SENATE BILL NO. 430

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE CIVIL COMMITMENT AND EMERGENCY DETENTION OF MENTALLY ILL PERSONS; ESTABLISHING CONDITIONS THAT MUST BE MET BEFORE TRANSPORTING OR TRANSFERRING A PERSON TO THE MONTANA STATE HOSPITAL; REVISING WHAT ACTIONS OR OMISSIONS ARE CONTEMPT; SUPERSEDING THE UNFUNDED MANDATE LAWS; AMENDING SECTIONS 3-1-501, 3-10-402, 3-11-303, 53-21-102, 53-21-126, 53-21-127, 53-21-129, 53-21-181, AND 53-21-193, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 3-1-501, MCA, is amended to read:

"**3-1-501. What acts or omissions are contempts -- civil and criminal contempt.** (1) The following acts or omissions in respect to a court of justice or proceedings in a court of justice are contempts of the authority of the court:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance tending to interrupt the due course of a trial or other judicial proceeding;

(c) misbehavior in office or other willful neglect or violation of duty by an attorney, counsel, clerk, sheriff, coroner, or other person appointed or elected to perform a judicial or ministerial service;

(d) deceit or abuse of the process or proceedings of the court by a party to an action or special proceeding;

(e) disobedience of any lawful judgment, order, or process of the court;

(f) assuming to be an officer, attorney, or counsel of a court and acting as that individual without authority;

(g) rescuing any person or property in the custody of an officer by virtue of an order or process of the court;

(h) unlawfully detaining a witness or party to an action while going to, remaining at, or returning from the court where the action is on the calendar for trial;

(i) any other unlawful interference with the process or proceedings of a court;

(j) disobedience of a subpoena duly served or refusing to be sworn or answer as a witness;

(k) when summoned as a juror in a court, neglecting to attend or serve as a juror or improperly conversing with a party to an action to be tried at the court or with any other person in relation to the merits of the action or receiving a communication from a party or other person in respect to it without immediately disclosing the communication to the court;

(l) disobedience by a lower tribunal, magistrate, or officer of the lawful judgment, order, or process of a superior court or proceeding in an action or special proceeding contrary to law after the action or special proceeding is removed from the jurisdiction of the lower tribunal, magistrate, or officer.

(2) Disobedience of the lawful orders or process of a judicial officer is also a contempt of the authority of the officer.

(3) Refusal or inability to admit a defendant, respondent, patient, or person who has been ordered to be committed, transferred, transported, or sentenced to or directed to be detained at the Montana state hospital or the custody of the director of the department of public health and human services related to a civil or criminal proceeding is not contempt if:

(a) a bed is not available for the defendant, respondent, patient, or person;

(b) admission of the defendant, respondent, patient, or person will cause the census at the hospital to exceed its licensed capacity; or

(c) the information and records requested by the department or hospital are not received, including:

(i) physical and psychiatric health information sufficient to:

(A) evaluate the immediate treatment needs and appropriate placement of the defendant, respondent, patient, or person, including the availability of less restrictive medically appropriate facilities; and

(B) coordinate care with the professional person, county attorney, court, or the person or entity

transporting the respondent during the admission process;

(ii) documentation of legal authority to admit the respondent or patient; and

(iii) other information and records as required by administrative rule.

~~(3)~~(4) A contempt may be either civil or criminal. A contempt is civil if the sanction imposed seeks to force the contemnor's compliance with a court order. A contempt is criminal if the court's purpose in imposing the penalty is to punish the contemnor for a specific act and to vindicate the authority of the court. If the penalty imposed is incarceration, a fine, or both, the contempt is civil if the contemnor can end the incarceration or avoid the fine by complying with a court order and is criminal if the contemnor cannot end the incarceration or avoid the fine by complying with a court order. If the court's purpose in imposing the sanction is to attempt to compel the contemnor's performance of an act, the court shall impose the sanction under 3-1-520 and may not impose a sanction under 45-7-309.

~~(4)~~(5) A person may be found guilty of and penalized for criminal contempt by proof beyond a reasonable doubt. The procedures provided in Title 46 apply to criminal contempt prosecutions, except those under 3-1-511."

Section 2. Section 3-10-402, MCA, is amended to read:

"**3-10-402. Proceedings.** When a contempt is committed, whether or not it is in the immediate view and presence of the justice, the procedures contained in ~~3-1-501(3)~~ 3-1-501(4) and ~~(4)~~ (5), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

Section 3. Section 3-11-303, MCA, is amended to read:

"**3-11-303. Contempts city judge may punish for -- procedure.** (1) A city judge may punish for contempt persons guilty of only the following acts:

(a) disorderly, contemptuous, or insolent behavior toward the judge while holding the court tending to interrupt the due course of a trial or other judicial proceeding;

(b) a breach of the peace, boisterous conduct, or violent disturbance in the presence of the judge or in the immediate vicinity of the court held by the judge tending to interrupt the due course of a trial or other judicial proceeding;

(c) disobedience or resistance to the execution of a lawful order or process made or issued by the judge;

(d) disobedience to a subpoena served or refusal to be sworn or to answer as a witness;

(e) rescuing any person or property in the custody of an officer by virtue of an order or process of the court.

(2) The procedures contained in ~~3-1-501(3)~~ 3-1-501(4) and ~~(4)~~ (5), 3-1-511 through 3-1-518, and 3-1-520 through 3-1-523 apply."

Section 4. Section 53-21-102, MCA, is amended to read:

"**53-21-102. Definitions.** As used in this chapter, the following definitions apply:

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(3) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors created by 2-15-211.

(4) "Commitment" means an order by a court requiring an individual to receive treatment for a mental disorder.

(5) "Community facility" means a facility that provides psychiatric or chemical dependency evaluation, treatment, and short-term habilitation of persons with a mental illness or disorder in a community setting and that provides any of the following:

(a) case management services;

(b) medication;

(c) stabilizing treatment;

(d) short-term inpatient treatment;

(e) chemical dependency treatment; or

(f) assertive community treatment.

~~(5)~~(6) "Court" means any district court of the state of Montana.

~~(6)~~(7) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(7)~~(8) "Emergency situation" means ~~either~~:

(a) 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~~ appears:

(i) to be, due to a mental disorder and due to the person's conduct, in imminent danger of death or harm to the person's self or another; and

(ii) to require commitment; ~~or~~

(b) 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 and:

(i) the situation presents a danger of death or bodily injury to the person's self or another; or

(ii) the situation reflects a consistent and pervasive history of being unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety; OR

(C) A SITUATION IN WHICH A PERSON'S CRIMINAL CHARGES HAVE BEEN DISMISSED AND THE PERSON MUST BE INVOLUNTARILY COMMITTED DUE TO HAVING BEEN FOUND UNFIT TO PROCEED AND DETERMINED TO BE INCAPABLE OF BEING RESTORED TO FITNESS WITHIN THE REASONABLY FORESEEABLE FUTURE.

~~(8)~~(9) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

~~(9)~~(10) (a) "Mental disorder" or "mental illness" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy.

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

~~(10)~~(11)"Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, a behavioral health inpatient facility, a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, a mental health center, a residential treatment facility, or a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(11)~~(12)"Mental health professional" means:

(a) a certified professional person;

(b) a physician licensed under Title 37, chapter 3;

(c) a clinical professional counselor licensed under Title 37, chapter 39;

(d) a psychologist licensed under Title 37, chapter 17;

(e) a clinical social worker licensed under Title 37, chapter 39;

(f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(g) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric mental health; or

(h) a marriage and family therapist licensed under Title 37, chapter 39.

~~(12)~~(13)(a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(13)~~(14)"Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(14)~~(15)"Patient" means a person civilly committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(15)~~(16)"Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(16)~~(17)"Professional person" means:

(a) a medical doctor;

(b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing;

(c) a licensed psychologist;

(d) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric mental health; or

(e) a person who has been certified, as provided for in 53-21-106, by the department.

~~(17)~~(18)"Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(18)~~(19)"Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(20) "Short term" means a period of not more than 6 months.

~~(19)~~(21)"State hospital" means the Montana state hospital."

SECTION 5. Section 53-21-126, MCA, is amended to read:

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

appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether 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) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

(c) whether, 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; and

(d) whether 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. Predictability may be established by the respondent's relevant medical history.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable 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.

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

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

(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~~ danger of injury to the respondent or to others because of the respondent's acts or omissions; ~~or~~

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

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

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

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

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

(e) whether an emergency situation as defined in 53-21-102 exists.

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

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

53-21-126. (Effective July 1, 2025) Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then

determine whether the respondent requires commitment. In determining whether the respondent requires commitment and the appropriate disposition under 53-21-127, the court shall consider the following:

(a) whether 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) whether the respondent has recently, because of a mental disorder and through an act or an omission, caused self-injury or injury to others;

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

(d) (i) whether 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:

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

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

(ii) Predictability may be established by the respondent's relevant medical history; and

(e) whether an emergency situation as defined in 53-21-102 exists.

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable 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.

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

may order the trial closed to the public for the protection of the respondent.

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

(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~~ danger of injury to the respondent or to others because of the respondent's acts or omissions; ~~or~~

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

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

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

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

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

(e) whether an emergency situation as defined in 53-21-102 exists.

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

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

(7) An individual with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic brain injury may be committed under this part only if the person meets the criteria outlined in

subsection (1)(b), (1)(c), or (1)(d)(i)(A)."

Section 6. Section 53-21-127, MCA, is amended to read:

"**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

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

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

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

~~(i)~~(A) not more than 3 months; or

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

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

~~(i)~~(A) the respondent meets the admission criteria of the center as described in 53-21-411 and

established in administrative rules of the department; and

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

(b) The court may not commit the respondent to a private mental health facility or hospital without the express consent of the facility or hospital.

(4) Except as provided in subsection ~~(3)(b)(ii)~~ (3)(a)(ii)(A), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

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

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

(7) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely ~~upon~~ on any of the ~~criterion~~ criteria provided in 53-21-126(1)(d), the court may require commitment only to a community facility, which may include a category D assisted living

facility, or a program or an appropriate course of treatment, as provided in subsection ~~(3)(b)~~ (3)(a)(ii), and may not require commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing care center.

(8) In ordering commitment pursuant to this section, the court shall attest that the court has not relied solely on the criteria provided in 53-21-126(1)(d) and shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission;

(h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:

(i) the respondent meets the admission criteria;

(ii) there is availability in a category D assisted living facility; and

(iii) a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

(i) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

(9) Any mental health evaluation report of a professional person who evaluated the respondent or patient in connection with the commitment must be filed under seal at the time of the filing of the court's order

but must be made available to the mental health facility to which the respondent or patient is committed.

~~(10) A court may not order the transfer or transport of a respondent or patient to the Montana state hospital until the hospital has confirmed in writing that:~~

~~(a) a bed is available for the respondent or patient;~~

~~(b) admission of the respondent or patient will not cause the census at the hospital to exceed its licensed bed capacity; and~~

~~(c) the information and records requested by the hospital are received, including:~~

~~(i) physical and psychiatric health information sufficient to:~~

~~(A) evaluate the immediate treatment needs and appropriate placement of the respondent or patient, including the availability of less restrictive medically appropriate facilities; and~~

~~(B) coordinate care with the professional person, county attorney, court, or the person or entity transporting the respondent during the admission process;~~

~~(ii) documentation of legal authority to admit the respondent or patient; and~~

~~(iii) other information and records as required by administrative rule.~~

~~(11) A respondent or patient may not be transported to the Montana state hospital until the requirements of subsection (10) are fulfilled.~~

~~(12) The Montana state hospital may refuse to admit into its custody a respondent or patient who has been ordered to be transferred or transported to the hospital until:~~

~~(a) a bed is available for the respondent or patient;~~

~~(b) admission of the respondent or patient will not cause the census at the hospital to exceed its licensed bed capacity;~~

~~(c) admission will not cause the hospital to violate any law, rule, or certification or licensing provision; and~~

~~(d) the information and records requested by the hospital under subsection (10)(c) are received by the hospital~~.

53-21-127. (Effective July 1, 2025) Posttrial disposition. (1) A respondent must be discharged and the petition dismissed if, upon trial, it is determined that the respondent:

(a) is not suffering from a mental disorder;

(b) does not require commitment within the meaning of this part; or

(c) is suffering from a mental disorder but the respondent's primary diagnosis is Alzheimer's disease, other forms of dementia, or traumatic brain injury and the respondent meets only the commitment criteria outlined in 53-21-126(1)(a) or (1)(d)(i)(B).

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

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

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

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

~~(i)~~(A) not more than 3 months; or

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

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

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

~~(ii)~~(B) the superintendent of the center has issued a written authorization specifying a date and time

for admission.

(b) The court may not commit the respondent to a private mental health facility or hospital without the express consent of the facility or hospital.

(4) Except as provided in subsection ~~(3)(b)(ii)~~ (3)(a)(ii), a treatment ordered pursuant to this section may not affect the respondent's custody or course of treatment for a period of more than 3 months.

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

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

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

facility, or the Montana mental health nursing care center.

(8) In ordering commitment pursuant to this section, the court shall attest that the court has not relied solely on the criteria provided in 53-21-126(1)(d) and shall make the following findings of fact:

(a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;

(b) the alternatives for treatment that were considered;

(c) the alternatives available for treatment of the respondent;

(d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

(e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;

(f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission;

(h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:

(i) the respondent meets the admission criteria;

(ii) there is availability in a category D assisted living facility; and

(iii) a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

(i) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

(9) Any mental health evaluation report of a professional person who evaluated the respondent or patient in connection with the commitment must be filed under seal at the time of the filing of the court's order but must be made available to the mental health facility to which the respondent or patient is committed.

~~(10) A court may not order the transfer or transport of a respondent or patient to the Montana state hospital until the hospital has confirmed in writing that:~~

~~(a) a bed is available for the respondent or patient ;~~

~~(b) admission of the respondent or patient will not cause the census at the hospital to exceed its licensed bed capacity; and~~

~~(c) the information and records requested by the hospital are received, including:~~

~~(i) physical and psychiatric health information sufficient to:~~

~~(A) evaluate the immediate treatment needs and appropriate placement of the respondent or patient, including the availability of less restrictive medically appropriate facilities; and~~

~~(B) coordinate care with the professional person, county attorney, court, or the person or entity transporting the respondent during the admission process ;~~

~~(ii) documentation of legal authority to admit the respondent or patient ; and~~

~~(iii) other information and records as required by administrative rule.~~

~~(11) A respondent or patient may not be transported to the Montana state hospital until the requirements of subsection (10) are fulfilled.~~

~~(12) The Montana state hospital may refuse to admit into its custody a respondent or patient who has been ordered to be transferred or transported to the hospital until:~~

~~(a) a bed is available for the respondent or patient ;~~

~~(b) admission of the respondent or patient will not cause the census at the hospital to exceed its licensed bed capacity;~~

~~(c) admission will not cause the hospital to violate any law, rule, or certification or licensing provision; and~~

~~(d) the information and records requested by the hospital under subsection (10)(c) are received by the hospital .~~."

Section 7. Section 53-21-129, MCA, is amended to read:

"**53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation as defined in 53-21-102 exists, a peace officer may take any person who appears to have a mental disorder and ~~to present an imminent danger of death or bodily harm to the person or to others or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety~~ appears to require commitment into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is ~~a danger to the person or to others and that~~ in an emergency situation as defined in 53-21-102 ~~exists~~, then the person may be detained and treated ~~only~~ FOR UP TO 72 HOURS, OR until ~~the next regular business day~~ the person can be placed at a mental health facility~~, but no greater than 4 days~~ IN ACCORDANCE WITH SUBSECTION (4). At that time, the professional person shall release the detained person or file findings with the county attorney. ~~who, if~~ If the county attorney determines probable cause ~~to exist~~ to believe that an emergency situation exists, the county attorney shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) (a) The county attorney of a county may make arrangements with a federal, state, regional, or private mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to ~~the state hospital or to a~~

~~behavioral health inpatient facility~~ any other mental health facility, subject to 53-21-193 and ~~subsection (4)~~ SUBSECTIONS (4) AND (5) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify in writing to the county attorney that the facility does not have adequate room at that time.

(b) A person may not be detained at a private mental health facility or hospital without the express consent of the facility or hospital.

~~(4) A person may not be transported to, detained at, or placed in the physical custody of the Montana state hospital unless the facility has confirmed in writing that:~~

~~(a) a bed is available for the person ;~~

~~(b) admission of the person will not cause the census at the hospital to exceed its licensed bed capacity; and~~

~~(c) the information and records requested by the hospital are received, including:~~

~~(i) physical and psychiatric health information sufficient to:~~

~~(A) evaluate the immediate treatment needs and appropriate placement of the person, including the availability of less restrictive medically appropriate facilities; and~~

~~(B) coordinate care with the professional person, county attorney, court, or the person or entity transporting the respondent during the admission process;~~

~~(ii) documentation of legal authority to admit the person ; and~~

~~(iii) other information and records as required by administrative rule.~~

~~(4)~~(5) (4) (A) Before a person may be transferred to ~~the state hospital or to a behavioral health inpatient facility~~ a mental health facility OR THE STATE HOSPITAL under this section, the ~~state hospital or the behavioral health inpatient facility~~ mental health facility OR THE STATE HOSPITAL must be notified prior to transfer and shall state whether a bed is available for the person AND WHETHER ADMISSION WOULD CAUSE THE FACILITY OR THE STATE HOSPITAL TO EXCEED ITS LICENSED CAPACITY. If the professional person, ~~determines~~ THE MENTAL HEALTH

FACILITY, AND THE STATE HOSPITAL AGREE that a ~~behavioral health inpatient facility~~ mental health facility OR THE STATE HOSPITAL is the appropriate facility for the emergency detention, ~~and~~ THAT a bed is available, AND THAT ADMISSION WILL NOT CAUSE THE MENTAL HEALTH FACILITY OR THE STATE HOSPITAL TO EXCEED ITS LICENSED CAPACITY, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

(B) IF THE PROFESSIONAL PERSON, THE MENTAL HEALTH FACILITY, AND THE STATE HOSPITAL AGREE THAT THE STATE HOSPITAL IS THE APPROPRIATE FACILITY FOR THE EMERGENCY DETENTION, OR IF THE PERSON HAS BEEN INVOLUNTARILY COMMITTED TO THE STATE HOSPITAL WHILE DETAINED AT ANOTHER MENTAL HEALTH FACILITY, AND A BED IS NOT AVAILABLE AT THE STATE HOSPITAL OR THE PERSON'S ADMISSION WOULD CAUSE THE STATE HOSPITAL TO EXCEED ITS LICENSED CAPACITY, THE STATE HOSPITAL SHALL PROVIDE THE PROFESSIONAL PERSON AND THE MENTAL HEALTH FACILITY WITH A PROJECTED TIME WHEN A BED MAY BECOME AVAILABLE FOR THE PERSON.

~~(6)~~ (5) A person may only be placed at the ~~Montana~~ state hospital under this section as a placement of last resort.

~~(7) The Montana state hospital may refuse to admit into its custody a person who has been ordered to be transferred or transported to the hospital until:~~

~~(a) a bed is available for the person ;~~

~~(b) admission of the person will not cause the census at the hospital to exceed its licensed bed capacity;~~

~~(c) admission will not cause the hospital to violate any law, rule, or certification or licensing provision; and~~

~~(d) the information and records requested by the hospital under subsection (4)(c) are received by the hospital.~~"

Section 8. Section 53-21-181, MCA, is amended to read:

"**53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.** (1) (a) At any time within the period of commitment provided for in 53-21-127, the patient may be discharged on the written order of the professional person in charge of the patient without further order of the court.

(b) If the patient is not discharged within the period of commitment and if the term is not extended as provided for in 53-21-128, a patient whose commitment was to a facility other than a category D assisted living facility must be discharged by the facility at the end of the period of commitment without further order of the court.

(c) A patient who was committed to a category D assisted living facility may be discharged from supervision by the court but may remain as a resident if the category D assisted living facility and the patient agree.

(2) 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. The court may not require that a discharge plan be filed with or approved by the court prior to discharge of the patient UNLESS, PURSUANT TO 53-21-184, THE PATIENT IS BEING HELD UPON AN ORDER OF COURT OR JUDGE IN A PROCEEDING ARISING OUT OF A CRIMINAL ACT. THE DEPARTMENT HAS STANDING ON BEHALF OF A PATIENT IN ITS CUSTODY TO PETITION FOR DISMISSAL OF AN ORDER PROHIBITING THE PATIENT'S DISCHARGE UNDER 53-21-184. A HEARING ON THE PETITION MUST BE HELD WITHIN 5 BUSINESS DAYS.

(3) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services."

Section 9. Section 53-21-193, MCA, is amended to read:

"**53-21-193. Commitment ~~to behavioral health inpatient facilities~~ and transportation to mental health facilities -- preference -- voluntary treatment.** (1) If a respondent is committed to the ~~Montana~~ state hospital under 53-21-127, or if a person in an emergency situation requires detention under 53-21-129, and a bed is available at a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, or a behavioral health inpatient facility, the professional person shall inform the county attorney, who shall inform the person who is responsible for transporting the individual as to the appropriate facility to which the individual is to be transported for admission. The ~~Montana~~ state hospital is

the placement of last resort.

(2) If a respondent is committed to, or an individual requires emergency detention in, a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, or a behavioral health inpatient facility, the facility, program, or inpatient treatment provider must be notified and the facility, program, or inpatient treatment provider shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before ~~an individual~~ a respondent may be transferred to the ~~behavioral health inpatient~~ facility, program, or course of inpatient treatment under this section.

(3) A respondent who is committed to, or an individual who is transferred to, a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, or a behavioral health inpatient facility may only be transferred to the ~~Montana~~ state hospital for the remaining period of commitment IN ACCORDANCE WITH CRITERIA ESTABLISHED BY THE DEPARTMENT BY ADMINISTRATIVE RULE. ~~in accordance with criteria established by the department by rule pursuant to 53-21- 194 UPON ACCEPTANCE IN WRITING BY THE STATE HOSPITAL AND AFTER RECEIVING WRITTEN CONFIRMATION THAT:~~

~~(A) A BED IS AVAILABLE FOR THE RESPONDENT;~~

~~(B) ADMISSION OF THE RESPONDENT WILL NOT CAUSE THE CENSUS AT THE HOSPITAL TO EXCEED ITS LICENSED BED CAPACITY; AND~~

~~(C) THE INFORMATION AND RECORDS REQUESTED BY THE HOSPITAL ARE RECEIVED, INCLUDING:~~

~~(I) PHYSICAL AND PSYCHIATRIC HEALTH INFORMATION SUFFICIENT TO:~~

~~(A) EVALUATE THE IMMEDIATE TREATMENT NEEDS AND APPROPRIATE PLACEMENT OF THE RESPONDENT, INCLUDING THE AVAILABILITY OF LESS RESTRICTIVE MEDICALLY APPROPRIATE FACILITIES; AND~~

~~(B) COORDINATE PATIENT CARE WITH THE PROFESSIONAL PERSON, COUNTY ATTORNEY, COURT, OR THE PERSON OR ENTITY TRANSPORTING THE RESPONDENT DURING THE ADMISSION PROCESS;~~

~~(II) DOCUMENTATION OF LEGAL AUTHORITY TO ADMIT THE RESPONDENT; AND~~

~~(III) OTHER INFORMATION AND RECORDS AS REQUIRED BY ADMINISTRATIVE RULE.~~

(4) A court order for commitment, transport, or transfer must include the commitment, transport, or transfer authority, and all conditions or requirements imposed on the Montana state hospital contained in the court order apply only after ~~a transfer~~ the transport of a respondent that complies with the requirements of this provision.

~~(4)~~(5) The court may not order commitment, transport, or transfer of the respondent ~~or transfer of an individual~~ to a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, or a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

~~(5)~~(6) If a bed is available, a community facility, a category D assisted living facility, a community program, an appropriate course of inpatient treatment, or a behavioral health inpatient facility may admit a person for voluntary treatment.

~~(7) A court may not order the transfer or transport of a respondent to the Montana state hospital until the hospital has confirmed in writing that:~~

~~(a) a bed is available for the respondent;~~

~~(b) admission of the respondent will not cause the census at the hospital to exceed its licensed bed capacity; and~~

~~(c) the information and records requested by the hospital are received, including:~~

~~(i) physical and psychiatric health information sufficient to:~~

~~(A) evaluate the immediate treatment needs and appropriate placement of the respondent, including the availability of less restrictive medically appropriate facilities; and~~

~~(B) coordinate patient care with the professional person, county attorney, court, or the person or entity transporting the respondent during the admission process;~~

~~(ii) documentation of legal authority to admit the respondent; and~~

~~(iii) other information and records as required by administrative rule.~~

~~(8) A respondent may not be transported to the Montana state hospital until the requirements of subsection (7) are fulfilled.~~

~~(9) The Montana state hospital may refuse to admit into its custody a respondent who has been ordered to be transferred or transported to the hospital until:~~

~~(a) a bed is available for the respondent;~~

~~(b) admission of the respondent will not cause the census at the hospital to exceed its licensed bed capacity;~~

~~(c) admission will not cause the hospital to violate any law, rule, or certification or licensing~~

~~provision; and~~

~~(d) the information and records requested by the hospital under subsection (7)(c) are received by the hospital.~~"

NEW SECTION. **Section 10. Unfunded mandate laws superseded.** The provisions of [this act] expressly supersede and modify the requirements of 1-2-112 through 1-2-116.

NEW SECTION. **Section 11. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 12. Effective date.** [This act] is effective on passage and approval.

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