ISSUES RELATED TO CIVIL INVOLUNTARY COMMITMENT
NECESSARY "BIG PICTURE" LEGAL CONCEPTS

Mental Illness that Requires Involuntary Civil Commitment

Montana Law provides that 4 circumstances may require the involuntary commitment of an individual. Those are, in brief, whether:

1. because of a mental disorder, a person is substantially unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety;
2. because of a mental disorder and through an act or an omission, has recently caused self-injury or injury to others;
3. because of a mental disorder, there is an imminent threat of injury to the person or to others because of the person's acts or omissions; and
4. if left untreated the person's mental disorder, as demonstrated by recent acts or omissions, will predictably result in deterioration of the mental condition to the point where the person 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.

The determination to involuntarily commit a person is made by a court, after consideration of all relevant facts. It must also be based on the diagnosis of a "professional person." A "professional person" can be a medical doctor, an advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing, a licensed psychologist, a physician assistant licensed with a specialty in psychiatric mental health, or another person, certified by the Department after verification of their qualifications and understanding of mental health laws, diagnosis, and treatment procedures.

Proceedings Related to Involuntary Civil Commitment

The genesis of most involuntary commitment proceedings can be traced back to 2 types of interactions:

1. initial law enforcement contact with a mentally ill individual upon a report of criminal activity resulting in transport to an emergency room instead of jail detention, or
2. initial emergency room staff contact with a mentally ill individual suffering from an acute psychiatric crisis followed by enlistment of assistance from law enforcement.

Emergency Detention and Timelines

Representatives of law enforcement who meet the definition of "peace officer" have the statutory authority to detain/seize a person they believe presents an "emergency situation" (determined by an assessment of the 4 circumstances listed above). No court order is required for this detention, but the person can only be held for the time required to have a professional person conduct an emergency evaluation.

If the professional person agrees that an emergency situation exists, that professional person may then require that the individual be further detained and treated in a facility that has an available inpatient bed. This detention can only be until "the next regular business day," which is typically 1 day (up to 72 hours).

The county attorney may then arrange for placement with a federal, state, regional, or private mental facility or other mental health facility. A person may be transported to the Montana State Hospital (MSH) for emergency detention only after a local facility has certified that it does not have adequate room and if there is a bed available at MSH.

Whatever facility is designated, it must be the least restrictive environment to protect the life and physical safety of the person and the public. And, whenever possible, a person must be detained in a mental health facility and in the county of residence, not a jail or other correctional facility.

Involuntary Civil Commitment and Timelines
At this juncture, the county attorney must either file a petition for involuntary commitment or the person must be released. If a petition is filed, the court must be notified immediately and the person must be brought before the court (with counsel, or have counsel appointed), be advised of their rights, and the court must determine whether probable cause exists for any petition filed. The person must then be examined by a professional person without unreasonable delay. The professional person may recommend dismissal, commitment, diversion from commitment to short-term inpatient treatment for up to 14 days, or placement in a category D assisted living facility.

Although adjudication of involuntary civil commitments are civil-law-centric, the Legislature has adopted a mixed standard of proof for these proceedings; the higher, criminal-law standard of proof, "Proof beyond a reasonable doubt," regarding any physical facts or evidence, clear and convincing evidence as to all other matters, proof to a reasonable medical certainty as to the person's mental disorder, and imminent threat of injury, which must be proved by recent overt acts or omissions. At least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment.

Treatment, Involuntary Medication, Discharge, and the Balance of Patient Rights
After hearing or trial, if a court orders involuntary civil commitment, the court must hold a disposition hearing within 5 days (up to 7 days).
The person may be committed to:

1. MSH or a behavioral health inpatient facility for up to 3 months;
2. to a community facility, including a category D assisted living facility for up to 3 months; or
3. a community program or appropriate course of treatment, including housing or residential requirements or conditions for up to 3 months;

4. or 6 months in the community if the person has previously been involuntarily committed for inpatient treatment in a mental health facility.

The court may authorize that a person be involuntarily medicated if necessary to protect the person or the public or to facilitate effective treatment and appropriate due process is afforded the person. A commitment may be extended, first, for 6 months, and for up to a year for any second or subsequent extension.

A patient may be discharged at any time within the period of commitment upon reaching maximum medical benefit and upon the written order of the professional person in charge of the patient without further order of the court. However, notice of the discharge must be filed with the court and the county attorney at least 5 days prior to the discharge. Failure to comply with the notice requirement may not delay the discharge of the patient.

Current Obstacles
First, as a nonparty to the underlying commitment action, the Department has no control over the number of patients being ordered to the MSH. Second, there are too few community-based stabilization and treatment resources that can currently be leveraged to psychiatrically stabilize and treat persons suffering from acute psychiatric crises and possibly divert them from being placed at MSH. Third, the Department has an insufficient number of inpatient beds needed to treat the number of patients that courts are ordering to be involuntarily committed to MSH. Fourth, and although the Department has recently been successful in attracting more of the medical and psychiatric staff needed to provide appropriate care to patients at MSH, the Department still struggles to find a sufficient number of qualified professionals without supplementing its workforce with contracted staff. Fifth, the ongoing deficit of resources necessary to address the overwhelming number of court-ordered admissions to the MSH has created a waitlist that pressurizes court processes and those few community-based emergency detention and mental health treatment resources that *are* available. Further, the absence of mid-tier mental health or short-term, inpatient, “step-down” facilities, continue to perpetuate a revolving door of patients who, having previously been treated to maximum medical benefit at MSH, are discharged only to return to MSH in very short intervals due to decompensation, which continues to stress both community and Department resources.

Department Efforts
Current leadership at DPHHS has been working diligently since 2021 to identify and resolve the things it *can* control; i.e., resolving physical plant and service-delivery deficits that contributed to MSH losing its CMS certification and which have affected patient care. Leadership and staff have also conducted significant and sustained engagement with stakeholders (courts, county attorneys, local government entities, and private health-system representatives) to identify and address procedural and other resource issues that could be resolved through partnerships. The Department has also

implemented numerous near-term initiatives through the Behavioral Health System for Future Generations (BHSFG) Commission that was formed after the passage of 2023's HB 872, which represented an historic investment in the state's behavioral health continuum of care. The Department has also authored legislation intended to further resolve gaps in the statutory structure governing civil involuntary commitments and drive community-based solutions.

The Department's efforts are beginning to bear fruit. However, more must be done. The Department is eager to continue its engagement with the Legislature to further promote a robust continuum of care and create a successful and sustainable behavioral health system for future generations.