

HJR 16: State-Operated Institutions
Montana Laws Governing Assisted Outpatient Treatment
Prepared for the Children, Families, Health, and Human Services Interim Committee
January 2014

Background

Court-ordered treatment that allows a seriously mentally ill person to remain in the community under specified conditions is known as Assisted Outpatient Treatment (AOT). Some interested parties have encouraged the Children, Families, Health, and Human Services Interim Committee to consider ways in which AOT could be better used in Montana for individuals involved in both civil and criminal commitments.

Under current law, a judge, the Montana State Hospital or the Board of Pardons and Parole may require individuals to follow certain conditions if they have been found to be either in need of commitment or in need of continued supervision upon release from the State Hospital or a correctional facility. The relevant laws are summarized below.

The Community Commitment Option

In a civil case, the following laws allow for a so-called "community commitment" when a judge finds that a person should be involuntarily committed because of a mental disorder.

- The judge may commit the person to a community facility or program or an appropriate course of treatment, rather than to the Montana State Hospital. The commitment may last for up to three months on an initial commitment or for up to six months if the person was previously committed to the State Hospital and the judge finds the previous commitment is relevant to decisions made in the current case. (53-21-127, MCA)
- The court may order a specific course of treatment or may order that the person comply with specific conditions. (53-21-149, MCA) Outpatient treatment varies widely in intensity and may include involuntary administration of medication. (*In re Mental Health of S.C.*, 2000 MT 370)
- The chief medical officer of the community facility or program at which the person receives outpatient treatment must submit a treatment plan to the court. The judge may revise the plan with the approval of a mental health professional. (53-21-150, MCA)
- When a person fails to "substantially comply" with the treatment plan, the facility or program must notify the court if the noncompliance is likely to result in the person becoming a danger to self or others or being unable to provide for basic needs. The court may take steps to require the person to comply with the treatment plan, including having the person taken to the mental health facility for treatment. The treatment may include involuntary administration of medication. (53-21-151, MCA)
- A community commitment is the only commitment option available for a person found to be in need of involuntary commitment solely because the person's recent actions indicate a likelihood that the person's mental condition will deteriorate to a point at which the person will either become a danger to self or others or be unable to provide for basic needs. (53-21-127(7), MCA)

- At the recommendation of the professional person appointed to conduct an examination, an individual may be diverted for short-term inpatient treatment while a commitment proceeding is suspended. (53-21-1205, MCA)

Judicial and mental health professionals involved in community commitments say the law is somewhat vague on what should be done when a person fails to comply with the community treatment plan. Noncompliance doesn't automatically result in a transfer to the Montana State Hospital. Instead, a new commitment petition is usually filed and may result in the person's commitment to the Montana State Hospital.

Conditional Release of Montana State Hospital Patients

Some Montana State Hospital patients are discharged to a form of supervised community treatment under the state's conditional release laws.

- When a mental health professional at the State Hospital believes a person can be appropriately served in the community while the commitment order is still in effect, the person may be released early but required to obtain outpatient care. The outpatient facility involved in the patient's care must agree in writing to assume responsibility for the patient. (53-21-183, MCA)
- If the patient fails to follow the terms of the conditional release, a county attorney, a professional person treating the patient, or the patient's next of kin may file a petition seeking rehospitalization. The petition must explain how the person has violated the conditions and state that the violation has caused a deterioration of the mental disorder, making outpatient care inappropriate. (53-21-195, MCA)
- The judge may revoke the conditional release and order a return to the State Hospital or commitment to another inpatient facility if the judge finds that a violation occurred and has caused a deterioration of the person's mental condition that makes continued outpatient care inappropriate. (53-21-197, MCA)
- A court may extend the terms of a conditional release for up to two years if the professional person files a petition and the evidence shows that continuation of the conditions is needed to prevent a deterioration of the person's mental disorder that would likely result in the need for further inpatient care. (53-21-198, MCA)
- The State Hospital is not responsible for the costs of treating or caring for a person who is conditionally released. (53-21-186, MCA)

Conditions of Probation and Parole

Individuals who have been convicted of a crime and who have a mental disorder may be required to continue mental health treatment when they are released on parole or probation. Under Title 46, Chapter 23, MCA, the Board of Pardons and Parole may establish conditions for parole for any offender released from a correctional facility. A sentencing judge may establish conditions for a person whose sentence includes a period of supervised release. The Department of Corrections supervises parolees and probationers and may arrest a person for an alleged violation of the conditions of release. If probable cause exists to believe the violation occurred, a hearing must be held.

In addition, the 2013 Legislature passed legislation allowing the Board of Pardons and Parole to require that a person sentenced to the custody of the Department of Public Health and Human Services participate in a supervised mental health treatment program upon parole. The board may revoke parole if the person fails to comply with the terms of the treatment program. (46-23-201, MCA)