



# Transition Review Committee

68th Montana Legislature

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March 11, 2024

To: Transition Review Committee  
From: Maddie Krezowski, Staff Attorney  
Re: Overview of Statutes Governing Extension and Discharge from Involuntary Civil Commitment

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## I. Introduction

This memo covers the extension, conditional release, and discharge processes from involuntary civil commitment outlined in statute under Title 53, chapter 21, part 1, MCA.

## II. Court Process to Extend Involuntary Commitment Period

### *A. Professional Person Files Petition for Extension*

The professional person in charge of a patient at an inpatient facility may petition the district court for an extension of the commitment period at least two weeks before the current court-

ordered commitment period is set to end. Section 53-21-128(1)(a), MCA. The petition must include a written report and evaluation of the patient and describe tests and evaluations that have been completed, the course of treatment undertaken, and the anticipated future course of treatment. Section 53-21-128(1)(a), MCA.

#### *B. Notice*

The court must provide notice of the petition to the patient; the patient's next of kin, if reasonably available; the court-appointed friend of the respondent, if any; and the patient's counsel. Section 53-21-128(1)(b), MCA.

#### *C. Hearing on the Petition Not Required Unless Requested*

Any of the noticed parties may request a hearing and the court must set a hearing within 10 days of the receipt of the request. Section 53-21-128(1)(b), MCA. If no hearing is requested, the court must extend the order of commitment for a period not to exceed 6 months without a hearing. Section 53-21-128(1)(a), MCA.

If a hearing is requested, it must follow the same procedure as the hearing for the initial commitment. Section 53-21-128(1)(c), MCA. If the court determines after the hearing that the patient is not suffering from a mental disorder and does not require commitment, the patient must be discharged and the petition dismissed. If the court determines after the hearing that the patient is suffering from a mental disorder and does require commitment, the court may order the commitment period to be extended up to 6 months. Section 53-21-128(1)(d), MCA.

If a patient was committed to a community facility or program or course of treatment, the commitment period may be extended if the patient requests the treating provider to petition the district court for an extension, following the same process as for a person committed to inpatient treatment outlined above. Section 53-21-128(2), MCA.

If a commitment period expires without a timely petition for extension under section 53-21-128, MCA, the court's jurisdiction over the involuntary commitment of the patient ends and the patient must be discharged. *See In re S.C.*, 2013 MT 140, ¶¶ 17-18. The State may file a new petition for involuntary commitment under section 53-21-121, MCA, and start the process from the beginning.

#### *D. Second and subsequent extensions*

Further extensions can be ordered following the same process outlined above but may be ordered for up to 1 year, rather than 6 months. Section 53-21-128(3), MCA.

### **III. Statutory Requirements During Commitment Period**

#### *A. Treatment Plan*

Each patient at the Montana State Hospital (MSH) must have an individualized treatment plan. Section 53-21-162(2), MCA. The plan must contain:

- a statement of the nature of the specific problems and specific needs of the patient;
- a statement of the least restrictive treatment conditions necessary to achieve the purposes of hospitalization;
- a description of treatment goals, with a projected timetable for their attainment;
- a statement and rationale for the plan of treatment for achieving these goals;
- a specification of staff responsibility for attaining each treatment goal;
- criteria for release to less restrictive treatment conditions; and
- a notation of any therapeutic tasks and labor to be performed by the patient.

Section 53-21-162(2)(a)-(g), MCA.

MSH must periodically reevaluate the patient and revise the treatment plan based on changes in the patient's condition. Section 53-21-162(4). At a minimum, the plan must be reviewed:

- at the time of any transfer within the facility;
- at the time of discharge;
- upon any major change in the patient's condition;
- at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay; and
- no less than every 90 days.

Section 53-21-162(4)(a)-(e), MCA. The treatment team reviewing the patient and plan must include at least one professional person who is not primarily responsible for the patient's treatment plan. Section 53-21-162(4)(f), MCA.

### *B. Examination Following Commitment*

A patient must have a comprehensive physical and mental examination and review of behavioral status within 48 hours of admission. Section 53-21-162(1), MCA.

The professional person in charge of the facility or the professional person's agent must reexamine the patient within 30 days of commitment to determine whether the patient continues to require commitment to the facility and whether a treatment plan has been implemented. Section 53-21-163, MCA. The patient must be released without further order from the court, if the professional person finds the patient no longer requires commitment, unless the patient agrees to voluntary treatment. Section 53-21-163, MCA.

### *C. Discharge Plan*

Within 10 days of admission, each patient must have an individualized discharge plan. Section 53-21-180, MCA. The discharge plan must contain:

- an anticipated discharge date;
- criteria for discharge;
- identification of the facility staff member responsible for discharge planning;
- identification of the community-based agency or individual who is assisting in arranging postdischarge services;

- referrals for financial assistance needed by the patient upon discharge; and
- other information necessary to ensure an appropriate discharge and adequate postdischarge services.

Section 53-21-180(1)-(6), MCA.

#### **IV. Court-Ordered Release to Alternative Placement or Treatment**

At any time during the period of commitment, the court may order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient therapy, or other appropriate placement or treatment. Section 53-21-182, MCA. The professional person in charge of the patient, the patient, the patient's next of kin, the patient's attorney, a third party responsible for the payment for the care of the patient, or the court-appointed friend may petition the court for such an order. Section 53-21-182, MCA.

#### **V. Conditional Release of Patient During Commitment Period**

The conditional release statutes allow for MSH to release a patient committed to it with conditions the patient must follow for the remainder of the court-order commitment period. If the patient fails to follow those conditions, MSH can petition the court to order the patient to return to the hospital for the remainder of the commitment period.

##### *A. Release Conditioned on Receipt of Outpatient Care*

If the professional person in charge of MSH determines that a patient committed to MSH can be appropriately served by outpatient care prior to the expiration of the commitment period, MSH may release the patient on the condition that the patient receive outpatient care. Section 53-21-183(1), MCA. The facility providing the outpatient care must agree in writing to assume responsibility for the patient. Section 53-21-183(1), MCA.

The professional person in charge of the patient must provide notice to the court and county attorney at least 5 days before releasing the patient to outpatient care. Section 53-21-183(3), MCA. But release cannot be delayed if the professional person fails to provide the notice. Section 53-21-183(3), MCA.

Section 53-21-183(4), MCA, distinguishes "a home visit not exceeding 30 days" from conditional release. The statute clarifies that the provisions governing conditional release "do not apply to a temporary release, certified by a professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days." Section 53-21-183(4), MCA.

##### *B. Rehospitalization of Conditionally Released Patient*

The county attorney, the professional person in charge of the patient's case, or the patient's next of kin may initiate a proceeding for the rehospitalization of a conditionally released patient.

Section 53-21-195(1), MCA. The patient has the same procedural rights during this proceeding as in the initial commitment proceeding. Section 53-21-195(2), MCA.

The petition must provide a statement of facts showing (1) that the patient has violated a condition of release; (2) that the violation have caused a deterioration of the patient's mental disorder; and (3) that as a result of the deterioration, the patient can no longer be appropriately served by outpatient care. Section 53-21-195(3)(d), MCA.

The court must schedule of a hearing on the petition within 5 days. Section 53-21-195(5), MCA. The patient may not be detained pending the hearing unless the county attorney requests detention based on probable cause. Sections 53-21-124(1) and 53-21-196, MCA.

After the hearing, the court may order the patient to be re-hospitalized if it finds by clear and convincing evidence: (1) the patient has been determined by the court to be suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment; (2) the patient has violated a condition of release and that the violation has caused a deterioration of the patient's mental condition, and that as a result of this deterioration, the patient can no longer be appropriately served by outpatient care. Section 53-21-197(1), MCA. The court's findings must be based on the testimony of the professional person responsible for the patient's care. Section 53-21-197(2), MCA.

### *C. Extension of Conditions of Release*

Not less than 2 calendar weeks before the end of the commitment period, the professional person responsible for the patient's case may petition the court for an extension of the conditions of release. Section 53-21-198(2), MCA. The petition must include a written report and evaluation of the patient's mental and physical condition.

The court must provide notice of the petition to the patient; the patient's next of kin, if reasonably available; the court-appointed friend, if any; and the patient's counsel. Section 53-21-198(3), MCA. Any of the persons notified may request a hearing on the petition. Section 53-21-198(3), MCA.

If hearing is not requested, the court must enter an order extending the conditions of release for up to 6 months. Section 52-21-198(3), MCA. If a hearing is requested, the court must schedule a hearing to be held within 10 days of the receipt of the request for a hearing. Section 53-21-198(3), MCA. The procedure for the hearing is the same as for a hearing on a rehospitalization petition. Section 52-21-198(4), MCA. If a hearing is requested, the court may extend the conditions of release beyond the expiration date of the original commitment period upon a showing of clear and convincing evidence that (1) the continuation of the conditions of release is necessary to prevent the deterioration of the patient's mental disorder; and (2) the deterioration will predictably result in the necessity of further inpatient care for the patient. Section 53-21-198(1), (5), MCA.

Further extensions can be obtained under the same procedure. Section 53-21-198(6), MCA. But any individual extension of the conditions of release may not exceed 1 year, and the total extensions may not exceed 2 years total. Section 53-21-198(1)(a), (6), MCA.

## **VI. Discharge During or at End of Initial Commitment Period**

MSH must discharge the patient without further order of the court at the end of the court-ordered commitment period unless the commitment period is extended by court order as explained above. Section 53-21-181(1)(b), MCA. The professional person in charge of a patient committed to MSH may also discharge the patient at any time during the period of commitment without further order from the court. Section 53-21-181(1)(a), MCA.

In either case, MSH must provide notice of the discharge to the court and the county attorney at least 5 days before discharge but may not delay discharge of the patient if it fails to provide the notice. Section 53-21-181(2), MCA.

Upon being discharged a patient has a right to be referred to other providers of mental health services. Section 53-21-181(3), MCA. Prescriptions from MSH are limited to 30 days. Section 53-21-145, MCA.