



Transition Review Committee

68th Montana Legislature

SENATE MEMBERS

DENNIS LENZ
CHRISTOPHER POPE

HOUSE MEMBERS

MARY CAFERRO
JENNIFER CARLSON

PUBLIC MEMBERS

ANN GEIGER
REZA GHOMI
MIKE LAHR
SARA HANSON-BAIAMONTE
HEATHER O'HARA
MIKE RANDOL
MELANIE WILLIAMS

COMMITTEE STAFF

MILLY ALLEN, Research Analyst
JOLANDA SONGER, Secretary

APPENDIX

Relevant Civil Commitment Statutes

53-21-101. Purpose. The purpose of this part is to:

(1) secure for each person who may be suffering from a mental disorder and requiring commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) accomplish this goal whenever possible in a community-based setting;

(3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and

(4) ensure that due process of law is accorded any person coming under the provisions of this part.

History: En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947, 38-1301; amd. Sec. 14, Ch. 490, L. 1997.

53-21-102. Definitions. As used in this chapter, 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 facility or a distinct part of a facility of 16 beds or less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

(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 situation" means:

(a) 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; or

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

(8) "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.

(9) (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) intellectual disability; or

(iv) epilepsy.

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

(10) "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) "Mental health professional" means:

(a) a certified professional person;

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

(c) a clinical professional counselor licensed under Title 37, chapter 39;

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

(e) a clinical social worker licensed under Title 37, chapter 39;

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

(g) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric mental health; or

(h) a marriage and family therapist licensed under Title 37, chapter 39.

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

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

(16) "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;
- (c) a licensed psychologist;
- (d) a physician assistant licensed under Title 37, chapter 20, with a clinical specialty in psychiatric mental health; or
- (e) a person who has been certified, as provided for in 53-21-106, by the department.

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

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

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

History: Ap. p. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977; Sec. 38-1302, R.C.M. 1947; (15)En. 38-106.1 by Sec. 3, Ch. 120, L. 1974; Sec. 38-106.1, R.C.M. 1947; R.C.M. 1947, 38-106.1, 38-1302; amd. Sec. 1, Ch. 547, L. 1979; amd. Sec. 18, Ch. 361, L. 1983; amd. Sec. 1, Ch. 578, L. 1983; amd. Sec. 1, Ch. 376, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1993; amd. Sec. 486, Ch. 546, L. 1995; amd. Sec. 15, Ch. 490, L. 1997; amd. Sec. 2, Ch. 310, L. 2001; amd. Sec. 6, Ch. 342, L. 2001; amd. Sec. 2, Ch. 344, L. 2001; amd. Sec. 3, Ch. 513, L. 2003; amd. Sec. 1, Ch. 81, L. 2005; amd. Sec. 1, Ch. 71, L. 2007; amd. Sec. 1, Ch. 116, L. 2007; amd. Sec. 1, Ch. 80, L. 2009; amd. Sec. 1, Ch. 481, L. 2009; amd. Sec. 20, Ch. 68, L. 2013; amd. Sec. 1, Ch. 308, L. 2013; amd. Sec. 1, Ch. 133, L. 2017; amd. Sec. 28, Ch. 713, L. 2023.

53-21-114. Notice of rights to be given. (1) Whenever a person is involuntarily detained pursuant to 53-21-121 through 53-21-126, the person must at the time of detention be informed of the person's constitutional rights and the person's rights under this part. Within 3 days of detention, the person must also be informed in writing by the county attorney of the enumerated rights.

(2) A respondent who is subject to an order for short-term treatment or long-term care and treatment must be advised in writing of the right to appeal the order by the court at the conclusion of any hearing as a result of which an order may be entered.

History: (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4); amd. Sec. 1, Ch. 522, L. 1983; amd. Sec. 1, Ch. 537, L. 1991; amd. Sec. 1912, Ch. 56, L. 2009.

53-21-115. Procedural rights. In addition to any other rights that may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has the following rights:

(1) the right to notice reasonably in advance of any hearing or other court proceeding concerning the person;

(2) the right in any hearing to be present, to offer evidence, and to present witnesses in any proceeding concerning the person;

(3) the right to know, before a hearing, the names and addresses of any witnesses who will testify in support of a petition;

(4) the right in any hearing to cross-examine witnesses;

(5) the right to be represented by counsel;

(6) the right to remain silent;

(7) the right in any hearing to be proceeded against according to the rules of evidence applicable to civil matters generally;

(8) the right to view and copy all petitions on file with the court concerning the person;

(9) the right to be examined by a professional person of the person's choice when the professional person is willing and reasonably available;

(10) the right to be dressed in the person's own clothes at any hearing held pursuant to this part;

(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part; and

(12) the right to voluntarily take necessary medications prior to any hearing pursuant to this part.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979; amd. Sec. 3, Ch. 376, L. 1987; amd. Sec. 17, Ch. 490, L. 1997.

53-21-116. Right to be present at hearing or trial — assignment of counsel. The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office

of state public defender, provided for in 2-15-1029, to immediately assign counsel to represent the person at either the hearing or the trial, or both.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 4, Ch. 376, L. 1987; amd. Sec. 18, Ch. 490, L. 1997; amd. Sec. 7, Ch. 583, L. 2003; amd. Sec. 58, Ch. 449, L. 2005; amd. Sec. 38, Ch. 358, L. 2017.

53-21-117. Right to representation by own attorney. The respondent or the friend of respondent appointed by the court may secure an attorney of the person's own choice and at the person's own expense to represent the respondent.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1913, Ch. 56, L. 2009.

53-21-118. Right to examination by professional person of own choosing. (1) The respondent, the respondent's attorney, or the friend of respondent appointed by the court may secure a professional person of the individual's own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of the professional person's examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

History: En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1914, Ch. 56, L. 2009.

53-21-119. Waiver of rights. (1) A person may waive the person's rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by the person's counsel and friend of respondent, if a friend of respondent is appointed, acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by the respondent's attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) (i) the presence of the respondent at the hearing would be likely to seriously adversely affect the respondent's mental condition; and

(ii) an alternative location for the hearing in surroundings familiar to the respondent would not prevent the adverse effects on the respondent's mental condition; or

(b) the respondent has voluntarily expressed a desire to waive the respondent's presence at the hearing.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, the minor's rights may be waived by the mutual consent of the minor's counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and the minor's parents or guardian, the court shall appoint a guardian ad litem for the minor.

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979; amd. Sec. 1915, Ch. 56, L. 2009; amd. Sec. 2, Ch. 308, L. 2013.

53-21-120. Detention to be in least restrictive environment — preference for mental health facility — court relief — prehearing detention of mentally ill person prohibited. (1) A person detained pursuant to this part must be detained in the least restrictive environment required to protect the life and physical safety of the person detained or members of the public; in this respect, prevention of significant injury to property may be considered.

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and the trial cannot be held within 7 days, subject to the provisions in 53-21-193, the individual may be sent to the state hospital or a behavioral health inpatient facility until the time of trial if arrangements can be made to return the person to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

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

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

History: En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(5); amd. Sec. 7, Ch. 547, L. 1979; amd. Sec. 5, Ch. 376, L. 1987; amd. Sec. 1, Ch. 360, L. 1989; amd. Sec. 1, Ch. 636, L. 1991; amd. Sec. 4, Ch. 513, L. 2003.

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

(2) The petition must contain:

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

(b) the name of the respondent and, if known, the address, age, sex, as defined in 1-1-201, marital status, and occupation of the respondent;

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

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

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

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

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

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

(i) the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names of the respondent's counsel, professional person, and friend of respondent must be hand-delivered, mailed, or sent by a facsimile transmission to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent, the director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 376, L. 1987; amd. Sec. 19, Ch. 490, L. 1997; amd. Sec. 8, Ch. 342, L. 2001; amd. Sec. 1, Ch. 165, L. 2003; amd. Sec. 36, Ch. 685, L. 2023.

53-21-122. Petition for commitment — filing of — initial hearing on. (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) (a) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have

private counsel present, the judge may order the office of state public defender, provided for in 2-15-1029, to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as provided in 53-21-199. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in 2-15-1029, to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as provided in 53-21-199. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to 53-21-116 and 53-21-117, and this information must be immediately communicated to the resident judge.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(3); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 7, Ch. 376, L. 1987; amd. Sec. 20, Ch. 490, L. 1997; amd. Sec. 59, Ch. 449, L. 2005; amd. Sec. 2, Ch. 80, L. 2009; amd. Sec. 2, Ch. 481, L. 2009; amd. Sec. 39, Ch. 358, L. 2017; amd. Sec. 4, Ch. 402, L. 2017.

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.

(2) (a) The professional person shall include in the report a recommendation about whether the respondent should be:

(i) diverted from involuntary commitment to short-term inpatient treatment provided for under 53-21-1205 and 53-21-1206; or

(ii) evaluated for eligibility as a resident in a category D assisted living facility as provided in 53-21-199.

(b) 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.

(3) 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 professional person recommends diversion from involuntary commitment to short-term inpatient treatment or an option for living in a category D assisted living facility, the court shall suspend the commitment hearing unless the county attorney or the respondent's attorney objects within 24 hours of receiving notice of the professional person's recommendation.

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

(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.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(4); amd. Sec. 8, Ch. 376, L. 1987; amd. Sec. 21, Ch. 490, L. 1997; amd. Sec. 9, Ch. 342, L. 2001; amd. Sec. 3, Ch. 481, L. 2009; amd. Sec. 5, Ch. 402, L. 2017.

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) 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.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(5); amd. Sec. 2, Ch. 360, L. 1989; amd. Sec. 4, Ch. 312, L. 1991; amd. Sec. 2, Ch. 636, L. 1991; amd. Sec. 10, Ch. 342, L. 2001.

53-21-125. Request for jury trial. At any time prior to the date set for hearing, the respondent, through counsel, may request a jury trial, and upon the request, the time set for hearing must be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury must be selected in the manner provided in 3-15-506 and a date must be set for trial by a jury within 7 days, exclusive of Saturdays, Sundays, and holidays.

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 1916, Ch. 56, L. 2009.

53-21-126. (Temporary) 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 professional person's presence may be accomplished by the use of two-way electronic audio-video communication. 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 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) 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.

53-21-126. (Effective July 1, 2025) 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) (i) 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:

(A) become a danger to self or to others; or

(B) be unable to provide for the respondent's own basic needs of food, clothing, shelter, health, or safety.

(ii) 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 professional person's presence may be accomplished by the use of two-way electronic audio-video communication. 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 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) 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.

(7) An individual with a primary diagnosis of Alzheimer's disease, other forms of dementia, or traumatic brain injury may be committed under this part only if the person meets the criteria outlined in subsection (1)(b), (1)(c), or (1)(d)(i)(A).

History: En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 8, Ch. 547, L. 1979; amd. Sec. 9, Ch. 376, L. 1987; amd. Sec. 22, Ch. 490, L. 1997; amd. Sec. 11, Ch. 342, L. 2001; amd. Sec. 2, Ch. 81, L. 2005; amd. Sec. 1, Ch. 757, L. 2023; amd. Sec. 1, Ch. 777, L. 2023.

53-21-127. (Temporary) 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), 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, which may include a category D assisted living facility, or a community 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) 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) 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) 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) 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, which may include a category D assisted living facility, or a 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) 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;
- (h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:
 - (i) the respondent meets the admission criteria;
 - (ii) there is availability in a category D assisted living facility; and
 - (iii) a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and
- (i) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

53-21-127. (Effective July 1, 2025) Posttrial disposition. (1) A respondent must be discharged and the petition dismissed if, upon trial, it is determined that the respondent:

(a) is not suffering from a mental disorder;

(b) does not require commitment within the meaning of this part; or

(c) is suffering from a mental disorder but the respondent's primary diagnosis is Alzheimer's disease, other forms of dementia, or traumatic brain injury and the respondent meets only the commitment criteria outlined in 53-21-126(1)(a) or (1)(d)(i)(B).

(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), 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, which may include a category D assisted living facility, or a community 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) 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) 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) 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) Except as provided in 53-21-126(7), 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 on the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility, which may include a category D assisted living facility, or a 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) 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;

(h) if the order provides for an evaluation to determine eligibility for entering a category D assisted living facility, a finding that indicates whether:

(i) the respondent meets the admission criteria;

(ii) there is availability in a category D assisted living facility; and

(iii) a category D assisted living facility is the least restrictive environment because the respondent is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

(i) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives.

History: En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 466, L. 1975; amd. Secs. 5, 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979; amd. Sec. 10, Ch. 376, L. 1987; amd. Sec. 2, Ch. 434, L. 1995; amd. Sec. 23, Ch. 490, L. 1997; amd. Sec. 12, Ch. 342, L. 2001; amd. Sec. 1, Ch. 163, L. 2003; amd. Sec. 5, Ch. 513, L. 2003; amd. Sec. 1, Ch. 554, L. 2003; amd. Sec. 6, Ch. 402, L. 2017; amd. Sec. 2, Ch. 777, L. 2023.

53-21-129. Emergency situation — petition — detention. (1) When an emergency situation as defined in 53-21-102 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 or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety 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 and that an emergency situation as defined in 53-21-102 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.

(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 professional person determines that a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

History: En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977; R.C.M. 1947, 38-1307; amd. Sec. 1, Ch. 560, L. 1983; amd. Sec. 25, Ch. 490, L. 1997; amd. Sec. 7, Ch. 513, L. 2003; amd. Sec. 2, Ch. 116, L. 2007; amd. Sec. 3, Ch. 308, L. 2013.

53-21-140. Use of two-way electronic audio-video communication. (1) For purposes of this chapter, a hearing that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard by all present, is considered to be a hearing in open court.

(2) Whenever the law requires that a respondent or patient in any of the hearings provided for in subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the respondent or patient, the respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately, and so that the respondent or patient and counsel are both present during the two-way electronic audio-video communication. A respondent or patient may request that counsel from the board be present, for consulting purposes only, if the respondent or patient is located at the state hospital.

(3) At the discretion of the court, the following hearings may be conducted through two-way electronic audio-video communication:

- (a) the initial hearing provided for in 53-21-122;
- (b) the detention hearing provided for in 53-21-124;
- (c) the trial or hearing on a petition provided for in 53-21-126;
- (d) a hearing on posttrial disposition as provided for in 53-21-127;
- (e) a hearing on the extension of a commitment period as provided for in 53-21-128;
- (f) a hearing on rehospitalization of a person conditionally released from an inpatient treatment facility as provided for in 53-21-197;
- (g) a hearing on an extension of the conditions of release as provided for in 53-21-198.

(4) This section does not abrogate a person's rights under 53-21-115, 53-21-116, or 53-21-117. A respondent or patient, the respondent's or patient's counsel, and a friend of respondent or patient, if any, must be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of respondent or patient, acting together, may waive any of the rights, as provided under 53-21-119.

(5) A two-way electronic audio-video communication may not be used:

(a) in an initial hearing provided for in 53-21-122 if the professional person objects; or
(b) in a hearing referred to in subsections (3)(b) through (3)(g) if a respondent or patient, the respondent's or patient's counsel, or the professional person objects.

History: En. Sec. 1, Ch. 212, L. 2001; amd. Sec. 1, Ch. 42, L. 2009.

53-21-149. Conditions of treatment in community facility, program, or course of treatment.

If the court orders a disposition under 53-21-127(3)(b), the court may order the following conditions for treatment in a community facility or program, or may order a course of treatment, including but not limited to:

(1) following a treatment plan developed pursuant to 53-21-150 that may include case management services, medication, short-term inpatient treatment, chemical dependency treatment, assertive community treatment, or a combination, as set forth by the designated community facility or program or the individual responsible for the management and supervision of the respondent's treatment; or

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

History: En. Sec. 1, Ch. 342, L. 2001.

53-21-150. Treatment plan — provider choice. (1) Stabilizing treatment must be provided during the development of a treatment plan.

(2) If the court orders a treatment plan under this section as a condition of a commitment for treatment in a community facility, program, or course of treatment, the chief medical officer of the facility or program at which the respondent has been ordered to receive outpatient treatment and at which the respondent is treated as an outpatient or the chief medical officer's designee shall submit a treatment plan, including any outpatient treatment recommendations that the respondent is required to follow, to the clerk of district court as soon as practical. However, the plan must be submitted no later than 30 days after the respondent has been ordered to receive treatment as an outpatient.

(3) A treatment plan must be developed with the respondent and the friend of respondent or respondent's family, if family involvement is determined by the court in consultation with the mental health professional to be in the best interests of the respondent.

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

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

History: En. Sec. 2, Ch. 342, L. 2001.

53-21-151. Notification of noncompliance as 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); or

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

History: En. Sec. 3, Ch. 342, L. 2001.

53-21-152. Department funding responsibility. The department shall develop a separate funding category and procedure for payment for services that are court-ordered for a commitment to a community facility or program or course of treatment. However, nothing in this chapter obligates the department to pay for services ordered under 53-21-127 unless the respondent is eligible for mental health services under the public mental health system funded by the department, the service is one that the department has included in its mental health program, and the department determines that the mental health service is medically necessary for the respondent.

History: En. Sec. 4, Ch. 342, L. 2001.

53-21-193. Commitment to behavioral health inpatient facilities — preference — voluntary treatment. (1) If a respondent is committed to the state hospital under 53-21-127 or if a person in an emergency situation requires detention under 53-21-129 and a bed is available at a behavioral health inpatient facility, the professional person shall inform the county attorney who shall inform the person who is responsible for transporting the individual as to the appropriate facility to which the individual is to be transported for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, 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 an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of

commitment in accordance with criteria established by the department by rule pursuant to 53-21-194. A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(4) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

(5) If a bed is available, a behavioral health inpatient facility may admit a person for voluntary treatment.

History: En. Sec. 1, Ch. 513, L. 2003; amd. Sec. 3, Ch. 116, L. 2007.

53-21-194. Department licensure of behavioral health inpatient facilities — rulemaking authority — transfer criteria. (1) The department may license behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title or to persons seeking treatment voluntarily.

(2) The department shall adopt rules:

(a) governing the qualifications for licensure of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection (4) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The rules for licensure must provide standards for the protection of the health and safety of persons committed to or detained in a behavioral health inpatient facility, including:

(a) requirements for medical stability;

(b) maximum length of stay;

(c) staffing levels and qualifications;

(d) building code classifications for occupancy; and

(e) security.

(4) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals or state hospital staff.

(5) The department shall provide notice to the district courts and professional persons of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer.

History: En. Sec. 2, Ch. 513, L. 2003; amd. Sec. 4, Ch. 116, L. 2007.

53-21-199. Option for diversion from involuntary commitment to Montana state hospital.

(1) Subject to subsection (3), a person with a mental disorder who is detained under 53-21-

120(4) may, upon meeting the requirements in 50-5-226(5), request diversion to a category D assisted living facility.

(2) If a court, after obtaining the results of an examination as provided in 53-21-123, finds that a short-term inpatient treatment is inappropriate for a person who otherwise is eligible for involuntary commitment to the Montana state hospital, the court may initiate the process necessary to determine eligibility for residency in a category D assisted living facility.

(3) For a person to be eligible for diversion from the Montana state hospital to a category D assisted living facility, a court determination and an examination under 53-21-123 must indicate that the person:

- (a) is not suffering acute psychosis;
- (b) is experiencing behavioral patterns that may make the person a danger to self or others;
- (c) is dependent on assistance for two or more activities of daily living; and
- (d) is more likely to benefit from being in a category D assisted living facility than in the Montana mental health nursing care center or the Montana state hospital.

History: En. Sec. 1, Ch. 402, L. 2017; Sec. 50-5-224, MCA 2019; redes. 53-21-199 by Code Commissioner, 2019.

53-21-1205. Short-term inpatient treatment — process — placement — length — conditions for proceeding with commitment hearing. (1) When a commitment hearing has been suspended pursuant to 53-21-123(3)(b) so that the respondent may be diverted to short-term inpatient treatment, the professional person who conducted the examination shall, with the concurrence of the county attorney, recommend to the court an appropriate placement in a mental health facility with available short-term treatment beds.

(2) Short-term inpatient treatment may not exceed 14 days, except pending a commitment hearing scheduled pursuant to subsection (5).

(3) Subject to the provisions of this section, a respondent may be released before completing 14 days of treatment if the professional person responsible for the respondent's treatment plan determines that the respondent no longer requires inpatient treatment. However, the county attorney and the respondent's attorney must be notified at least 24 hours before a respondent is released.

(4) When a respondent is released, the professional person shall notify the court and the court shall dismiss the commitment petition.

(5) The court must be notified and shall proceed with a commitment hearing within 5 business days of receiving notice of any of the following circumstances:

- (a) the professional person responsible for the respondent's treatment plan determines that the respondent should not be released after 14 days of treatment because, in the professional person's judgment, an emergency situation would exist if the respondent were released;
- (b) the respondent refuses treatment;

(c) the respondent's attorney requests the respondent's release before the 14-day treatment period is completed; or

(d) the county attorney objects to the respondent's release within 24 hours of being notified of the respondent's pending release as required in subsection (3).

History: En. Sec. 5, Ch. 481, L. 2009.

53-21-1206. Treatment and discharge plan — safety — rights. (1) For each respondent admitted as an inpatient to a mental health facility for short-term inpatient treatment pursuant to 53-21-1205 and this section, the provisions of 53-21-162 and 53-21-180 apply, except as follows:

(a) the comprehensive physical and mental examination and review of behavioral status must be completed within 24 hours of admission;

(b) the individualized treatment plan must be implemented no later than 3 days after the admission; and

(c) a discharge plan must be developed prior to discharge.

(2) Short-term inpatient treatment must be provided in a manner that considers the safety of the respondent, other patients, staff, and the general public.

(3) A respondent in a mental health facility for short-term inpatient treatment is entitled to all of the rights and protections provided in part 1 of this chapter.

History: En. Sec. 6, Ch. 481, L. 2009.