**2025 Proposed Legislation Concepts**

**Title:** 6901-33-02, Civil Mental Health Commitment and Emergency Detention Amendments
**Agency Name – Division:** DPHHS/Health Care Facilities Practice
**Agency Contact/Phone:** Chad G. Parker, Deputy Chief Legal Counsel/406-444-0207
**Date:** August 29, 2024

1. **What is the purpose of the proposed legislation?**

   Amend civil involuntary commitment statutes in Title 53, Chapter 21, Part 1 to repair processes which have created significant logistical and clinical care issues for patients involuntarily committed to the Montana State Hospital (MSH-Warm Springs), which contributed to the loss of MSH's federal CMS certification, and which have subjected the Department to time-consuming and expensive litigation. The proposed changes seek to ensure that (1) patients are more appropriately committed, transferred, and transported to MSH, and (2) that use of community care and treatment options, other than state-run facilities, are maximized to provide mental health service to mentally ill patients. These aims require numerous revisions to Mont. Code Ann., 53-21-102, -127, -129, and -193.

2. **What is the background?**

   MSH has struggled to maintain appropriate levels of care for individuals involuntarily committed to the Department's custody due to a variety of well-publicized factors, including budgetary and staffing constraints, the lack of availability of community-based resources throughout Montana, and the lack of control over the flow of patients ordered to MSH by Montana courts.

3. **If possible, please list the MCA (Montana Code Annotated) sections that would need to be amended.**

   Montana Code Annotated §§ 53-21-102, -127, -129, -193.

   **Section 1 – Amend Mont. Code Ann. § 53-21-102 (Definitions).**

   a. New subsection (5); Add definition of "Community Facility."
   New statutory language provides additional community-based options for placement of individuals subject to an emergency detention. Currently, the only options are a "behavioral health inpatient facility" and MSH.

   b. Amend subsection (7); Amend definition of "Emergency Situation."

Amended definition limits the meaning of the term to actual emergencies, which include imminent danger of death or bodily harm to oneself or others. The current definition inappropriately makes every situation that could result in civil commitment an "emergency."

c. Amend subsection (10); Amend definition of "Mental health facility" or "facility": Amended definition includes less-restrictive, community-based options and emphasizes an appropriate hierarchy of choices for emergency detention and commitment prior to consideration of Montana State Hospital, which is arguably the most restrictive environment for emergency detention or involuntary commitment.

d. Amend subsection (14); Amend definition of "Patient": Amended definition clarifies that the term includes a person who is "civilly" committed by the court.

e. New subsection (20); Add definition of "Short-term": New statutory language provides a definition of "short-term" to clarify that less-restrictive, community-based placements are best restricted in time to not more than 6 months.

**Section 2 – Amend Mont. Code Ann. § 53-21-127 (Posttrial disposition).**

a. Amend subsections (7) and (8). Amended language reconciles changes made during the 2023 Legislative Session and facilitates disclosure of reports to a mental health facility, including Montana state hospital, so an admitting facility can appropriately address a patient's clinical and psychiatric needs at the time of admission. New language also includes required disclosure of any mental health evaluation report by any professional person who evaluated the person in connection with the commitment.

b. New subsections (9), (10), and (11). New statutory language requires parties to an involuntary civil commitment proceeding to consider the necessary and most basic clinical and psychiatric protocols of a mental health facility, including the Montana state hospital, prior to admission. These considerations are currently memorialized in statute and the Administrative Rules of Montana but are frequently ignored.

Prior to ordering commitment, transfer, or transport of a person, there must be written confirmation that:

1. a bed is actually available,

2. admission will not cause the mental health facility to exceed its licensed capacity, and
3. information and records requested by the facility, concerning the legal status, medical and psychiatric condition and needs of the person have been received, so effective coordination between professional persons, the county attorney, the transporting person or entity, and the admitting facility can be accomplished.

These new provisions are also aimed at eliminating the recurrence of frivolous, time-consuming, and costly contempt proceedings under very limited circumstances; i.e., when MSH's failure to admit a person is based on impossibility of immediate compliance with a court order, would threaten the safety of facility staff, a person and/or existing patients, or when compliance would jeopardize a facility's license.

**Section 3 – Amend Mont. Code Ann. § 53-21-129 (Emergency situation – petition - detention)**.

a. Amend subsections (1) and (2). Minor revisions to include commonly used language "mental illness or disorder" and addition of new language to provide consistency with changes to the definition of "emergency situation."

b. Amended current/existing subsection (3). New statutory language related to community-based facilities and programs to include less-restrictive, community-based options. Amendments also emphasize an appropriate order/hierarchy of choices for emergency detention of a person to a less-restrictive placement in the community prior to consideration of the Montana state hospital, which is arguably the most restrictive environment into which a person can be placed for emergency detention or involuntary commitment.

c. New subsections (4), (5), and (6). New statutory language requires for an emergency detention that the necessary and most basic clinical and psychiatric protocols of a mental health facility, including the Montana state hospital, be considered prior to admission. These considerations are currently memorialized in statute and the Administrative Rules of Montana but are frequently ignored.

Prior to detention, transfer, or transport of a person to a facility for emergency detention, there must be written confirmation that:

1. a bed is actually available,
2. admission will not cause the mental health facility to exceed its licensed capacity, and

3. information and records requested by the facility, concerning the legal status, medical and psychiatric condition and needs of the person have been received, so effective coordination between professional persons, the county attorney, the transporting person or entity, and the admitting facility can be accomplished.

These new provisions are also aimed at eliminating the recurrence of frivolous, time-consuming, and costly contempt proceedings under very limited circumstances; i.e., when MSH's failure to admit a person is based on impossibility of immediate compliance with a court order, would threaten the safety of facility staff, a person and/or existing patients, or when compliance would jeopardize a facility's license.

**Section 4 – Amend Mont. Code Ann. § 53-21-193 (Commitment and transportation to mental health facility, preference, voluntary treatment)**.

a. Amend subsections (1) and (2). New statutory language provides additional, community-based options into which a person may be directed by professional persons and county attorneys when required in the context of an emergency detention or involuntary commitment. New subsection (1)(b) and amendment to subsection (2) aligns § 53-21-193 with the preceding provisions on verification of bed space, census adherence, and documentation needs prior to admission into MSH.

b. Amend subsection (3), (4), and (5) and add new subsections (6) and (7). Amendments further align § 53-21-193 with §§ 53-21-127 and -129 requiring verification of bed space, census adherence, and documentation needs prior to initial admission into a community-based facility or program, and for transfer to MSH for remaining periods of such commitments.

4. **Please list anticipated fiscal impact by fund type.** *(Dollar amounts, funding source, and FTE if known)*

   To be determined.

   FTE: No anticipated change.

5. **Please list anticipated controversy or impact on other state agencies or special interest groups.**

   The current statutory framework encourages overutilization of MSH for emergency detention and involuntary civil commitment of persons without

consideration of the availability of resources allocated to the Department, including availability of bed space, the limited number of psychiatric and medical professionals employed by the department who can perform provide necessary mental health services for involuntarily committed patients, but it has also led to the loss of CMS certification for the Montana state hospital.

Although the suggested changes should result in more efficient and effective patient care and assist in meeting requirements for CMS recertification of MSH, many community-based mental health resources are currently only in the developmental stage. Until such community-based resources are developed and sources of funding stabilize, current frustrations for communities, courts, and county attorneys are likely to continue.

6. **Has similar legislation been requested in the past, been introduced in another state, or provided as a model act? If so, please provide a citation, reference, or point of contact.**

   To the best of the Department's knowledge, there has not been a comprehensive effort to update the system for examination, treatment, and processing of individuals who may require emergency detention or civil involuntary commitment.