

## 1 HOUSE BILL NO. 41

2 INTRODUCED BY L. SMITH

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING A DETERMINATION OF INCAPACITY IN AN  
6 INVOLUNTARY COMMITMENT PROCEEDING; REQUIRING THE APPOINTMENT OF A TREATMENT  
7 GUARDIAN; ENUMERATING THE POWERS AND DUTIES OF A TREATMENT GUARDIAN; AMENDING  
8 SECTIONS 41-5-523, 53-21-102, 53-21-106, 53-21-120, 53-21-121, 53-21-123, 53-21-126, 53-21-127,  
9 AND 53-21-128, MCA; AND PROVIDING EFFECTIVE DATES."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
12

13 **Section 1.** Section 53-21-102, MCA, is amended to read:

14 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

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

18 (3) "Department" means the department of corrections and human services provided for in Title  
19 2, chapter 15, part 23.

20 (4) "Emergency situation" means a situation in which ~~any~~ a person is in imminent danger of death  
21 or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

22 (5) "Friend of respondent" means ~~any~~ a person willing and able to assist a mentally ill person, a  
23 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally  
24 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of  
25 respondent may be the next of kin<sub>71</sub>; the person's conservator or legal guardian, if any<sub>71</sub>; a representative  
26 of a charitable or religious organization<sub>71</sub>; or any other person appointed by the court to perform the  
27 functions of a friend of respondent set out in this part. Only one person may at any one time be the friend  
28 of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider  
29 the preference of the respondent. The court may at any time, for good cause shown, change its  
30 designation of the friend of respondent.

1 (6) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
2 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

3 (a) addiction to drugs or alcohol; or

4 (b) drug or alcohol intoxication.

5 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~  
6 that is equipped and staffed to provide treatment for persons with mental disorders or a community mental  
7 health center or ~~any a~~ mental health clinic or treatment center approved by the department. A correctional  
8 institution or facility or jail is not a mental health facility within the meaning of this part.

9 (8) "Mentally ill" means suffering from a mental disorder ~~which~~ that has not resulted in self-inflicted  
10 injury or injury to others or the imminent threat of injury but ~~which~~ that:

11 (a) has resulted in behavior that creates serious difficulty in protecting the person's life or health  
12 even with the available assistance of family, friends, or others;

13 (b) is treatable, with a reasonable prospect of success and consistent with the least restrictive  
14 course of treatment as provided in 53-21-127(3), at or through the facility to which the person is to be  
15 committed;

16 (c) has deprived the person of the capacity to make an informed decision concerning treatment;

17 (d) has resulted in the person's refusing or being unable to consent to voluntary admission for  
18 treatment; and

19 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,  
20 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
21 be established by the patient's medical history.

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

24 (10) "Patient" means a person committed by the court for treatment for any period of time or who  
25 is voluntarily admitted for treatment for any period of time.

26 (11) "Peace officer" means ~~any a~~ sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or other  
27 peace officer.

28 (12) "Professional person" means:

29 (a) a medical doctor; or

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

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

3 (14) "Respondent" means a person alleged in a petition filed pursuant to this part to be mentally  
4 ill or seriously mentally ill.

5 (15) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in  
6 self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person  
7 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.  
8 A person may not be involuntarily committed to a mental health facility or detained for evaluation and  
9 treatment because the person is an epileptic, ~~or is~~ mentally deficient, mentally retarded, senile, or suffering  
10 from a mental disorder unless the condition causes the person to be seriously mentally ill within the  
11 meaning of this part.

12 (16) "State hospital" means the Montana state hospital.

13 (17) "Treatment guardian" means a competent person; a suitable institution, association, or  
14 nonprofit corporation; or a member of a suitable institution, association, or nonprofit corporation who makes  
15 decisions on behalf of an incapacitated person as to medical and psychiatric treatment. (Terminates July  
16 1, 1997--sec. 1, Ch. 541, L. 1989.)

17 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
18 apply:

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

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

22 (3) "Department" means the department of corrections and human services provided for in Title  
23 2, chapter 15, part 23.

24 (4) "Emergency situation" means a situation in which ~~any~~ a person is in imminent danger of death  
25 or serious bodily harm from the activity of a person who appears to be seriously mentally ill.

26 (5) "Friend of respondent" means ~~any~~ a person willing and able to assist a seriously mentally ill  
27 person or person alleged to be seriously mentally ill in dealing with legal proceedings, including consultation  
28 with legal counsel and others. The friend of respondent may be the next of kin<sub>72</sub>; the person's conservator  
29 or legal guardian, if any<sub>72</sub>; representatives of a charitable or religious organization<sub>72</sub>; or any other person  
30 appointed by the court to perform the functions of a friend of respondent set out in this part. Only one

1 person may at any one time be the friend of respondent within the meaning of this part. In appointing a  
 2 friend of respondent, the court shall consider the preference of the respondent. The court may at any time,  
 3 for good cause shown, change its designation of the friend of respondent.

4 (6) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
 5 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

6 (a) addiction to drugs or alcohol; or

7 (b) drug or alcohol intoxication.

8 (7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital ~~which~~  
 9 that is equipped and staffed to provide treatment for persons with mental disorders or a community mental  
 10 health center or ~~any~~ a mental health clinic or treatment center approved by the department. A correctional  
 11 institution or facility or jail is not a mental health facility within the meaning of this part.

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

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

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

18 (11) "Professional person" means:

19 (a) a medical doctor; or

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

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

23 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously  
 24 mentally ill.

25 (14) "Seriously mentally ill" means suffering from a mental disorder ~~which~~ that has resulted in  
 26 self-inflicted injury or injury to others or the imminent threat of injury or ~~which~~ that has deprived the person  
 27 afflicted of the ability to protect the person's life or health. For this purpose, injury means physical injury.  
 28 A person may not be involuntarily committed to a mental health facility or detained for evaluation and  
 29 treatment because the person is an epileptic, mentally deficient, mentally retarded, senile, or suffering from  
 30 a mental disorder unless the condition causes the person to be seriously mentally ill within the meaning of

1 this part.

2 (15) "State hospital" means the Montana state hospital.

3 (16) "Treatment guardian" means a competent person; a suitable institution, association, or  
4 nonprofit corporation; or a member of a suitable institution, association, or nonprofit corporation who makes  
5 decisions on behalf of an incapacitated person as to medical and psychiatric treatment."

6

7 **Section 2.** Section 53-21-106, MCA, is amended to read:

8 **"53-21-106. (Temporary) Certification of professional persons.** (1) The department shall certify  
9 professional persons, as defined in 53-21-102, for the purpose of this part.

10 (2) The department, with reference to recognized national standards in the field of mental health,  
11 shall adopt standards and rules governing the certification of professional persons.

12 (3) The rules for certification must address but are not limited to:

13 (a) the type of education that an individual has received, including degrees;

14 (b) the type of experience of or training received by the individual;

15 (c) continuing education, training, instruction, and work experience necessary to maintain  
16 certification;

17 (d) an examination instrument to be used to determine an individual's proficiency and  
18 understanding of mental health laws, diagnosis, and treatment procedures;

19 (e) the procedure for categorical certification qualifying the level of professional authority and  
20 responsibility of an individual; and

21 (f) specific procedures for certification, recertification, and revocation of certification. (Terminates  
22 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

23 **53-21-106. (Effective July 1, 1997) Certification of professional persons.** (1) The department shall  
24 certify professional persons ~~as defined in 53-21-102(10)(b)~~ for the purpose of this part.

25 (2) The department, with reference to recognized national standards in the field of mental health,  
26 shall adopt standards and rules governing the certification of professional persons as defined in 53-21-102.

27 (3) The rules for certification must address but are not limited to:

28 (a) the type of education that an individual has received, including degrees;

29 (b) the type of experience of or training received by the individual;

30 (c) continuing education, training, instruction, and work experience necessary to maintain

1 certification;

2 (d) an examination instrument to be used to determine an individual's proficiency and  
3 understanding of mental health laws, diagnosis, and treatment procedures;

4 (e) the procedure for categorical certification qualifying the level of professional authority and  
5 responsibility of an individual; and

6 (f) specific procedures for certification, recertification, and revocation of certification."  
7

8 **Section 3.** Section 53-21-120, MCA, is amended to read:

9 **"53-21-120. (Temporary) Detention to be in least restrictive environment -- preference for mental**  
10 **health facility -- court relief -- prehearing detention of mentally ill person prohibited.** (1) A person detained  
11 pursuant to this part must be detained in the least restrictive environment required to protect the life and  
12 physical safety of the person detained or members of the public; ~~in this respect.~~ With regard to this  
13 detention, prevention of significant injury to property may be considered.

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

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

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

25 (5) Detention may not be ordered under this part for a person concerning whom a petition has been  
26 filed under 53-21-121(1)~~(b)~~(a)(ii).

27 (6) A person may not be involuntarily committed to a mental health facility or detained for  
28 evaluation and treatment because ~~he~~ the person is an epileptic, ~~or is~~ mentally deficient, mentally retarded,  
29 senile, or suffering from a mental disorder unless the condition causes ~~him~~ the person to be seriously  
30 mentally ill within the meaning of this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

1           **53-21-120. (Effective July 1, 1997) Detention to be in least restrictive environment -- preference**  
 2 **for mental health facility -- court relief -- prehearing detention of mentally ill person prohibited.** (1) A  
 3 person detained pursuant to this part must be detained in the least restrictive environment required to  
 4 protect the life and physical safety of the person detained or members of the public; ~~in this respect.~~ With  
 5 regard to this detention, prevention of significant injury to property may be considered.

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

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

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

17  
 18           **Section 4.** Section 53-21-121, MCA, is amended to read:

19           **"53-21-121. (Temporary) Petition for commitment -- contents of -- notice of.** (1) The county  
 20 attorney, upon the written request of any person having direct knowledge of the facts, may file a petition  
 21 with the court:

22           (a) alleging that there is a person within the county;

23           (i) who is seriously mentally ill and requesting that the person be committed to a mental health  
 24 facility for a period of no more than 3 months; or

25           ~~(b)(ii) alleging that there is a person within the county~~ who is mentally ill and requesting that the  
 26 person be committed to a mental health facility for a period of no more than 30 days; and

27           (b) alleging that the person is an incapacitated person as defined in 72-5-101.

28           (2) The petition ~~shall~~ must contain:

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

1 (b) the name of the respondent and, if known, the address, age, sex, marital status, and  
2 occupation of the respondent;

3 (c) the purported facts supporting the allegation of mental illness and incapacity;

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

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

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

10 (g) the name and address of a potential treatment guardian;

11 (h) the name, address, and telephone number of the attorney, if any, who has most recently  
12 represented the ~~person for whom evaluation is sought~~; if respondent. If there is no attorney, there ~~shall~~  
13 must be a statement as to whether to the best knowledge of the person requesting the petition the ~~person~~  
14 ~~for whom evaluation is sought~~ respondent is indigent and therefore unable to afford the services of an  
15 attorney; ~~and~~.

16 (h)(i) a statement of the rights of the respondent ~~which shall~~ that must be in conspicuous print and  
17 identified by a suitable heading.

18 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the  
19 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of  
20 the peace. Notice of the petition and the order setting the date and time of the hearing and the names of  
21 the respondent's counsel, professional person, ~~and~~ friend of respondent ~~shall~~, and proposed treatment  
22 guardian must be hand-delivered or mailed to the person or persons who are legally responsible for care,  
23 support, and maintenance of the respondent, the next of kin identified in the petition, and any other person  
24 identified by the county attorney as a possible friend of respondent other than the one named as the friend  
25 of respondent. The notice may provide, other than as to the respondent and ~~his~~ the respondent's counsel,  
26 that no further notice will be given unless a written request is filed with the clerk of court. (Terminates July  
27 1, 1997--sec. 1, Ch. 541, L. 1989.)

28 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The  
29 county attorney, upon the written request of any person, may file a petition with the court;

30 (a) alleging that there is a person within the county who is seriously mentally ill and requesting that



1 the person be committed to a mental health facility for a period of no more than 3 months; and

2 (b) alleging that the person is an incapacitated person as defined in 72-5-101.

3 (2) The petition ~~shall~~ must contain:

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

6 (b) the name of the respondent and, if known, the address, age, sex, marital status, and  
7 occupation of the respondent;

8 (c) the purported facts supporting the allegation of mental illness and incapacity;

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

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

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

15 (g) the name and address of a potential treatment guardian;

16 (h) the name, address, and telephone number of the attorney, if any, who has most recently  
17 represented the ~~person for whom evaluation is sought~~; if respondent. If there is no attorney, there ~~shall~~  
18 must be a statement as to whether to the best knowledge of the person requesting the petition the ~~person~~  
19 ~~for whom evaluation is sought~~ respondent is indigent and therefore unable to afford the services of an  
20 attorney; ~~and~~.

21 ~~(h)(i)~~ (i) a statement of the rights of the respondent ~~which shall~~ that must be in conspicuous print and  
22 identified by a suitable heading.

23 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the  
24 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of  
25 the peace. Notice of the petition and the order setting the date and time of the hearing and the names of  
26 the respondent's counsel, professional person, ~~and~~ friend of respondent ~~shall~~, and proposed treatment  
27 guardian must be hand-delivered or mailed to the person or persons who are legally responsible for care,  
28 support, and maintenance of the respondent, the next of kin identified in the petition, and any other person  
29 identified by the county attorney as a possible friend of respondent other than the one named as the friend  
30 of respondent. The notice may provide, other than as to the respondent and ~~his~~ the respondent's counsel,

1 that no further notice will be given unless a written request is filed with the clerk of court."

2

3 **Section 5.** Section 53-21-123, MCA, is amended to read:

4 **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**

5 **of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace,

6 the respondent ~~shall~~ must be examined by ~~the~~ a professional person without unreasonable delay. In the

7 case of a petition alleging incapacity, the professional person must be a physician or psychologist. The

8 examination may not exceed a period of 4 hours. The professional person shall immediately notify the

9 county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the

10 examination to the court, ~~with~~ and send copies to the respondent's attorney and the county attorney.

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

12 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally

13 notify counsel and the respondent, if ~~he has been~~ detained, ~~shall~~ must be released and the petition

14 dismissed. However, the county attorney may, upon good cause shown, request the court to order ~~an~~ no

15 more than one additional, ~~but no more than one,~~ examination by a different professional person for a period

16 of no more than 4 hours.

17 (b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing

18 ~~shall~~ must be held as scheduled.

19 (3) The court may not order further evaluation pending the hearing unless sound medical reasons

20 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,

21 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

22 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**

23 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice

24 of the peace, the respondent ~~shall~~ must be examined by ~~the~~ a professional person without unreasonable

25 delay. In the case of a petition alleging incapacity, the professional person must be a physician or

26 psychologist. The examination may not exceed a period of 4 hours. The professional person shall

27 immediately notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written

28 report of ~~his~~ the examination to the court, ~~with~~ and send copies to the respondent's attorney and the

29 county attorney.

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

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

6 (b) If ~~he~~ the professional person finds that commitment proceedings should continue, the hearing  
 7 ~~shall~~ must be held as scheduled.

8 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
 9 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
 10 along with the amount of additional time needed."  
 11

12 **Section 6.** Section 53-21-126, MCA, is amended to read:

13 "**53-21-126. (Temporary) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be present  
 14 unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ ~~shall~~ the  
 15 respondent must be represented by counsel at all stages of the trial. The trial ~~shall be~~ is limited to the  
 16 determination of whether or not the respondent is mentally ill or seriously mentally ill or is an incapacitated  
 17 person within the meaning set forth in this part.

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

23 (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject  
 24 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure except that,  
 25 if tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that the respondent is  
 26 seriously mentally ill. The written report of the professional person that indicates the professional person's  
 27 diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter,  
 28 is not admissible merely because it is contained in the report. The court may order the trial closed to the  
 29 public for the protection of the respondent.

30 (4) The professional person may testify as to the ultimate issue of whether the respondent is

1 mentally ill or seriously mentally ill and whether the respondent is an incapacitated person. Testimony from  
 2 a professional person or others must be received on each element of the definition of mentally ill or  
 3 seriously mentally ill as those terms are defined in 53-21-102 and the definition of incapacitated person as  
 4 that term is defined in 72-5-101.

5 (5) The court, upon the showing of good cause and when it is in the best interests of the  
 6 respondent, may order a change of venue. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

7 **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must  
 8 be present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he shall~~  
 9 the respondent must be represented by counsel at all stages of the trial. The trial ~~shall be~~ is limited to the  
 10 determination of whether or not the respondent is seriously mentally ill or is an incapacitated person within  
 11 the meaning set forth in this part.

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

17 (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject  
 18 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure except that,  
 19 if tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding that the respondent is  
 20 seriously mentally ill. The written report of the professional person that indicates the professional person's  
 21 diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter,  
 22 is not admissible merely because it is contained in the report. The court may order the trial closed to the  
 23 public for the protection of the respondent.

24 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
 25 seriously mentally ill. This testimony is insufficient unless accompanied by evidence from the professional  
 26 person or others that:

27 (a) the respondent is suffering from a mental disorder; and

28 (b) the mental disorder has resulted in self-inflicted injury or injury to others or the imminent threat  
 29 ~~thereof~~ of injury or has deprived the person afflicted of the ability to protect ~~his~~ the person's life or health.

30 (5) The professional person may testify as to the ultimate issue of whether the respondent is an

1 incapacitated person. This testimony is insufficient unless accompanied by evidence from the professional  
 2 person or others that the respondent lacks sufficient understanding or capacity to make or communicate  
 3 responsible decisions or that the mental disorder has impaired the respondent's judgment to the extent that  
 4 the respondent is incapable of realizing and making a rational decision with respect to the respondent's  
 5 need for treatment.

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

8

9 **Section 7.** Section 53-21-127, MCA, is amended to read:

10 **"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the  
 11 respondent is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the  
 12 respondent must be discharged and the petition dismissed.

13 (2) (a) If it is determined in a proceeding on a petition under 53-21-121(1)(a)(i) that the respondent  
 14 is seriously mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing.  
 15 The disposition hearing ~~shall~~ must be held within 5 days (including Saturdays, Sundays, and holidays unless  
 16 the fifth day falls on a Saturday, Sunday, or holiday), during which time the court may order further  
 17 evaluation and treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

18 (i) commit the respondent to a facility for a period of not more than 3 months;

19 (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some  
 20 other appropriate place other than an institution;

21 (iii) order outpatient therapy; or

22 (iv) make some other appropriate order for treatment.

23 (b) ~~No-treatment~~ Treatment ordered pursuant to ~~this~~ subsection (2)(a) may ~~affect~~ not effect the  
 24 respondent's custody for a period of more than 3 months.

25 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
 26 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
 27 effective treatment. The court shall consider and shall describe in its order ~~what~~ the alternatives for  
 28 treatment of the respondent that are available, ~~what~~ the alternatives that were investigated, and why the  
 29 investigated alternatives were not ~~deemed~~ considered suitable. The court shall enter into the record a  
 30 detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

1 (3) If it is determined in a proceeding on a petition under 53-21-121~~(4)(b)~~(1)(a)(ii) that the  
 2 respondent is mentally ill within the meaning of this part, the court shall order that ~~he~~ the respondent  
 3 receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course  
 4 of treatment reasonably available to the respondent. The court ~~must~~ shall make a separate finding, setting  
 5 forth the reason ~~therefor~~ for the finding if the order includes a requirement of inpatient treatment or  
 6 involuntary medication. The court may not order inpatient treatment in the ~~Montana~~ state hospital ~~at Warm~~  
 7 ~~Spring~~ under this subsection ~~(3)~~. The respondent may not be required to pay for court-ordered treatment  
 8 unless ~~he is~~ financially able to do so.

9 (4) Before ordering any treatment under subsection (3) for a respondent found to be mentally ill  
 10 ~~under subsection (3)~~, the court shall make findings of fact that treatment appropriate to the needs of the  
 11 respondent is available. The court shall also indicate on the order the name of the facility that is to be  
 12 responsible for the management and supervision of the respondent's treatment. ~~No~~ A person may not use  
 13 physical force to administer medication. A court may use any legal means to enforce an order to take  
 14 medication, including immediate detention not to exceed 72 hours, until the mentally ill person can be  
 15 returned to the court.

16 (5) If it is determined in a proceeding on a petition under 53-21-121 that the respondent is an  
 17 incapacitated person, the court shall appoint a treatment guardian for the duration of the period of  
 18 commitment. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

19 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
 20 the respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must  
 21 be discharged and the petition dismissed.

22 (2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part,  
 23 the court shall hold a posttrial disposition hearing. The disposition hearing ~~shall~~ must be held within 5 days  
 24 (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday),  
 25 during which time the court may order further evaluation and treatment of the respondent. At the  
 26 conclusion of the disposition hearing, the court shall:

- 27 (i) commit the respondent to a facility for a period of not more than 3 months;  
 28 (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some  
 29 other appropriate place other than an institution;  
 30 (iii) order outpatient therapy; or

1 (iv) make some other appropriate order for treatment.

2 (b) ~~No treatment~~ Treatment ordered pursuant to ~~this~~ subsection (2)(a) may ~~affect~~ not effect the  
3 respondent's custody for a period of more than 3 months.

4 (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
5 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
6 effective treatment. The court shall consider and shall describe in its order ~~what~~ the alternatives for  
7 treatment of the respondent that are available, ~~what~~ the alternatives that were investigated, and why the  
8 investigated alternatives were not ~~deemed~~ considered suitable. The court shall enter into the record a  
9 detailed statement of the facts upon which it found the respondent to be seriously mentally ill.

10 (d) If it is determined in a proceeding under 53-21-121 that the respondent is an incapacitated  
11 person, the court shall appoint a treatment guardian for the duration of the commitment."

12  
13 **Section 8.** Section 53-21-128, MCA, is amended to read:

14 **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month  
15 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be  
16 followed:

17 (a) Not less than 2 calendar weeks prior to the end of the 3-month period, the professional person  
18 in charge of the patient at the place of detention may petition the district court in the county where the  
19 patient is detained for extension of the detention period unless otherwise ordered by the original committing  
20 court. The petition ~~shall~~ must be accompanied by a written report and evaluation of the patient's mental  
21 and physical condition. The report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have  
22 been employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the  
23 patient, and the future course of treatment anticipated by the professional person.

24 (b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to  
25 the patient; ~~his~~ the patient's next of kin, if reasonably available; ~~the~~ friend of respondent appointed by  
26 the court, if any; and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the  
27 termination of the previous detention ~~authority~~ period, the court shall immediately set a time and place for  
28 a hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
29 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
30 enter an order of commitment for a period not to exceed 6 months.

1           (c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~  
 2 must be the same in all respects as the procedure on the petition for the original 3-month commitment,  
 3 except that the patient is not entitled to a trial by jury. The hearing ~~shall~~ must be held in the district court  
 4 having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court.  
 5 Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial  
 6 commitment proceedings.

7           (d) If upon ~~the~~ hearing the court finds that the patient is not seriously mentally ill within the  
 8 meaning of this part, ~~he shall~~ the patient must be discharged and the petition dismissed. If the court finds  
 9 that the patient continues to suffer from serious mental illness, the court shall order commitment, custody  
 10 ~~in~~ by relatives, outpatient therapy, or ~~either~~ another order for treatment as set forth in 53-21-127(2), except  
 11 that ~~no~~ an order may ~~affect his~~ not effect the patient's custody for more than 6 months. In its order, the  
 12 court shall describe ~~what~~ the alternatives for treatment of the patient that are available, ~~what~~ the  
 13 alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered  
 14 suitable. The court ~~shall~~ may not order continuation of an alternative ~~which~~ that does not include a  
 15 comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an  
 16 alternative ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment  
 17 exists.

18           (2) To extend the period of treatment provided for in 53-21-127(3), the procedure set forth in this  
 19 subsection (2) must be followed:

20           (a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under  
 21 53-21-127(3), the professional person in charge of the respondent's care may petition the court for  
 22 extension of the treatment period. The petition must be accompanied by a written report and evaluation  
 23 of the respondent's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation  
 24 devices ~~which~~ that have been employed in evaluating the respondent, the course of treatment ~~which~~ that  
 25 has been undertaken for the respondent, and the future course of treatment anticipated by the professional  
 26 person.

27           (b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to  
 28 the respondent; ~~his~~ the respondent's next of kin, if reasonably available; ~~the~~ the friend of respondent  
 29 appointed by the court, if any; ~~and~~ and the respondent's counsel. If any person ~~so~~ notified requests a hearing  
 30 prior to the termination of the previous detention ~~authority~~ period, the court shall immediately set a time



1 and place for a hearing on a date not more than 5 days from the receipt of the request and notify the same  
 2 people, including the professional person in charge of the respondent. If a hearing is not requested, the  
 3 court shall enter an order of treatment for a period not to exceed 30 days.

4 (c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~  
 5 must be the same in all respects as the procedure on the petition under 53-21-121~~(1)(b)~~ for the original  
 6 treatment, except that the respondent is not entitled to a trial by jury. The hearing ~~shall~~ must be held in  
 7 the district court for the county in which the treatment is being supervised unless otherwise ordered by the  
 8 court. Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in  
 9 the initial proceedings.

10 (d) If upon ~~the~~ hearing the court finds that the respondent is not mentally ill within the meaning  
 11 of this part, the petition ~~shall~~ must be dismissed. If the court finds that the respondent continues to be  
 12 mentally ill, the court shall order treatment for the respondent for a period not to exceed 30 days. In its  
 13 order, the court shall describe ~~what~~ the alternatives for treatment of the respondent that are available, ~~what~~  
 14 the alternatives that were investigated, and why the investigated alternatives were not considered suitable.  
 15 The court may not order continuation of an alternative ~~which~~ that does not include a comprehensive,  
 16 individualized plan of treatment for the respondent. A court order for the continuation of an alternative ~~shall~~  
 17 must include a specific finding that a comprehensive, individualized plan of treatment exists.

18 (3) Further extensions of the period of detention provided for in 53-21-127(2) may be obtained  
 19 under the same procedure described in subsection (1) of this section, except that the patient's custody may  
 20 not be ~~affected~~ effected for more than 1 year without a renewal of the commitment under the procedures  
 21 set forth in subsection (1), including a statement of the findings required by subsection (1).

22 (4) The period of treatment provided for in 53-21-127(3) may be extended only once under this  
 23 section. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

24 **53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less  
 25 than 2 calendar weeks prior to the end of the 3-month period of detention provided for in 53-21-127(2),  
 26 the professional person in charge of the patient at the place of detention may petition the district court in  
 27 the county where the patient is detained for extension of the detention period unless otherwise ordered by  
 28 the original committing court. The petition ~~shall~~ must be accompanied by a written report and evaluation  
 29 of the patient's mental and physical condition. The report ~~shall~~ must describe any tests and evaluation  
 30 devices ~~which~~ that have been employed in evaluating the patient, the course of treatment ~~which~~ that has

1 been undertaken for the patient, and the future course of treatment anticipated by the professional person.

2 (b) Upon ~~the~~ filing of the petition, the court shall give written notice of the filing of the petition to  
 3 the patient;~~his~~ the patient's next of kin, if reasonably available;~~;~~ the friend of respondent appointed by  
 4 the court, if any; and the patient's counsel. If ~~any~~ a person ~~so~~ notified requests a hearing prior to the  
 5 termination of the previous detention authority, the court shall immediately set a time and place for a  
 6 hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
 7 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
 8 enter an order of commitment for a period not to exceed 6 months.

9 (c) ~~Procedure~~ The procedure on the petition for extension when a hearing has been requested ~~shall~~  
 10 must be the same in all respects as the procedure on the petition for the original 3-month commitment,  
 11 except that the patient is not entitled to a trial by jury. The hearing ~~shall~~ must be held in the district court  
 12 having jurisdiction over the facility in which the patient is detained unless otherwise ordered by the court.  
 13 Court costs and witness fees, if any, ~~shall~~ must be paid by the county that paid the same costs in the initial  
 14 commitment proceedings.

15 (d) If upon ~~the~~ hearing the court finds that the patient is not seriously mentally ill within the  
 16 meaning of this part, ~~he shall~~ the patient must be discharged and the petition dismissed. If the court finds  
 17 that the patient continues to suffer from serious mental illness, the court shall order commitment, custody  
 18 in by relatives, outpatient therapy, or ~~either~~ another order for treatment as set forth in 53-21-127(2),  
 19 that ~~no~~ an order may ~~affect his~~ not effect the patient's custody for more than 6 months. In its order, the  
 20 court shall describe ~~what~~ the alternatives for treatment of the patient that are available, ~~what~~ the  
 21 alternatives that were investigated, and why the investigated alternatives were not ~~deemed~~ considered  
 22 suitable. The court ~~shall~~ may not order continuation of an alternative ~~which~~ that does not include a  
 23 comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an  
 24 alternative ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment  
 25 exists.

26 (2) Further extensions may be obtained under the same procedure described in subsection (1),  
 27 except that the patient's custody may not be ~~affected~~ effected for more than 1 year without a renewal of  
 28 the commitment under the procedures set forth in subsection (1), including a statement of the findings  
 29 required by subsection (1)."  
 30

1           **NEW SECTION. Section 9. Powers and duties of treatment guardian.** (1) The powers and duties  
2 of a treatment guardian are those specified in the order appointing the treatment guardian unless the  
3 treatment guardian has also been appointed a guardian under Title 72, chapter 5. The treatment guardian  
4 is required to report the condition of the incapacitated person as required by the court.

5           (2) The treatment guardian shall make a decision on behalf of the incapacitated person as to  
6 whether to accept treatment, depending on whether the treatment appears to be in the person's best  
7 interest and is the least drastic means for accomplishing the treatment objective. In making a decision, the  
8 treatment guardian shall consult with the person and consider the person's expressed opinions, if any, even  
9 if those opinions do not constitute valid consent or rejection of treatment. The treatment guardian shall  
10 give consideration to any previous decisions made by the person in similar circumstances when the person  
11 was able to make treatment decisions. The treatment guardian shall consult with the physician or other  
12 professional who is proposing treatment, the person's attorney, and interested friends or relatives of the  
13 person as the treatment guardian considers appropriate in making the decision.

14  
15           **Section 10.** Section 41-5-523, MCA, is amended to read:

16           **"41-5-523. Disposition -- commitment to department -- placement and evaluation of youth --**  
17 **restrictions.** (1) If a youth is found to be a delinquent youth or a youth in need of supervision, the youth  
18 court may enter its judgment making any of the following dispositions:

19           (a) place the youth on probation;

20           (b) commit the youth to the department if the court determines that the youth is in need of  
21 placement in other than the youth's own home, provided that:

22           (i) the court shall determine whether continuation in the home would be contrary to the welfare  
23 of the youth and whether reasonable efforts have been made to prevent or eliminate the need for removal  
24 of the youth from the youth's home. The court shall include a determination in the order committing the  
25 youth to the department.

26           (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
27 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
28 finds that the placement is necessary for the protection of the public. The court may order the department  
29 to notify the court within 5 working days before the proposed release of a youth from a state youth  
30 correctional facility. Once a youth is committed to the department for placement in a state youth

1 correctional facility, the department is responsible for determining an appropriate date of release into an  
2 appropriate placement.

3 (c) order restitution by the youth or the youth's parents;

4 (d) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
5 if committed by an adult;

6 (e) require the performance of community service;

7 (f) require the youth, the youth's parents or guardians, or the persons having legal custody of the  
8 youth to receive counseling services;

9 (g) require the medical and psychological evaluation of the youth, the youth's parents or guardians,  
10 or the persons having legal custody of the youth;

11 (h) require the parents, guardians, or other persons having legal custody of the youth to furnish  
12 services that the court may designate;

13 (i) order further care, treatment, evaluation, or relief that the court considers beneficial to the youth  
14 and the community and that does not obligate funding from the department without the department's  
15 approval, except that a youth may not be placed by a youth court in a residential treatment facility as  
16 defined in 50-5-101. Only the department may, pursuant to subsection (1)(b), place a youth in a residential  
17 treatment facility.

18 (j) commit the youth to a mental health facility if, based upon the testimony of a professional  
19 person as defined in 53-21-102, the court finds that the youth is seriously mentally ill as defined in  
20 53-21-102. The youth is entitled to all rights provided by 53-21-114 through 53-21-119. A youth  
21 adjudicated ~~mentally ill or~~ seriously mentally ill as defined in 53-21-102 may not be committed to a state  
22 youth correctional facility. A youth adjudicated to be ~~mentally ill or~~ seriously mentally ill after placement  
23 by the department in a state youth correctional facility must be moved to a more appropriate placement in  
24 response to the youth's mental health needs and consistent with the disposition alternatives available in  
25 53-21-127.

26 (k) place the youth under home arrest as provided in Title 46, chapter 18, part 10.

27 (2) When a youth is committed to the department, the department shall determine the appropriate  
28 placement and rehabilitation program for the youth after considering the recommendations made under  
29 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

30 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would

1 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

2 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
3 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
4 offenses that brought the youth under the jurisdiction of the youth court. Nothing in this section limits the  
5 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

6 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
7 execution of ~~sentences~~ sentences of adults convicted of crimes.

8 (3) A youth placed by the department in a state youth correctional facility or other facility or  
9 program operated by the department or who signs an aftercare agreement under 52-5-126 must be  
10 supervised by the department. A youth who is placed in any other placement by the department, the youth  
11 court, or the youth court's juvenile probation officer must be supervised by the probation officer of the  
12 youth court having jurisdiction over the youth under 41-5-205 whether or not the youth is committed to  
13 the department. Supervision by the youth probation officer includes but is not limited to:

14 (a) submitting information and documentation necessary for the person, committee, or team that  
15 is making the placement recommendation to determine an appropriate placement for the youth;

16 (b) securing approval for payment of special education costs from the youth's school district of  
17 residence or the office of public instruction, as required in Title 20, chapter 7, part 4;

18 (c) submitting an application to a facility in which the youth may be placed; and

19 (d) case management of the youth.

20 (4) The youth court may order that a youth ~~to~~ receive a medical or psychological evaluation at any  
21 time prior to final disposition if the youth waives the youth's constitutional rights in the manner provided  
22 for in 41-5-303. The county determined by the court as the residence of the youth is responsible for the  
23 cost of the evaluation, except as provided in subsection (5). A county may contract with the department  
24 or other public or private agencies to obtain evaluation services ordered by the court.

25 (5) The youth court shall determine the financial ability of the youth's parents to pay the cost of  
26 an evaluation ordered by the court under subsection (4). If they are financially able, the court shall order  
27 the youth's parents to pay all or part of the cost of the evaluation.

28 (6) The youth court may not order placement or evaluation of a youth ~~at~~ in a state youth  
29 correctional facility unless the youth is found to be a delinquent youth or is alleged to have committed an  
30 offense that is transferable to criminal court under 41-5-206.

1 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
2 is transferred to the district court under 41-5-206.

3 (8) An order of the court may be modified at any time. In the case of a youth committed to the  
4 department, an order pertaining to the youth may be modified only upon notice to the department and a  
5 subsequent hearing.

6 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
7 judgment copies of medical reports, social history material, education records, and any other clinical,  
8 predisposition, or other reports and information pertinent to the care and treatment of the youth.

9 (10) If a youth is committed to the department, the court shall examine the financial ability of the  
10 youth's parents or guardians to pay a contribution covering all or part of the costs for the care,  
11 commitment, and treatment of the youth, including the costs of necessary medical, dental, and other health  
12 care.

13 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
14 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
15 an amount based on the uniform child support guidelines adopted by the department of social and  
16 rehabilitation services pursuant to 40-5-209.

17 (12) (a) Except as provided in subsection (12)(b), contributions ordered under this section and each  
18 modification of an existing order are enforceable by immediate or delinquency income withholding, or both,  
19 under Title 40, chapter 5, part 4. An order for contribution that is inconsistent with this section is  
20 nevertheless subject to withholding for the payment of the contribution without need for an amendment  
21 of the support order or for any further action by the court.

22 (b) A court-ordered exception from contributions under this section must be in writing and be  
23 included in the order. An exception from the immediate income withholding requirement may be granted  
24 if the court finds that there is:

25 (i) good cause not to require immediate income withholding; or

26 (ii) an alternative arrangement between the department and the person who is ordered to pay  
27 contributions.

28 (c) A finding of good cause not to require immediate income withholding must, at a minimum, be  
29 based upon:

30 (i) a written determination and explanation by the court of the reasons why the implementation of

1 immediate income withholding is not in the best interests of the child; and

2 (ii) proof of timely payment of previously ordered support in cases involving modification of  
3 contributions ordered under this section.

4 (d) An alternative arrangement must:

5 (i) provide sufficient security to ensure compliance with the arrangement;

6 (ii) be in writing and be signed by a representative of the department and the person required to  
7 make contributions; and

8 (iii) if approved by the court, be entered into the record of the proceeding.

9 (13) Upon a showing of a change in the financial ability of the youth's parents or guardians to pay,  
10 the court may modify its order for the payment of contributions required under subsection (11).

11 (14) (a) If the court orders the payment of contributions under this section, the department shall  
12 apply to the department of social and rehabilitation services for support enforcement services pursuant to  
13 Title IV-D of the Social Security Act.

14 (b) The department of social and rehabilitation services may collect and enforce a contribution order  
15 under this section by any means available under law, including the remedies provided for in Title 40,  
16 chapter 5, parts 2 and 4."

17  
18 **NEW SECTION. Section 11. Codification instruction.** [Section 9] is intended to be codified as an  
19 integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to  
20 [section 9].

21  
22 **NEW SECTION. Section 12. Effective dates.** (1) [Sections 1 through 9 and 11 and this section]  
23 are effective October 1, 1995.

24 (2) [Section 10] is effective July 1, 1997.

25 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0041, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill requiring a determination of incapacity in an involuntary commitment proceeding. This bill would require the appointment of a treatment guardian, enumerating the powers and duties of the treatment guardian.

ASSUMPTIONS:

1. In current law under Title 53, determination of capacity is not related to involuntary commitment, but is done (under Title 72) in a separate hearing, usually held at Montana State Hospital, where the patient is represented by the legal staff of the Board of Visitors and the petitioner (Montana State Hospital MSH) is represented by the legal staff of Department of Corrections and Human Services (DCHS). The current system allows evaluation for commitment by a mental health professional person (MSW, RN, LPC, psychologist, or physician).
2. In proposed law under HB41, the district court that commits the person will be responsible for determining competency for involuntary commitment. Evaluation will be required by a psychiatrist or psychologist.
3. Current level of filings under 53-21-121, MCA, will remain constant.
4. There will be 225 involuntary commitments per year.
5. In 60% of commitments(135), capacity to give consent is an issue. In 58% of these commitments(79), a psychologist or physician is already involved and therefore no extra cost is involved.
6. In 42% of the 135 commitments (57), without this legislation, would involve an evaluation by someone other than a psychologist or a physician.
7. It would cost \$300 more per evaluation to have an evaluation done by a psychologist or a physician rather than by some other professional person.
8. In about 25% of the 135 commitments(34), where capacity is an issue, problems in finding a treatment guardian will require an extra day of hospitalization due to this proposed legislation. Psychiatric hospitalization costs \$750 per day.
9. In the case of a difference of opinion, the county attorney or the respondent may request an additional evaluation by a different professional person.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

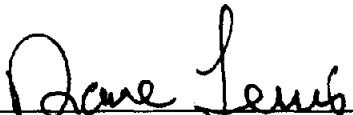
Appointment of a "treatment guardian" as defined may result in increased costs to counties. Currently, qualified persons under this section may not be readily available in some counties, requiring travel. Many counties do not have suitable mental health facilities; therefore, persons detained under Title 53 must be transported to another county, increasing time and travel costs for the "treatment guardian".


There would be an additional cost of approximately \$42,600 to counties, using the following calculation:

57 commitments X \$300 = \$17,100

34 commitments X \$750 = \$25,500

(continued)

 1-10-95  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

 1-11-95  
LIZ SMITH, PRIMARY SPONSOR      DATE

Fiscal Note for HB0041, as introduced

HB 41



Fiscal Note Request, HB0041, as introduced

Page 2

(continued)

LONG RANGE EFFECTS OF PROPOSED LEGISLATION:

The long-term effect may be less cost for institutional care.

TECHNICAL NOTES:

HB41 changes the word "affect" or "affected" to "effect" or "effected" in several places as noted below. The correct word is "affect" and should not be changed.

Page 13 Line 23

Page 15 Line 2

Page 16 Line 11

Page 17 Line 20

Page 18 Lines 19 and 27

## 1 HOUSE BILL NO. 41

2 INTRODUCED BY L. SMITH

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "~~AN ACT REQUIRING A DETERMINATION OF INCAPACITY IN AN~~  
6 ~~INVOLUNTARY COMMITMENT PROCEEDING; REQUIRING THE APPOINTMENT OF A TREATMENT~~  
7 ~~GUARDIAN; ENUMERATING THE POWERS AND DUTIES OF A TREATMENT GUARDIAN; AMENDING~~  
8 ~~SECTIONS 41-5-523, 53-21-102, 53-21-106, 53-21-120, 53-21-121, 53-21-123, 53-21-126, 53-21-127,~~  
9 ~~AND 53-21-128, MCA; AND PROVIDING EFFECTIVE DATES. PROVIDING A PROCEDURE BY WHICH~~  
10 MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY;  
11 PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE  
12 GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 (Refer to Introduced Bill)

16 Strike everything after the enacting clause and insert:  
1718 **Section 1.** Section 53-21-104, MCA, is amended to read:

19 **"53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an  
20 independent board of inquiry and review to assure that the treatment of all persons either voluntarily or  
21 involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this  
22 part.

23 (2) The board shall review all plans for experimental research involving persons admitted to a  
24 mental health facility to assure that the research project is humane and not unduly hazardous and that it  
25 complies with the principles of the statement on the use of human subjects for research of the American  
26 association on mental deficiency and with the principles for research involving human subjects required by  
27 the United States department of health, education, and welfare. An experimental research project involving  
28 persons admitted to a mental health facility affected by this part may not be commenced unless it is  
29 approved by the mental disabilities board of visitors.

30 (3) The board shall at least annually inspect every mental health facility which is providing

1 treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant,  
2 including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment areas.  
3 The board shall inquire concerning all treatment programs being implemented by the facility. .

4 (4) The board shall annually insure that a treatment plan exists and is being implemented for each  
5 patient admitted or committed to a mental health facility under this part. The board shall inquire concerning  
6 all use of restraints, isolation, or other extraordinary measures.

7 (5) The board may assist any patient at a mental health facility in resolving any grievance the  
8 patient may have concerning the patient's commitment or course of treatment in the facility.

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

15 (7) If the board believes that any facility is failing to comply with the provisions of this part in  
16 regard to its physical facilities or its treatment of any patient, it shall report its findings at once to the  
17 professional person in charge of the facility and the director of the department, and if appropriate, after  
18 waiting a reasonable time for a response from the professional person, the board may notify the next of  
19 kin or guardian of any patient involved, the friend of respondent appointed by the court for any patient  
20 involved, and the district court which has jurisdiction over the facility.

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

22 (a) the status of the mental health facilities and treatment programs which it has inspected; and

23 (b) medications involuntarily administered to patients in mental health facilities and the  
24 effectiveness of the review procedure required by 53-21-127(2) in protecting patients from unnecessary  
25 or excessive medication."

26  
27 **Section 2.** Section 53-21-127, MCA, is amended to read:

28 "**53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the respondent  
29 is not mentally ill or seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be  
30 discharged and the petition dismissed.

1           (2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously  
2 mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The  
3 disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth  
4 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and  
5 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

6           (i) commit the respondent to a facility for a period of not more than 3 months;

7           (ii) order the respondent to be placed in the care and custody of ~~his~~ a relative or guardian or some  
8 other appropriate place other than an institution;

9           (iii) order outpatient therapy; or

10          (iv) make some other appropriate order for treatment.

11          (b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a  
12 period of more than 3 months.

13          (c) In determining which of the above alternatives to order, the court shall choose the least  
14 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

15 The court shall consider and shall describe in its order what alternatives for treatment of the respondent  
16 are available, what alternatives were investigated, and why the investigated alternatives were not deemed  
17 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication

18 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the  
19 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient

20 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary  
21 administration and unless, if possible, a medication review committee reviews it prior to the beginning of

22 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning  
23 of the involuntary administration. The medication review committee must include at least one person who

24 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has  
25 one, must receive adequate written notice of the date, time, and place of the review and must be allowed

26 to appear and give testimony and evidence. The involuntary administration of medication must be again  
27 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if

28 medication is still being involuntarily administered. The mental disabilities board of visitors must be fully  
29 informed of the matter within 5 working days after the beginning of the involuntary administration. The

30 court shall enter into the record a detailed statement of the facts upon which it found the respondent to

1 be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found  
 2 involuntary medication to be necessary.

3 (3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill  
 4 within the meaning of this part, the court shall order that he receive treatment for a period of no more than  
 5 30 days. The court shall choose the least restrictive course of treatment reasonably available to the  
 6 respondent. The court must make a separate finding, setting forth the reason therefor if the order includes  
 7 a requirement of inpatient treatment or involuntary medication. The court may not order inpatient  
 8 treatment in the Montana state hospital at Warm Springs under this subsection (3). The respondent may  
 9 not be required to pay for court-ordered treatment unless he is financially able.

10 (4) Before ordering any treatment for a respondent found to be mentally ill under subsection (3),  
 11 the court shall make findings of fact that treatment appropriate to the needs of the respondent is available.  
 12 The court shall also indicate on the order the name of the facility that is to be responsible for the  
 13 management and supervision of the respondent's treatment. No person may use physical force to  
 14 administer medication. A court may use any legal means to enforce an order to take medication, including  
 15 immediate detention not to exceed 72 hours, until the mentally ill person can be returned to the court.  
 16 (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

17 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that the  
 18 respondent is not seriously mentally ill within the meaning of this part, ~~he shall~~ the respondent must be  
 19 discharged and the petition dismissed.

20 (2) (a) If it is determined that the respondent is seriously mentally ill within the meaning of this part,  
 21 the court shall hold a posttrial disposition hearing. The disposition hearing shall be held within 5 days  
 22 (including Saturdays, Sundays, and holidays unless the fifth day falls on a Saturday, Sunday, or holiday),  
 23 during which time the court may order further evaluation and treatment of the respondent. At the  
 24 conclusion of the disposition hearing, the court shall:

25 (i) commit the respondent to a facility for a period of not more than 3 months;

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 27 other appropriate place other than an institution;

28 (iii) order outpatient therapy; or

29 (iv) make some other appropriate order for treatment.

30 (b) No treatment ordered pursuant to this subsection may affect the respondent's custody for a

1 period of more than 3 months.

2 (c) In determining which of the above alternatives to order, the court shall choose the least  
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20 be seriously mentally ill and, if the court authorized involuntary medication, of the facts upon which it found  
21 involuntary medication to be necessary."

22

-END-

## 1 HOUSE BILL NO. 41

2 INTRODUCED BY L. SMITH

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES  
4

5 A BILL FOR AN ACT ENTITLED: "~~AN ACT REQUIRING A DETERMINATION OF INCAPACITY IN AN~~  
6 ~~INVOLUNTARY COMMITMENT PROCEEDING; REQUIRING THE APPOINTMENT OF A TREATMENT~~  
7 ~~GUARDIAN; ENUMERATING THE POWERS AND DUTIES OF A TREATMENT GUARDIAN; AMENDING~~  
8 ~~SECTIONS 41-5-523, 53-21-102, 53-21-106, 53-21-120, 53-21-121, 53-21-123, 53-21-126, 53-21-127,~~  
9 ~~AND 53-21-128, MCA; AND PROVIDING EFFECTIVE DATES. PROVIDING A PROCEDURE BY WHICH~~  
10 MEDICATION MAY BE INVOLUNTARILY ADMINISTERED TO A PATIENT AT A MENTAL HEALTH FACILITY;  
11 PROVIDING PROTECTIONS FOR THE PATIENT; PROVIDING FOR AN ANNUAL REPORT TO THE  
12 GOVERNOR; AND AMENDING SECTIONS 53-21-104 AND 53-21-127, MCA."

13  
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

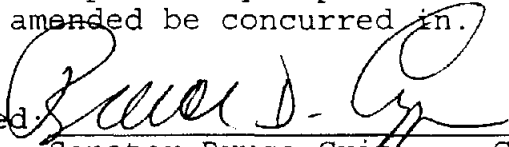
THERE ARE NO CHANGES IN THIS BILL AND IT WILL  
NOT BE REPRINTED. PLEASE REFER TO SECOND  
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1  
March 7, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 41 (third reading copy -- blue), respectfully report that HB 41 be amended as follows and as so amended be concurred in.

Signed:   
Senator Bruce Crippen, Chair


That such amendments read:

1. Page 3, line 28.  
Following: "visitors"  
Insert: "and the director of the department of corrections and human services"
2. Page 3, line 29.  
Following: "administration."  
Insert: "The director shall report to the governor on an annual basis."
3. Page 4, line 4.  
Strike: "he"  
Insert: "the respondent"
4. Page 5, line 17.  
Following: "visitors"  
Insert: "and the director of the department of corrections and human services"
5. Page 5, line 18.  
Following: "administration."  
Insert: "The director shall report to the governor on an annual basis."

-END-

HB 41

SENATE

  
Amd. Coord.  
Sec. of Senate

  
Senator Carrying Bill

531106SC.SRF



## 1 HOUSE BILL NO. 41

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