

1 SENATE BILL NO. 466

2 INTRODUCED BY M. WATERMAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MENTAL HEALTH COMMITMENT
 5 STATUTES; ALLOWING THE COURT TO ~~ORDER ASSISTED OUTPATIENT~~ COMMIT A PERSON TO
 6 COMMUNITY TREATMENT FOR A PERIOD NOT TO EXCEED ~~12~~ 6 MONTHS; PROVIDING FOR ~~FINDINGS,~~
 7 OPTIONAL TREATMENT PLANS, PROVIDER CHOICE, AND CONDITIONS ~~TO OBTAIN AN ORDER FOR~~
 8 ~~ASSISTED OUTPATIENT~~ FOR A COMMITMENT TO COMMUNITY TREATMENT; ~~PROVIDING FOR~~
 9 ~~APPEARANCE OF TREATING PROVIDERS AND RESPONDENTS BEFORE THE COURT EVERY 3 MONTHS;~~
 10 PROVIDING FOR WRITTEN REPORTS BY THE TREATING PROVIDER TO THE COURT; PROVIDING THAT
 11 A REFERRAL FOR APPROPRIATE MENTAL ILLNESS PROCEEDINGS IS AN APPROPRIATE CONDITION OF
 12 PRETRIAL DIVERSION; DEFINING "MENTAL HEALTH PROFESSIONAL"; ALLOWING FOR AN EXTENSION
 13 OF THE ASSISTED OUTPATIENT COMMUNITY TREATMENT AT THE REQUEST OF THE RESPONDENT;
 14 AND AMENDING SECTIONS 46-16-130, 53-21-102, 53-21-104, 53-21-121, 53-21-123, 53-21-124,
 15 53-21-126, 53-21-127, 53-21-128, AND 53-21-181, MCA."

16

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

18

19 NEW SECTION. Section 1. Conditions of ~~assisted outpatient~~ treatment in a community facility,
 20 program, or course of treatment. If the court orders a disposition under 53-21-127(3)(b), the court may
 21 order the following conditions for ~~assisted outpatient~~ treatment in a community facility or program, or may
 22 order a course of treatment, including but not limited to:

23 (1) following a treatment plan DEVELOPED PURSUANT TO [SECTION 3 2] that may include case
 24 management services, medication, short-term inpatient treatment, ~~or~~ chemical dependency treatment,
 25 ASSERTIVE COMMUNITY TREATMENT, OR A COMBINATION, as set forth by the designated community facility or
 26 program or the individual responsible for the management and supervision of the respondent's treatment;
 27 or

28 (2) specific residential or housing requirements that may include being under the care or custody
 29 of a relative or guardian.

30

1 ~~NEW SECTION. Section 2. Assisted outpatient treatment -- findings -- inability to make rational~~
2 ~~treatment decision -- rebuttable presumption.~~ (1) The court ordering a respondent to receive assisted
3 outpatient treatment shall make the following findings of fact:

4 ~~—— (a) that for at least one recent extended period, the respondent has failed substantially to follow~~
5 ~~a reasonable treatment plan without reasons or without adequate justification, which resulted in at least~~
6 ~~one of the conditions in 53-21-126(1)(b) or (1)(c);~~

7 ~~—— (b) subject to the determination required in 53-21-190, that PURSUANT TO THIS PART, the respondent~~
8 ~~has previously been determined to be suffering from a mental disorder and, has received treatment in an~~
9 ~~inpatient hospital pursuant to this part, AND HAS RECEIVED AT LEAST TWO OTHER CIVIL COMMITMENTS; and~~

10 ~~—— (c) as a result of the respondent's mental disorder, that the respondent lacks the capacity to make~~
11 ~~rational treatment decisions.~~

12 ~~—— (2) For the purposes of this section, "rational treatment decision" means a WELL-REASONED, WILLFUL,~~
13 ~~AND KNOWING decision based on plausible or good reasons CONCERNING MEDICAL OR PSYCHIATRIC TREATMENT.~~
14 ~~A respondent's treatment decision that is medically inadvisable or that conflicts with the recommendations~~
15 ~~of a MENTAL HEALTH professional person treating the respondent may be rational if the decision is based on~~
16 ~~plausible or good reasons. A respondent's refusal to follow a professional person's MENTAL HEALTH~~
17 ~~PROFESSIONAL'S reasonable treatment plan remains a rational treatment decision if the refusal reflects a~~
18 ~~good faith attempt to follow a reasonable WRITTEN alternative treatment plan THAT FOLLOWS ACCEPTED~~
19 ~~MEDICAL STANDARDS, IS SUPERVISED BY A MENTAL HEALTH PROFESSIONAL, AND DOES NOT RESULT IN ONE OF THE~~
20 ~~CONDITIONS IN 53-21-126(1) or if it is protected by a constitutional right to refuse treatment.~~

21 ~~—— (3) (A) If the respondent has substantially complied for the prior 12 months with any current~~
22 ~~treatment plans or recommendations made as a result of proceedings previously initiated under this chapter~~
23 ~~or with the current treatment recommendations of any other MENTAL HEALTH professional person treating~~
24 ~~the respondent, a rebuttable presumption arises that the respondent has the capacity to make rational~~
25 ~~treatment decisions.~~

26 ~~—— (B) (i) In deciding whether that presumption is overcome, the court shall consider, among other~~
27 ~~factors, how frequently and how recently the respondent has failed to follow reasonable treatment~~
28 ~~recommendations and whether any failures, if they exist, have led to the respondent's inability to provide~~
29 ~~for the respondent's basic needs for food, shelter, clothing, health, or safety or have led to~~
30 ~~self-endangerment or to the respondent being dangerous to others.~~

1 ~~_____ (ii) IF THE RESPONDENT HAS BEEN PREVIOUSLY ORDERED TO ASSISTED OUTPATIENT TREATMENT AND THE~~
 2 ~~RESPONDENT HAS REQUESTED AN EXTENSION AS PROVIDED IN 53-21-128, THE COURT MAY, IN THE ABSENCE OF EVIDENCE~~
 3 ~~TO THE CONTRARY, CONSIDER THAT THE PRESUMPTION THAT THE RESPONDENT HAS THE CAPACITY TO MAKE RATIONAL~~
 4 ~~TREATMENT DECISIONS HAS BEEN OVERCOME.~~

5

6 NEW SECTION. Section 2. Assisted outpatient treatment TREATMENT plan -- provider choice [--
 7 advanced directive]. (1) Stabilizing treatment must be provided during the development of a treatment
 8 plan.

9 (2) ~~The~~ IF THE COURT ORDERS A TREATMENT PLAN UNDER THIS SECTION AS A CONDITION OF A COMMITMENT
 10 FOR TREATMENT IN A COMMUNITY FACILITY, PROGRAM, OR COURSE OF TREATMENT, THE chief medical officer of the
 11 facility or program at which the respondent has been ordered to receive outpatient treatment and at which
 12 the respondent is treated as an outpatient or the chief medical officer's designee shall submit a treatment
 13 plan, including any outpatient treatment recommendations that the respondent is required to follow, to the
 14 clerk of district court as soon as practical. However, the plan must be submitted no later than 30 days
 15 after the respondent has been ordered to receive treatment as an outpatient.

16 (3) A treatment plan must be developed with the respondent and the friend of respondent or
 17 respondent's family, IF FAMILY INVOLVEMENT IS DETERMINED BY THE COURT IN CONSULTATION WITH THE MENTAL
 18 HEALTH PROFESSIONAL TO BE IN THE BEST INTERESTS OF THE RESPONDENT, ~~and must respect any durable powers~~
 19 ~~of attorney [or advanced directives] in effect at the time of the order.~~

20 (4) The clerk of district court shall send a copy of the proposed treatment plan to the court, to
 21 the respondent, to the friend of respondent, and to the respondent's attorney of record, who may relay
 22 the respondent's objections to the treatment plan, if any, and provide alternative treatment
 23 recommendations to the court.

24 (5) The court may accept the treatment plan or require a revised treatment plan that is approved
 25 by a mental health professional.

26 ~~_____ (6) If the respondent wishes to receive outpatient treatment from a different mental health~~
 27 ~~professional or a facility or program that is willing to treat the respondent as a court-ordered outpatient~~
 28 ~~under the approved treatment plan, the court shall order the respondent to the care of that professional~~
 29 ~~person, facility, or program upon the respondent's written request.~~

30 ~~_____ (7) A respondent may execute a durable power of attorney for health care decisions, in~~

1 ~~accordance with 72-5-501[, or an advanced directive]. If legally sufficient pursuant to Title 72, chapter~~
 2 ~~31, part 2, a durable power of attorney for health care decisions [or an advance directive pursuant to LC~~
 3 ~~1415] is binding on the court and on any professional person provided that the decisions made by the~~
 4 ~~agent possessing the power of attorney and the instructions, if any, in the executed power of attorney for~~
 5 ~~health care decisions [or in the advance directive] are within accepted medical standards and practices.~~
 6 ~~This section does not require a mental health professional to accept as an outpatient a respondent who~~
 7 ~~has executed a durable power of attorney for health care decisions [or an advance directive] that provides~~
 8 ~~for treatment, whether by instructions or by decisions of the person possessing the power of attorney,~~
 9 ~~that in the mental health professional's judgment would not be an appropriate treatment for the~~
 10 ~~respondent's condition.~~

11

12 ~~———— **NEW SECTION. Section 4. Periodic reports -- failure to file.** (1) The chief medical officer of the~~
 13 ~~facility or program where the respondent obtains treatment as an outpatient or the chief medical officer's~~
 14 ~~designee shall appear with the respondent before the court and furnish written reports on the respondent's~~
 15 ~~progress every 3 months. At the court appearance OR AT ANY TIME DURING THE COMMITMENT, the respondent~~
 16 ~~and the treating provider may seek amendment of the treatment plan or dismissal of the treatment order~~
 17 ~~as provided in 53-21-181 and 53-21-182.~~

18 ~~———— (2) The chief medical officer shall provide a copy of the report to the respondent, to the~~
 19 ~~respondent's counsel, and to the friend of respondent.~~

20 ~~———— (3) If a progress report required in subsection (1) is not filed in a timely manner AT EACH 3-MONTH~~
 21 ~~COURT APPEARANCE or if services to a respondent are not provided, the court shall inform the department.~~
 22 ~~The department or a designee shall make a determination regarding whether the respondent's treatment~~
 23 ~~is being publicly funded, and if it is publicly funded, the department shall refer the services to utilization~~
 24 ~~review to determine if there is appropriate action to take regarding the treating provider.~~

25

26 ~~———— **NEW SECTION. Section 3. Notification of noncompliance to assisted outpatient OF CONDITION FOR**~~
 27 ~~**treatment PLAN -- response.** (1) If the respondent HAS BEEN ORDERED TO FOLLOW A TREATMENT PLAN AND THE~~
 28 ~~RESPONDENT does not substantially comply with the treatment plan developed pursuant to the order for~~
 29 ~~assisted outpatient treatment PURSUANT TO A COMMITMENT TO A COMMUNITY FACILITY OR PROGRAM OR COURSE~~
 30 ~~OF TREATMENT, the chief medical officer or designee shall promptly notify the court upon becoming aware~~

1 of substantial noncompliance THAT IS LIKELY TO RESULT IN AT LEAST ONE OF THE CONDITIONS IN 53-21-126(1) and
 2 shall provide supporting documentation.

3 (2) The court may take reasonable steps to ensure compliance with the court's outpatient
 4 treatment order, including but not limited to the following:

5 (a) directing that the friend of respondent remind the respondent of the respondent's treatment
 6 obligations and attempt to persuade the noncompliant respondent to comply with the treatment plan;

7 (b) presenting the respondent to the mental health facility or program for treatment, including
 8 administration of medication pursuant to 53-21-127(6); or

9 (c) directing the treating provider to work with the respondent to bring about compliance with the
 10 treatment plan.

11 ~~———(3) The court may order the respondent and the treating provider to appear before the court. If
 12 necessary the court may order the sheriff to bring the respondent before the court.~~

13 ~~———(4) Unless the court has good reason, based upon past experience with the respondent or the
 14 friend of respondent, to believe that the methods in subsections (1) through (3) will not be effective in
 15 ensuring compliance with the court's outpatient treatment order or that immediate treatment is necessary,
 16 the court shall attempt to secure compliance by one or more of the reasonable steps provided for in
 17 subsections (1) through (3) before ordering the sheriff to bring the noncompliant respondent to treatment.
 18 If necessary, the court shall order the sheriff to bring the respondent to the facility or program for
 19 treatment.~~

20

21 NEW SECTION. Section 4. Department funding responsibility for assisted outpatient treatment.

22 The department shall develop a separate funding category and procedure for payment for services that are
 23 court-ordered for ~~assisted outpatient treatment~~ A COMMITMENT TO A COMMUNITY FACILITY OR PROGRAM OR
 24 COURSE OF TREATMENT if the individual under the commitment. HOWEVER, NOTHING IN THIS CHAPTER OBLIGATES
 25 THE DEPARTMENT TO PAY FOR SERVICES ORDERED UNDER 53-21-127 UNLESS THE RESPONDENT is eligible for mental
 26 health services under the public mental health system FUNDED BY THE DEPARTMENT, THE SERVICE IS ONE THAT
 27 THE DEPARTMENT HAS INCLUDED IN ITS MENTAL HEALTH PROGRAM, AND THE DEPARTMENT DETERMINES THAT THE MENTAL
 28 HEALTH SERVICE IS MEDICALLY NECESSARY FOR THE RESPONDENT.

29

30 **Section 5.** Section 46-16-130, MCA, is amended to read:

1 **"46-16-130. Pretrial diversion.** (1) (a) Prior to the filing of a charge, the prosecutor and a
 2 defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a
 3 prosecution for a specified period of time based on one or more of the following conditions:

4 (i) that the defendant may not commit any offense;

5 (ii) that the defendant may not engage in specified activities, conduct, and associations bearing
 6 a relationship to the conduct upon which the charge against the defendant is based;

7 (iii) that the defendant shall participate in a supervised rehabilitation program, which may include
 8 treatment, counseling, training, or education;

9 (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the
 10 offense; or

11 (v) any other reasonable conditions.

12 (b) The agreement must be in writing, must be signed by the parties, and must state that the
 13 defendant waives the right to speedy trial for the period of deferral. The agreement may include
 14 stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of
 15 the prosecution is terminated and there is a trial on the charge.

16 (c) The prosecution must be deferred for the period specified in the agreement unless there has
 17 been a violation of its terms.

18 (d) The agreement must be terminated and the prosecution automatically dismissed with prejudice
 19 upon expiration and compliance with the terms of the agreement.

20 (2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to
 21 determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

22 ~~(2)~~(3) After a charge has been filed, a deferral of prosecution may be entered into only with the
 23 approval of the court.

24 ~~(3)~~(4) A prosecution for a violation of 61-8-401, 61-8-406, or 61-8-410 may not be deferred."
 25

26 **SECTION 6.** SECTION 53-21-102, MCA, IS AMENDED TO READ:

27 **"53-21-102. Definitions.** As used in this part, the following definitions apply:

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

30 (2) "Commitment" means an order by a court requiring an individual to receive treatment for a

1 mental disorder.

2 (3) "Court" means any district court of the state of Montana.

3 (4) "Department" means the department of public health and human services provided for in
4 2-15-2201.

5 (5) "Emergency situation" means a situation in which any person is in imminent danger of death
6 or bodily harm from the activity of a person who appears to be suffering from a mental disorder and
7 appears to require commitment.

8 (6) "Friend of respondent" means any person willing and able to assist a person suffering from
9 a mental disorder and requiring commitment or person alleged to be suffering from a mental disorder and
10 requiring commitment in dealing with legal proceedings, including consultation with legal counsel and
11 others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any,
12 representatives of a charitable or religious organization, or any other person appointed by the court to
13 perform the functions of a friend of respondent set out in this part. Only one person may at any one time
14 be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court
15 shall consider the preference of the respondent. The court may at any time, for good cause, change its
16 designation of the friend of respondent.

17 (7) "Mental disorder" means any organic, mental, or emotional impairment that has substantial
18 adverse effects on an individual's cognitive or volitional functions. The term does not include:

19 (a) addiction to drugs or alcohol;

20 (b) drug or alcohol intoxication;

21 (c) mental retardation; or

22 (d) epilepsy.

23 (8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital that
24 is equipped and staffed to provide treatment for persons with mental disorders or a community mental
25 health center or any mental health clinic or treatment center approved by the department. A correctional
26 institution or facility or jail is not a mental health facility within the meaning of this part.

27 (9) "Mental health professional" means:

28 (a) a certified professional person;

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

30 (c) a professional counselor licensed under Title 37, chapter 23;

1 (d) a psychologist licensed under Title 37, chapter 17;
 2 (e) a social worker licensed under Title 37, chapter 22; or
 3 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty
 4 in psychiatric mental health nursing.

5 ~~(9)~~(10) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult
 6 brothers and sisters of a person.

7 ~~(10)~~(11) "Patient" means a person committed by the court for treatment for any period of time or
 8 who is voluntarily admitted for treatment for any period of time.

9 ~~(11)~~(12) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace
 10 officer.

11 ~~(12)~~(13) "Professional person" means:

12 (a) a medical doctor; or

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

14 ~~(13)~~(14) "Reasonable medical certainty" means reasonable certainty as judged by the standards
 15 of a professional person.

16 ~~(14)~~(15) "Respondent" means a person alleged in a petition filed pursuant to this part to be
 17 suffering from a mental disorder and requiring commitment.

18 ~~(15)~~(16) "State hospital" means the Montana state hospital."
 19

20 **Section 7.** Section 53-21-104, MCA, is amended to read:

21 **"53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
 22 independent board of inquiry and review to assure that the treatment of all persons either voluntarily or
 23 involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in
 24 this part.

25 (2) The board shall review all plans for experimental research involving persons admitted to a
 26 mental health facility to assure that the research project is humane and not unduly hazardous and that it
 27 complies with the principles of the statement on the use of human subjects for research of the American
 28 association on mental deficiency and with the principles for research involving human subjects required
 29 by the United States department of health, education, and welfare. An experimental research project
 30 involving persons admitted to a mental health facility affected by this part may not be commenced unless

1 it is approved by the mental disabilities board of visitors.

2 (3) The board shall at least annually inspect every mental health facility ~~which~~ that is providing
3 treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant,
4 including residential, recreational, dining, and sanitary facilities. ~~It~~ the board shall visit all wards and
5 treatment areas. The board shall inquire concerning all treatment programs being implemented by the
6 facility.

7 (4) The board shall annually insure that a treatment plan exists and is being implemented for each
8 patient admitted or committed to a mental health facility under this part. The board shall inquire concerning
9 all use of restraints, isolation, or other extraordinary measures.

10 (5) The board may assist any patient at a mental health facility in resolving any grievance the
11 patient may have concerning the patient's commitment or course of treatment in the facility.

12 (6) The board shall employ and be responsible for full-time legal counsel at the state hospital,
13 whose responsibility is to act on behalf of all patients at the institution. The board shall insure that there
14 is sufficient legal staff and facilities to insure availability to all patients and shall require that the appointed
15 counsel periodically interview every patient and examine the patient's files and records. The board may
16 employ additional legal counsel for representation of patients in a similar manner at any other mental health
17 facility having inpatient capability.

18 (7) If the board believes that any facility is failing to comply with the provisions of this part in
19 regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the
20 professional person in charge of the facility and the director of the department, and if appropriate, after
21 waiting a reasonable time for a response from the professional person, the board may notify the next of
22 kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient
23 involved, and the district court which has jurisdiction over the facility.

24 (8) The board shall report annually to the governor concerning:

25 (a) the status of the mental health facilities and treatment programs which it has inspected; and

26 (b) medications involuntarily administered to patients in mental health facilities and the
27 effectiveness of the review procedure required by 53-21-127~~(2)~~(6) in protecting patients from unnecessary
28 or excessive medication."
29

30 **Section 8.** Section 53-21-121, MCA, is amended to read:

1 **"53-21-121. Petition for commitment -- contents of -- notice of.** (1) The county attorney, upon
2 the written request of any person having direct knowledge of the facts, may file a petition with the court
3 alleging that there is a person within the county who is suffering from a mental disorder and who requires
4 commitment pursuant to this chapter.

5 (2) The petition must contain:

6 (a) the name and address of the person requesting the petition and the person's interest in the
7 case;

8 (b) the name of the respondent and, if known, the address, age, sex, marital status, and
9 occupation of the respondent;

10 (c) the purported facts supporting the allegation of mental disorder, including a report by a mental
11 health professional if any, a statement of the disposition sought pursuant to 53-21-127(~~2~~), and the need
12 for commitment;

13 (d) the name and address of every person known or believed to be legally responsible for the care,
14 support, and maintenance of the respondent for whom evaluation is sought;

15 (e) the name and address of the respondent's next of kin to the extent known to the county
16 attorney and the person requesting the petition;

17 (f) the name and address of any person whom the county attorney believes might be willing and
18 able to be appointed as friend of respondent;

19 (g) the name, address, and telephone number of the attorney, if any, who has most recently
20 represented the respondent for whom evaluation is sought; if there is no attorney, there must be a
21 statement as to whether to the best knowledge of the person requesting the petition the respondent for
22 whom evaluation is sought is indigent and unable to afford the services of an attorney; and

23 (h) a statement of the rights of the respondent, which must be in conspicuous print and identified
24 by a suitable heading.

25 (3) Notice of the petition must be hand-delivered to the respondent and to the respondent's
26 counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The
27 respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain
28 the probable course of the proceedings. Notice of the petition and the order setting the date and time of
29 the hearing and the names of the respondent's counsel, professional person, and friend of respondent must
30 be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance

1 of the respondent, the next of kin identified in the petition, and any other person identified by the county
2 attorney as a possible friend of respondent other than the one named as the friend of respondent. The
3 notice may provide, other than as to the respondent and the respondent's counsel, that no further notice
4 will be given unless written request is filed with the clerk of court."

5

6 **Section 9.** Section 53-21-123, MCA, is amended to read:

7 **"53-21-123. Examination of respondent following initial hearing -- recommendation of professional**
8 **person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the respondent
9 must be examined by the professional person without unreasonable delay. The examination may not
10 exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the
11 findings in person or by phone and shall make a written report of the examination to the court, with copies
12 to the respondent's attorney and the county attorney. If the professional person recommends commitment,
13 the professional person's written report must contain a statement of the professional person's
14 recommendations to the court for disposition under 53-21-127~~(2)~~.

15 (2) The following action must be taken based on the professional person's findings:

16 (a) If the professional person recommends dismissal, the professional person shall additionally
17 notify counsel and the respondent must be released and the petition dismissed. However, the county
18 attorney may, upon good cause shown, request the court to order an additional, but no more than one,
19 examination by a different professional person for a period of no more than 4 hours.

20 (b) If the court finds that commitment proceedings should continue, the hearing must be held as
21 scheduled.

22 (3) The court may not order further evaluation pending the hearing unless sound medical reasons
23 require additional time for a complete evaluation. The reasons must be set forth in the order, along with
24 the amount of additional time needed."

25

26 **Section 10.** Section 53-21-124, MCA, is amended to read:

27 **"53-21-124. Detention of respondent pending hearing or trial -- jail prohibited.** (1) The court may
28 not order detention of a respondent pending the hearing unless requested by the county attorney and upon
29 the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for
30 the respondent may then request a detention hearing, which must be held ~~forthwith~~ immediately.

1 (2) In the event of detention, the respondent must be detained in the least restrictive setting
2 necessary to ~~assure his~~ ensure the respondent's presence and ~~assure his safety and~~ ensure the safety of
3 the respondent and of others as provided in 53-21-120.

4 (3) If the respondent is detained, ~~he~~ the respondent has the right to be examined additionally by
5 a professional person of ~~his~~ the respondent's choice, which may not depend on the respondent's ability
6 to pay, and the respondent must be informed of this right. Unless objection is made by counsel for the
7 respondent, ~~he~~ the respondent must continue to be evaluated and treated by the professional person
8 pending the hearing.

9 (4) A respondent may not be detained in a jail or other correctional facility pending a hearing or
10 trial to determine whether the respondent should be committed to a mental health facility."

11

12 **Section 11.** Section 53-21-126, MCA, is amended to read:

13 **"53-21-126. Trial or hearing on petition.** (1) The respondent must be present unless the
14 respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be
15 represented by counsel at all stages of the trial. The trial must be limited to the determination of whether
16 or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court
17 shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental
18 disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall
19 then determine whether the respondent requires commitment. In determining whether the respondent
20 requires commitment AND THE APPROPRIATE DISPOSITION UNDER 53-21-127, the court shall consider the
21 following:

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

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

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

28 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts
29 or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to
30 the point at which the respondent will become a danger to self or to others or will be unable to provide

1 for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be
2 established by the respondent's relevant medical history.

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

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

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

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

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

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

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

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

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

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

30 (ii) will, if untreated, predictably result in deterioration of the respondent's mental condition to the

1 point at which the respondent will become a danger to self or to others or will be unable to provide for the
 2 respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established
 3 by the respondent's relevant medical history.

4 ~~—— (5) If the petition seeks an order for assisted outpatient treatment, as provided in 53-21-127, the~~
 5 ~~evidence must include testimony REGARDING THE FINDINGS OF FACT REQUIRED IN [SECTION 2]:~~

6 ~~—— (a) that for at least one recent extended period, the respondent has failed to follow any reasonable~~
 7 ~~treatment plan without reasons or without adequate justification, which resulted in at least one of the~~
 8 ~~conditions in 53-21-126(1)(b) OR (1)(c):~~

9 ~~—— (b) that PURSUANT TO THIS PART, the individual has previously been determined to be suffering from~~
 10 ~~a mental disorder and, HAS received treatment in an inpatient hospital pursuant to this part, AND HAS~~
 11 ~~RECEIVED AT LEAST TWO OTHER CIVIL COMMITMENTS; and~~

12 ~~—— (c) as a result of the individual's mental disorder, that the respondent lacks the capacity to make~~
 13 ~~rational treatment decisions AS DEFINED IN [SECTION 2].~~

14 ~~(5)(6)(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

17 **Section 12.** Section 53-21-127, MCA, is amended to read:

18 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not
 19 suffering from a mental disorder or does not require commitment within the meaning of this part, the
 20 respondent must be discharged and the petition dismissed.

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

26 (3) At the conclusion of the disposition hearing AND PURSUANT TO THE PROVISIONS IN SUBSECTION (7),
 27 the court shall:

28 ~~(i)(a)~~ commit the respondent to the state hospital for a period of not more than 3 months; OR
 29 ~~(ii)(b) order the respondent to receive assisted outpatient treatment pursuant to [sections 1~~
 30 ~~through 6] for a period not to exceed 12 months; or~~

1 ~~(e)(B)~~ commit the respondent to a community facility, ~~or program,~~ or to any appropriate course of
 2 treatment, which may include housing or residential requirements, for a period of not more than ~~3~~ 6
 3 months;

4 ~~—— (iii) order the respondent to be placed in the care and custody of a relative or guardian or some~~
 5 ~~other appropriate place other than an institution;~~

6 ~~—— (iv) order outpatient therapy; or~~

7 ~~—— (v) make some other appropriate order for treatment.~~

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

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

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

30 ~~(d)(7)~~ Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant

1 to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court
 2 may require commitment only to a community facility or program or an appropriate course of treatment
 3 ~~or to assisted outpatient treatment as provided in subsection (3)(b) or (3)(c) (3)(B)~~, and may not require
 4 commitment at the state hospital.

5 ~~(e)(8)~~ In ordering commitment pursuant to this section, the court shall make the following findings
 6 of fact:

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

9 ~~(ii)(b)~~ the alternatives for treatment that were considered;

10 ~~(iii)(c)~~ the alternatives available for treatment of the respondent;

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

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

15 ~~(vi)(f)~~ if the order includes a requirement for inpatient treatment, the reason inpatient treatment
 16 was chosen from among other alternatives; ~~and~~ AND

17 ~~(vii)(g)~~ if the order includes involuntary medication, the reason involuntary medication was chosen
 18 from among other alternatives; ~~and~~

19 ~~— (h) if the order includes assisted outpatient treatment, the findings required by [section 2]."~~

20

21 **Section 13.** Section 53-21-128, MCA, is amended to read:

22 **"53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks
 23 prior to the end of the 3-month period of commitment to the state hospital or THE PERIOD OF COMMITMENT
 24 to a community facility or program or a course of treatment provided for in 53-21-127~~(2)(3)(a) or (3)(c)~~,
 25 the professional person in charge of the patient at the place of commitment may petition the district court
 26 in the county where the patient is committed for extension of the commitment period unless otherwise
 27 ordered by the original committing court. The petition must be accompanied by a written report and
 28 evaluation of the patient's mental and physical condition. The report must describe any tests and
 29 evaluation devices that have been employed in evaluating the patient, the course of treatment that was
 30 undertaken for the patient, and the future course of treatment anticipated by the professional person.

1 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition
 2 to the patient, the patient's next of kin, if reasonably available, the friend of respondent appointed by the
 3 court, and the patient's counsel. If any person notified requests a hearing prior to the termination of the
 4 previous commitment authority, the court shall immediately set a time and place for a hearing on a date
 5 not more than 10 days from the receipt of the request and notify the same people, including the
 6 professional person in charge of the patient. If a hearing is not requested, the court shall enter an order
 7 of commitment for a period not to exceed 6 months.

8 (c) Procedure on the petition for extension when a hearing has been requested must be the same
 9 in all respects as the procedure on the petition for the original 3-month commitment except the patient is
 10 not entitled to trial by jury. The hearing must be held in the district court having jurisdiction over the facility
 11 in which the patient is detained unless otherwise ordered by the court. Court costs and witness fees, if
 12 any, must be paid by the county that paid the same costs in the initial commitment proceedings.

13 (d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and
 14 requiring commitment within the meaning of this part, the patient must be discharged and the petition
 15 dismissed. If the court finds that the patient continues to suffer from a mental disorder and to require
 16 commitment, the court shall order commitment, ~~custody in relatives, outpatient therapy, or other order~~
 17 as set forth in 53-21-127~~(2)~~(3). However, an order may not affect the patient's custody for more than 6
 18 months ~~unless it is a new order for assisted outpatient treatment, which may not exceed 12 months~~. In
 19 its order, the court shall describe what alternatives for treatment of the patient are available, what
 20 alternatives were investigated, and why the investigated alternatives were not found suitable. The court
 21 may not order continuation of an alternative that does not include a comprehensive, individualized plan of
 22 treatment for the patient. A court order for the continuation of an alternative must include a specific
 23 finding that a comprehensive, individualized plan of treatment exists.

24 (2) PRIOR TO THE END OF THE 12-MONTH PERIOD OF COMMITMENT TO ASSISTED OUTPATIENT TREATMENT AS
 25 PROVIDED IN 53-21-127(3)(B) A COMMUNITY FACILITY OR PROGRAM OR COURSE OF TREATMENT, A RESPONDENT MAY
 26 REQUEST THAT THE TREATING PROVIDER PETITION THE DISTRICT COURT FOR AN EXTENSION OF THE ASSISTED OUTPATIENT
 27 TREATMENT COMMITMENT ORDER. THE PETITION MUST BE ACCOMPANIED BY A WRITTEN REPORT AND EVALUATION OF THE
 28 RESPONDENT'S MENTAL AND PHYSICAL CONDITION, AN UPDATED TREATMENT PLAN, AND A WRITTEN STATEMENT BY THE
 29 RESPONDENT THAT AN EXTENSION OF ASSISTED OUTPATIENT TREATMENT IS DESIRED. THE EXTENSION PROCEDURE MUST
 30 FOLLOW THE PROCEDURE REQUIRED IN SUBSECTIONS (1)(B) THROUGH (1)(D).

1 ~~(2)~~(3) Further extensions UNDER SUBSECTION (1) OR (2) may be obtained under the same procedure
 2 described in subsection (1); ~~however~~ However, the patient's custody may not be affected for more than
 3 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including
 4 a statement of the findings required by subsection (1)."

5

6 **Section 14.** Section 53-21-181, MCA, is amended to read:

7 **"53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.**

8 (1) At any time within the ~~3-month~~ period of commitment provided for in 53-21-127~~(2)~~, the patient may
 9 be discharged on the written order of the professional person in charge of ~~him~~ the patient. ~~In the event~~
 10 If the patient is not discharged within the ~~3-month~~ period of commitment and if the term is not extended
 11 as provided for in 53-21-128, ~~he shall~~ the patient must be discharged by the facility at the end of ~~3~~
 12 ~~months~~ the period of commitment without further order of the court. Notice of the discharge ~~shall~~ must
 13 be filed with the court and the county attorney at least 5 days prior to the discharge.

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

16

17 NEW SECTION. **Section 15. Codification instruction.** [Sections 1 through ~~6~~ 4] are intended to be
 18 codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part
 19 1, apply to [sections 1 through ~~6~~ 4].

20

21 ~~————~~ NEW SECTION. **Section 18. Coordination instruction.** (1) If [LC 1415] and [this act] are both
 22 passed and approved, then the bracketed references to "advanced directives" must be inserted in [this
 23 act].

24 ~~————~~ (2) If [LC 1415] is not passed and approved, then the bracketed references to "advance
 25 directives" in [this act] are void.

26

- END -