

1 HOUSE BILL NO. 353

2 INTRODUCED BY K. KELKER

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO ALCOHOL AND
 5 DRUG ADDICTION; REVISING TERMS USED TO DESCRIBE ALCOHOL AND DRUG ADDICTION; REVISING
 6 THE STATE POLICY ON TREATMENT OF ALCOHOLISM AND DRUG DEPENDENCY TO STATE THAT
 7 TREATMENT SHOULD BE A PRIORITY; PROVIDING THAT PUBLIC INCAPACITATION IS NOT A CRIME;
 8 LIMITING A LOCAL GOVERNMENT FROM SANCTIONING OR PENALIZING BEING FOUND IN AN
 9 INCAPACITATED STATE IN PUBLIC; REVISING LAWS RELATED TO INVOLUNTARY COMMITMENT OF AN
 10 ALCOHOLIC TO INCLUDE A PERSON WITH A SUBSTANCE USE DISORDER; AND AMENDING SECTIONS
 11 7-32-4302, 16-1-404, 16-1-406, 16-1-411, 37-35-102, 37-38-102, 40-4-212, 47-1-104, 53-1-601, 53-1-602,
 12 53-1-603, 53-24-101, 53-24-102, 53-24-103, 53-24-104, 53-24-106, 53-24-107, 53-24-108, 53-24-204, 53-24-206,
 13 53-24-207, 53-24-209, 53-24-211, 53-24-301, 53-24-302, 53-24-303, AND 53-24-306, MCA."

14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
 17 **Section 1.** Section 7-32-4302, MCA, is amended to read:

18 **"7-32-4302. Control of disturbances of the peace.** Within the city or town and within 3 miles of the
 19 limits ~~thereof~~ of the city or town, the city or town council has power to prevent and punish ~~intoxication~~
 20 incapacitation (subject to the limits established in 53-24-106), fights, riots, loud noises, disorderly conduct,
 21 obscenity, and acts or conduct calculated to disturb the public peace or ~~which~~ that are offensive to public morals."

22
 23 **Section 2.** Section 16-1-404, MCA, is amended to read:

24 **"16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) Except as provided in
 25 subsection (4), the department shall collect at the time of sale and delivery of any liquor under any provisions of
 26 the laws of the state of Montana a license tax of:

27 (a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that
 28 manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor
 29 nationwide in the calendar year preceding imposition of the tax pursuant to this section;

30 (b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that

1 manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more
2 than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to
3 this section;

4 (c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that
5 manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor
6 nationwide in the calendar year preceding imposition of the tax pursuant to this section.

7 (2) The license tax must be charged and collected on all liquor produced in or brought into the state and
8 taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state
9 markup of 40.5% for all liquor other than sacramental wine, for which the markup must be 20%, and fortified wine
10 containing more than 16% but not more than 24% alcohol by volume, for which the markup must be 51%. The
11 license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax.
12 The department shall retain in a separate account the amount of the license tax received. The department, in
13 accordance with the provisions of 17-2-124, shall allocate the revenue as follows:

14 (a) Thirty-four and one-half percent is allocated to the state general fund.

15 (b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of
16 the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism
17 and ~~chemical dependency~~ substance use disorder.

18 (3) The license tax proceeds that are allocated to the department of public health and human services
19 for the treatment, rehabilitation, and prevention of alcoholism and ~~chemical dependency~~ substance use disorder
20 must be credited quarterly to the department of public health and human services. The legislature may
21 appropriate a portion of the license tax proceeds to support alcohol and ~~chemical dependency~~ substance use
22 disorder programs. The remainder must be distributed as provided in 53-24-206.

23 (4) The following are exempt from the tax and markup imposed by this section:

24 (a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a
25 brewery under conditions set by the department as provided in 16-3-214; and

26 (b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions
27 set by the department as provided in 16-4-311 and 16-4-312."

28

29 **Section 3.** Section 16-1-406, MCA, is amended to read:

30 **"16-1-406. Taxes on beer.** (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana

1 by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer
2 produced by a brewer in a year. A brewer who produces less than 10,000 barrels of beer a year is taxed on the
3 following increments of production:

4 (i) up to 5,000 barrels, \$1.30;

5 (ii) 5,001 barrels to 10,000 barrels, \$2.30.

6 (b) The tax on beer sold for a brewer who produces over 10,000 barrels is \$4.30.

7 (2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon
8 beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in
9 containers other than barrels or in barrels of more or less capacity than 31 gallons.

10 (3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to
11 subsection (1), an amount equal to:

12 (a) 23.26% must be deposited in the state treasury to the credit of the department of public health and
13 human services for the treatment, rehabilitation, and prevention of alcoholism and ~~chemical dependency~~
14 substance use disorder; and

15 (b) the balance must be deposited in the state general fund."
16

17 **Section 4.** Section 16-1-411, MCA, is amended to read:

18 **"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is
19 imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor or the
20 department and on table wine shipped directly by a winery with a direct shipment endorsement.

21 (b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the
22 department.

23 (2) The tax imposed in subsection (1) must be paid by the winery with a direct shipment endorsement
24 or a table wine distributor by the 15th day of the month following shipment by the winery with the direct shipment
25 endorsement or sale of the sacramental wine, table wine, or hard cider from the table wine distributor's
26 warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the winery with
27 the direct shipment endorsement or the table wine distributor to the penalties and interest provided for in
28 15-1-216.

29 (3) The tax paid by a winery with a direct shipment endorsement or by a table wine distributor in
30 accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

1 (a) 69% to the state general fund; and

2 (b) 31% to the state special revenue fund to the credit of the department of public health and human
3 services for the treatment, rehabilitation, and prevention of alcoholism and ~~chemical dependency~~ substance use
4 disorder.

5 (4) The tax computed and paid in accordance with this section is the only tax imposed by the state or
6 any of its subdivisions, including cities and towns.

7 (5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include
8 hard cider."

9

10 **Section 5.** Section 37-35-102, MCA, is amended to read:

11 **"37-35-102. Definitions.** As used in this chapter, the following definitions apply:

12 (1) "Accredited college or university" means a college or university accredited by a regional or national
13 accrediting association for institutions of higher learning.

14 (2) "Addiction" means the condition or state in which an individual is physiologically or psychologically
15 dependent upon alcohol or other drugs. The term includes ~~chemical dependency~~ substance use disorder as
16 defined in 53-24-103.

17 (3) "Addiction counselor licensure candidate" means a person who is registered pursuant to 37-35-202(5)
18 to engage in addiction counseling and earn supervised work experience necessary for licensure.

19 (4) "Board" means the board of behavioral health provided for in 2-15-1744.

20 (5) "Licensed addiction counselor" means a person who has the knowledge and skill necessary to
21 provide the therapeutic process of addiction and gambling dependence impulse control disorder counseling and
22 who is licensed under the provisions of this chapter."

23

24 **Section 6.** Section 37-38-102, MCA, is amended to read:

25 **"37-38-102. Definitions.** As used in this chapter, the following definitions apply:

26 (1) "Behavioral health" includes a person with a diagnosis of:

27 (a) a mental disorder, as that term is defined in 53-21-102; or

28 (b) ~~chemical dependency~~ substance use disorder, as that term is defined in 53-24-103.

29 (2) "Behavioral health peer support" means the use of a peer support specialist's personal experience
30 with a behavioral health disorder to provide support, mentoring, guidance, and advocacy and to offer hope to

1 individuals with behavioral health disorders.

2 (3) "Board" means the board of behavioral health established under 2-15-1744.

3 (4) "Certified behavioral health peer support specialist" means a person who:

4 (a) has experienced and is in recovery from a behavioral health disorder;

5 (b) has obtained the education and skills needed to provide therapeutic support to individuals with
6 behavioral health disorders; and

7 (c) possesses a valid and current certification.

8 (5) "Mental health professional" means:

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

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

11 (c) a social worker licensed under Title 37, chapter 22;

12 (d) a professional counselor licensed under Title 37, chapter 23;

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

15 (f) a marriage and family therapist licensed under Title 37, chapter 37; or

16 (g) a licensed addiction counselor licensed under Title 37, chapter 35."
17

18 **Section 7.** Section 40-4-212, MCA, is amended to read:

19 **"40-4-212. Best interest of child.** (1) The court shall determine the parenting plan in accordance with
20 the best interest of the child. The court shall consider all relevant parenting factors, which may include but are
21 not limited to:

22 (a) the wishes of the child's parent or parents;

23 (b) the wishes of the child;

24 (c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with
25 any other person who significantly affects the child's best interest;

26 (d) the child's adjustment to home, school, and community;

27 (e) the mental and physical health of all individuals involved;

28 (f) physical abuse or threat of physical abuse by one parent against the other parent or the child;

29 (g) ~~chemical dependency~~ substance use disorder, as defined in 53-24-103, or ~~chemical~~ substance abuse
30 on the part of either parent;

- 1 (h) continuity and stability of care;
- 2 (i) developmental needs of the child;
- 3 (j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which
4 is considered to be not in the child's best interests;
- 5 (k) whether a parent has knowingly failed to financially support a child that the parent is able to support,
6 which is considered to be not in the child's best interests;
- 7 (l) whether the child has frequent and continuing contact with both parents, which is considered to be
8 in the child's best interests unless the court determines, after a hearing, that contact with a parent would be
9 detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical
10 abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to
11 whether a parent or other person residing in that parent's household has been convicted of any of the crimes
12 enumerated in 40-4-219(8)(b).
- 13 (m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment
14 actions.
- 15 (2) When determining the best interest of the child of a parent in military service, the court shall consider
16 all relevant parenting factors provided in subsection (1) and may not determine the best interest of the child based
17 only upon the parent's military service.
- 18 (3) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the
19 child's parent or parents to prove the factors set forth in 40-4-219.
- 20 (4) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:
21 (a) A parenting plan action brought by a parent within 6 months after a child support action against that
22 parent is vexatious.
- 23 (b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to
24 amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan
25 or with dispute resolution provisions of the final parenting plan."

26

27 **Section 8.** Section 47-1-104, MCA, is amended to read:

28 **"47-1-104. Statewide system -- structure and scope of services -- assignment of counsel at public**
29 **expense.** (1) There is a statewide public defender system, which is required to deliver public defender services
30 in all courts in this state. The system is supervised by the director.

1 (2) The director shall approve a strategic plan for service delivery and divide the state into not more than
2 11 public defender regions. The director may establish a regional office to provide public defender services in
3 each region, as provided in 47-1-215, establish a contracted services program to provide services in the region,
4 or utilize other service delivery methods as appropriate and consistent with the purposes described in 47-1-102.

5 (3) When a court orders the assignment of a public defender, the appropriate office shall immediately
6 assign a public defender qualified to provide the required services. The director shall establish protocols to ensure
7 that the offices make appropriate assignments in a timely manner.

8 (4) A court may order assignment of a public defender under this chapter in the following cases:

9 (a) in cases in which a person is entitled to assistance of counsel at public expense because of financial
10 inability to retain private counsel, subject to a determination of indigence pursuant to 47-1-111, as follows:

11 (i) for a person charged with a felony or charged with a misdemeanor for which there is a possibility of
12 incarceration, as provided in 46-8-101;

13 (ii) for a party in a proceeding to determine parentage under the Uniform Parentage Act, as provided in
14 40-6-119;

15 (iii) for a parent, guardian, or other person with physical or legal custody of a child or youth in any
16 removal, placement, or termination proceeding pursuant 41-3-422 and as required under the federal Indian Child
17 Welfare Act, as provided in 41-3-425;

18 (iv) for an applicant for sentence review pursuant to Title 46, chapter 18, part 9;

19 (v) for a petitioner in a proceeding for postconviction relief, as provided in 46-21-201;

20 (vi) for a petitioner in a habeas corpus proceeding pursuant to Title 46, chapter 22;

21 (vii) for a parent or guardian in a proceeding for the involuntary commitment of a developmentally
22 disabled person to a residential facility, as provided in 53-20-112;

23 (viii) for a respondent in a proceeding for involuntary commitment for a mental disorder, as provided in
24 53-21-116;

25 (ix) for a respondent in a proceeding for the involuntary commitment of a person for ~~alcoholism~~ substance
26 use disorder, as provided in 53-24-302; and

27 (x) for a witness in a criminal grand jury proceeding, as provided in 46-4-304.

28 (b) in cases in which a person is entitled by law to the assistance of counsel at public expense regardless
29 of the person's financial ability to retain private counsel, as follows:

30 (i) as provided for in 41-3-425;

1 (ii) for a youth in a proceeding under the Montana Youth Court Act alleging a youth is delinquent or in
 2 need of intervention, as provided in 41-5-1413, and in a prosecution under the Extended Jurisdiction Prosecution
 3 Act, as provided in 41-5-1607;

4 (iii) for a juvenile entitled to assigned counsel in a proceeding under the Interstate Compact on Juveniles,
 5 as provided in 41-6-101;

6 (iv) for a minor who petitions for a waiver of parental consent requirements under the Parental Consent
 7 for Abortion Act of 2013, as provided in 50-20-509;

8 (v) for a respondent in a proceeding for the involuntary commitment of a developmentally disabled
 9 person to a residential facility, as provided in 53-20-112;

10 (vi) for a minor voluntarily committed to a mental health facility, as provided in 53-21-112;

11 (vii) for a person who is the subject of a petition for the appointment of a guardian or conservator in a
 12 proceeding under the provisions of the Uniform Probate Code in Title 72, chapter 5;

13 (viii) for a ward when the ward's guardian has filed a petition to require medical treatment for a mental
 14 disorder of the ward, as provided in 72-5-322; and

15 (c) for an eligible appellant in an appeal of a proceeding listed in this subsection (4).

16 (5) (a) Except as provided in subsection (5)(b), a public defender may not be assigned to act as a
 17 court-appointed special advocate or guardian ad litem in a proceeding under the Montana Youth Court Act, Title
 18 41, chapter 5, or in an abuse and neglect proceeding under Title 41, chapter 3.

19 (b) A private attorney who is contracted with under the provisions of 47-1-121 to provide public defender
 20 services under this chapter may be appointed as a court-appointed special advocate or guardian ad litem in a
 21 proceeding described in subsection (5)(a) if the appointment is separate from the attorney's service for the
 22 statewide public defender system and does not result in a conflict of interest."

23

24 **Section 9.** Section 53-1-601, MCA, is amended to read:

25 **"53-1-601. Purpose of department of public health and human services.** The department of public
 26 health and human services shall use to maximum efficiency the resources of state government in a coordinated
 27 effort to:

28 (1) develop and maintain comprehensive services and programs in the fields of:

29 (a) mental health; and

30 (b) ~~chemical dependency~~ substance use disorder;

1 (2) provide, according to the requirements of Title 53, chapter 20, inpatient institutional care for persons
2 with developmental disabilities who require institutional care; and

3 (3) provide nursing home care for honorably discharged veterans as provided by law."
4

5 **Section 10.** Section 53-1-602, MCA, is amended to read:

6 **"53-1-602. Department of public health and human services.** (1) The following components are in
7 the department of public health and human services to carry out the purposes of the department:

8 (a) mental health services, consisting of the following institutional components for care and treatment
9 of the mentally ill pursuant to Title 53, chapter 21:

10 (i) the Montana state hospital; and

11 (ii) the Montana mental health nursing care center;

12 (b) a community services component, consisting of appropriate services for the care and treatment of
13 the mentally ill pursuant to Title 53, chapter 21, part 10;

14 (c) ~~chemical dependency~~ substance use disorder services, consisting of appropriate detoxification,
15 inpatient, intensive outpatient, outpatient, prevention, education, and other necessary ~~chemical dependency~~
16 substance use disorder services pursuant to Title 53, chapter 24;

17 (d) an institutional and residential component of the developmental disabilities system for those persons
18 with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which
19 component consists of the Montana developmental center; and

20 (e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged
21 veterans as provided by law, consisting of:

22 (i) the Montana veterans' home;

23 (ii) the eastern Montana veterans' home at Glendive; and

24 (iii) the southwestern Montana veterans' home.

25 (2) A state institution may not be moved, discontinued, or abandoned without the consent of the
26 legislature."
27

28 **Section 11.** Section 53-1-603, MCA, is amended to read:

29 **"53-1-603. Powers and duties of department of public health and human services.** The department
30 of public health and human services shall:

1 (1) adopt rules for the admission, custody, transfer, and release of persons in department programs
 2 except as otherwise provided by law. However, rules adopted by the department may not amend or alter the
 3 statutory powers and duties of the board of pardons and parole.

4 (2) subject to the functions of the department of administration, lease or purchase lands for use by
 5 institutions and classify those lands to determine those that may be most profitably used for agricultural purposes,
 6 taking into consideration the needs of all institutions for the food products that can be grown or produced on the
 7 lands and the relative value of agricultural programs in the treatment or rehabilitation of the persons confined in
 8 the institutions;

9 (3) use the staff and services of other state agencies and units of the Montana university system, within
 10 their respective statutory functions, to carry out its functions under this title;

11 (4) propose programs to the legislature to meet the projected long-range needs of institutions, including
 12 programs and facilities for the diagnosis, treatment, care, and aftercare of persons placed in institutions; and

13 (5) encourage the establishment of programs at the local level for the prevention and rehabilitation of
 14 disabilities as they relate to mental illness and ~~chemical dependency~~ substance use disorder."

15

16 **Section 12.** Section 53-24-101, MCA, is amended to read:

17 **"53-24-101. Legislative purpose.** (1) It is the purpose of this chapter and the policy of this state to
 18 recognize;

19 (a) ~~chemical dependency~~ substance use disorder as a problem affecting the health, safety, ~~morals,~~
 20 economy, and general welfare of this state; ~~to recognize~~

21 (b) ~~chemical dependency~~ substance use disorder as a problem subject to treatment; and ~~to recognize~~

22 (c) the sufferer of ~~chemical dependency~~ substance use disorder as worthy of treatment and rehabilitation.

23 (2) It is the intent of this chapter to establish means ~~whereby~~ by which the appropriate resources of this
 24 state may be focused fully and effectively upon the problem of ~~chemical dependency~~ substance use disorder and
 25 utilized in implementing programs for the control and treatment of this problem."

26

27 **Section 13.** Section 53-24-102, MCA, is amended to read:

28 **"53-24-102. Declaration of policy.** It is the policy of the state of Montana to recognize ~~alcoholism~~
 29 substance use disorder as an illness and that ~~alcoholics and intoxicated~~ persons with substance use disorder
 30 and incapacitated persons may not be subjected to criminal prosecution because of their ~~consumption of alcoholic~~

1 ~~beverages~~ substance use disorder but rather should be afforded a continuum of treatment in order that they may
 2 lead normal lives as productive members of society. Treatment should be prioritized for persons with substance
 3 use disorder and incapacitated persons."

4

5 **Section 14.** Section 53-24-103, MCA, is amended to read:

6 **"53-24-103. Definitions.** For purposes of this chapter, the following definitions apply:

7 (1) ~~"Alcoholic" means a person who has~~ "Alcoholism" means a chronic illness or disorder of behavior
 8 characterized by repeated drinking of alcoholic beverages to the extent that it endangers the health, interpersonal
 9 relationships, or economic function of ~~the~~ an individual or the public health, welfare, or safety.

10 (2) "Approved private treatment facility" means a private agency that has as its function the treatment,
 11 rehabilitation, and prevention of ~~chemical dependency~~ substance use disorder, that meets the standards
 12 prescribed in 53-24-208(1), and that is approved under 53-24-208.

13 (3) "Approved public treatment facility" means:

14 (a) a treatment agency operating under the direction and control of the department as a state agency
 15 and approved under 53-24-208; or

16 (b) a treatment agency operating under the direction and control of a local government and approved
 17 under 53-24-208.

18 (4) ~~"Chemical dependency" means the use of any chemical substance, legal or illegal, that creates~~
 19 ~~behavioral or health problems, or both, resulting in operational impairment. This term includes alcoholism, drug~~
 20 ~~dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual~~
 21 ~~or the public health, welfare, or safety.~~

22 (5)(4) "Commission on accreditation of rehabilitation facilities" means the organization nationally
 23 recognized by that name that surveys rehabilitation facilities upon their requests and grants accreditation status
 24 to a rehabilitation facility that it finds meets its standards and requirements.

25 (6)(5) "Department" means the department of public health and human services provided for in
 26 2-15-2201.

27 (6) "Drug" has the meaning provided in 46-1-1103.

28 (7) "Family member" is the spouse, mother, father, child, or member of the household of a ~~chemically~~
 29 ~~dependent person~~ with substance use disorder whose life has been affected by the actions of the ~~chemically~~
 30 ~~dependent person~~ with substance use disorder and who may require treatment.

1 ~~(6) "Incapacitated by alcohol" means that a person, as a result of the use of alcohol, is unconscious or~~
 2 ~~has judgment otherwise so impaired that the person is incapable of realizing and making a rational decision with~~
 3 ~~respect to a need for treatment.~~

4 (8) "Incapacitated" or "incapacitation" means that a person is impaired by reason of alcohol or drug use
 5 to the extent that the person lacks sufficient understanding or capacity to make or communicate responsible
 6 decisions and is incapable of realizing and making a rational decision with respect to the person's need for
 7 treatment.

8 (9) "Incompetent person" means a person who has been adjudged incompetent by the district court.

9 ~~(10) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired~~
 10 ~~as a result of the use of alcohol.~~

11 ~~(11) "Prevention" has meaning on the following four levels; these are:~~

12 (a) education to provide information to ~~the~~ school children and the general public relating to ~~chemical~~
 13 ~~dependency~~ substance use disorder treatment and rehabilitative services and to reduce the consequences of
 14 life experiences acquired by contact with a ~~chemically dependent~~ person with substance use disorder;

15 (b) early detection and recovery from the illness before lasting emotional or physical damage, or both,
 16 have occurred;

17 (c) if lasting emotional or physical damage, or both, have occurred, to arrest the illness before full
 18 disability has been reached;

19 (d) the provision of facility requirements to meet division program standards and improve public
 20 accessibility for services.

21 ~~(12) "Rehabilitation facility" means a facility that is operated for the primary purpose of assisting in~~
 22 ~~the rehabilitation of disabled individuals by providing comprehensive medical evaluations and services,~~
 23 ~~psychological and social services, or vocational evaluation and training or any combination of these services and~~
 24 ~~in which the major portion of the services is furnished within the facility.~~

25 (12) "Substance use disorder" means the use of any chemical substance, legal or illegal, that creates
 26 behavioral or health problems, or both, resulting in operational impairment. The term includes alcoholism, drug
 27 dependency, or both, that endanger the health, interpersonal relationships, or economic functions of an individual
 28 or the public health, welfare, or safety.

29 (13) "Treatment" means the broad range of emergency, outpatient, intermediate, and inpatient services
 30 and care, including diagnostic evaluation, medical, psychiatric, psychological, and social service care, vocational

1 rehabilitation, and career counseling, which may be extended to ~~chemically dependent~~ persons with substance
 2 use disorder, ~~intoxicated~~ incapacitated persons, and family members."

3

4 **Section 15.** Section 53-24-104, MCA, is amended to read:

5 **"53-24-104. Deposit of funds from federal or private sources with state treasurer.** Funds available
 6 to the department from federal or private sources for use in ~~chemical dependency~~ substance use disorder
 7 prevention, treatment, and control programs ~~shall~~ must be deposited with the state treasurer to the account of
 8 the department in the federal special revenue fund or the state special revenue fund."

9

10 **Section 16.** Section 53-24-106, MCA, is amended to read:

11 **"53-24-106. Criminal laws limitation.** (1) A county, municipality, or other political subdivision may not
 12 adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes ~~drinking, being~~
 13 ~~a common drunkard, or~~ being found in an ~~intoxicated~~ incapacitated condition as one of the elements of the
 14 offense giving rise to a criminal or civil penalty or sanction.

15 (2) This section does not affect any law, ordinance, resolution, or rule against drunken driving, driving
 16 under the influence of alcohol or drugs, or other similar offense involving the operation of a vehicle, an aircraft,
 17 a boat, machinery, or other equipment or regarding the sale, purchase, dispensing, possessing, or use of
 18 alcoholic beverages or drugs at stated times and places or by a particular class of persons.

19 (3) This section does not prevent the department from imposing a sanction on or denying eligibility to
 20 applicants for or recipients of public assistance who fail or refuse to comply with all eligibility criteria and program
 21 requirements."

22

23 **Section 17.** Section 53-24-107, MCA, is amended to read:

24 **"53-24-107. Public intoxication incapacitation not criminal offense.** (1) A person who appears to
 25 be ~~intoxicated~~ incapacitated in public does not commit a criminal offense solely by reason of being in an
 26 ~~intoxicated~~ incapacitated condition but may be detained by a peace officer for the person's own protection. A
 27 peace officer who detains a person who appears to be ~~intoxicated~~ incapacitated in public shall proceed in the
 28 manner provided in 53-24-303 and subsection (3) of this section.

29 (2) If none of the alternatives in 53-24-303 are reasonably available, a peace officer may detain a person
 30 who appears to be ~~intoxicated~~ incapacitated until the person is no longer creating a risk to self or others.

1 (3) A peace officer, in detaining the person, shall make every reasonable effort to protect the person's
2 health and safety. The peace officer may take reasonable steps for the officer's own protection. An entry or other
3 record may not be made to indicate that the person detained under this section has been arrested or charged
4 with a crime.

5 (4) A peace officer, acting within the scope of the officer's authority under this chapter, is not personally
6 liable for the officer's actions."
7

8 **Section 18.** Section 53-24-108, MCA, is amended to read:

9 **"53-24-108. Use of funds generated by taxation on alcoholic beverages.** (1) Revenue generated
10 by 16-1-404, 16-1-406, and 16-1-411 and allocated to the department to be used in state-approved private or
11 public programs whose function is the treatment, rehabilitation, and prevention of alcoholism, which for the
12 purposes of this section includes ~~chemical dependency~~ substance use disorder, must be distributed as follows:

13 (a) 20% is statutorily appropriated, as provided in 17-7-502, to be allocated as provided in
14 53-24-206(3)(b), and must be distributed as grants to state-approved private or public alcoholism programs;

15 (b) 6.6% is statutorily appropriated, as provided in 17-7-502, to be distributed to state-approved private
16 or public alcoholism programs that provide services for treatment and rehabilitation for persons with co-occurring
17 serious mental illness and ~~chemical dependency~~ substance use disorder; and

18 (c) the remainder of funds not statutorily appropriated in subsections (1)(a) and (1)(b) may be distributed:

19 (i) as payment of fees for alcoholism services provided by state-approved private or public alcoholism
20 programs and licensed hospitals for detoxification services; or

21 (ii) as matching funds for the Montana medicaid program administered by the department that are used
22 for alcoholism and ~~chemical dependency~~ substance use disorder programs.

23 (2) A person operating a state-approved alcoholism program may not be required to provide matching
24 funds as a condition of receiving a grant under subsection (1)(a).

25 (3) In addition to funding received under this section, a person operating a state-approved alcoholism
26 program may accept gifts, bequests, or the donation of services or money for the treatment, rehabilitation, or
27 prevention of alcoholism.

28 (4) A person receiving funding under this section to support operation of a state-approved alcoholism
29 program may not refuse alcoholism treatment, rehabilitation, or prevention services to a person solely because
30 of that person's inability to pay for those services.

1 (5) A grant made under this section is subject to the following conditions:

2 (a) The grant application must contain an estimate of all program income, including income from earned
3 fees, gifts, bequests, donations, and grants from other than state sources during the period for which grant
4 support is sought.

5 (b) Whenever, during the period of grant support, program income exceeds the amount estimated in the
6 grant application, the amount of the excess must be reported to the grantor.

7 (c) The excess must be used by the grantee under the terms of the grant in accordance with one or a
8 combination of the following options:

9 (i) use for any purpose that furthers the objectives of the legislation under which the grant was made;

10 or

11 (ii) to allow program growth through the expansion of services or for capital expenditures necessary to
12 improve facilities where services are provided.

13 (6) Revenue generated by 16-1-404, 16-1-406, and 16-1-411 for the treatment, rehabilitation, and
14 prevention of alcoholism that has not been encumbered for those purposes by the counties of Montana or the
15 department must be returned to the state special revenue fund for the treatment, rehabilitation, and prevention
16 of alcoholism within 30 days after the close of each fiscal year and must be distributed by the department the
17 following year as provided in 53-24-206(3)(b)."

18

19 **Section 19.** Section 53-24-204, MCA, is amended to read:

20 **"53-24-204. Powers and duties of department.** (1) To carry out this chapter, the department may:

21 (a) accept gifts, grants, and donations of money and property from public and private sources;

22 (b) enter into contracts; and

23 (c) acquire and dispose of property.

24 (2) The department shall:

25 (a) approve treatment facilities as provided for in 53-24-208;

26 (b) prepare a comprehensive long-term state ~~chemical dependency~~ substance use disorder plan every
27 4 years and update this plan each biennium;

28 (c) provide for and conduct statewide service system evaluations;

29 (d) distribute state and federal funds to the counties for approved treatment programs in accordance with
30 the provisions of 53-24-108 and 53-24-206;

- 1 (e) plan in conjunction with approved programs and provide for training of program personnel delivering
 2 services to persons with a ~~chemical dependency~~ substance use disorder;
- 3 (f) establish criteria to be used for the development of new programs;
- 4 (g) provide planning for the optimal use of funds by increasing efficiency of services, ensuring existing
 5 needs are met, and encouraging rural counties to form multicounty districts or contract with urban programs for
 6 services;
- 7 (h) cooperate with the board of pardons and parole in establishing and conducting programs to provide
 8 treatment for ~~intoxicated~~ incapacitated persons and persons with a ~~chemical dependency~~ substance use disorder
 9 in or on parole from penal institutions;
- 10 (i) establish standards for ~~chemical dependency~~ substance use disorder educational courses provided
 11 by state-approved treatment programs and approve or disapprove the courses;
- 12 (j) hold all state-approved facilities, programs, and providers to uniform standards as established by the
 13 department by rule; and
- 14 (k) assist all interested public agencies and private organizations in developing education and prevention
 15 programs for ~~chemical dependency~~ substance use disorder."

16
 17 **Section 20.** Section 53-24-206, MCA, is amended to read:

18 **"53-24-206. Administration of financial assistance.** (1) The department may apply for and receive
 19 grants, allotments, or allocations of funds or other assistance for purposes pertaining to the problems of ~~chemical~~
 20 ~~dependency~~ substance use disorder or related social problems under laws and rules of the United States, any
 21 other state, or any private organization.

22 (2) The department may cooperate with any other government agency or private organization in
 23 programs on ~~chemical dependency~~ substance use disorder or related social problems. In carrying out cooperative
 24 programs, the department may make grants of financial assistance to government agencies and private
 25 organizations under terms and conditions agreed upon.

26 (3) (a) In administering proceeds derived from the liquor license tax, the beer license tax, or the wine tax,
 27 the department shall distribute those funds appropriated by the legislature. Money that is appropriated for
 28 distribution to approved private or public programs on a discretionary basis must be distributed to those programs
 29 that can demonstrate that:

30 (i) the program is achieving the goals and objectives mutually agreed upon by the program and the

1 department; and

2 (ii) the receipt of additional funds would be justified.

3 (b) The remainder of the proceeds that are not appropriated, as provided in subsection (3)(a), or that
4 are not statutorily appropriated in 53-24-108(1)(b) must be distributed to the counties for use by approved private
5 or public programs. The distribution of these proceeds is statutorily appropriated as provided in 17-7-502 and
6 must be distributed in the following manner:

7 (i) Eighty-five percent must be allocated according to the proportion of each county's population to the
8 state's population according to the most recent United States census.

9 (ii) Fifteen percent must be allocated according to the proportion of the county's land area to the state's
10 land area.

11 (c) Money distributed under subsection (3) may only be used for purposes pertaining to the problems
12 of alcoholism and ~~chemical dependency~~ substance use disorder."

13

14 **Section 21.** Section 53-24-207, MCA, is amended to read:

15 **"53-24-207. Comprehensive program for treatment.** (1) The department shall establish a
16 comprehensive and coordinated program for the treatment of ~~chemically dependent~~ persons with substance use
17 disorder, ~~intoxicated~~ incapacitated persons, and family members.

18 (2) The program must include:

19 (a) emergency treatment provided by a facility affiliated with or part of the medical service of a general
20 hospital;

21 (b) inpatient treatment;

22 (c) intermediate treatment;

23 (d) outpatient treatment; and

24 (e) followup services.

25 (3) The department shall provide for adequate and appropriate treatment for ~~alcoholics and intoxicated~~
26 incapacitated persons admitted under 53-24-301 through 53-24-303.

27 (4) All appropriate public and private resources must be coordinated with and used in the program if
28 possible.

29 (5) The department shall prepare, publish, and distribute annually a list of all approved public and private
30 treatment facilities."

1
 2 **Section 22.** Section 53-24-209, MCA, is amended to read:
 3 **"53-24-209. Rules for acceptance for treatment.** The department shall adopt rules for acceptance of
 4 persons into the treatment program, considering available treatment resources and facilities, for the purpose of
 5 early and effective treatment of ~~chemically dependent~~ persons with substance use disorder, ~~intoxicated~~
 6 incapacitated persons, and family members. In adopting the rules, the department must be guided by the
 7 following standards:

- 8 (1) If possible, a patient must be treated on a voluntary rather than an involuntary basis.
 9 (2) A patient must be initially assigned or transferred to outpatient treatment unless found to require
 10 inpatient treatment.
 11 (3) An individualized treatment plan must be prepared and maintained on a current basis for each
 12 person.
 13 (4) Provision must be made for a continuum of coordinated treatment services so that a person who
 14 leaves a facility or a form of treatment will have available and use other appropriate treatment."

15
 16 **Section 23.** Section 53-24-211, MCA, is amended to read:
 17 **"53-24-211. County plan to be submitted to department.** (1) Every 4 years each county shall submit
 18 to the department a comprehensive countywide plan for the treatment, rehabilitation, and prevention of ~~chemical~~
 19 ~~dependency~~ substance use disorder. Each county shall also submit annual plan updates that include, at a
 20 minimum, allocation to approved programs of revenues generated by taxation on alcoholic beverages.
 21 (2) The plan must have been approved by the board of county commissioners and must contain
 22 information regarding existing private and public ~~chemical dependency~~ substance use disorder programs within
 23 the county. The plan must also contain information regarding the current and future needs of the county for the
 24 treatment, rehabilitation, and prevention of ~~chemical dependency~~ substance use disorder.
 25 (3) The department shall approve or disapprove the countywide plan and annual updates. If the
 26 department disapproves a plan or update, the county may submit another plan or update to the department. In
 27 distributing funds to approved programs in a county, the department shall give consideration to the county plan.
 28 (4) The department may adopt rules regarding the submission, submission dates, updates, approval,
 29 and disapproval of plans and the use of plans by the department in determining the needs of the county for the
 30 treatment, rehabilitation, and prevention of ~~chemical dependency~~ substance use disorder. ~~No money~~ Money may

1 not be distributed to a county by the department for the treatment, rehabilitation, and prevention of ~~chemical~~
 2 ~~dependency~~ substance use disorder if the county does not comply with these rules."

3

4 **Section 24.** Section 53-24-301, MCA, is amended to read:

5 **"53-24-301. Treatment of ~~the chemically dependent~~ persons with substance use disorder.** (1) An
 6 applicant for voluntary admission or court-referred admission to an approved public treatment facility shall obtain
 7 confirmation from a licensed addiction counselor that the applicant ~~is chemically dependent~~ has a substance use
 8 disorder and is appropriate for inpatient, freestanding care as described in the administrative rules. The
 9 department shall adopt rules to establish policies and procedures governing assessment, patient placement,
 10 confirmation, and admission to an approved public treatment facility. If the proposed patient is a minor or an
 11 incompetent person, the proposed patient, a parent, legal guardian, or other legal representative may make the
 12 application.

13 (2) Subject to rules adopted by the department, the administrator of an approved public treatment facility
 14 may determine who is admitted for treatment. If a person is refused admission to an approved public treatment
 15 facility, the administrator, subject to departmental rules, shall refer the person to an approved private treatment
 16 facility for treatment if possible and appropriate.

17 (3) If a patient receiving inpatient care leaves an approved public treatment facility, the patient must be
 18 encouraged to consent to appropriate outpatient or intermediate treatment. If it appears to the administrator of
 19 the treatment facility that the patient ~~is chemically dependent~~ has a substance use disorder and requires help,
 20 the department shall arrange for assistance in obtaining supportive services and residential facilities.

21 (4) If a patient leaves an approved public treatment facility, with or against the advice of the administrator
 22 of the facility, the department shall make reasonable provisions for the patient's transportation to another facility
 23 or to the patient's home. If the patient has no home, the patient must be assisted in obtaining shelter. If the patient
 24 is a minor or an incompetent person, the request for discharge from an inpatient facility must be made by a
 25 parent, legal guardian, or other legal representative or by the minor or incompetent, if the minor or incompetent
 26 person was the original applicant."

27

28 **Section 25.** Section 53-24-302, MCA, is amended to read:

29 **"53-24-302. Involuntary commitment of ~~alcoholics~~ persons with substance use disorder -- rights.**

30 (1) A person may be committed to the custody of the department by the district court upon the petition of the

1 person's spouse or guardian, a relative, the certifying physician, or the chief of any approved public treatment
2 facility. The petition must allege that the person is ~~an alcoholic who~~ has a substance use disorder and habitually
3 lacks self-control as to the use of ~~alcoholic beverages~~ alcohol or drugs and that the person has threatened,
4 attempted, or inflicted physical harm on another and that unless committed is likely to inflict physical harm on
5 another or is incapacitated ~~by alcohol~~. A refusal to undergo treatment does not constitute evidence of lack of
6 judgment as to the need for treatment. The petition must be accompanied by a certificate of a licensed physician
7 who has examined the person within 2 days before submission of the petition unless the person whose
8 commitment is sought has refused to submit to a medical examination, in which case the fact of refusal must be
9 alleged in the petition. The certificate must set forth the physician's findings in support of the allegations of the
10 petition. A physician employed by the admitting facility or the department is not eligible to be the certifying
11 physician.

12 (2) Upon filing the petition, the court shall fix a date for a hearing no later than 10 days after the date the
13 petition was filed. A copy of the petition and of the notice of the hearing, including the date fixed by the court, must
14 be served on the petitioner, the person whose commitment is sought, the person's next of kin other than the
15 petitioner, a parent or the person's legal guardian if the person is a minor, the administrator in charge of the
16 approved public treatment facility to which the person has been committed for emergency care, and any other
17 person the court believes advisable. A copy of the petition and certificate must be delivered to each person
18 notified.

19 (3) At the hearing, the court shall hear all relevant testimony, including, if possible, the testimony of at
20 least one licensed physician who has examined the person whose commitment is sought. The person has a right
21 to have a licensed physician of the person's own choosing conduct an examination and testify on the person's
22 behalf. If the person has no funds with which to pay the physician, the reasonable costs of one examination and
23 testimony must be paid by the county. The person must be present unless the court believes that the person's
24 presence is likely to be injurious to the person. The court shall examine the person in open court or, if advisable,
25 shall examine the person in chambers. If the person refuses an examination by a licensed physician and there
26 is sufficient evidence to believe that the allegations of the petition are true or if the court believes that more
27 medical evidence is necessary, the court may make a temporary order committing the person to the department
28 for a period of not more than 5 days for purposes of a diagnostic examination.

29 (4) If after hearing all relevant evidence, including the results of any diagnostic examination by the
30 department, the court finds that grounds for involuntary commitment have been established by clear and

1 convincing evidence, it shall make an order of commitment to the department. The court may not order
2 commitment of a person unless it determines that the department is able to provide adequate and appropriate
3 treatment for the person and that the treatment is likely to be beneficial.

4 (5) A person committed under this section must remain in the custody of the department for treatment
5 for a period of 40 days unless sooner discharged. At the end of the 40-day period, the person must automatically
6 be discharged unless before expiration of the period the department obtains a court order from the district court
7 of the committing district for the person's recommitment upon the grounds set forth in subsection (1) for a further
8 period of 90 days unless sooner discharged. If a person has been committed because the person ~~is an alcoholic~~
9 has a substance use disorder and is likely to inflict physical harm on another, the department shall apply for
10 recommitment if after examination it is determined that the likelihood still exists.

11 (6) A person recommitted under subsection (5) who has not been discharged by the department before
12 the end of the 90-day period must be discharged at the expiration of that period unless before expiration of the
13 period the department obtains a court order from the district court of the committing district on the grounds set
14 forth in subsection (1) for recommitment for a further period not to exceed 90 days. If a person has been
15 committed because the person ~~is an alcoholic~~ has a substance use disorder and is likely to inflict physical harm
16 on another, the department shall apply for recommitment if after examination it is determined that the likelihood
17 still exists. Only two recommitment orders under subsections (5) and (6) are permitted.

18 (7) Upon the filing of a petition for recommitment under subsection (5) or (6), the court shall fix a date
19 for hearing no later than 10 days after the date the petition was filed. A copy of the petition and of the notice of
20 hearing, including the date fixed by the court, must be served on the petitioner, the person whose commitment
21 is sought, the person's next of kin other than the petitioner, the original petitioner under subsection (1) if different
22 from the petitioner for recommitment, one of the person's parents or the person's legal guardian if the person is
23 a minor, and any other person the court believes advisable. At the hearing, the court shall proceed as provided
24 in subsection (3).

25 (8) A person committed to the custody of the department for treatment must be discharged at any time
26 before the end of the period for which the person has been committed if either of the following conditions is met:

27 (a) in case of ~~an alcoholic~~ a person with a substance use disorder committed on the grounds of likelihood
28 of infliction of physical harm upon another, that the person is no longer in need of treatment or the likelihood no
29 longer exists; or

30 (b) in case of ~~an alcoholic~~ a person with a substance use disorder committed on the grounds of

1 incapacity and the need of treatment, that the incapacity no longer exists, further treatment will not be likely to
2 bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

3 (9) The court shall inform the person whose commitment or recommitment is sought of the person's right
4 to contest the application, be represented by counsel at every stage of any proceedings relating to the person's
5 commitment and recommitment, and have assigned counsel pursuant to the Montana Public Defender Act, Title
6 47, chapter 1, if the person wants the assistance of counsel and is unable to obtain private counsel. If the court
7 believes that the person needs the assistance of counsel, the court shall order the office of state public defender,
8 provided for in 2-15-1029, to assign counsel for the person regardless of the person's wishes. The person whose
9 commitment or recommitment is sought must be informed of the right to be examined by a licensed physician of
10 the person's choice. If the person is unable to obtain a licensed physician and requests examination by a
11 physician, the court shall employ a licensed physician.

12 (10) If a private treatment facility agrees with the request of a competent patient or the patient's parent,
13 sibling, adult child, or guardian to accept the patient for treatment, the department may transfer the patient to the
14 private treatment facility.

15 (11) A person committed under this section may at any time seek to be discharged from commitment by
16 writ of habeas corpus or other appropriate means.

17 (12) The venue for proceedings under this section is the place in which the person to be committed
18 resides or is present."
19

20 **Section 26.** Section 53-24-303, MCA, is amended to read:

21 **"53-24-303. Treatment and services for ~~intoxicated~~ incapacitated persons.** (1) A person who
22 appears to be ~~intoxicated~~ incapacitated in a public place and to be in need of help may be assisted to the person's
23 home, an approved private treatment facility, or other health care facility by the police.

24 (2) A peace officer acting within the scope of the officer's authority under this chapter is not personally
25 liable for the officer's actions."
26

27 **Section 27.** Section 53-24-306, MCA, is amended to read:

28 **"53-24-306. Records of ~~chemically dependent persons with substance use disorder, intoxicated~~**
29 **incapacitated persons, and family members.** (1) The registration and other records of treatment facilities ~~shall~~
30 must remain confidential and are privileged to the patient.

