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INTRODUCED BY _____
(Primary Sponsor)

A BILL FOR AN ACT ENTITLED: "AN ACT CAPPING ADMISSIONS TO THE MONTANA STATE HOSPITAL AT THE HOSPITAL'S LICENSED CAPACITY; PROVIDING FOR WAITING LISTS; AND AMENDING SECTIONS 46-14-202, 46-14-221, 46-14-301, 46-14-312, 53-21-102, 53-21-120, 53-21-124, 53-21-127, 53-21-129, 53-21-149, 53-21-197, AND 53-21-414, MCA."

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

NEW SECTION. **Section 1. Cap on state hospital admissions -- purpose -- waiting list.** (1) There is a cap on admissions to the Montana state hospital. The purpose of the cap is to:

- (a) avoid overcrowding at the state hospital;
- (b) maintain a sufficient level of services and staffing to provide safe and effective treatment of the individuals with mental disorders who are admitted to the state hospital; and
- (c) protect the safety of the employees and other individuals who provide care to state hospital patients and the safety of members of the public who visit the state hospital.

(2) The state hospital may not admit a patient when the admission would result in the hospital census exceeding the hospital's licensed capacity.

(3) (a) Whenever the state hospital census reaches the hospital's licensed capacity, the superintendent of the state hospital shall establish a waiting list for persons committed pursuant to 46-14-221, 46-14-301, 53-21-127, and 53-21-197 or sentenced pursuant to 46-14-312.

(b) The superintendent shall publish a notice on the state hospital website when the state hospital census has reached the hospital's licensed capacity. The notification must state that a waiting list has been established.

- (4) Admissions from the waiting list must be based on the date of the court order that:
 - (a) commits the person to the state hospital pursuant to 53-21-127 or 53-21-197;
 - (b) commits the person to the custody of the department pursuant to 46-14-221 or 46-14-301; or
 - (c) sentences the person to the custody of the director of the department pursuant to 46-14-312.



1 **Section 2.** Section 46-14-202, MCA, is amended to read:

2 **"46-14-202. Examination of defendant.** (1) If the defendant or the defendant's counsel files a written
3 motion requesting an examination or if the issue of the defendant's fitness to proceed is raised by the court,
4 prosecution, or defense counsel, the court shall appoint at least one qualified psychiatrist, licensed clinical
5 psychologist, or advanced practice registered nurse or shall request the superintendent of the Montana state
6 hospital to designate at least one qualified psychiatrist, licensed clinical psychologist, or advanced practice
7 registered nurse, who may be or include the superintendent, to examine and report upon the defendant's mental
8 condition.

9 (2) (a) The court may order the defendant to be committed to a hospital or other suitable facility for the
10 purpose of the examination for a period not exceeding 60 days or a longer period that the court determines to
11 be necessary for the purpose and may direct that a qualified psychiatrist, licensed clinical psychologist, or
12 advanced practice registered nurse retained by the defendant be permitted to witness and participate in the
13 examination.

14 (b) The court may not commit the defendant to the Montana state hospital if the superintendent of the
15 state hospital has posted notice in accordance with [section 1] that the hospital census has reached the hospital's
16 licensed capacity.

17 (3) In the examination, any method may be employed that is accepted by the medical or psychological
18 profession for the examination of those alleged to be suffering from mental disease or defect.

19 (4) (a) The costs incurred for an examination ordered under subsection (2) must be paid as follows:

20 (i) if the issue of the defendant's fitness to proceed was raised by the court or the examination was
21 requested by the prosecution, the cost of the examination and other associated expenses must be paid by the
22 court or, in district court proceedings, by the office of court administrator, except as provided in subsection
23 (4)(a)(iv);

24 (ii) if the examination was requested by the defendant or the defendant's counsel, the cost of the
25 examination and other associated expenses must be paid by the defendant or, if the defendant was represented
26 by an attorney pursuant to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public
27 defender, except as provided by subsection (4)(a)(iv);

28 (iii) if the examination was jointly requested by the prosecution and defense counsel or the need for the
29 examination was jointly agreed to by the prosecution and defense, the cost of the examination and other
30 associated expenses must be divided and paid equally by the court or, in district court proceedings, by the office

1 of court administrator, and the defendant or, if the defendant was represented by an attorney assigned pursuant
 2 to the Montana Public Defender Act, Title 47, chapter 1, by the office of state public defender, except as provided
 3 in subsection (4)(a)(iv);

4 (iv) any costs for an examination performed by an employee of the department of public health and
 5 human services, any other associated expenses at a facility of the department of public health and human
 6 services, and any other associated expenses for which the legislature has made a general fund appropriation to
 7 the department of public health and human services may not be charged to the office of court administrator or
 8 the office of state public defender.

9 (b) For purposes of this subsection (4), "other associated expenses" means the following costs incurred
 10 in association with the commitment to a hospital or other suitable facility for the purpose of examination,
 11 regardless of whether the examination is done at the Montana state hospital or any other facility:

12 (i) the expenses of transporting the defendant from the place of detention to the place where the
 13 examination is performed and returning the defendant to detention, including personnel costs of the law
 14 enforcement agency by whom the defendant is detained;

15 (ii) housing expenses of the facility where the examination is performed; and

16 (iii) medical costs, including medical and dental care, including costs of medication."
 17

18 **Section 3.** Section 46-14-221, MCA, is amended to read:

19 **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1)**

20 The issue of the defendant's fitness to proceed may be raised by the court, by the defendant or the defendant's
 21 counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the
 22 prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may
 23 make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the
 24 issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and
 25 cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence
 26 upon the issue.

27 (2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the
 28 defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant
 29 to the custody of the director of the department of public health and human services to be placed in an
 30 appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, of the

1 department of public health and human services for so long as the unfitness endures or until disposition of the
2 defendant is made pursuant to this section, whichever occurs first.

3 (b) (i) If the director designates the state hospital as the appropriate facility but the hospital is unable to
4 admit the defendant because the admission would result in the hospital census exceeding the hospital's licensed
5 capacity as established in [section 1], the commitment begins on the date of admission from the waiting list
6 established pursuant to [section 1].

7 (ii) The defendant remains subject to the provisions of Title 46, chapter 9, regarding bail or release until
8 admitted from the waiting list.

9 ~~(b)~~(c) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness
10 to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication
11 that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan,
12 the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the
13 petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and
14 if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific
15 findings that the state has proved an overriding justification for the order and that the treatment being ordered
16 is medically appropriate.

17 (3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to
18 proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant
19 will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must
20 be dismissed, except as provided in subsection (4).

21 (b) If the court determines that the defendant lacks fitness to proceed because the defendant has a
22 mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the
23 court for commitment in the manner provided in Title 53, chapter 21, ~~to determine the disposition of the defendant~~
24 ~~pursuant to those provisions.~~

25 (c) If the court determines that the defendant lacks fitness to proceed because the defendant has a
26 developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and
27 the prosecutor shall petition the court for involuntary treatment in the manner provided in Title 53, chapter 20, ~~to~~
28 ~~determine the disposition of the defendant pursuant to those provisions.~~

29 (4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the
30 prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation

1 of the defendant.

2 (5) Except as provided in subsection (6), the expenses of transporting the defendant to the custody of
3 the director of the department of public health and human services to be placed in an appropriate facility of the
4 department of public health and human services, of the care, custody, and treatment of the defendant at the
5 facility, and of transporting the defendant back are payable by the court or, in district court proceedings, by the
6 office of court administrator.

7 (6) The cost of care, custody, and treatment at a facility for which the legislature has made a general fund
8 appropriation to the department of public health and human services may not be charged to the office of court
9 administrator."

10

11 **Section 4.** Section 46-14-301, MCA, is amended to read:

12 **"46-14-301. Commitment upon finding of not guilty by reason of lack of mental state -- hearing**
13 **to determine release or discharge -- limitation on confinement.** (1) When a defendant is found not guilty for
14 the reason that due to a mental disease or defect the defendant could not have a particular state of mind that is
15 an essential element of the offense charged, the court shall order a predisposition investigation in accordance
16 with 46-18-112 and 46-18-113, which must include an investigation of the present mental condition of the
17 defendant. If the trial was by jury, the court shall hold a hearing to determine the appropriate disposition of the
18 defendant. If the trial was by the court, the court may hold a hearing to obtain any additional testimony it considers
19 necessary to determine the appropriate disposition of the defendant. In either case, the testimony and evidence
20 presented at the trial must be considered by the court in making its determination.

21 (2) The court shall evaluate the nature of the offense with which the defendant was charged. If the
22 offense:

23 (a) involved a substantial risk of serious bodily injury or death, actual bodily injury, or substantial property
24 damage, the court may find that the defendant suffers from a mental disease or defect that renders the defendant
25 a danger to the defendant or others. If the court finds that the defendant presents a danger to the defendant or
26 others, the defendant may be committed to the custody of the director of the department of public health and
27 human services to be placed in an appropriate mental health facility for custody, care, and treatment. However,
28 if the court finds that the defendant is seriously developmentally disabled, as defined in 53-20-102, the prosecutor
29 shall petition the court for involuntary treatment in the manner provided in Title 53, chapter 20.

30 (b) charged did not involve a substantial risk of serious bodily injury or death, actual bodily injury, or

1 substantial property damage, the court shall release the defendant. The prosecutor may petition the court for
 2 involuntary treatment or commitment in the manner provided in Title 53, chapter 20 or 21.

3 (3) (a) If the director designates the Montana state hospital as the appropriate mental health facility for
 4 placement under subsection (2)(a) but the state hospital is unable to admit the defendant because the admission
 5 would result in the hospital census exceeding the hospital's licensed capacity as established in [section 1], the
 6 director must give notice to the court, the prosecutor, and counsel for the defendant. The prosecutor may petition
 7 the court for commitment in the manner provided in Title 53, chapter 21.

8 (b) If the defendant is committed as provided in 53-21-127 while on the waiting list for commitment under
 9 this section, the commitment under this section begins on the date the defendant is admitted to the state hospital
 10 from the waiting list established pursuant to [section 1].

11 ~~(3)~~(4) A person committed to the custody of the director of the department of public health and human
 12 services must have a hearing within 180 days of confinement at a mental health facility to determine the person's
 13 present mental condition and whether the person must be discharged or released or whether the commitment
 14 may be extended because the person continues to suffer from a mental disease or defect that renders the person
 15 a danger to the person or others. The hearing must be conducted by the court that ordered the commitment
 16 unless that court transfers jurisdiction to the district court in the district in which the person has been placed. The
 17 court shall cause notice of the hearing to be served upon the person, the person's counsel, the prosecutor, and
 18 the court that originally ordered the commitment. The hearing is a civil proceeding, and the burden is upon the
 19 state to prove by clear and convincing evidence that the person may not be safely released because the person
 20 continues to suffer from a mental disease or defect that causes the person to present a substantial risk of:

- 21 (a) serious bodily injury or death to the person or others;
- 22 (b) an imminent threat of physical injury to the person or others; or
- 23 (c) substantial property damage.

24 ~~(4)~~(5) According to the determination of the court upon the hearing, the person must be discharged or
 25 released on conditions the court determines to be necessary or must be committed to the custody of the director
 26 of the department of public health and human services to be placed in an appropriate mental health facility for
 27 custody, care, and treatment. The period of commitment may not exceed the maximum sentence determined
 28 under 46-14-214(2). At the time that the period of the maximum sentence expires, involuntary civil commitment
 29 proceedings may be instituted in the manner provided in Title 53, chapter 21.

30 ~~(5)~~(6) A professional person shall review the status of the person each year. At the time of the annual

1 review, the director of the department of public health and human services or the person or the representative
2 of the person may petition for discharge or release of the person. Upon request for a hearing, a hearing must be
3 held pursuant to the provisions of subsection ~~(3)~~ (4)."

4

5 **Section 5.** Section 46-14-312, MCA, is amended to read:

6 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
7 commission of the offense of which the defendant was convicted did not suffer from a mental disease or defect
8 as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

9 (2) (a) If the court finds that the defendant at the time of the commission of the offense suffered from a
10 mental disease or defect or developmental disability as described in 46-14-311, any mandatory minimum
11 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
12 committed to the custody of the director of the department of public health and human services to be placed, after
13 consideration of the recommendations of the professionals providing treatment to the defendant and
14 recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility,
15 mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental
16 disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to
17 exceed the maximum term of imprisonment that could be imposed under subsection (1).

18 (b) (i) If the director designates the Montana state hospital as the appropriate facility for placement under
19 this section but the state hospital is unable to admit the defendant because the admission would result in the
20 hospital census exceeding the hospital's licensed capacity as established in [section 1], the director must give
21 notice to the court, the prosecutor, and counsel for the defendant. The prosecutor may petition the court for
22 commitment in the manner provided in Title 53, chapter 21.

23 (ii) If the defendant is committed as provided in 53-21-127 while on the waiting list for commitment under
24 this section, the commitment under this section begins on the date the defendant is admitted to the state hospital
25 from the waiting list established pursuant to [section 1].

26 (c) The director may, after considering the recommendations of the professionals providing treatment
27 to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently
28 transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility that
29 will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to
30 sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection

1 of the public are provided for.

2 (3) Either the director or a defendant whose sentence has been imposed under subsection (2) may
3 petition the sentencing court for review of the sentence if the professional person certifies that:

4 (a) the defendant no longer suffers from a mental disease or defect;

5 (b) the defendant's mental disease or defect no longer renders the defendant unable to appreciate the
6 criminality of the defendant's conduct or to conform the defendant's conduct to the requirements of law;

7 (c) the defendant suffers from a mental disease or defect or developmental disability but is not a danger
8 to the defendant or others; or

9 (d) the defendant suffers from a mental disease or defect that makes the defendant a danger to the
10 defendant or others, but:

11 (i) there is no treatment available for the mental disease or defect;

12 (ii) the defendant refuses to cooperate with treatment; or

13 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or defect.

14 (4) The sentencing court may make any order not inconsistent with its original sentencing authority,
15 except that the length of confinement or supervision must be equal to that of the original sentence. The
16 professional person shall review the defendant's status each year."

17

18 **Section 6.** Section 53-21-102, MCA, is amended to read:

19 **"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

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

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

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

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

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

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

3 (7) "Emergency situation" means:

4 (a) a situation in which any person is in imminent danger of death or bodily harm from the activity of a
5 person who appears to be suffering from a mental disorder and appears to require commitment; or

6 (b) a situation in which any person who appears to be suffering from a mental disorder and appears to
7 require commitment is substantially unable to provide for the person's own basic needs of food, clothing, shelter,
8 health, or safety.

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

12 (9) "Hospital census" means the number of patients occupying hospital beds in the state hospital on a
13 given day.

14 (10) "Licensed capacity" means the number of hospital beds that the state hospital is licensed by the state
15 to operate.

16 ~~(9)~~(11) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial
17 adverse effects on an individual's cognitive or volitional functions.

18 (b) The term does not include:

19 (i) addiction to drugs or alcohol;

20 (ii) drug or alcohol intoxication;

21 (iii) intellectual disability; or

22 (iv) epilepsy.

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

24 ~~(10)~~(12) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing
25 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
26 facility, or a residential treatment center licensed or certified by the department that provides treatment to children
27 or adults with a mental disorder. A correctional institution or facility or jail is not a mental health facility within the
28 meaning of this part.

29 ~~(11)~~(13) "Mental health professional" means:

30 (a) a certified professional person;

- 1 (b) a physician licensed under Title 37, chapter 3;
2 (c) a professional counselor licensed under Title 37, chapter 23;
3 (d) a psychologist licensed under Title 37, chapter 17;
4 (e) a social worker licensed under Title 37, chapter 22; or
5 (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
6 psychiatric mental health nursing.

7 ~~(12)~~(14) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person
8 receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory
9 responsibilities to protect patients from abuse and neglect.

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

- 11 (i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;
12 (ii) failure to follow a prescribed plan of care and treatment; or
13 (iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

14 ~~(13)~~(15) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers
15 and sisters of a person.

16 ~~(14)~~(16) "Patient" means a person committed by the court for treatment for any period of time or who is
17 voluntarily admitted for treatment for any period of time.

18 ~~(15)~~(17) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

19 ~~(16)~~(18) "Professional person" means:

- 20 (a) a medical doctor;
21 (b) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in
22 psychiatric mental health nursing;
23 (c) a licensed psychologist; or
24 (d) a person who has been certified, as provided for in 53-21-106, by the department.

25 ~~(17)~~(19) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a
26 professional person.

27 ~~(18)~~(20) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from
28 a mental disorder and requiring commitment.

29 ~~(19)~~(21) "State hospital" means the Montana state hospital."
30

1 **Section 7.** Section 53-21-120, MCA, is amended to read:

2 **"53-21-120. Detention to be in least restrictive environment -- preference for mental health facility**
 3 **-- court relief -- prehearing detention of mentally ill person in jail prohibited.** (1) A person detained pursuant
 4 to this part must be detained in the least restrictive environment required to protect the life and physical safety
 5 of the person detained or members of the public; in this respect, prevention of significant injury to property may
 6 be considered. Whenever possible, a person detained pursuant to this part must be detained in a mental health
 7 facility and in the county of residence.

8 (2) ~~(a) Whenever possible, a person detained pursuant to this part must be detained in a mental health~~
 9 ~~facility and in the county of residence.~~ If the person detained demands a jury trial and the trial cannot be held
 10 within 7 days, the individual may be sent to one of the following facilities until the time of trial if arrangements can
 11 be made to return the person to trial:

12 (i) a behavioral health inpatient facility, subject to the provisions in 53-21-193, the individual may be sent
 13 to; or

14 (ii) the state hospital or a behavioral health inpatient facility until the time of trial if arrangements can be
 15 made to return the person to trial, unless the superintendent of the state hospital has posted notice in accordance
 16 with [section 1] that the hospital census has reached the hospital's licensed capacity.

17 (b) The trial must be held within 30 days.

18 (c) The county of residence shall pay the cost of travel and professional services associated with the trial.

19 (d) A person may not be detained in any hospital or other medical facility that is not a mental health
 20 facility unless the hospital or facility has agreed in writing to admit the person.

21 (3) A person may not be detained pursuant to this part in a jail or other correctional facility.

22 (4) A person detained prior to involuntary commitment may apply to the court for immediate relief with
 23 respect to the need for detention or the adequacy of the facility being utilized to detain."
 24

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

26 **"53-21-124. Detention of respondent pending hearing or trial -- jail prohibited.** (1) The court may
 27 not order detention of a respondent pending the hearing unless requested by the county attorney and upon the
 28 existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the
 29 respondent may then request a detention hearing, which must be held immediately.

30 (2) In the event of detention, the respondent must be detained in the least restrictive setting necessary

1 to ensure the respondent's presence and ensure the safety of the respondent and of others as provided in
2 53-21-120.

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

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

9 (5) A respondent may not be detained at the state hospital if the superintendent of the state hospital has
10 posted notice in accordance with [section 1] that the hospital census has reached the hospital's licensed
11 capacity."

12

13 **Section 9.** 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), the court
22 shall:

23 (a) subject to the provisions of 53-21-193 and [section 1], commit the respondent to the state hospital
24 or to a behavioral health inpatient facility for a period of not more than 3 months;

25 (b) if the superintendent of the state hospital has posted notice in accordance with [section 1] that the
26 state hospital census has reached the hospital's licensed capacity, commit the respondent on an interim basis
27 to an alternative facility or course of treatment available under this section until the respondent is admitted from
28 the waiting list established in accordance with [section 1];

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

1 period of:

2 (i) not more than 3 months; or

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

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

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

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

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

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

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

1 working days after the beginning of the involuntary administration. The director shall report to the governor on
2 an annual basis.

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

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

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

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

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

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

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

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

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

21 (h) if the order includes involuntary medication, the reason involuntary medication was chosen from
22 among other alternatives."

23

24 **Section 10.** Section 53-21-129, MCA, is amended to read:

25 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation as defined
26 in 53-21-102 exists, a peace officer may take any person who appears to have a mental disorder and to present
27 an imminent danger of death or bodily harm to the person or to others or who appears to have a mental disorder
28 and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or
29 safety into custody only for sufficient time to contact a professional person for emergency evaluation. If possible,
30 a professional person should be called prior to taking the person into custody.

1 (2) If the professional person agrees that the person detained is a danger to the person or to others and
 2 that an emergency situation as defined in 53-21-102 exists, then the person may be detained and treated until
 3 the next regular business day. At that time, the professional person shall release the detained person or file
 4 findings with the county attorney who, if the county attorney determines probable cause to exist, shall file the
 5 petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case,
 6 the professional person shall file a report with the court explaining the professional person's actions.

7 (3) The county attorney of a county may make arrangements with ~~a any~~ federal, state, regional, or private
 8 mental health facility ~~or with a mental health facility in a county in the state~~ for the detention of persons held
 9 pursuant to this section, subject to the provisions of 53-21-120. ~~If an arrangement has been made with a facility~~
 10 ~~that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person~~
 11 ~~may be transported to the state hospital or to a behavioral health inpatient facility, subject to 53-21-193 and~~
 12 ~~subsection (4) of this section, for detention and treatment as provided in this part. This determination must be~~
 13 ~~made on an individual basis in each case, and the professional person at the local facility shall certify to the~~
 14 ~~county attorney that the facility does not have adequate room at that time. A person may not be detained under~~
 15 ~~this section at the state hospital if the superintendent of the state hospital has posted notice in accordance with~~
 16 [section 1] that the hospital census has reached the hospital's licensed capacity as provided in [section 1].

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

24 **Section 11.** Section 53-21-149, MCA, is amended to read:

25 **"53-21-149. Conditions of treatment in community facility, program, or course of treatment.** If the
 26 court orders a disposition under 53-21-127~~(3)(b)(3)(c)~~, the court may order the following conditions for treatment
 27 in a community facility or program, or may order a course of treatment, including but not limited to:

28 (1) following a treatment plan developed pursuant to 53-21-150 that may include case management
 29 services, medication, short-term inpatient treatment, chemical dependency treatment, assertive community
 30 treatment, or a combination, as set forth by the designated community facility or program or the individual

1 responsible for the management and supervision of the respondent's treatment; or
2 (2) specific residential or housing requirements that may include being under the care or custody of a
3 relative or guardian."

4
5 **Section 12.** Section 53-21-197, MCA, is amended to read:

6 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court
7 may order that the patient's conditional release status be revoked and that the patient be returned to the mental
8 health facility from which the patient was conditionally released or be sent to another appropriate inpatient mental
9 health facility if, after a hearing, the court finds by clear and convincing evidence that:

10 (a) the conditionally released patient has been determined by the district court to be suffering from a
11 mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to
12 53-21-127 or 53-21-128; and

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

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

18 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a treatment
19 plan must be updated or a new plan prepared for the patient as required by and within the time set forth in
20 53-21-162.

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

24 (5) If the superintendent of the state hospital has posted noticed in accordance with [section 1] that the
25 hospital census has reached the hospital's licensed capacity, the court may commit the respondent on an interim
26 basis to any facility or course of treatment available under 53-21-127 until the respondent is admitted to the state
27 hospital from the waiting list established pursuant to [section 1]."

28
29 **Section 13.** Section 53-21-414, MCA, is amended to read:

30 **"53-21-414. Admissions to mental health nursing care center.** (1) The Montana mental health

1 nursing care center may admit patients on a voluntary basis according to admission criteria and procedures
2 established in administrative rules and by involuntary commitment pursuant to 53-21-127~~(3)(c)~~(3)(d).

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

11 (3) Except as provided in 53-21-413(2) and subsection (2) of this section, patients involuntarily
12 transferred to the center have the rights provided in this chapter."

13
14 NEW SECTION. **Section 14. Codification instruction.** [Section 1] is intended to be codified as an
15 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 1].

16 - END -