

(f) a description of the relief requested, whether commitment to a residential facility or imposition of a community

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treatment plan; and

(g) a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.

(4) ~~The~~ Upon filing of the petition, the county attorney shall immediately mail a copy of the petition to the residential facility screening team, the respondent's parents or guardian, if any, and the respondent's counsel. The county attorney shall ensure that the petition is promptly hand-delivered to the respondent.

(5) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall:

(i) order the office of the state public defender, provided for in 47-1-201, to immediately assign counsel for the respondent if the respondent does not have counsel;

(ii) schedule an initial hearing on the petition on the next business day after filing of the petition; and

(iii) order the respondent and counsel to appear at the initial hearing.

(b) The respondent's attorney may request a hearing to challenge a finding of probable cause.

(6) During the initial hearing, the judge shall:

(a) notify the respondent of the respondent's rights as set

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forth in 53-20-112;

(b) if necessary, appoint a responsible person as provided in 53-20-114; and

(c) set a date and time for a hearing to be held:

(i) within 45 days for a proceeding held pursuant to 53-20-125; or

(ii) within 10 days for a hearing held pursuant to 53-20-129.

(7) (a) If a judge is not available in the county in person, the clerk of court shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender to immediately provide assigned counsel.

(b) The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the petition.

(8) If the respondent has been admitted to a residential facility on an emergency basis, the initial hearing may be held by two-way electronic audio-video communication."

{*Internal References to 53-20-121:
53-20-129x*}

Section 7. Section 53-20-125, MCA, is amended to read:
"53-20-125. Outcome of screening -- recommendation for

commitment to residential facility or imposition of community treatment plan -- hearing.

(1) A court may commit a person to a residential facility or impose a community treatment plan only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to a residential facility or imposition of a community treatment plan by the residential facility screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) After the screening required by 53-20-133, the residential facility screening team shall file its written recommendation and report with the court. The report must be filed within 30 days of the court's referral, must include the factual basis for the recommendation, and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination of whether the respondent is seriously developmentally disabled and in need of commitment.

(3) ~~Notice~~ A copy of the determination recommendation and report of the residential facility screening team must be mailed or delivered to:

(a) the respondent;

(b) the respondent's parents, guardian, or next of kin, if

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known;

- (c) the responsible person;
- (d) the respondent's advocate, if any;
- (e) the county attorney;
- (f) the residential facility;
- (g) the attorney for the respondent, ~~if any~~; and
- (h) the attorney for the parents or guardian, if any.

~~(4) The respondent, the respondent's parents or guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. The request for a hearing must be made in writing within 15 days of service of the report.~~

~~(5) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection (4).~~

(4) Upon receiving the report of the residential facility screening team, the court shall:

(a) immediately dismiss the petition if the residential facility screening team finds that the respondent does not have a developmental disability or is not in need of developmental disability services;

(b) immediately dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209 if the residential facility screening team finds that the respondent has a developmental disability and is in need of services but is not seriously

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developmentally disabled or not in need of commitment or
imposition of a community treatment plan; or

(c) conduct the hearing previously set under 53-20-121 if
the residential facility screening team recommends commitment or
imposition of a community treatment plan, unless the respondent
has waived the hearing pursuant to 53-20-113.

(5) If a hearing is waived, the court may rely on the
residential facility screening team report required in subsection
(2) in making its decision on the commitment petition.

(6) The hearing must be held before the court without jury.
The rules of civil procedure and rules of evidence apply. The use
of the residential facility screening team report in the hearing
must comply with these rules.

(7) ~~Upon receiving the report of the residential facility
screening team and after~~ After a hearing, ~~if one is requested,~~
the court shall enter findings of fact and take one of the
following actions:

(a) If both the residential facility screening team and the
court find that the respondent is seriously developmentally
disabled and in need of commitment to a residential facility, the
court shall order the respondent committed to a residential
facility for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the
court find that the respondent is seriously developmentally
disabled but either the residential facility screening team or
the court finds that a less restrictive community treatment plan
has been proposed, the court may impose a community treatment

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plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

~~(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.~~

~~(d) If either the residential facility screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, the court shall dismiss the petition.~~

(8) (a) If the residential facility screening team recommends commitment to a residential facility or imposition of a community treatment plan and ~~none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report~~ the hearing required under this section has been waived, the court may:

(i) issue an order committing the respondent to the

residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4);
or

(iii) initiate its own inquiry as to whether an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4) (c) and (4) (d).

(9) The court may refuse to authorize commitment of a respondent to a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

(10) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

{*Internal References to 53-20-125:*

53-20-113x	53-20-127x	53-20-127x	53-20-128x
53-20-133x	53-20-140x	53-20-140x	53-20-140x}

Section 8. Section 53-20-126, MCA, is amended to read:

"53-20-126. Maximum period of commitment or treatment plan.

(1) The court order approving the commitment to a residential facility or the imposition of the community treatment plan:

_____ (a) must specify the maximum period of time for which the person is committed or for which a community treatment plan is imposed; and

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(b) may not exceed the time period recommended by the residential facility screening team.

(2) The maximum period may not exceed 1 year.

(3) The commitment period must be calculated from:

(a) the date of the order, if the respondent has not been admitted to a residential facility or placed in a community treatment plan;

(b) the date of the respondent's admission to a residential facility or the imposition of a community treatment plan, if the admission or imposition was made on an emergency basis pursuant to 53-20-129; or

(c) the date an existing order expires, for a respondent involved in a recommitment proceeding."

{Internal References to 53-20-126: None.}

Section 9. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily injury, as defined in 45-2-101.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission to a residential facility may

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not proceed unless:

(a) the developmental disabilities professional responsible for the emergency admission has provided reasonable notice to the residential facility and the department of public health and human services are given reasonable notice of the circumstances and need for placement by the developmental disabilities professional responsible for emergency admission; and

(b) the residential facility specifies the time and date for the admission to take place.

(4) (a) ~~A~~ The developmental disabilities professional responsible for the emergency admission must immediately notify the county attorney of the county in which the respondent resides and the county attorney must file a petition for emergency commitment ~~must be filed~~ on the next judicial day after an emergency admission to a residential facility ~~by the county attorney of the county where the respondent resides~~. The petition may be combined with a petition for commitment for up to 1 year, as provided for in 53-20-121, and must include a report by the respondent's developmental disabilities case manager or the developmental disabilities professional who initiated the emergency admission.

(b) If the petition is not filed on the next business day, the emergency admission may not continue until the petition is filed and the court has ordered an emergency commitment, unless the resident consents to remain in the residential facility pending the petition and court order.

(c) Except as otherwise provided in this section, the

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rights accorded to a respondent in 53-20-112 and the procedures established in 53-20-121 apply to a respondent in a matter involving an emergency commitment or imposition of a temporary community treatment plan.

(5) A petition for imposition of ~~an emergency~~ a temporary community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or have attached the written report of a case manager and the proposed community treatment plan. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

(6) The residential facility screening team shall file its recommendation and report back to ~~with~~ the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.

(7) ~~Once~~ Upon receipt of the report of the residential facility screening team, ~~is received by the court, continued placement in the residential facility or continued imposition of the temporary community treatment plan may not continue without an order of the court for emergency commitment or continued imposition of the community treatment plan~~ the court shall immediately rule on the petition for emergency commitment or temporary community treatment plan.

(8) A court may enter an order for an emergency commitment or continue a temporary community treatment plan ~~only when the residential facility screening team has recommended and the court has determined~~ without a hearing if the court finds that the record, including the report of the case manager or developmental

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disabilities professional and the recommendation and report of the residential facility screening team, establishes that the emergency commitment or continued imposition of a temporary community treatment plan is necessary to protect the respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

~~(9) An order for emergency commitment or continued imposition of a temporary community treatment plan may be entered without a hearing before the court if the court finds that the record supports the order.~~

~~(10)~~ (9) An emergency commitment to a residential facility or imposition of a temporary community treatment plan may not continue for longer than 30 days after placement in the residential facility or imposition of a temporary community treatment plan unless a petition for an extended commitment to the residential facility or for imposition of a temporary community treatment plan as provided in 53-20-121 has been filed. If a petition for extended commitment has been filed, the emergency commitment or temporary community treatment plan continues until the court has ruled on the petition or extended commitment."

{Internal References to 53-20-129:

53-20-118x 53-20-125x 53-20-133x 53-20-140x}

- END -

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