

1 HOUSE BILL NO. 29

2 INTRODUCED BY J. CARLSON

3 BY REQUEST OF THE CHILDREN, FAMILIES, HEALTH, AND HUMAN SERVICES INTERIM COMMITTEE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS REGARDING THE
6 INVOLUNTARY COMMITMENT OF INDIVIDUALS WITH ALZHEIMER'S DISEASE, OTHER FORMS OF
7 DEMENTIA, OR TRAUMATIC BRAIN INJURY; ENDING INVOLUNTARY COMMITMENT OF THE
8 INDIVIDUALS AFTER JUNE 30, 2025, WHEN ONLY CERTAIN COMMITMENT CRITERIA ARE MET;
9 REQUIRING THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO TRANSITION
10 MONTANA STATE HOSPITAL PATIENTS WITH THOSE DIAGNOSES TO COMMUNITY SERVICES;
11 ESTABLISHING A TEMPORARY TRANSITION REVIEW COMMITTEE; PROVIDING AN APPROPRIATION;
12 AMENDING SECTIONS 53-21-126, 53-21-127, 53-21-401, AND 53-21-402, MCA; AND PROVIDING
13 EFFECTIVE DATES AND A TERMINATION DATE."
14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **Section 1.** Section 53-21-126, MCA, is amended to read:

18 **"53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the
19 respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented
20 by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the
21 respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all
22 the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court
23 determines that the respondent is suffering from a mental disorder, the court shall then determine whether the
24 respondent requires commitment. In determining whether the respondent requires commitment and the
25 appropriate disposition under 53-21-127, the court shall consider the following:

26 (a) whether the respondent, because of a mental disorder, is substantially unable to provide for the
27 respondent's own basic needs of food, clothing, shelter, health, or safety;

28 (b) whether the respondent has recently, because of a mental disorder and through an act or an

1 omission, caused self-injury or injury to others;

2 (c) whether, because of a mental disorder, there is an imminent threat of injury to the respondent
3 or to others because of the respondent's acts or omissions; and

4 (d) (i) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts
5 or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the
6 point at which the respondent will:

7 (A) become a danger to self or to others; or

8 (B) will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health,
9 or safety.

10 (ii) Predictability may be established by the respondent's relevant medical history.

11 (2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable
12 doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters.
13 However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat
14 of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as
15 to be material and relevant as to the respondent's present condition.

16 (3) The professional person appointed by the court must be present for the trial and subject to
17 cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are
18 tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a
19 mental disorder and requires commitment. The written report of the professional person that indicates the
20 professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as
21 hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial
22 closed to the public for the protection of the respondent.

23 (4) The professional person may testify as to the ultimate issue of whether the respondent is
24 suffering from a mental disorder and requires commitment. This testimony is insufficient unless accompanied
25 by evidence from the professional person or others that:

26 (a) the respondent, because of a mental disorder, is substantially unable to provide for the
27 respondent's own basic needs of food, clothing, shelter, health, or safety;

28 (b) the respondent has recently, because of a mental disorder and through an act or an omission,

1 caused self-injury or injury to others;

2 (c) because of a mental disorder, there is an imminent threat of injury to the respondent or to
3 others because of the respondent's acts or omissions; or

4 (d) (i) the respondent's mental disorder:

5 (A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the
6 respondent's life or health;

7 (B) is treatable, with a reasonable prospect of success;

8 (C) has resulted in the respondent's refusing or being unable to consent to voluntary admission for
9 treatment; and

10 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the
11 point at which the respondent will become a danger to self or to others or will be unable to provide for the
12 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by
13 the respondent's relevant medical history.

14 (5) The court, upon the showing of good cause and when it is in the best interests of the
15 respondent, may order a change of venue.

16 (6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring
17 diagnosis of chemical dependency may satisfy criteria for commitment under this part.

18 (7) An individual with a primary diagnosis of Alzheimer's disease, other forms of dementia, or
19 traumatic brain injury may be committed under this part only if the person meets the criteria outlined in
20 subsection (1)(b), (1)(c), or (1)(d)(i)(A)."

21

22 **Section 2.** Section 53-21-127, MCA, is amended to read:

23 **"53-21-127. Posttrial disposition.** (1) ~~if~~ A respondent must be discharged and the petition dismissed
24 if, upon trial, it is determined that the respondent:

25 (a) is not suffering from a mental disorder or;

26 (b) does not require commitment within the meaning of this part, ~~the respondent must be~~
27 ~~discharged and the petition dismissed;~~ or

28 (c) is suffering from a mental disorder but the respondent's primary diagnosis is Alzheimer's

1 disease, other forms of dementia, or traumatic brain injury and the respondent meets only the commitment
2 criteria outlined in 53-21-126(1)(a) or (1)(d)(i)(B).

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

8 (3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7),
9 the court shall:

10 (a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a
11 behavioral health inpatient facility for a period of not more than 3 months;

12 (b) commit the respondent to a community facility, which may include a category D assisted living
13 facility, or a community program or to any appropriate course of treatment, which may include housing or
14 residential requirements or conditions as provided in 53-21-149, for a period of:

15 (i) not more than 3 months; or

16 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in
17 the community rather than a more restrictive placement in the state hospital if a respondent has been
18 previously involuntarily committed for inpatient treatment in a mental health facility and the court determines
19 that the admission of evidence of the previous involuntary commitment is relevant to the criterion of
20 predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided
21 in 53-21-190; or

22 (c) commit the respondent to the Montana mental health nursing care center for a period of not
23 more than 3 months if the following conditions are met:

24 (i) the respondent meets the admission criteria of the center as described in 53-21-411 and
25 established in administrative rules of the department; and

26 (ii) the superintendent of the center has issued a written authorization specifying a date and time
27 for admission.

28 (4) Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not

1 affect the respondent's custody or course of treatment for a period of more than 3 months.

2 (5) In determining which of the alternatives in subsection (3) to order, the court shall choose the
3 least restrictive alternatives necessary to protect the respondent and the public and to permit effective
4 treatment.

5 (6) The court may authorize the chief medical officer of a facility or a physician designated by the
6 court to administer appropriate medication involuntarily if the court finds that involuntary medication is
7 necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be
8 involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by
9 the court approves it prior to the beginning of the involuntary administration and unless, if possible, a
10 medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review
11 is not possible, within 5 working days after the beginning of the involuntary administration. The medication
12 review committee must include at least one person who is not an employee of the facility or program. The
13 patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of
14 the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The
15 involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after
16 the beginning of the involuntary administration if medication is still being involuntarily administered. The mental
17 disabilities board of visitors and the director of the department of public health and human services must be
18 fully informed of the matter within 5 working days after the beginning of the involuntary administration. The
19 director shall report to the governor on an annual basis.

20 (7) ~~Satisfaction~~ Except as provided in 53-21-126(7), satisfaction of any one of the criteria listed in
21 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely ~~upon~~ on the
22 criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility, which may
23 include a category D assisted living facility, or a program or an appropriate course of treatment, as provided in
24 subsection (3)(b), and may not require commitment at the state hospital, a behavioral health inpatient facility, or
25 the Montana mental health nursing care center.

26 (8) In ordering commitment pursuant to this section, the court shall make the following findings of
27 fact:

28 (a) a detailed statement of the facts upon which the court found the respondent to be suffering

- 1 from a mental disorder and requiring commitment;
- 2 (b) the alternatives for treatment that were considered;
- 3 (c) the alternatives available for treatment of the respondent;
- 4 (d) the reason that any treatment alternatives were determined to be unsuitable for the
5 respondent;
- 6 (e) the name of the facility, program, or individual to be responsible for the management and
7 supervision of the respondent's treatment;
- 8 (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was
9 chosen from among other alternatives;
- 10 (g) if the order commits the respondent to the Montana mental health nursing care center, a finding
11 that the respondent meets the admission criteria of the center and that the superintendent of the center has
12 issued a written authorization specifying a date and time for admission;
- 13 (h) if the order provides for an evaluation to determine eligibility for entering a category D assisted
14 living facility, a finding that indicates whether:
- 15 (i) the respondent meets the admission criteria;
- 16 (ii) there is availability in a category D assisted living facility; and
- 17 (iii) a category D assisted living facility is the least restrictive environment because the respondent
18 is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and
- 19 (i) if the order includes involuntary medication, the reason involuntary medication was chosen
20 from among other alternatives."

21

22 **Section 3.** Section 53-21-401, MCA, is amended to read:

23 **"53-21-401. Legislative intent.** (1) It is the intent of the legislature that geriatric patients at the
24 Montana state hospital and geriatric residents of the state who may ~~in the future be placed at~~ be at risk of
25 commitment to the Montana state hospital and who do not need intensive psychiatric care receive care and
26 treatment in nursing homes located in community settings.

27 (2) It is the further intent of the legislature that nursing homes providing such care and treatment
28 be located regionally so that the residents may be near their homes and families.

1 (3) It is the further intent of the legislature that these nursing homes ~~shall~~must be located in
2 communities with:

3 (a) a labor pool large enough to ensure adequate and qualified staffing;

4 (b) sufficient medical facilities and medical professionals to provide necessary medical services;

5 and

6 (c) if possible, an institution or institutions of higher learning with educational programs in
7 disciplines with relevance to the problems of aging.

8 (4) It is the further intent of the legislature to:

9 (a) end the involuntary commitment of individuals who have a primary diagnosis of Alzheimer's
10 disease, other forms of dementia, or traumatic brain injury when those individuals meet only the commitment
11 criteria outlined in 53-21-126(1)(a) or (1)(d)(i)(B); and

12 (b) develop, based on consultation and collaboration between providers and the department,
13 services in the community for those individuals."

14

15 **Section 4.** Section 53-21-402, MCA, is amended to read:

16 **"53-21-402. Powers and duties of department of public health and human services.** The
17 department of ~~public health and human services:~~

18 (1) shall contract with nonprofit corporations ~~which that~~ demonstrate expertise in and the capability
19 of providing rehabilitative and restorative programs for aged citizens for the operation and management of
20 nursing homes established under this part;

21 (2) shall ensure that nursing homes established and operated under this part are in compliance
22 with all applicable federal and state regulations;

23 (3) shall adopt rules for staffing requirements and the admission of patients;

24 (4) shall provide that ~~geriatric residents of the Montana state hospital have~~ first priority for
25 admission to nursing homes established under this part be given to:

26 (a) Montana state hospital patients who are geriatric; and

27 (b) people with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic
28 brain injury who:

1 (i) have been involuntarily committed to the Montana state hospital but no longer need the
2 intensive treatment provided by the hospital; or

3 (ii) are substantially unable to provide for their basic needs of food, clothing, shelter, health, or
4 safety;

5 (5) shall provide members of the transition review committee provided for in [section 6] with the
6 information necessary to carry out the committee's duties;

7 (6) shall implement, in consultation and collaboration with the transition review committee, a plan
8 to prepare for the end of involuntary commitment of many individuals with a primary diagnosis of Alzheimer's
9 disease, other forms of dementia, or traumatic brain injury; and

10 ~~(5)~~(7) may accept grants, gifts, bequests, and contributions in money or property or any other form
11 from individuals, corporations, associations, or federal, state, and local government agencies for the purposes
12 of establishing and operating nursing homes under this part."

13
14 **NEW SECTION. Section 5. Placement of individuals with Alzheimer's disease, other forms of**
15 **dementia, or traumatic brain injury -- direction to department.** To accomplish the intent of 53-21-401(4), the
16 legislature directs the department to:

17 (1) by June 30, 2025, develop and implement a plan to ensure the availability of community-based
18 services for individuals with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic
19 brain injury who might otherwise be at risk of involuntary commitment;

20 (2) collaborate with the transition review committee provided for in [section 6] to identify the
21 community-based services needed to ensure that individuals with those diagnoses can be safely and effectively
22 served in the community;

23 (3) transfer funds as authorized by 17-7-139, [section 8], and federal laws and regulations to
24 develop the services needed in the community; and

25 (4) by June 30, 2025, transition out of the Montana state hospital and into community services the
26 Montana state hospital patients whose primary diagnosis involves Alzheimer's disease, other forms of
27 dementia, or traumatic brain injury and who meet only the commitment criteria of 53-21-126(1)(a) or (1)(d)(i)(B).
28 As part of this transition, the legislature intends for the department to actively pursue the timely discharge of

1 those Montana state hospital patients.

2

3 **NEW SECTION. Section 6. Transition review committee -- membership -- meetings --**

4 **reimbursement.** (1) There is a transition review committee to monitor the need for and progress in developing
5 community-based services for individuals who have been or are at risk of being involuntarily committed to the
6 Montana state hospital and who have a primary diagnosis of Alzheimer's disease, other forms of dementia, or
7 traumatic brain injury.

8 (2) The committee must consist of:

9 (a) four legislators appointed as provided in subsection (4); and

10 (b) seven members appointed by the governor or the governor's designee as follows:

11 (i) one representative of a statewide association whose primary purpose is representing skilled
12 nursing facilities and assisted living facilities;

13 (ii) one representative of the state protection and advocacy system for individuals with mental
14 illness authorized under 42 U.S.C. 10803;

15 (iii) one representative of a statewide association whose primary purpose is representing
16 individuals with Alzheimer's disease or other forms of dementia;

17 (iv) one representative of a statewide association whose primary purpose is representing
18 individuals with traumatic brain injury;

19 (v) one physician with experience in geriatric psychiatry;

20 (vi) one family member or guardian of an individual who is or has, within the previous 5 years, been
21 committed to the Montana state hospital and whose diagnosis included Alzheimer's disease, other forms of
22 dementia, or traumatic brain injury; and

23 (vii) one representative of the department of public health and human services.

24 (3) Appointments must be made no later than May 15, 2023.

25 (4) (a) Legislative members of the committee must, in consultation with the minority party, be
26 appointed as provided in this subsection (4).

27 (b) (i) The committee on committees shall appoint two members of the Montana senate, one from
28 the majority party and one from the minority party.

1 (ii) The speaker of the house shall appoint two members of the Montana house, one from the
2 majority party and one from the minority party.

3 (c) Two of the appointees must have served on the section b joint appropriations subcommittee,
4 and two of the appointees must have been members of the house human services committee or senate public
5 health, welfare, and safety committee.

6 (d) Legislative appointees to the committee may continue to serve on the committee if they are not
7 members of the 69th legislature.

8 (5) A vacancy on the committee must be filled in the same manner as the original appointment.

9 (6) The committee shall elect a presiding officer and vice presiding officer from among the
10 legislative members of the committee.

11 (7) The committee shall meet quarterly during the biennium beginning July 1, 2023, and must be
12 disbanded no later than June 30, 2025.

13 (8) (a) A legislative member of the committee is entitled to salary and expenses as provided in 5-2-
14 302.

15 (b) A nonlegislative member of the committee is entitled to reimbursement for travel expenses as
16 provided in 2-18-501 through 2-18-503.

17 (9) The legislative services division shall provide staff support to the committee.

18

19 **NEW SECTION. Section 7. Transition review committee duties -- reporting requirement.** (1) The
20 transition review committee shall:

21 (a) hear regular reports from the department and, as necessary, the office of budget and program
22 planning on:

23 (i) the number of Montana state hospital patients with a primary diagnosis of Alzheimer's disease,
24 other forms of dementia, or traumatic brain injury;

25 (ii) efforts the department is making to find community placements for individuals with those
26 diagnoses, including any barriers to discharging the individuals from the Montana state hospital and the steps
27 being taken to alleviate the barriers; and

28 (iii) activities being taken to identify and develop community-based services and to transition into

1 those services individuals with a primary diagnosis of Alzheimer's disease, other forms of dementia, or
2 traumatic brain injury who meet only the commitment criteria of 53-21-126(1)(a) or (1)(d)(i)(B);

3 (b) hear reports from providers on matters related to serving individuals with Alzheimer's disease,
4 other forms of dementia, or traumatic brain injury, including but not limited to information on the resources
5 needed for serving the individuals in the community and recommendations for meeting those needs;

6 (c) review, as needed, efforts undertaken in other states to reduce the involuntary commitment of
7 individuals with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic brain injury
8 and to identify practices in those states that may assist Montana in ending involuntary commitment of
9 individuals with those diagnoses;

10 (d) advise the department of problems it is observing with the transition process; and

11 (e) make recommendations to the department and the legislature on potential solutions for
12 alleviating problems encountered in the transition process.

13 (2) The department reports on Montana state hospital patients required under subsection (1)(a)(i)
14 must include, for each period covered by the report:

15 (a) the number of those patients admitted to the hospital;

16 (b) the number currently receiving treatment; and

17 (c) the number discharged.

18 (3) The committee shall report regularly to the children, families, health, and human services
19 interim committee and at least once to the house human services committee and the senate public health,
20 welfare, and safety committee of the 69th legislature on:

21 (a) its review of the department's efforts and progress in:

22 (i) transitioning individuals from the Montana state hospital; and

23 (ii) developing the community-based services needed to prepare for the scheduled discontinuance
24 on July 1, 2025, of the use of involuntary commitments for individuals with a primary diagnosis of Alzheimer's
25 disease, other forms of dementia, or traumatic brain injury who meet only the commitment criteria of 53-21-
26 126(1)(a) or (1)(d)(i)(B); and

27 (b) any recommendations for additional legislation needed to accomplish the purposes of [sections
28 5 through 9].

1

2 NEW SECTION. Section 8. Certain transfers of funds authorized. Funds appropriated to the
3 department for the operation of the Montana state hospital may be used for carrying out the purposes of
4 [section 5] if:

5 (1) Montana state hospital patients are transferred to a community-based nursing home or other
6 community setting that results in lower expenditures than allowed by legislative appropriation; and

7 (2) a transfer of appropriations between programs is:

8 (a) made as provided in 17-7-139; and

9 (b) approved by the governor.

10

11 NEW SECTION. Section 9. Limitation on expenditures. For the biennium beginning July 1, 2023,
12 the department may spend up to \$9 million a year to place individuals with a primary diagnosis of Alzheimer's
13 disease, other forms of dementia, or traumatic brain injury in a community setting rather than at the Montana
14 state hospital when those individuals meet only the commitment criteria of 53-21-126(1)(a) or (1)(d)(i)(B).

15

16 NEW SECTION. Section 10. Appropriation. There is appropriated \$39,775 from the general fund to
17 the legislative services division for the biennium beginning July 1, 2023, for costs of the transition review
18 committee provided for in [section 6].

19 (2) The legislature intends that this is a one-time-only appropriation.

20

21 NEW SECTION. Section 11. Codification instruction. [Sections 5 through 9] are intended to be
22 codified as an integral part of Title 53, chapter 21, part 4, and the provisions of Title 53, chapter 21, part 4,
23 apply to [sections 5 through 9].

24

25 NEW SECTION. Section 12. Effective dates. (1) Except as provided in subsections (2) and (3), [this
26 act] is effective on passage and approval.

27 (2) [Sections 1 and 2] are effective July 1, 2025.

28 (3) [Section 10] is effective July 1, 2023.

