



Involuntary Commitments

Law & Procedure

Involuntary Commitment

- Involuntary: “Not resulting from a free and unrestrained choice.”

Black’s Law Dictionary

- Commitment: “An order by a court requiring an individual to receive treatment for a mental disorder.”

§ 53-21-102(4), MCA

Purpose of Involuntary Commitment Proceeding

- To secure care and treatment for a person, who is suffering from a mental disorder and requires commitment, that is suited to the specific needs of the person and to ensure that the care and treatment is skillfully and humanely administered in a manner that provides respect to the person's dignity and integrity.
- To accomplish this goal whenever possible in a community-based setting;
- Accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and required commitment; and
- Ensure that due process of law is accorded any person coming under the provisions of this part.

§ 53-21-101, MCA

Civil (not criminal) Proceeding

- The Respondent (person subject to the commitment proceedings) is not subject to criminal penalty.
- The Respondent may not be detained in jail or in a correctional facility.
 - This restriction applies to all parts of the proceedings – emergency detention, detention pending the commitment hearing, and the commitment.

§ 53-21-120, MCA

Involuntary Commitment Requirements

1. Respondent is an Adult
2. Respondent has a Mental Disorder
3. Respondent Requires Commitment
 1. MSH = “least restrictive means”

Generally Only Adults Can Be Involuntarily Committed

- An individual who is under 18 years of age may not be voluntarily admitted or involuntarily committed by a court to the Montana State Hospital unless an information has been filed in District Court. § 53-21-506, MCA.
- A parent or guardian of a minor may consent to voluntary mental health services to be rendered to the minor by a mental health facility, physician, or mental health professional. § 53-21-112, MCA.
- Transportation of a juvenile to a facility at the request of the juvenile's parents by law enforcement officers is a special concern to be addressed by each law enforcement agency.

Does Respondent Have a Mental Disorder?

Mental Disorder means: “[a]ny organic, mental, or emotional impairment that has substantial adverse effects on an individual’s cognitive or volitional functions.”

- Examples:
 - Bipolar Disorder
 - Schizophrenia
 - Borderline Personality Disorder
 - Dementia
 - Unspecified Neurocognitive Disorder

- The term does not include:
 - Addiction to drugs or alcohol;
 - Drug or alcohol intoxication;
 - Intellectual disability; or
 - Epilepsy.

- A mental disorder may co-occur with addiction or chemical dependency.

§ 53-21-102(9), MCA

Does Respondent Require Commitment?

A. The respondent, because of a mental disorder, is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety.

B. The respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others.

C. Because of a mental disorder, there is an imminent threat of injury to the respondent or to others because of the respondent's acts or omissions.

D. The respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety.

Process of Involuntary Commitment:

1. Protective Custody
2. Mental Health Evaluation
3. Emergency Detention
4. Petition for Commitment
5. Initial Appearance
6. Second Mental Health Evaluation
7. Contested Hearing
8. Dismissal, Short-term Inpatient Diversion, Community Commitment, or Commitment to Montana State Hospital

I. Protective Custody

- When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder into custody
- Emergency situation means:
 - A situation in which any person is in imminent danger of death or bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to require commitment; or
 - A situation in which any person who appears to be suffering from a mental disorder and appears to require commitment is substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety.
- The Protective Custody can last **only for sufficient time to contact a Professional Person for emergency evaluation.**

§ 53-21-129(1), MCA; § 53-21-102(7), MCA.

Protective Custody Continued ...

- If possible, a Professional Person should be called prior to taking the person into custody.
- Investigation:
 - Contact with witnesses, family members, and friends.
 - Collect names, contact numbers, and addresses.
 - Why should the person be taken into protective custody?
 - Statements of the person or witnesses.
 - Behavior of the person.
- Avoid protective custody based upon hearsay (if possible).

2. Mental Health Evaluation

- A “Professional Person” must be certified by the Montana Department of Health and Human Services.
 - Can also be a medical doctor, an advanced practice registered nurse (with clinical specialty in psychiatric mental health nursing); or licensed psychologist . (§ 53-21-102(16), MCA)
- Evaluation of the person
- Review of person’s history
- Contact with friends and family

3. Emergency Detention

- If the Professional Person agrees that the person detained is a danger to the person or to others because of a mental disorder and that an emergency situation exists, then the person may be detained and treated until the next regular business day.
- The Professional Person obtains authorization for the emergency detention from the County Attorney's Office.
- The Professional Person then completes a Legal/Mental Status Report and submits to County Attorney's Office.
- The Legal/Mental Status Report forms the basis for the Petition for Commitment

§ 53-21-129(2), MCA

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MONTANA FIRST JUDICIAL DISTRICT COURT, LEWIS AND CLARK COUNTY

In the Matter of the Mental Health of:)
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 Respondent.)

DETENTION ORDER

Based on the Professional Person's report, attached hereto, the Court determines probable cause exists to believe that the respondent has a mental disorder and is in need of commitment to Montana State Hospital at Warm Springs, Montana.

No facility is available at which to hold respondent prior to the appearance of the respondent before this Court.

Therefore, it is ordered that the respondent shall be detained and treated at Montana State Hospital until a petition can be filed.

DATED January 21, 2020

DISTRICT COURT JUDGE

4. Petition for Commitment

- County Attorney “may” file.

§ 53-21-121, MCA

- Contents of Petition:

- Person requesting the petition (the Professional Person);
- Identity of the Respondent;
- The purported facts supporting the allegation of mental disorder;
- Anyone legally responsible for the Respondent;
- Any next of kin;
- Anyone who may be willing and able to serve as the Respondent’s “friend” – a person who assists the Respondent in dealing with legal proceedings, including consulting with legal counsel and others;
- The attorney, if any, that most recently represented the Respondent;
- A statement of the Respondent’s rights; and
- The mental health facility to which commitment is requested.

§ 53-21-121(2), MCA

- Petition is filed same or next business day.
- Court issues Order finding probable cause.

5. Initial Appearance

- By video from mental health facility.
- Court advises the Respondent of rights.
- Court appoints counsel and friend.
- The Respondent may stipulate to the commitment OR contest the petition and request a hearing.
- If the Respondent contests the petition, Respondent remains at or is transported to mental health facility.
- Court issues Order scheduling hearing, second evaluation, and transportation to court.

The Respondent's Rights

Constitutional Rights:

- To remain silent.
- To talk to a lawyer.
- To have an attorney appointed if one cannot be afforded.

Statutory Rights

- To notice reasonably in advance of any court proceeding.
- In any hearing, to be present, offer evidence, and present witnesses.
- To know before a hearing the names and addresses of any witnesses who will testify in support of the petition.
- In any hearing, to cross-examine witnesses.
- To be represented by counsel.
- To remain silent.
- In any hearing, to be proceeded against according to the Montana Rules of Evidence.
- To view and copy all petitions concerning the person.
- To be examined by a professional person of the person's choice when such professional person is willing and reasonably available.
- To be dressed in person's own clothes at any commitment proceeding.
- To refuse any but lifesaving medication for up to 24 hours prior to any commitment hearing.
- To voluntarily take necessary medications prior to any hearing.

6. Second Mental Health Evaluation

- Second evaluation is performed prior to hearing by Professional Person.
- Results of second evaluation determine if commitment proceedings continue:
 - The petition must be dismissed if the Respondent's condition has improved and commitment is no longer required.
 - The proceedings must be suspended if the Respondent can be diverted to a short-term inpatient treatment program.
 - The proceedings must continue if the Respondent is suffering from a mental disorder requiring commitment.

7. Contested Hearing

- The hearing must be scheduled within five days, including weekends and holidays, of the initial appearance.

§ 53-21-122(2), MCA

- The Respondent may stipulate to the commitment – either placement at the State Hospital or in the community.
- Witness testimony on issue of whether the Respondent has a mental disorder that requires commitment.
 - Persons (including law enforcement officers and Hope House employees) who have had contact with the Respondent should be prepared to appear for the hearing and offer testimony.

Standards of Proof

- “Proof beyond a reasonable doubt” with respect to any physical facts or evidence; “Clear and convincing evidence” as to all other matters.
- However, the Respondent’s mental disorder must be proved “to a reasonable degree of medical certainty.”
- Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions sufficiently recent in time as to be material and relevant as to the Respondent’s present condition.

§ 53-21-126(2), MCA

Contested Hearing Continued ...

Court's Decision

- **Order Dismissing Petition:** The Respondent is not suffering from a mental disorder that requires commitment.
 - The Respondent is released from custody.
- **Order Suspending Commitment Proceedings:** The Respondent is suffering from a mental disorder, but can be diverted to a short-term (14 day or less) inpatient treatment program.
 - The Respondent remains in protective custody and is transported to the Hope House.
 - Commitment proceeding dismissed upon release from inpatient treatment program.
- **Order for Community Commitment:** The Respondent is suffering from a mental disorder that requires commitment, but not to the Montana State Hospital.
 - The Respondent is released from custody and transported to the Hope House (or sent home with guardian). Conditions of commitment in effect for up to 90 days.
- **Order for Commitment:** The Respondent is suffering from a mental disorder that requires commitment to the Montana State Hospital for treatment.
 - The Respondent is transported the State Hospital.

8. Commitment

- The Respondent must be detained in the least restrictive environment required to protect the Respondent and the public, and to permit effective treatment
- Time period – cannot exceed 3 months
- Options for Commitment:
 - Montana State Hospital
 - Behavioral Health Inpatient Facility (secure inpatient-treatment):
 - Western Montana Mental Health Centers: Hope House (Bozeman); Hayes-Morris (Butte); Journey Home (Helena); West House (Hamilton); Lake House (Polson)
 - Hospital Behavioral Health Units: Billings Clinic; St. Peter's Hospital (Helena); Benefis Hospital (Great Falls); Kalispell Regional Hospital; St. Patrick's Hospital (Missoula)
 - Community Placement or Program
 - Montana Mental Health Nursing Care Center (Lewistown)
- Involuntary Medication: The Court can authorize the Chief Medical Officer at the State Hospital to administer medication involuntarily if necessary to protect the Respondent or the public, or to facilitate effective treatment
- Community Commitment:
 - Court orders conditions of treatment in community facility/program, such as following a treatment plan; taking prescribed medications; placement in short-term inpatient facility (2-3 days); obtaining chemical dependency treatment.
 - Court can require specific residential or housing requirements, including being under the care or custody of a relative or guardian.

What happens after the commitment?

Discharge Prior to 90 day period:

- Unconditional Release: At any time during commitment, patient may be discharged on written order of Professional Person.
- Conditional Release: The Respondent can be discharged with outpatient care as condition of release (for remainder of commitment period).

Rehospitalization after Conditional Release

- Petition filed requesting rehospitalization to Montana State Hospital; limited to period of original commitment.

Extension of Commitment or Conditions of Release

- Petition filed requesting extension of commitment period. Can extend commitment not more than 6 months. Allowed twice before new Commitment Petition required.
- Petition filed to extend conditions of release. Can extend conditions no longer than 2 years beyond expiration of commitment period.

Notice of Noncompliance

- If the Respondent does not substantially comply with conditions of Community Commitment.
- Court can take “reasonable steps to ensure compliance,” including presenting the person to the mental health facility and ordering involuntary medication.
- Usually filed with new Petition for Commitment.