

1 SENATE BILL NO. 216

2 INTRODUCED BY D. WEINBERG

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PEACE OFFICER OR EMERGENCY MEDICAL
5 SERVICE PROVIDER PROVIDING TRANSPORTATION IN A MOTOR VEHICLE TO AN INDIVIDUAL
6 SUFFERING FROM A MENTAL DISORDER TO APPLY A RESTRAINT TO THE INDIVIDUAL DURING
7 TRANSPORTATION ONLY IF A COURT HAS ORDERED THE RESTRAINT, A MENTAL HEALTH
8 PROFESSIONAL HAS APPROVED THE USE OF THE RESTRAINT IN AN EMERGENCY SITUATION, OR THE
9 PEACE OFFICER OR EMERGENCY MEDICAL SERVICE PROVIDER IS CONCERNED FOR THE SAFETY OF
10 AN INDIVIDUAL INVOLVED IN THE TRANSPORTATION AND DOCUMENTS THE REASON FOR APPLYING
11 THE RESTRAINT; LIMITING THE TYPE OF RESTRAINT THAT MAY BE USED; AMENDING SECTIONS
12 50-6-323, 53-21-102, 53-21-104, 53-21-111, 53-21-112, 53-21-123, 53-21-124, 53-21-126, 53-21-127, 53-21-129,
13 53-21-130, 53-21-133, 53-21-138, 53-21-151, 53-21-183, 53-21-197, 53-21-413, AND 53-21-414, MCA; AND
14 PROVIDING AN APPLICABILITY DATE."

15
16 WHEREAS, individuals suffering from mental disorders cannot, under Montana law, be involuntarily
17 committed unless they are a danger to themselves or others and need treatment and, once committed, cannot
18 be involuntarily restrained without approval by a mental health professional; and

19 WHEREAS, when individuals suffering from mental disorders are transported in motor vehicles by peace
20 officers in Montana they are usually transported in handcuffs; and

21 WHEREAS, the United States Supreme Court held in *Youngberg v. Romeo*, 457 U.S. 307 (1982), that
22 an individual in a mental health facility suffering from a mental disorder but not violating a criminal law is entitled,
23 as a part of due process of law before the deprivation of liberty, to the opinion of a mental health professional as
24 to whether the individual should be restrained; and

25 WHEREAS, the same requirement for the use of a restraint on an individual committed to a mental health
26 facility should apply to the use of a restraint by a peace officer or emergency medical service provider transporting
27 an individual with a mental disorder in a motor vehicle, but the safety of the individuals in the vehicle should be
28 the primary concern.

29 THEREFORE, the Legislature believes that the opinion of a professional person and a court's order
30 should guide the use of a restraint in a motor vehicle, but if the individual controlling the vehicle has a concern

1 for the safety of someone in the vehicle, that individual should be able to apply a restraint at any time after
2 documenting the reason for applying the restraint.

3

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

5

6 **Section 1.** Section 50-6-323, MCA, is amended to read:

7 **"50-6-323. Powers and duties of department.** (1) The department has general authority to supervise
8 and regulate emergency medical services in Montana.

9 (2) The department shall receive and investigate complaints relating to the operation of any emergency
10 medical service, including complaints concerning:

11 (a) patient care provided by an emergency medical service;

12 (b) the condition of any vehicle or aircraft used as an ambulance; or

13 (c) individual performance by an emergency medical service provider, including transportation provided
14 pursuant to [section 3] to an individual who is or may be suffering from a mental disorder.

15 (3) Upon completion of an investigation as provided in subsection (2), the department shall take
16 appropriate action, including the institution of necessary legal proceedings, as authorized under this part.

17 (4) In order to carry out the provisions of this part, the department shall prescribe and enforce rules for
18 emergency medical services. Rules of the department may include but are not limited to the following:

19 (a) the classification and identification of specific types and levels of prehospital and interhospital medical
20 transportation or treatment services;

21 (b) procedures for issuing, denying, renewing, and canceling licenses;

22 (c) minimum licensing standards for each type and level of service, including requirements for personnel,
23 medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage
24 as determined appropriate by the department; and

25 (d) other requirements necessary and appropriate to ~~assure~~ ensure the quality, safety, and proper
26 operation and administration of emergency medical services.

27 (5) A rule under this section is not effective until:

28 (a) a public hearing has been held for review of the rule; and

29 (b) notice of the public hearing and a copy of the proposed rules have been sent to all persons licensed
30 under 50-6-306 to conduct or operate an emergency medical service. Notice must be sent at least 30 days prior

1 to the date of the public hearing."

2

3 **Section 2.** Section 53-21-102, MCA, is amended to read:

4 **"53-21-102. Definitions.** As used in this part, the following definitions apply:

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

9 (2) "Behavioral health inpatient facility" means a licensed facility of 16 beds or less designated by the
10 department that:

11 (a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is
12 capable of providing inpatient psychiatric services, including services to persons with mental illness and
13 co-occurring chemical dependency; and

14 (b) has contracted with the department to provide services to persons who have been involuntarily
15 committed for care and treatment of a mental disorder pursuant to this title.

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

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

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

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

22 (7) "Emergency medical service" has the meaning provided in 50-6-302.

23 ~~(7)~~(8) "Emergency situation" means a situation in which any person is in imminent danger of death or
24 bodily harm from the activity of a person who appears to be suffering from a mental disorder and appears to
25 require commitment.

26 ~~(8)~~(9) "Friend of respondent" means any person willing and able to assist a person suffering from a
27 mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and
28 requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others. The
29 friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives
30 of a charitable or religious organization, or any other person appointed by the court to perform the functions of

1 a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within
2 the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the
3 respondent. The court may at any time, for good cause, change its designation of the friend of respondent.

4 ~~(9)~~(10) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial
5 adverse effects on an individual's cognitive or volitional functions.

6 (b) The term does not include:

7 (i) addiction to drugs or alcohol;

8 (ii) drug or alcohol intoxication;

9 (iii) mental retardation; or

10 (iv) epilepsy.

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

12 ~~(10)~~(11) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing
13 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
14 facility, or a residential treatment center licensed or certified by the department that provides treatment to children
15 or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the
16 meaning of this part.

17 ~~(11)~~(12) "Mental health professional" means:

18 (a) a certified professional person;

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

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

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

22 (e) a social worker licensed under Title 37, chapter 22; or

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

25 ~~(12)~~(13) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person
26 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory
27 responsibilities to protect patients from abuse and neglect.

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

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

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

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

2 ~~(13)~~(14) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers
3 and sisters of a person.

4 ~~(14)~~(15) "Patient" means a person committed by the court for treatment for any period of time or who is
5 voluntarily admitted for treatment for any period of time.

6 ~~(15)~~(16) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

7 ~~(16)~~(17) "Professional person" means:

8 (a) a medical doctor;

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

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

12 ~~(17)~~(18) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a
13 professional person.

14 ~~(18)~~(19) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from
15 a mental disorder and requiring commitment.

16 (20) "Restraint" means:

17 (a) a strap, chain, lock, handcuff, or other device made specifically for the purpose of preventing or
18 limiting an individual's range of movement; or

19 (b) a drug intended to be administered orally or by injection to sedate an individual so that the individual
20 may be physically managed without injury to the individual.

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

22

23 **NEW SECTION. Section 3. Transportation by ambulance or peace officer -- policy -- use of**
24 **restraints.** (1) It is the policy of the state that individuals suffering from mental disorders are to be treated with
25 dignity and respect. Therefore, it is the policy of the state that an individual suffering from a mental disorder is not
26 to be restrained while being transported by a peace officer or emergency medical service provider in a motor
27 vehicle unless at least one of the conditions in subsection (3)(a) has been met.

28 (2) While providing transportation in a motor vehicle, a peace officer or emergency medical service
29 provider may not restrain an individual who is or may be suffering from a mental disorder by any other means
30 except as provided in this section.

1 (3) (a) A restraint may be used only if:

2 (i) a court has ordered the restraint based on the opinion of a professional person in a proceeding subject
3 to this chapter;

4 (ii) a professional person has approved the use of a restraint in an emergency situation pursuant to
5 53-21-129; or

6 (iii) the peace officer or emergency medical service provider is concerned for the safety of an individual
7 in the transporting motor vehicle and, whether or not a court has ordered the use of the restraint or a professional
8 person has approved the use of the restraint, has documented the factual basis for that concern in a paper or
9 electronic record maintained by the employer of the peace officer or emergency service provider.

10 (b) The restraint must be applied by an individual trained in the application and use of the restraint and
11 used in the manner in which it was intended.

12 (4) A supervisor of a peace officer or emergency medical service provider who applies a restraint to an
13 individual who is or may be suffering from a mental disorder shall review the record required by subsection
14 (3)(a)(iii) to see if a restraint was appropriately applied.

15

16 **Section 4.** Section 53-21-104, MCA, is amended to read:

17 **"53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
18 independent board of inquiry and review that is responsible to ensure that the treatment of all persons either
19 voluntarily or involuntarily admitted to a mental facility in Montana is humane, is consistent with established
20 clinical and other professional standards, and meets the requirements set forth in this part.

21 (2) The board shall review all plans for experimental research involving persons admitted to a mental
22 health facility to ensure that each research project is humane and not unduly hazardous and that it complies with
23 the principles of the statement on the use of human subjects for research of the American association on mental
24 deficiency and with the principles for research involving human subjects required by the United States department
25 of health and human services. An activity considered to be an experimental research project and that involves
26 a person or persons admitted to a mental health facility affected by this part may not be commenced unless it is
27 approved by the mental disabilities board of visitors.

28 (3) (a) The board shall inspect every mental health facility that provides treatment or evaluation to any
29 person pursuant to this part.

30 (b) The board shall annually establish a schedule for the inspection of mental health facilities that

1 enables the board to meet its obligation under subsection (1).

2 (c) The board's authority to inspect mental health facilities may not be waived or precluded by other
3 treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative
4 to inspect any mental health facility at any time independent of its facility inspection schedule.

5 (d) The board shall produce a written report of each inspection of a mental health facility that must
6 include specific recommendations for improvements that the board concludes are necessary in order for the
7 inspected facility to meet the requirements in this part.

8 (e) The board shall provide a draft of each written report within 30 calendar days of the completion of
9 each mental health facility inspection to the professional person in charge of the inspected facility for review prior
10 to publication.

11 (f) The professional person in charge of the inspected facility shall provide a written response to the
12 board's written report within 30 calendar days of receipt of the report. The response must include one of the
13 following for each recommendation:

14 (i) a specific plan for implementation of the recommended action; or

15 (ii) a specific rationale that explains why the recommendation cannot be implemented.

16 (g) The board shall include the inspected facility's written response in the board's final published written
17 report.

18 (h) The board shall include in subsequent inspections an assessment of each facility's implementation
19 of the recommendations.

20 (i) The board shall report in writing to the director of the department and the governor when it determines
21 that a mental health facility has not either implemented written recommendations or provided a specific rationale
22 that explains why any recommendations cannot be implemented.

23 (4) (a) The board, by applying a sampling process during a scheduled inspection of a mental health
24 facility, shall ensure that a treatment plan and a discharge plan exists and is being implemented for each patient
25 admitted or committed to the mental health facility being inspected under this part.

26 (b) The board, during a scheduled inspection of a mental health facility, shall review all aspects of the
27 treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve
28 behavior control, including but not limited to the use of any type of mechanical restraints, locked and unlocked
29 seclusion or isolation, time out, or any other procedure involving physical control.

30 (c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at

1 inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental
2 health professionals, is implemented only when other less restrictive measures have failed, and is implemented
3 to the least extent necessary to protect the safety and health of the affected individual or others in the immediate
4 environment.

5 (d) The board may exercise the prerogative to inquire about and ensure the existence and
6 implementation of treatment plans and discharge plans for any person admitted to a mental health facility and
7 to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any
8 person admitted to a mental health facility independent of its facility inspection schedule.

9 (5) The board may assist any person who is receiving or who has received treatment at a mental health
10 facility in resolving any grievance the person may have concerning the person's admission or course of treatment
11 in the facility.

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

18 (7) (a) If the board believes that any facility is failing to comply with the provisions of this part in regard
19 to its physical facilities or its treatment of any person, it shall report its findings in writing to the professional person
20 in charge of the facility and the director of the department.

21 (b) The professional person in charge of the facility shall submit a written response to the board within
22 10 working days of the receipt of the board's written findings provided for in subsection (7)(a) that includes an
23 explanation of the facility's point of view regarding the board's concerns, including areas of disagreement and
24 agreement. If the facility is in full or partial agreement with the board's concerns, its written response must include
25 actions that it has taken or that it plans to take to address the concerns.

26 (c) If the facility's written response does not resolve the concerns to the board's satisfaction, the board
27 and the professional person in charge of the facility shall meet in person within 15 working days of the board's
28 receipt of the facility's response to seek a mutually agreed upon resolution.

29 (8) The board shall publish standards for its inspections of mental health facilities.

30 (9) The board shall report annually to the governor concerning:

1 (a) the status of the mental health facilities and treatment programs that it has inspected since the last
2 annual report; and

3 (b) occurrences of the administration of medications against the wishes of persons receiving treatment
4 in mental health facilities and the effectiveness of the review procedure required by 53-21-127~~(6)~~(7) in protecting
5 persons from unnecessary or excessive medication."
6

7 **Section 5.** Section 53-21-111, MCA, is amended to read:

8 **"53-21-111. Voluntary admission -- content of admission form -- requirements for valid admission.**

9 (1) (a) This part may not be construed to limit the right of a person to make voluntary application for admission
10 at any time to a mental health facility or professional person.

11 (b) An application for admission to a mental health facility must be in writing on a form prescribed by the
12 facility. The form must explain:

13 (i) the process for requesting release and that the request must be in writing;

14 (ii) that the individual applying for release may be held involuntarily for up to 5 days after requesting
15 release; and

16 (iii) that the facility may request a court to involuntarily commit the applicant.

17 (c) A statement of the rights of the person voluntarily applying for admission, as set out in this part, must
18 be furnished to the patient within 12 hours.

19 (2) An applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain
20 certification from a professional person that the applicant is suffering from a mental disorder. The professional
21 person shall then obtain confirmation from the department or the department's designee that the facilities
22 available to the mental health region in which the applicant resides are unable to provide adequate evaluation
23 and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall
24 obtain the confirmation from the department or the department's designee as required in this section.

25 (3) An application for voluntary admission must give the facility the right to detain the applicant for no
26 more than 5 days, excluding weekends and holidays, past the applicant's written request for release. A mental
27 health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility shall notify
28 all applicants of the rules and post the rules as provided in 53-21-168.

29 (4) An individual applying for voluntary admission pursuant to this section may not be admitted unless:

30 (a) the admission is approved by a professional person;

1 (b) the individual applying for admission has been informed orally of the matters required by subsection
2 (1)(b) to be stated in the written application for admission;

3 (c) a copy of the written application for admission has been given to the applicant; and

4 (d) the admission otherwise complies with the requirements of this section.

5 (5) If the applicant for admission is to be transported to the facility by a peace officer or by an emergency
6 medical service provider in a motor vehicle, the use of a restraint during transportation must comply with the
7 requirements of [section 3].

8 ~~(5)~~(6) A person voluntarily entering or remaining in a mental health facility shall enjoy all the rights
9 secured to a person involuntarily committed to the facility."

10

11 **Section 6.** Section 53-21-112, MCA, is amended to read:

12 **"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a parent
13 or guardian of a minor may consent to mental health services to be rendered to the minor by:

14 (a) a facility;

15 (b) a person licensed in this state to practice medicine; or

16 (c) a mental health professional licensed in this state.

17 (2) A minor who is at least 16 years of age may, without the consent of a parent or guardian, consent
18 to receive mental health services from those facilities or persons listed in subsection (1).

19 (3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary admission of
20 a minor to a mental health facility but not to the state hospital.

21 (4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for
22 an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted
23 with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent
24 or guardian as provided in 53-21-111(3). A minor who has been admitted without consent by a parent or guardian,
25 pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as
26 provided in 53-21-111(3). Unless there has been a periodic review and a voluntary readmission consented to by
27 the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor
28 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's
29 request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of
30 state public defender, provided for in 47-1-201, to assign counsel for the minor.

1 (5) If transportation is provided to a minor by a peace officer or an emergency medical service provider
 2 to a mental health facility, the use of a restraint during transportation must comply with the requirements of
 3 [section 3]."

4

5 **Section 7.** Section 53-21-123, MCA, is amended to read:

6 **"53-21-123. Examination of respondent following initial hearing -- recommendation of**
 7 **professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the
 8 respondent must be examined by the professional person without unreasonable delay. The examination may not
 9 exceed a period of 4 hours. The professional person shall immediately notify the county attorney of the findings
 10 in person or by phone and shall make a written report of the examination to the court, with copies to the
 11 respondent's attorney and the county attorney. If the professional person recommends commitment, the
 12 professional person's written report must contain a statement of the professional person's recommendations to
 13 the court for disposition under 53-21-127.

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

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

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

21 (3) If the respondent is to be transported by a peace officer or an emergency medical service provider
 22 in a motor vehicle, the use of a restraint during transportation must comply with the requirements of [section 3].

23 ~~(3)~~(4) The court may not order further evaluation pending the hearing unless sound medical reasons
 24 require additional time for a complete evaluation. The reasons must be set forth in the order, along with the
 25 amount of additional time needed."

26

27 **Section 8.** Section 53-21-124, MCA, is amended to read:

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

1 respondent may then request a detention hearing, which must be held immediately.

2 (2) In the event of detention, the respondent must be detained in the least restrictive setting necessary
3 to ensure the respondent's presence and ensure the safety of the respondent and of others as provided in
4 53-21-120.

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

9 (4) If the respondent is to be transported by a peace officer or an emergency medical service provider
10 in a motor vehicle, the use of a restraint during transportation must comply with the requirements of [section 3].

11 ~~(4)~~(5) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial
12 to determine whether the respondent should be committed to a mental health facility."

13

14 **Section 9.** Section 53-21-126, MCA, is amended to read:

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

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

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

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

29 (d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or
30 omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point

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

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

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

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

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

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

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

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

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

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

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

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

5 (5) The professional person shall include in the person's written report and testimony the approval or
 6 disapproval of the use of a restraint while the person who is or may be suffering from a mental disorder is being
 7 transported in a motor vehicle for the purposes of commitment.

8 ~~(5)(6)~~ The court, upon the showing of good cause and when it is in the best interests of the respondent,
 9 may order a change of venue.

10 ~~(6)(7)~~ An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis
 11 of chemical dependency may satisfy criteria for commitment under this part."
 12

13 **Section 10.** Section 53-21-127, MCA, is amended to read:

14 **"53-21-127. Posttrial disposition.** (1) If, upon trial, it is determined that the respondent is not suffering
 15 from a mental disorder or does not require commitment within the meaning of this part, the respondent must be
 16 discharged and the petition dismissed.

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

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

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

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

27 (i) not more than 3 months; or

28 (ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the
 29 community rather than a more restrictive placement in the state hospital if a respondent has been previously
 30 involuntarily committed for inpatient treatment in a mental health facility and the court determines that the

1 admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as
2 provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

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

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

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

9 (4) If a respondent is to be committed and the respondent will be transported by a peace officer or an
10 emergency medical service provider in a motor vehicle to the place of commitment, the court shall make certain
11 the record shows whether the use of a restraint has been approved or disapproved by the professional person
12 and, if approved, shall order the use of the restraint.

13 ~~(4)(5)~~ Except as provided in subsection (3)(b)(ii), a treatment ordered pursuant to this section may not
14 affect the respondent's custody or course of treatment for a period of more than 3 months.

15 ~~(5)(6)~~ In determining which of the alternatives in subsection (3) to order, the court shall choose the least
16 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

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

1 an annual basis.

2 ~~(7)~~(8) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this
3 chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require
4 commitment only to a community facility or program or an appropriate course of treatment, as provided in
5 subsection (3)(b), and may not require commitment at the state hospital, a behavioral health inpatient facility, or
6 the Montana mental health nursing care center.

7 ~~(8)~~(9) In ordering commitment pursuant to this section, the court shall make the following findings of fact:

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

10 (b) the alternatives for treatment that were considered;

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

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

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

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

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

20 (h) if the order includes involuntary medication, the reason involuntary medication was chosen from
21 among other alternatives; and

22 (i) if the order requires that the respondent be restrained during transportation, the factual basis for
23 requiring that restraint."

24

25 **Section 11.** Section 53-21-129, MCA, is amended to read:

26 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists, a
27 peace officer may take any person who appears to have a mental disorder and to present an imminent danger
28 of death or bodily harm to the person or to others into custody only for sufficient time to contact a professional
29 person for emergency evaluation. If possible, a professional person should be called prior to taking the person
30 into custody.

1 (2) If the professional person agrees that the person detained is a danger to the person or to others
2 because of a mental disorder and that an emergency situation exists, then the person may be detained and
3 treated until the next regular business day. At that time, the professional person shall release the detained person
4 or file findings with the county attorney who, if the county attorney determines probable cause to exist, shall file
5 the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either
6 case, the professional person shall file a report with the court explaining the professional person's actions. If a
7 professional person determines that an emergency situation exists and transportation is required by a peace
8 officer or an emergency medical service provider for the person being detained, the professional person shall also
9 approve or disapprove the use of a restraint during transportation. If disapproved, the restraint may not be used
10 except in compliance with [section 3].

11 (3) The county attorney of a county may make arrangements with a federal, state, regional, or private
12 mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section.
13 If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available
14 to detain the person at that facility, the person may be transported to the state hospital or to a behavioral health
15 inpatient facility, subject to 53-21-193 and subsection (4) of this section, for detention and treatment as provided
16 in this part. This determination must be made on an individual basis in each case, and the professional person
17 at the local facility shall certify to the county attorney that the facility does not have adequate room at that time.

18 (4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility
19 under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and
20 shall state whether a bed is available for the person. If the Montana state hospital determines that a behavioral
21 health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the
22 appropriate facility to which the person must be transported for emergency detention."
23

24 **Section 12.** Section 53-21-130, MCA, is amended to read:

25 **"53-21-130. Transfer or commitment to mental health facility from other institutions.** (1) A person
26 who is in the custody of the department for any purpose other than treatment of severe mental illness may not
27 be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment
28 is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may
29 be commenced in the county of the mental health facility where the person is, in the county of the institution from
30 which the person was transferred to the mental health facility, or in the county of the person's residence. Notice

1 of a transfer must be given immediately to the assigned counsel at the mental health facility and to the parents
2 of minors, guardians, friends of respondent, or conservators.

3 (2) A person who is in the custody of the department of corrections may be transferred for placement
4 in a mental health facility for a period of up to 10 days, subject to the approval of the mental health facility. A
5 placement in excess of 10 days must be performed according to the procedures for voluntary admission or
6 involuntary commitment as provided in this part. Proceedings for involuntary commitment may be commenced
7 in the county of the mental health facility where the person is placed or in the county of the correctional facility
8 from which the person was transferred. Notice of a transfer must be given to the legal counsel for the person and
9 to the parents of minors, guardians, friends of respondent, or conservators.

10 (3) If a person who is in the custody of the department is to be transferred in a motor vehicle by a peace
11 officer or an emergency medical service provider, the person may not be restrained during transportation except
12 in accordance with the requirements of [section 3]."

13

14 **Section 13.** Section 53-21-133, MCA, is amended to read:

15 **"53-21-133. Transfer to nonstate facilities.** (1) If a person is committed under the provisions of this
16 part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of
17 notification from ~~such~~ the agency showing that facilities are available and that the person is eligible for care or
18 treatment ~~therein~~ in the facilities is received, the court may order the person to be placed in the custody of the
19 agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which
20 a person is ~~so~~ hospitalized ~~shall be~~ is vested with the same powers as the superintendent of the state hospital
21 with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction ~~shall~~ must
22 be retained in the appropriate courts of this state to inquire into the mental condition of the hospitalized persons
23 ~~so hospitalized~~ and to determine the necessity for continuance of their hospitalization.

24 (2) Consistent with other provisions of this part, a person committed under this part for a period of 3
25 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state
26 or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. ~~No~~
27 ~~such~~ The commitment ~~shall~~ may not be for a longer period of time than is permitted within the state. If the patient
28 is indigent, the expense of supporting ~~him~~ the patient in an out-of-state facility and the expense of transportation
29 ~~shall~~ must be borne by the state of Montana.

30 (3) The transfer out of Montana of persons committed under the provisions of this part or into Montana

1 under the laws of another jurisdiction shall be are governed by the provisions of the Interstate Compact on Mental
2 Health. If the Interstate Compact on Mental Health or an agreement executed pursuant to it does not govern the
3 use of a restraint during transfer, the use of a restraint during transfer must comply with the requirements of
4 [section 3]."

5

6 **Section 14.** Section 53-21-138, MCA, is amended to read:

7 **"53-21-138. Diversion of certain persons suffering from mental disorders from detention center.**

8 (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify
9 persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may
10 require commitment, as defined in 53-21-102.

11 (2) If as a result of screening and observation it is believed that an inmate is suffering from a mental
12 disorder and may require commitment, the sheriff or administrator of the detention center shall:

13 (a) request services from a crisis intervention program established by the department, as provided for
14 in 53-21-139;

15 (b) refer the inmate to the nearest qualified mental health care provider as arranged by the county; or

16 (c) subject to 53-21-193 and subsection (3) of this section, transfer the inmate to a private mental health
17 facility, a behavioral health inpatient facility, or a hospital equipped to provide treatment and care of persons who
18 are suffering from a mental disorder and who require commitment.

19 (3) The facility must be notified, and the facility shall state that a bed is available and agree to accept
20 transfer of the patient based on admission criteria before a person may be transferred under this section.

21 (4) As used in this section, the term "minor misdemeanor offense" includes but is not limited to a
22 nonserious misdemeanor, such as criminal trespass to property, loitering, disorderly conduct, and disturbing the
23 public peace.

24 (5) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense may be
25 detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the
26 need for commitment can be performed.

27 (6) If transportation is provided to an inmate who is or may be suffering from a mental disorder by a
28 peace officer or an emergency medical service provider in a motor vehicle, the use of a restraint during
29 transportation must comply with the requirements of [section 3]."

30

1 **Section 15.** Section 53-21-151, MCA, is amended to read:

2 **"53-21-151. Notification of noncompliance of condition for treatment plan -- response.** (1) If the
3 respondent has been ordered to follow a treatment plan and the respondent does not substantially comply with
4 the treatment plan developed pursuant to the order for treatment pursuant to a commitment to a community facility
5 or program or course of treatment, the chief medical officer or designee shall promptly notify the court upon
6 becoming aware of substantial noncompliance that is likely to result in at least one of the conditions in
7 53-21-126(1) and shall provide supporting documentation.

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

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

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

14 (c) directing the treating provider to work with the respondent to bring about compliance with the
15 treatment plan."

16

17 **Section 16.** Section 53-21-183, MCA, is amended to read:

18 **"53-21-183. Release conditioned on receipt of outpatient care.** (1) When, in the opinion of the
19 professional person in charge of a mental health facility providing involuntary treatment, the committed person
20 can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient
21 care may be required as a condition for early release. ~~for a~~ Except as provided in 53-21-198, the period which
22 for outpatient care, when added to the inpatient treatment period, ~~except as provided in 53-21-198,~~ may not
23 exceed the period of commitment. If the mental health facility designated to provide outpatient care is ~~other than~~
24 not the facility providing involuntary treatment, the outpatient facility ~~so designated~~ must agree in writing to
25 assume ~~such the~~ responsibility.

26 (2) The mental health facility designated to provide outpatient care or the professional person in charge
27 of the patient's case may modify the conditions for continued release when the modification is in the best interest
28 of the patient. This includes the authorization to transfer the patient to another mental health facility designated
29 to provide outpatient care, ~~provided if~~ provided if the transfer is in the best interest of the patient and the outpatient facility
30 ~~so designated~~ agrees in writing to assume responsibility. Notice of an intended transfer ~~shall~~ must be given to

1 the professional person in charge of the mental health facility that provided the involuntary treatment.

2 (3) Notice in writing to the court ~~which that~~ committed the patient for treatment and the county attorney
3 who initiated the action ~~shall~~ must be provided by the professional person in charge of ~~him~~ the patient at least
4 5 days prior to ~~his~~ the release from commitment or outpatient care.

5 (4) ~~This section and Sections~~ 53-21-195 through 53-21-198 ~~and this section~~ do not apply to a temporary
6 release, certified ~~as such~~ by the professional person in charge of the mental health facility, from the facility for
7 the purposes of a home visit not exceeding 30 days.

8 (5) If the patient is to be transported by a peace officer or emergency medical service provider in a motor
9 vehicle, the use of a restraint during transportation must comply with the requirements of [section 3]."

10

11 **Section 17.** Section 53-21-197, MCA, is amended to read:

12 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court
13 may order that the patient's conditional release status be revoked and that the patient be returned to the mental
14 health facility from which the patient was conditionally released or be sent to another appropriate inpatient mental
15 health facility if, after a hearing, the court finds by clear and convincing evidence that:

16 (a) the conditionally released patient has been determined by the district court to be suffering from a
17 mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to
18 53-21-127 or 53-21-128; and

19 (b) the conditionally released patient has violated a condition of the release, that the violation has caused
20 a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer
21 be appropriately served by outpatient care.

22 (2) A revocation of the patient's conditional release status under subsection (1) must be based on the
23 testimony of the professional person responsible for the patient's case.

24 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment
25 plan must be updated or a new plan prepared for the patient as required by and within the time set forth in
26 53-21-162.

27 (4) Except as provided in 53-21-198, an order revoking the patient's conditional release status may not
28 order hospitalization or impose other conditions of release that extend beyond the expiration date of the order
29 committing the patient under 53-21-127 or 53-21-128.

30 (5) If a patient is to be transported by a peace officer or an emergency medical service provider in a

1 motor vehicle, the use of a restraint during transportation must comply with the requirements of [section 3]."

2

3 **Section 18.** Section 53-21-413, MCA, is amended to read:

4 **"53-21-413. Discharge and transfer of patients.** (1) The superintendent of the Montana mental health
5 nursing care center may authorize the discharge of a patient residing at the center according to rules adopted
6 by the department of public health and human services. Rules adopted by the department governing discharge
7 from the center must be consistent with 53-21-111, 53-21-181, and 53-21-183.

8 (2) A patient in the center who requires the intensity of treatment available at the Montana state hospital
9 may be transferred to the Montana state hospital if the patient is subject to an involuntary commitment. The
10 department shall notify the patient, the patient's next of kin, and the mental disabilities board of visitors at least
11 15 days before the transfer. If a person or entity notified by the department objects to the transfer, the person or
12 entity may petition the district court for a hearing to review whether the transfer is necessary and appropriate to
13 meet the needs of the patient. The notice required by this subsection must include notification of the right to
14 petition the district court pursuant to this subsection. Notice pursuant to this subsection does not preclude transfer
15 pursuant to 53-21-130.

16 (3) If a patient is to be transported by a peace officer or emergency medical service provider in a motor
17 vehicle, the use of a restraint during transportation must comply with the requirements of [section 3]."

18

19 **Section 19.** Section 53-21-414, MCA, is amended to read:

20 **"53-21-414. Admissions to mental health nursing care center.** (1) The Montana mental health
21 nursing care center may admit patients on a voluntary basis according to admission criteria and procedures
22 established in administrative rules and by involuntary commitment pursuant to 53-21-127(3)(c).

23 (2) A patient involuntarily committed to the Montana state hospital may be transferred by the department
24 of public health and human services to the Montana mental health nursing care center if the patient meets the
25 admission criteria of the center. The department shall notify the patient, the patient's next of kin, and the mental
26 disabilities board of visitors at least 15 days before the transfer. If a person or entity notified by the department
27 objects to the transfer, the person or entity may petition the district court for a hearing to review whether the
28 transfer is necessary and appropriate to meet the needs of the patient. The notice required by this subsection
29 must include notification of the right to petition the district court pursuant to this subsection. Section 53-21-128
30 applies to extensions of involuntary commitment of patients to the center.

