

SENATE BILL NO. 216
INTRODUCED BY D. WEINBERG

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A PEACE OFFICER OR EMERGENCY MEDICAL SERVICE PROVIDER PROVIDING TRANSPORTATION IN A MOTOR VEHICLE TO AN INDIVIDUAL SUFFERING FROM A MENTAL DISORDER TO APPLY A RESTRAINT TO THE INDIVIDUAL DURING TRANSPORTATION ONLY IF A COURT HAS ORDERED THE RESTRAINT, A MENTAL HEALTH PROFESSIONAL HAS APPROVED THE USE OF THE RESTRAINT IN AN EMERGENCY SITUATION, OR THE PEACE OFFICER OR EMERGENCY MEDICAL SERVICE PROVIDER IS CONCERNED FOR THE SAFETY OF AN INDIVIDUAL INVOLVED IN THE TRANSPORTATION AND DOCUMENTS THE REASON FOR APPLYING THE RESTRAINT; LIMITING THE TYPE OF RESTRAINT THAT MAY BE USED; AMENDING SECTIONS 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, 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 PROVIDING AN APPLICABILITY DATE."

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

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

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

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

THEREFORE, the Legislature believes that the opinion of a professional person and a court's order should guide the use of a restraint in a motor vehicle, but if the individual controlling the vehicle has a concern for the safety of someone in the vehicle, that individual should be able to apply a restraint at any time after

documenting the reason for applying the restraint.

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

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

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

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

- (a) patient care provided by an emergency medical service;
- (b) the condition of any vehicle or aircraft used as an ambulance; or
- (c) individual performance by an emergency medical service provider, including transportation provided pursuant to [section 3] to an individual who is or may be suffering from a mental disorder.

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

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

- (a) the classification and identification of specific types and levels of prehospital and interhospital medical transportation or treatment services;
- (b) procedures for issuing, denying, renewing, and canceling licenses;
- (c) minimum licensing standards for each type and level of service, including requirements for personnel, medical control, maintenance, equipment, reporting, recordkeeping, sanitation, and minimum insurance coverage as determined appropriate by the department; and
- (d) other requirements necessary and appropriate to ~~assure~~ ensure the quality, safety, and proper operation and administration of emergency medical services.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The term does not include:

- (i) addiction to drugs or alcohol;
- (ii) drug or alcohol intoxication;
- (iii) mental retardation; or
- (iv) epilepsy.

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

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

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

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

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

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

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

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

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

voluntarily admitted for treatment for any period of time.

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

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

(a) a medical doctor;

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

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

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

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

(20) "Restraint" means:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

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

(d) The board shall produce a written report of each inspection of a mental health facility that must include specific recommendations for improvements that the board concludes are necessary in order for the

inspected facility to meet the requirements in this part.

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

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

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

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

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

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

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

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

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

(c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.

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

person admitted to a mental health facility independent of its facility inspection schedule.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

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

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

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

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

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

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

professional person's written report must contain a statement of the professional person's recommendations to the court for disposition under 53-21-127.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(d) whether the respondent's mental disorder, as demonstrated by the respondent's recent acts or omissions, will, if untreated, predictably result in deterioration of the respondent's mental condition to the point at which the respondent will become a danger to self or to others or will be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety. Predictability may be established by the respondent's relevant medical history.

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

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

public for the protection of the respondent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

discharged and the petition dismissed.

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

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

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

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

(i) not more than 3 months; or

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

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

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

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

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

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

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

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

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

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

- (a) a detailed statement of the facts upon which the court found the respondent to be suffering from a mental disorder and requiring commitment;
- (b) the alternatives for treatment that were considered;
- (c) the alternatives available for treatment of the respondent;
- (d) the reason that any treatment alternatives were determined to be unsuitable for the respondent;
- (e) the name of the facility, program, or individual to be responsible for the management and supervision of the respondent's treatment;
- (f) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was chosen from among other alternatives;
- (g) if the order commits the respondent to the Montana mental health nursing care center, a finding that

the respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission; ~~and~~

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

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

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

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

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

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

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility

under this section, the state hospital or the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention."

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

"53-21-130. Transfer or commitment to mental health facility from other institutions. (1) A person who is in the custody of the department for any purpose other than treatment of severe mental illness may not be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer must be given immediately to the assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators.

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

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

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

"53-21-133. Transfer to nonstate facilities. (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from ~~such the~~ the agency showing that facilities are available and that the person is eligible for care or treatment ~~therein in the facilities~~ therein in the facilities is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which

a person is ~~so~~ hospitalized ~~shall be~~ is vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction ~~shall~~ must be retained in the appropriate courts of this state to inquire into the mental condition of the hospitalized persons ~~so hospitalized~~ and to determine the necessity for continuance of their hospitalization.

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

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction ~~shall be~~ are governed by the provisions of the Interstate Compact on Mental Health. If the Interstate Compact on Mental Health or an agreement executed pursuant to it does not govern the use of a restraint during transfer, the use of a restraint during transfer must comply with the requirements of [section 3]."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

"53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release. ~~for a~~ Except as provided in 53-21-198, the period which

for outpatient care, when added to the inpatient treatment period, ~~except as provided in 53-21-198~~, may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is ~~other than~~ not the facility providing involuntary treatment, the outpatient facility ~~so designated~~ must agree in writing to assume ~~such~~ the responsibility.

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

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

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

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

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

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

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

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

(2) A revocation of the patient's conditional release status under subsection (1) must be based on the

testimony of the professional person responsible for the patient's case.

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

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

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

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

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

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

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

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

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

(2) A patient involuntarily committed to the Montana state hospital may be transferred by the department

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

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

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

NEW SECTION. Section 20. Codification instruction. [Section 3] is intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [section 3].

NEW SECTION. Section 21. Applicability. [This act] applies to the transportation in a motor vehicle of a person who is or may be suffering from a mental disorder by a peace officer or emergency medical service provider on or after October 1, 2007.

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