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INTRODUCED BY

*House* BILL NO. 502  
*Jeff Walz*

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS; AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323, 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112, 53-21-115, 53-21-116, 53-21-121, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

**Section 1.** Section 2-16-501, MCA, is amended to read:

**"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the following events before the expiration of the term of the incumbent:

- (1) the death of the incumbent;
- (2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously mentally ill~~ suffers from a mental disorder and is in need of commitment;
- (3) ~~his~~ resignation of the incumbent;
- (4) ~~his~~ removal of the incumbent from office;
- (5) ~~he~~ the incumbent's ceasing to be a resident of the state or, if the office ~~he~~ is local, of the district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within which the duties of ~~his~~ the incumbent's office are required to be discharged;
- (6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period  
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission  
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent of a felony or of ~~any~~ an offense involving moral turpitude or  
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within  
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or  
10 appointment."

11

12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 "**2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~  
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a  
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared  
16 void, the body, judge, or officer before whom the proceedings were ~~had~~ must ~~conducted~~ shall give notice  
17 ~~thereof~~ of the proceedings to the officer authorized to fill the vacancy."

18

19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 "**25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~  
21 ~~or~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor  
22 or other person ~~must~~ shall appear either by ~~his~~ the general guardian, if ~~he~~ the minor or other person has one,  
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,  
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill~~ ~~or~~ incompetent person, or person who has been committed  
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill~~ ~~or~~ an  
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
30 of a relative or friend;

1 (c) in ~~any a~~ case described in subsection (1)(a) or (1)(b) in which no application is made, upon the  
2 justice's own motion.

3 (2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed  
4 pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is  
5 returned or before the answer:

6 (a) in the case of a minor who is 14 or more years old and who applies before the summons is  
7 returned or at the time of the return, upon the application of the minor;

8 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an  
9 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
10 of a relative or friend or any other party to the action;

11 (c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the  
12 justice's own motion."

13  
14 **Section 4.** Section 27-2-401, MCA, is amended to read:

15 **"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to  
16 bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either  
17 a minor or ~~seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not  
18 a part of the time limit for commencing the action. However, the time limit cannot be extended more than  
19 5 years by the disability of ~~serious mental illness~~ commitment.

20 (2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of  
21 the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities  
22 mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to  
23 recover damages. In the action, the person may recover the sum or the value of the property that the  
24 person would have received upon the final distribution of the estate if an action had been ~~seasonably~~  
25 commenced in a timely manner by the personal representative.

26 (3) A person may not claim a disability unless it existed when the right of action or entry accrued.

27 (4) When both disabilities referred to in subsection (1) coexist at the time that the right of action  
28 or entry accrues, the limitation does not attach until both are removed."

29  
30 **Section 5.** Section 27-8-204, MCA, is amended to read:

1           **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested  
 2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or  
 3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~  
 4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal  
 5 relations ~~in respect thereto~~:

6           (1) to ascertain any class of creditors, devisees, heirs, or others;

7           (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular  
 8 act in their fiduciary capacity; or

9           (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including  
 10 questions of construction of wills and other writings."  
 11

12           **Section 6.** Section 33-20-121, MCA, is amended to read:

13           **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not  
 14 be delivered or issued for delivery in this state if it contains a provision:

15           (a) for a period shorter than that provided by statute within which an action at law or in equity may  
 16 be commenced on the policy; or

17           (b) that excludes or restricts liability for death caused in a certain specified manner or occurring  
 18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting  
 19 coverage as specified in the policy in the event of death:

20           (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces  
 21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian  
 22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air  
 23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24           (ii) as a result of aviation ~~or any~~ air travel, or flight;

25           (iii) as a result of a specified hazardous occupation or occupations;

26           (iv) while the insured is a resident outside the continental United States and Canada; or

27           (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~  
 28 ~~mentally ill~~ committed pursuant to 53-21-127, or otherwise. If a life insurance policy contains a dependent  
 29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30           (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide

1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the  
 2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve  
 3 valuation method on the basis of the mortality table and interest rate specified in the policy for the  
 4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed  
 5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by  
 6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,  
 8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to  
 9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more  
 11 favorable to the policyholder than a provision permitted by this section."

12  
 13 **Section 7.** Section 37-3-323, MCA, is amended to read:

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation  
 15 whenever it is brought to its attention that there is reason to suspect that a person having a license or  
 16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a  
 18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared  
 19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared  
 20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it  
 21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for  
 25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of  
 28 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
 29 the person to submit to a physical examination or a mental examination, or both, by a physician or  
 30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part  
2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or  
4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~  
5 ~~ill or~~ to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127,  
6 the person's license may be suspended by the board. The suspension continues until the licensee is found  
7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to  
8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of  
9 the board."

10

11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for  
13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus  
14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed  
16 podiatrist:

17 (a) is mentally or physically unable to engage safely in the practice of podiatry;

18 (b) has procured the license by fraud, misrepresentation, or through error;

19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later  
20 been lawfully declared competent;

21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it  
22 incapacitates the licensee in the safe performance of professional duties;

23 (e) has been found guilty of unprofessional conduct;

24 (f) has practiced podiatry while the license was suspended or revoked;

25 (g) has had the license suspended or revoked by any licensing authority for reasons other than  
26 nonpayment of fees; or

27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged  
29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation  
30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

1 a physician or physicians selected by the board if it appears to be in the best interest of the public that this  
 2 evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the  
 3 examination, and copies ~~shall~~ must be released to the board on written request.

4 (4) If a person holding a license to practice podiatry under this chapter is by a final order or  
 5 adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally~~  
 6 ~~ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license  
 7 may be suspended by the board. The suspension continues until the licensee is found by the court to be  
 8 restored to reason or cured or until the licensee is discharged as restored to reason or cured and the  
 9 licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

10  
 11 **Section 9.** Section 37-11-321, MCA, is amended to read:

12 "**37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may  
 13 refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser  
 14 disciplinary action on the license of any licensed person who:

15 (1) is habitually intoxicated or is addicted to the use of narcotic drugs;

16 (2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2,  
 17 ~~of this title;~~

18 (3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by  
 19 board rule;

20 (4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this~~  
 21 ~~title;~~

22 (5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy  
 23 or practice as an assistant;

24 (6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

25 (7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of  
 26 competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to ~~be~~  
 27 ~~seriously mentally ill~~ require further commitment;

28 (8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

29 (9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical  
 30 therapist or assistant or of conduct detrimental to the best interests of the public; or

1 (10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation  
2 of the person's training and education."  
3

4 **Section 10.** Section 37-12-322, MCA, is amended to read:

5 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever  
6 it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

7 (a) has a mental or physical condition ~~such~~ that renders the person ~~is~~ unable to safely engage in  
8 the practice of chiropractic;

9 (b) has been declared incompetent or ~~seriously mentally ill~~ has been committed pursuant to  
10 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or  
11 released from supervision;

12 (c) has procured the license through mistake;

13 (d) has been guilty of unprofessional conduct;

14 (e) has practiced chiropractic while the license was suspended or revoked;

15 (f) has while under probation violated its terms.

16 (2) The investigation must be for the purpose of determining the probability of the existence of  
17 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
18 the person to submit to a physical or mental examination, or both, by a physician or physicians selected  
19 by the board if it appears to be in the best interests of the public that this evaluation be secured. The board  
20 may examine the hospital records and reports of the licensee as part of the examination, and copies of  
21 these must be released to the board on written request."  
22

23 **Section 11.** Section 41-5-523, MCA, is amended to read:

24 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
25 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth  
26 in need of supervision, the youth court may enter its judgment making one or more of the following  
27 dispositions:

28 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

29 (b) place the youth on probation;

30 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state



1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs  
4 the judge that space is available for the youth at that facility. The sentencing judge may not place  
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and  
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider  
10 placement recommendations from the youth placement committee. The judge may not place the youth in  
11 an in-state residence unless the department informs the judge that resources are available for placement  
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to  
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need  
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
19 finds that the placement is necessary for the protection of the public. The court may order the department  
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the  
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,  
30 or the persons having legal custody of the youth;

1 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish  
2 services the court may designate;

3 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the  
4 youth and the community and that does not obligate funding from the department for services outside the  
5 state of Montana without the department's approval, except that a youth may not be placed by a youth  
6 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
7 subsection (1)(f), place a youth in a residential treatment facility.

8 (n) commit the youth to a mental health facility if, based upon the testimony of a professional  
9 person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a  
10 mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights  
11 provided by 53-21-114 through 53-21-119.

12 (i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to  
13 be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a  
14 state youth correctional facility.

15 (ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from  
16 a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional  
17 facility must be moved to a more appropriate placement in response to the youth's mental health needs and  
18 consistent with the disposition alternatives available in 53-21-127.

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

20 (2) When a youth is committed to the department, the department shall determine the appropriate  
21 placement and rehabilitation program for the youth after considering the recommendations made under  
22 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
24 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
26 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
27 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the  
28 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
30 execution of sentence of adults convicted of crimes.

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

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

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

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

12 (d) case management of the youth.

13 (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
14 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
15 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
16 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
17 public or private agencies to obtain evaluation services ordered by the court.

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

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

24 (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
25 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

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

29 (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
30 judgment copies of medical reports, social history material, education records, and any other clinical,

1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

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

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
8 an amount based on the uniform child support guidelines adopted by the department of public health and  
9 human services pursuant to 40-5-209.

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

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

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

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

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

23 (i) a written determination and explanation by the court of the reasons why the implementation of  
24 immediate income withholding is not in the best interests of the youth; and

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

27 (d) An alternative arrangement must:

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

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

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

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

4 (14) (a) If the court orders the payment of contributions under this section, the department shall  
5 apply to the department of public health and human services for support enforcement services pursuant  
6 to Title IV-D of the Social Security Act.

7 (b) The department of public health and human services may collect and enforce a contribution  
8 order under this section by any means available under law, including the remedies provided for in Title 40,  
9 chapter 5, parts 2 and 4."

10

11 **Section 12.** Section 46-14-206, MCA, is amended to read:

12 **"46-14-206. Report of examination.** (1) A report of the examination must include the following:

13 (a) a description of the nature of the examination;

14 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
15 defendant ~~is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require  
16 commitment, or is seriously developmentally disabled, as defined in 53-20-102;

17 (c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's  
18 capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

19 (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular  
20 state of mind that is an element of the offense charged; and

21 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental  
22 disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's  
23 behavior to the requirement of the law.

24 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to  
25 participate in the examination, the report must state that fact and must include, if possible, an opinion as  
26 to whether the unwillingness of the defendant was the result of mental disease or defect."

27

28 **Section 13.** Section 53-20-112, MCA, is amended to read:

29 **"53-20-112. Procedural rights.** (1) A respondent has all the rights accorded to a person subject  
30 to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as  
 2 provided in 53-21-115 through 53-21-118.

3 (2) In addition, the parents or guardian of a respondent have the right to:

4 (a) be present at any hearing held pursuant to this part;

5 (b) be represented by counsel in any hearing;

6 (c) offer evidence and cross-examine witnesses in any hearing; and

7 (d) have the respondent examined by a professional of their choice when a professional is  
 8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible  
 9 person appointed by the court."

10

11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 "**53-21-101. Purpose.** The purpose of this part is to:

13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder  
 14 ~~such and requiring commitment the~~ care and treatment ~~as will be~~ suited to the needs of the person and to  
 15 ~~insure~~ ensure that ~~such~~ the care and treatment are skillfully and humanely administered with full respect  
 16 for the person's dignity and personal integrity;

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

18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are  
 19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~  
 20 suffering from a mental disorder and requires commitment; and

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

23

24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 "**53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

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

29 (3) "Department" means the department of public health and human services provided for in  
 30 2-15-2201.

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

3 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a  
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally  
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of  
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of  
7 a charitable or religious organization, or any other person appointed by the court to perform the functions  
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of  
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider  
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation  
11 of the friend of respondent.

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

14 (a) addiction to drugs or alcohol; or

15 (b) drug or alcohol intoxication.

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

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

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

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

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

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

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
2 be established by the patient's medical history.

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

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

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

8 (12) "Professional person" means:

9 (a) a medical doctor; or

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

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

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

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

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541,  
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
25 apply:

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

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

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.



1           ~~(3)~~(4) "Department" means the department of public health and human services provided for in  
2 2-15-2201.

3           ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death  
4 or serious bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from  
5 a mental disorder and appears to require commitment.

6           ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~  
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~  
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including  
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's  
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other  
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only  
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing  
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any  
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15           ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which that~~ has  
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17           (a) addiction to drugs or alcohol; ~~or~~

18           (b) drug or alcohol intoxication;

19           ~~(c) mental retardation; or~~

20           ~~(d) epilepsy.~~

21           ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
22 ~~which that~~ is equipped and staffed to provide treatment for persons with mental disorders or a community  
23 mental health center or any mental health clinic or treatment center approved by the department. A  
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25           ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
26 brothers and sisters of a person.

27           ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or  
28 who is voluntarily admitted for treatment for any period of time.

29           ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or  
30 other peace officer.

1           ~~(11)~~(12) "Professional person" means:

2           (a) a medical doctor; or

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

4           ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards  
5 of a professional person.

6           ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be  
7 seriously mentally ill suffering from a mental disorder and requiring commitment.

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

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

16

17           **Section 16.** Section 53-21-112, MCA, is amended to read:

18           "**53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a  
19 minor who is 16 years of age or older a parent or guardian of a minor may consent to ~~receive~~ mental health  
20 services to be rendered to the minor by:

21           (a) a facility ~~that is not a state institution;~~ or

22           (b) a person licensed in this state to practice medicine; or ~~psychology~~

23           ~~(c) a mental health professional licensed~~ in this state.

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

26           ~~(2)~~(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary  
27 admission of a minor to a mental health facility but not to the state hospital.

28           ~~(3)~~(4) Except as provided by this subsection, voluntary admission of a minor to a mental health  
29 facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A  
30 minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

1 released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The~~ A minor  
 2 ~~himself~~ who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may  
 3 ~~also make such~~ a request and also has the right to be released within 5 days as provided in 53-21-111(3).  
 4 Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian  
 5 in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor  
 6 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel  
 7 ~~shall~~ must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with  
 8 potential legal proceedings.

9 ~~(4) If, in any application for voluntary admission for any period of time to a mental health facility,~~  
 10 ~~a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the~~  
 11 ~~application for admission shall be treated as a petition for involuntary commitment. Notice of the substance~~  
 12 ~~of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous~~  
 13 ~~location on any form or application used for the voluntary admission of a minor to a mental health facility.~~  
 14 ~~The notice shall be explained to the minor."~~

15  
 16 **Section 17.** Section 53-21-115, MCA, is amended to read:

17 **"53-21-115. (Temporary) Procedural rights.** In addition to any other rights ~~which~~ that may be  
 18 guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this  
 19 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has  
 20 the following rights:

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

23 (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who  
 24 will testify in support of the petition;

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

27 ~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any  
 28 proceeding concerning ~~him~~ the person;

29 ~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

30 ~~(5)(6)~~ the right to be represented by counsel;

1           ~~(6)~~(7) the right to remain silent;

2           ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable  
3 to civil matters generally;

4           ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

5           ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~  
6 professional person is willing and reasonably available;

7           ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
8 part; and

9           ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

11           **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which~~ that  
12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or  
13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this  
14 part has the following rights:

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

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

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

21           ~~(3)~~(4) the right in any hearing to cross-examine witnesses;

22           ~~(4)~~(5) the right to be represented by counsel;

23           ~~(5)~~(6) the right to remain silent;

24           ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable  
25 to civil matters generally;

26           ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

27           ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such the~~  
28 professional person is willing and reasonably available;

29           ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
30 part; and

1           ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
2 held pursuant to this part."  
3

4           **Section 18.** Section 53-21-116, MCA, is amended to read:

5           **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The  
6 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.  
7 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,  
8 who shall be compensated from the public funds of the county where the respondent resides. (Terminates  
9 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

10           **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**  
11 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring  
12 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge  
13 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who shall must be  
14 compensated from the public funds of the county where the respondent resides."  
15

16           **Section 19.** Section 53-21-121, MCA, is amended to read:

17           **"53-21-121. (Temporary) Petition for commitment -- contents of -- notice of.** (1) The county  
18 attorney, upon the written request of any person having direct knowledge of the facts, may file a petition  
19 with the court:

20           (a) alleging that there is a person within the county who is seriously mentally ill and requesting that  
21 the person be committed to a mental health facility for a period of no more than 3 months; or

22           (b) alleging that there is a person within the county who is mentally ill and requesting that the  
23 person be committed to a mental health facility for a period of no more than 30 days.

24           (2) The petition shall contain:

25           (a) the name and address of the person requesting the petition and his interest in the case;

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

28           (c) the purported facts supporting the allegation of mental illness;

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

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

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

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

9 (h) a statement of the rights of the respondent which shall be in conspicuous print and identified  
10 by a suitable heading.

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

20 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The  
21 county attorney, upon the written request of any person, may file a petition with the court alleging that  
22 there is a person within the county who is ~~seriously mentally ill and requesting that the person be~~  
23 ~~committed to a mental health facility for a period of no more than 3 months~~ suffering from a mental  
24 disorder and who requires commitment pursuant to this chapter.

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

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

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

30 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the

1 disposition sought pursuant to 53-21-127(2), and the need for commitment;

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

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

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

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

13 (h) a statement of the rights of the respondent, which ~~shall~~ must be in conspicuous print and  
14 identified by a suitable heading.

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

25 **Section 20.** Section 53-21-123, MCA, is amended to read:

26 **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**  
27 **of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the  
28 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination  
29 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney  
30 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the

1 court, with copies to the respondent's attorney and the county attorney. If the professional person  
2 recommends commitment, the professional person's written report must contain a statement of the  
3 professional person's recommendations to the court for disposition under 53-21-127(2).

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

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

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

12 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
13 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
14 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

15 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**  
16 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice  
17 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable  
18 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately  
19 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~  
20 the examination to the court, with copies to the respondent's attorney and the county attorney. If the  
21 professional person recommends commitment, the professional person's written report must contain a  
22 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

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

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

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

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



1 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
2 along with the amount of additional time needed.”

3  
4 **Section 21.** Section 53-21-126, MCA, is amended to read:

5 **"53-21-126. (Temporary) Trial or hearing on petition.** (1) The respondent shall be present unless  
6 his presence has been waived as provided in 53-21-119(2), and he shall be represented by counsel at all  
7 stages of the trial. The trial shall be limited to the determination of whether or not the respondent is  
8 mentally ill or seriously mentally ill within the meaning set forth in this part.

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

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

21 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
22 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on  
23 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in  
24 53-21-102.

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

27 **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be  
28 present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the  
29 respondent shall must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to  
30 the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in~~

1 ~~this part~~ suffering from a mental disorder and requires commitment. At the trial, the court shall consider  
 2 all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the  
 3 court determines that the respondent is suffering from a mental disorder, the court shall then determine  
 4 whether the respondent requires commitment. In determining whether the respondent requires commitment,  
 5 the court shall consider the following:

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

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

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

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

17 (2) The standard of proof in ~~any a~~ hearing held pursuant to this section is proof beyond a  
 18 reasonable doubt with respect to any physical facts or evidence and clear and convincing evidence as to  
 19 all other matters, ~~except that. However, the respondent's mental disorders shall be evidenced~~ disorder  
 20 must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others  
 21 ~~shall be evidenced~~ must be proved by overt acts or omissions, sufficiently recent in time as to be material  
 22 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. However, if the issues are tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding  
 26 that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The  
 27 written report of the professional person that indicates the professional person's diagnosis may be attached  
 28 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely  
 29 because it is contained in the report. The court may order the trial closed to the public for the protection  
 30 of the respondent.

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

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

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

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

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

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

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

14 (A) has resulted in behavior that creates difficulty in protecting the respondent's life or health;

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

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

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

22 (5) The court, upon the showing of good cause and when it is in the best interests of the  
 23 respondent, may order a change of venue."  
 24

25 **Section 22.** Section 53-21-127, MCA, is amended to read:

26 **"53-21-127. (Temporary) Posttrial disposition.** (1) If, upon trial, it is determined that the  
 27 respondent is not mentally ill or seriously mentally ill within the meaning of this part, the respondent must  
 28 be discharged and the petition dismissed.

29 (2) (a) If it is determined in a proceeding under 53-21-121(1)(a) that the respondent is seriously  
 30 mentally ill within the meaning of this part, the court shall hold a posttrial disposition hearing. The

1 disposition hearing shall be held within 5 days (including Saturdays, Sundays, and holidays unless the fifth  
2 day falls on a Saturday, Sunday, or holiday), during which time the court may order further evaluation and  
3 treatment of the respondent. At the conclusion of the disposition hearing, the court shall:

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

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

7 (iii) order outpatient therapy; or

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

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

11 (c) In determining which of the above alternatives to order, the court shall choose the least  
12 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.  
13 The court shall consider and shall describe in its order what alternatives for treatment of the respondent  
14 are available, what alternatives were investigated, and why the investigated alternatives were not deemed  
15 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication  
16 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the  
17 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient  
18 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary  
19 administration and unless, if possible, a medication review committee reviews it prior to the beginning of  
20 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning  
21 of the involuntary administration. The medication review committee must include at least one person who  
22 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,  
23 must receive adequate written notice of the date, time, and place of the review and must be allowed to  
24 appear and give testimony and evidence. The involuntary administration of medication must be again  
25 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if  
26 medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
27 of the department of public health and human services must be fully informed of the matter within 5  
28 working days after the beginning of the involuntary administration. The director shall report to the governor  
29 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it  
30 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the

1 facts upon which it found involuntary medication to be necessary.

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

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

16 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
17 the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment  
18 within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

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

26 (ii) commit the respondent to a community facility, program, or course of treatment for a period  
27 of not more than 3 months;

28 ~~iii~~ (iii) order the respondent to be placed in the care and custody of a relative or guardian or some  
29 other appropriate place other than an institution;

30 ~~iiii~~ (iv) order outpatient therapy; or

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

2           (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody  
3 or course of treatment 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 alternatives for treatment~~  
7 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~  
8 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician  
9 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary  
10 medication is necessary to protect the respondent ~~and~~ or the public ~~and~~ or to facilitate effective treatment.  
11 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility  
12 or a physician designated by the court approves it prior to the beginning of the involuntary administration  
13 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary  
14 administration or, if prior review is not possible, within 5 working days after the beginning of the  
15 involuntary administration. The medication review committee must include at least one person who is not  
16 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient  
17 has one, must receive adequate written notice of the date, time, and place of the review and must be  
18 allowed to appear and give testimony and evidence. The involuntary administration of medication must be  
19 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration  
20 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
21 of the department of public health and human services must be fully informed of the matter within 5  
22 working days after the beginning of the involuntary administration. The director shall report to the governor  
23 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~  
24 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~  
25 ~~facts upon which it found involuntary medication to be necessary.~~

26           (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to  
27 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court  
28 may require commitment only to a community facility and may not require commitment at the state  
29 hospital.

30           (e) In ordering commitment pursuant to this section, the court shall make the following findings

1 of fact:

2 (i) a detailed statement of the facts upon which the court found the respondent to be suffering  
3 from a mental disorder and requiring commitment;

4 (ii) the alternatives for treatment that were considered;

5 (iii) the alternatives available for treatment of the respondent;

6 (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

7 (v) the name of the facility, program, or individual to be responsible for the management and  
8 supervision of the respondent's treatment;

9 (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was  
10 chosen from among other alternatives; and

11 (vii) if the order includes involuntary medication, the reason involuntary medication was chosen  
12 from among other alternatives."

13

14 **Section 23.** Section 53-21-128, MCA, is amended to read:

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

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

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

1 period not to exceed 6 months.

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

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

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

18 (a) Not less than 7 days prior to the end of the 30-day period of treatment ordered under  
19 53-21-127(3), the professional person in charge of the respondent's care may petition the court for  
20 extension of the treatment period. The petition must be accompanied by a written report and evaluation  
21 of the respondent's mental and physical condition. The report shall describe any tests and evaluation  
22 devices which have been employed in evaluating the respondent, the course of treatment which has been  
23 undertaken for the respondent, 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 respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,  
26 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination  
27 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date  
28 not more than 5 days from the receipt of the request and notify the same people, including the professional  
29 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment  
30 for a period not to exceed 30 days.



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

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

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

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

20 **53-21-128. (Effective July 1, 1997) Petition for extension of commitment period.** (1) (a) Not less  
 21 than 2 calendar weeks prior to the end of the 3-month period of ~~detention~~ commitment provided for in  
 22 53-21-127(2), the professional person in charge of the patient at the place of ~~detention~~ commitment may  
 23 petition the district court in the county where the patient is ~~detained~~ committed for extension of the  
 24 ~~detention~~ commitment period unless otherwise ordered by the original committing court. The petition ~~shall~~  
 25 must be accompanied by a written report and evaluation of the patient's mental and physical condition. The  
 26 report ~~shall~~ must describe any tests and evaluation devices ~~which that~~ have been employed in evaluating  
 27 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future  
 28 course of treatment anticipated by the professional person.

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
 30 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the

1 court, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the termination of the  
 2 previous ~~detention~~ commitment authority, the court shall immediately set a time and place for a hearing on  
 3 a date not more than 10 days from the receipt of the request and notify the same people, including the  
 4 professional person in charge of the patient. If a hearing is not requested, the court shall enter an order of  
 5 commitment for a period not to exceed 6 months.

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

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

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

27

28 **Section 24.** Section 53-21-129, MCA, is amended to read:

29 "53-21-129. **Emergency situation -- petition -- detention.** (1) When an emergency situation exists,  
 30 a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious~~

1 ~~mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent  
 2 danger of death or serious bodily harm to the person or to others into custody only for sufficient time to  
 3 contact a professional person for emergency evaluation. If possible, a professional person should be called  
 4 prior to taking the person into custody.

5 (2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~  
 6 is a danger to the person or to others because of a mental disorder and that an emergency situation exists,  
 7 then the person may be detained and treated until the next regular business day. At that time, the  
 8 professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if  
 9 ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121  
 10 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall  
 11 file a report with the court explaining ~~his~~ the professional person's actions.

12 (3) The county attorney of ~~any~~ a county may make arrangements with ~~any~~ a federal, state,  
 13 regional, or private mental facility or with a mental health facility in ~~any~~ a county for the detention of  
 14 persons held pursuant to this section. ~~Whenever~~ If an arrangement has been made with a facility that does  
 15 not, at the time of the emergency, have a bed available to detain the person at that facility, the person may  
 16 be transported to the state hospital for detention and treatment as provided in this part. This determination  
 17 must be made on an individual basis in each case, and the professional person at the local facility ~~must~~ shall  
 18 certify to the county attorney that the facility does not have adequate room at that time.

19 (4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state  
 20 hospital must be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."  
 21

22 **Section 25.** Section 53-21-132, MCA, is amended to read:

23 "**53-21-132. Cost of examination and commitment.** (1) The cost of the precommitment  
 24 examination, committal, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering  
 25 from a mental disorder and who requires commitment to a mental health facility must be paid by the county  
 26 in which ~~he~~ the person resides at the time ~~he~~ that the person is ~~adjudged to be seriously mentally ill~~  
 27 committed. The sheriff must be allowed the actual expenses incurred in taking a committed person ~~who~~  
 28 ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

29 (2) The county of residence shall also pay all precommitment expenses, including transportation  
 30 to a mental health facility, incurred in connection with the detention, examination, and precommitment

1 custody of the respondent. However, the county of residence is not required to pay costs of treatment and  
 2 custody of the respondent after the respondent is committed pursuant to this part. The fact that a person  
 3 is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to  
 4 this part does not relieve a third party from a contractual obligation to pay for the cost of the examination,  
 5 hospitalization, or treatment.

6 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and  
 7 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public  
 8 mental health program funds.

9 (4) A community service provider that is a private, nonpublic provider may not be required to treat  
 10 or treat without compensation a person who has been committed."

11

12 **Section 26.** Section 53-21-134, MCA, is amended to read:

13 **"53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder**  
 14 **pending return to home state.** A person who is ~~seriously mentally ill~~ suffering from a mental disorder and  
 15 in need of commitment and who is not a resident of this state may be received into the state hospital for  
 16 a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."

17

18 **Section 27.** Section 53-21-138, MCA, is amended to read:

19 **"53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail. (1)**  
 20 The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons  
 21 accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental  
 22 disorders and who require commitment, as defined in 53-21-102.

23 (2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~  
 24 suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

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

27 (b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

28 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment  
 29 and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require  
 30 commitment.

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

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

7  
 8 **Section 28.** Section 53-21-139, MCA, is amended to read:

9 **"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available  
 10 appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour  
 11 emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and  
 12 requiring commitment in a temporary, safe environment in the community as an alternative to placement  
 13 in jail.

14 (2) The department shall provide information and technical assistance regarding needed services  
 15 and assist counties in developing county plans for crisis intervention services and for the provision of  
 16 alternatives to jail placement.

17 (3) The department may provide crisis intervention programs as:

18 (a) a rehabilitative service under 53-6-101(3)(j); and

19 (b) a targeted case management service authorized in 53-6-101(3)(n)."

20  
 21 **Section 29.** Section 53-21-144, MCA, is amended to read:

22 **"53-21-144. Rights concerning photographs and videotapes.** (1) A person admitted to a mental  
 23 health facility may be photographed ~~upon admission for identification and the~~ or videotaped for the clinical  
 24 or administrative purposes of the facility. ~~Such~~ The photographs shall be or videotapes are confidential and  
 25 shall not be released by the facility except pursuant to court order. Photographs may be released to a law  
 26 enforcement agency when needed to aid in the search for a person who has left a facility without  
 27 authorization from the facility's medical staff. A law enforcement agency may not subsequently release  
 28 photographs to the public or other persons unless authorized by a court order.

29 (2) ~~No other~~ Other nonmedical photographs ~~shall~~ or videotapes may not be taken or used without  
 30 consent of the patient or, if applicable, the patient's legal guardian or without a court order."

1           **Section 30.** Section 53-21-182, MCA, is amended to read:

2           **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the  
3 patient's commitment, the court may, on its own initiative or upon application of the professional person  
4 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party  
5 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,  
6 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient  
7 therapy or other appropriate placement or treatment."

8

9           **Section 31.** Section 53-21-195, MCA, is amended to read:

10           **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**

11 -- **petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient  
12 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition  
13 in any district court by the county attorney, the professional person in charge of the patient's case, or the  
14 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each  
15 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under  
16 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded  
17 to the clerk. The file or files must be promptly forwarded.

18           (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

19           (3) The petition must state:

20           (a) the patient's name and last-known address;

21           (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent  
22 appointed by the court, if any and if this information is reasonably ascertainable;

23           (c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering  
24 from a mental disorder and requiring commitment within the meaning of this part and is presently under a  
25 valid order of commitment pursuant to 53-21-127 or 53-21-128;

26           (d) a simple and precise statement of the facts showing that the patient has violated a condition  
27 of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a  
28 result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

29           (e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must  
30 be in conspicuous print and identified by a suitable heading.

1 (4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

2 (5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing  
3 must be held no more than 5 days after the date that the petition is filed, including weekends and holidays,  
4 unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient.  
5 Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered  
6 to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

7  
8 **Section 32.** Section 53-21-197, MCA, is amended to read:

9 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court  
10 may order that the patient's conditional release status be revoked and that the patient be returned to the  
11 mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate  
12 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

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

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

19 (2) A revocation of the patient's conditional release status under subsection (1) must be based on  
20 the testimony of the professional person responsible for the patient's case.

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

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

27  
28 **Section 33.** Section 53-21-198, MCA, is amended to read:

29 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be  
30 extended by the district court beyond the expiration date of the order committing the patient under

1 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear  
2 and convincing evidence that:

3 (a) continuation of the conditions of release is necessary to prevent the deterioration of the  
4 patient's mental disorder; and

5 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~  
6 patient. Predictability may be established by the patient's medical history.

7 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under  
8 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the  
9 professional person responsible for the patient's case may petition the court for extension of the conditions  
10 of release. The petition must be accompanied by a written report and evaluation of the patient's mental  
11 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been  
12 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,  
13 and the future course of treatment anticipated by the professional person.

14 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
15 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the  
16 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the  
17 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place  
18 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
19 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
20 enter an order extending the conditions of release for a period not to exceed 6 months.

21 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing  
22 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,  
23 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district  
24 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by  
25 the county that paid the same costs in the initial commitment proceeding.

26 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been  
27 made, the conditions of release may not be extended. If the court finds that the required showing has been  
28 made, the court may extend the conditions of release as recommended by the professional person. In its  
29 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives  
30 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court



1 may not order continuation of an alternative that does not include a comprehensive, individualized plan of  
 2 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative  
 3 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

4 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~  
 5 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the  
 6 extension under the procedures set forth in this section, including a hearing and a statement of the findings  
 7 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation  
 8 provided in subsection (1)."

9  
 10 **Section 34.** Section 70-19-413, MCA, is amended to read:

11 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies  
 12 if a person entitled to commence an action for the recovery of real property or for the recovery of the  
 13 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property  
 14 or to rents or services out of the same is, at the same time ~~such~~ the title first descends or accrues:

15 (a) under the age of majority;

16 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or

17 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term  
 18 of less than for life.

19 (2) The time during which disability continues is not considered any portion of the time in this  
 20 chapter limited for the commencement of ~~such~~ the action or the making of ~~such~~ the entry or defense, ~~but~~  
 21 ~~such.~~ The action may be commenced or entry or defense made within the period of 5 years after ~~such~~ the  
 22 disability ceases or after the death of the person entitled who dies under ~~such~~ the disability, but ~~such~~ the  
 23 action may not be commenced or entry or defense made after that period."

24  
 25 **Section 35.** Section 70-29-113, MCA, is amended to read:

26 **"70-29-113. Death or incompetency of parties -- proceedings not delayed.** (1) If during the  
 27 pendency of the action ~~any of the parties~~ a party dies or ~~becomes seriously mentally ill~~ is committed  
 28 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be  
 29 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~  
 30 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to

1 represent the interest ~~which~~ that was held by the party until ~~his~~ the party's heirs or legal representatives,  
2 or successors in interest have appeared in the action.

3 (2) An attorney ~~so~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a  
4 reasonable compensation for ~~his~~ the attorney's services, ~~which~~. The compensation may be taxed as costs  
5 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share  
6 or interest, in the discretion of the court."

7

8 **Section 36.** Section 70-29-210, MCA, is amended to read:

9 "70-29-210. **Consent of guardian to share of ward.** The general guardian of a minor and the  
10 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed  
11 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who  
12 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~  
13 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or  
14 other person entitled ~~and~~ to the share. The guardian may execute a release, in ~~his~~ the person's behalf, to  
15 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the  
16 court."

17

18 **Section 37.** Section 70-29-328, MCA, is amended to read:

19 "70-29-328. **Incompetent's share of proceeds -- payment to guardian.** The guardian who may be  
20 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant  
21 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest  
22 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the  
23 proceeds of ~~such~~ the real property from the referees. The guardian may receive the interest on executing  
24 an undertaking with ~~sufficient sureties on an undertaking,~~ a surety. The undertaking must be approved by a  
25 judge of the court, ~~that he~~ and must state that the guardian will faithfully discharge the trust ~~reposed~~ placed  
26 in ~~him~~ the guardian and will ~~render a true and just~~ make an accurate account to the person entitled to the  
27 accounting or to ~~his~~ the person's legal representative."

28

29 **Section 38.** Section 72-5-322, MCA, is amended to read:

30 "72-5-322. **Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the

1 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court  
2 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~  
3 ~~shall.~~ However, the order may not forcibly detain the ward against ~~his~~ the ward's will for more than 72  
4 hours.

5 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights  
6 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment  
7 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

8

9 NEW SECTION. Section 39. Saving clause. [This act] does not affect rights and duties that  
10 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
11 act].

12

13 NEW SECTION. Section 40. Effective date. [This act] is effective July 1, 1997.

14

-END-

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STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0502, as introduced

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DESCRIPTION OF PROPOSED LEGISLATION:

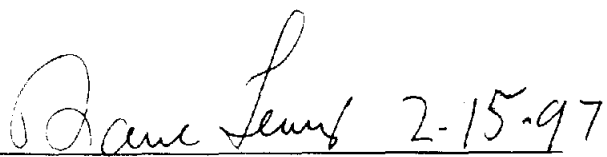
A bill relating to mental health, and deleting the definition of "seriously mentally ill" and substituting "mental disorder".

ASSUMPTIONS:

1. This bill provides current terminology and clarification where needed.

FISCAL IMPACT:

Passage of HB 502 has no fiscal impact on state government.

  
DAVE LEWIS, BUDGET DIRECTOR      DATE  
Office of Budget and Program Planning

LOREN SOFT, PRIMARY SPONSOR      DATE

Fiscal Note for HB0502, as introduced

**HB 502**

## 1 HOUSE BILL NO. 502

2 INTRODUCED BY SOFT, WATERMAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION  
5 OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS  
6 "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY  
7 OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO  
8 VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND  
9 ADMINISTRATIVE USE OF PHOTOGRAPHS AND ~~VIDEOTAPES~~ OF MENTAL HEALTH FACILITY PATIENTS;  
10 AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323,  
11 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112,  
12 53-21-115, 53-21-116, 53-21-121, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129,  
13 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197,  
14 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN  
15 EFFECTIVE DATE."

16  
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18  
19 **Section 1.** Section 2-16-501, MCA, is amended to read:

20 **"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the  
21 following events before the expiration of the term of the incumbent:

22 (1) the death of the incumbent;

23 (2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously~~  
24 ~~mentally ill~~ suffers from a mental disorder and is in need of commitment;

25 (3) ~~his~~ resignation of the incumbent;

26 (4) ~~his~~ removal of the incumbent from office;

27 (5) ~~his~~ the incumbent's ceasing to be a resident of the state or, if the office ~~be~~ is local, of the  
28 district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within  
29 which the duties of ~~his~~ the incumbent's office are required to be discharged;

30 (6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period  
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission  
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent's a felony or of ~~any an~~ offense involving moral turpitude or  
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within  
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or  
10 appointment."

11

12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 "**2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~  
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a  
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared  
16 void, the body, judge, or officer before whom the proceedings were ~~had must~~ conducted shall give notice  
17 ~~thereof~~ of the proceedings to the officer <sup>f</sup>authorized to fill the vacancy."

18

19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 "**25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~  
21 ~~or~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor  
22 or other person ~~must~~ shall appear either by ~~his~~ general guardian, if ~~he~~ the minor or other person has one,  
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,  
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill or~~ incompetent person, or person who has been committed  
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~ an  
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
30 of a relative or friend;

1 (c) in ~~any~~ a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the  
2 justice's own motion.

3 (2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed  
4 pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is  
5 returned or before the answer:

6 (a) in the case of a minor who is 14 or more years old and who applies before the summons is  
7 returned or at the time of the return, upon the application of the minor;

8 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an  
9 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
10 of a relative or friend or any other party to the action;

11 (c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the  
12 justice's own motion."

13

14 **Section 4.** Section 27-2-401, MCA, is amended to read:

15 **"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to  
16 bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either  
17 a minor ~~or seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not  
18 a part of the time limit for commencing the action. However, the time limit cannot be extended more than  
19 5 years by the disability of ~~serious mental illness~~ commitment.

20 (2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of  
21 the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities  
22 mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to  
23 recover damages. In the action, the person may recover the sum or the value of the property that the  
24 person would have received upon the final distribution of the estate if an action had been ~~seasonably~~  
25 commenced in a timely manner by the personal representative.

26 (3) A person may not claim a disability unless it existed when the right of action or entry accrued.

27 (4) When both disabilities referred to in subsection (1) coexist at the time that the right of action  
28 or entry accrues, the limitation does not attach until both are removed."

29

30 **Section 5.** Section 27-8-204, MCA, is amended to read:

1           **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested  
 2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or  
 3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~  
 4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal  
 5 relations ~~in respect thereto~~:

6           (1) to ascertain any class of creditors, devisees, heirs, or others;

7           (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular  
 8 act in their fiduciary capacity; or

9           (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including  
 10 questions of construction of wills and other writings."

11  
 12           **Section 6.** Section 33-20-121, MCA, is amended to read:

13           **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not  
 14 be delivered or issued for delivery in this state if it contains a provision:

15           (a) for a period shorter than that provided by statute within which an action at law or in equity may  
 16 be commenced on the policy; or

17           (b) that excludes or restricts liability for death caused in a certain specified manner or occurring  
 18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting  
 19 coverage as specified in the policy in the event of death:

20           (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces  
 21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian  
 22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air  
 23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24           (ii) as a result of aviation ~~or any~~ air travel, or flight;

25           (iii) as a result of a specified hazardous occupation or occupations;

26           (iv) while the insured is a resident outside the continental United States and Canada; or

27           (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~  
 28 ~~mentally ill~~ committed pursuant to 53-21-127, ~~or otherwise~~. If a life insurance policy contains a dependent  
 29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30           (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide



1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the  
2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve  
3 valuation method on the basis of the mortality table and interest rate specified in the policy for the  
4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed  
5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by  
6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,  
8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to  
9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more  
11 favorable to the policyholder than a provision permitted by this section."

12  
13 **Section 7.** Section 37-3-323, MCA, is amended to read:

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation  
15 whenever it is brought to its attention that there is reason to suspect that a person having a license or  
16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a  
18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared  
19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared  
20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it  
21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for  
25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of  
28 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
29 the person to submit to a physical examination or a mental examination, or both, by a physician or  
30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part  
 2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or  
 4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~  
 5 ~~ill or~~ to be addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127,  
 6 the person's license may be suspended by the board. The suspension continues until the licensee is found  
 7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to  
 8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of  
 9 the board."

10

11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for  
 13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus  
 14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed  
 16 podiatrist:

17 (a) is mentally or physically unable to engage safely in the practice of podiatry;

18 (b) has procured the license by fraud, misrepresentation, or through error;

19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later  
 20 been lawfully declared competent;

21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it  
 22 incapacitates the licensee in the safe performance of professional duties;

23 (e) has been found guilty of unprofessional conduct;

24 (f) has practiced podiatry while the license was suspended or revoked;

25 (g) has had the license suspended or revoked by any licensing authority for reasons other than  
 26 nonpayment of fees; or

27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged  
 29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation  
 30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

1 a physician or physicians selected by the board if it appears to be in the best interest of the public that this  
 2 evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the  
 3 examination, and copies ~~shall~~ must be released to the board on written request.

4 (4) If a person holding a license to practice podiatry under this chapter is by a final order or  
 5 adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally~~  
 6 ~~ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license  
 7 may be suspended by the board. The suspension continues until the licensee is found by the court to be  
 8 restored to reason or cured or until the licensee is discharged as restored to reason or cured and the  
 9 licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

10  
 11 **Section 9.** Section 37-11-321, MCA, is amended to read:

12 **"37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may  
 13 refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser  
 14 disciplinary action on the license of any licensed person who:

15 (1) is habitually intoxicated or is addicted to the use of narcotic drugs;

16 (2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2,  
 17 ~~of this title;~~

18 (3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by  
 19 board rule;

20 (4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this~~  
 21 ~~title;~~

22 (5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy  
 23 or practice as an assistant;

24 (6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

25 (7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of  
 26 competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to ~~be~~  
 27 ~~seriously mentally ill~~ require further commitment;

28 (8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

29 (9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical  
 30 therapist or assistant or of conduct detrimental to the best interests of the public; or

1 (10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation  
2 of the person's training and education."

3  
4 **Section 10.** Section 37-12-322, MCA, is amended to read:

5 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever  
6 it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

7 (a) has a mental or physical condition ~~such~~ that renders the person is unable to safely engage in  
8 the practice of chiropractic;

9 (b) has been declared incompetent or ~~seriously mentally ill~~ has been committed pursuant to  
10 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or  
11 released from supervision;

12 (c) has procured the license through mistake;

13 (d) has been guilty of unprofessional conduct;

14 (e) has practiced chiropractic while the license was suspended or revoked;

15 (f) has while under probation violated its terms.

16 (2) The investigation must be for the purpose of determining the probability of the existence of  
17 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
18 the person to submit to a physical or mental examination, or both, by a physician or physicians selected  
19 by the board if it appears to be in the best interests of the public that this evaluation be secured. The board  
20 may examine the hospital records and reports of the licensee as part of the examination, and copies of  
21 these must be released to the board on written request."

22  
23 **Section 11.** Section 41-5-523, MCA, is amended to read:

24 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
25 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth  
26 in need of supervision, the youth court may enter its judgment making one or more of the following  
27 dispositions:

28 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

29 (b) place the youth on probation;

30 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state

1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs  
4 the judge that space is available for the youth at that facility. The sentencing judge may not place  
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and  
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider  
10 placement recommendations from the youth placement committee. The judge may not place the youth in  
11 an in-state residence unless the department informs the judge that resources are available for placement  
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to  
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need  
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
19 finds that the placement is necessary for the protection of the public. The court may order the department  
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the  
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,  
30 or the persons having legal custody of the youth;

1 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish  
2 services the court may designate;

3 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the  
4 youth and the community and that does not obligate funding from the department for services outside the  
5 state of Montana without the department's approval, except that a youth may not be placed by a youth  
6 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
7 subsection (1)(f), place a youth in a residential treatment facility.

8 (n) commit the youth to a mental health facility if, based upon the testimony of a professional  
9 person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a  
10 mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights  
11 provided by 53-21-114 through 53-21-119.

12 (i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to  
13 be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a  
14 state youth correctional facility.

15 (ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from  
16 a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional  
17 facility must be moved to a more appropriate placement in response to the youth's mental health needs and  
18 consistent with the disposition alternatives available in 53-21-127.

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

20 (2) When a youth is committed to the department, the department shall determine the appropriate  
21 placement and rehabilitation program for the youth after considering the recommendations made under  
22 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
24 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
26 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
27 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the  
28 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
30 execution of sentence of adults convicted of crimes.

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

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

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

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

12           (d) case management of the youth.

13           (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
14 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
15 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
16 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
17 public or private agencies to obtain evaluation services ordered by the court.

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

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

24           (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
25 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

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

29           (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
30 judgment copies of medical reports, social history material, education records, and any other clinical,

1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

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

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
8 an amount based on the uniform child support guidelines adopted by the department of public health and  
9 human services pursuant to 40-5-209.

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

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

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

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

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

23 (i) a written determination and explanation by the court of the reasons why the implementation of  
24 immediate income withholding is not in the best interests of the youth; and

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

27 (d) An alternative arrangement must:

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

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



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

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

4 (14) (a) If the court orders the payment of contributions under this section, the department shall  
5 apply to the department of public health and human services for support enforcement services pursuant  
6 to Title IV-D of the Social Security Act.

7 (b) The department of public health and human services may collect and enforce a contribution  
8 order under this section by any means available under law, including the remedies provided for in Title 40,  
9 chapter 5, parts 2 and 4.”

10

11 **Section 12.** Section 46-14-206, MCA, is amended to read:

12 **"46-14-206. Report of examination.** (1) A report of the examination must include the following:

13 (a) a description of the nature of the examination;

14 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
15 ~~defendant is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require  
16 commitment, or is seriously developmentally disabled, as defined in 53-20-102;

17 (c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant’s  
18 capacity to understand the proceedings against the defendant and to assist in the defendant’s own defense;

19 (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular  
20 state of mind that is an element of the offense charged; and

21 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental  
22 disease or defect, to appreciate the criminality of the defendant’s behavior or to conform the defendant’s  
23 behavior to the requirement of the law.

24 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to  
25 participate in the examination, the report must state that fact and must include, if possible, an opinion as  
26 to whether the unwillingness of the defendant was the result of mental disease or defect.”

27

28 **Section 13.** Section 53-20-112, MCA, is amended to read:

29 **"53-20-112. Procedural rights.** (1) A respondent has all the rights accorded to a person subject  
30 to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as  
 2 provided in 53-21-115 through 53-21-118.

3 (2) In addition, the parents or guardian of a respondent have the right to:

4 (a) be present at any hearing held pursuant to this part;

5 (b) be represented by counsel in any hearing;

6 (c) offer evidence and cross-examine witnesses in any hearing; and

7 (d) have the respondent examined by a professional of their choice when a professional is  
 8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible  
 9 person appointed by the court."

10

11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 "**53-21-101. Purpose.** The purpose of this part is to:

13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder  
 14 ~~such and requiring commitment the~~ care and treatment ~~as will be~~ suited to the needs of the person and to  
 15 ~~insure~~ ensure that ~~such the~~ care and treatment are skillfully and humanely administered with full respect  
 16 for the person's dignity and personal integrity;

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

18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are  
 19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~  
 20 suffering from a mental disorder and requires commitment; and

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

23

24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 "**53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

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

29 (3) "Department" means the department of public health and human services provided for in  
 30 2-15-2201.

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

3           (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a  
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally  
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of  
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of  
7 a charitable or religious organization, or any other person appointed by the court to perform the functions  
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of  
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider  
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation  
11 of the friend of respondent.

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

14           (a) addiction to drugs or alcohol; or

15           (b) drug or alcohol intoxication.

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

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

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

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

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

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

30           (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
2 be established by the patient's medical history.

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

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

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

8 (12) "Professional person" means:

9 (a) a medical doctor; or

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

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

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

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

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541,  
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
25 apply:

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

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

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.

1           ~~(3)~~(4) "Department" means the department of public health and human services provided for in  
2 2-15-2201.

3           ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death  
4 or ~~serious~~ bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from  
5 a mental disorder and appears to require commitment.

6           ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~  
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~  
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including  
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's  
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other  
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only  
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing  
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any  
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15           ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17           (a) addiction to drugs or alcohol; ~~or~~

18           (b) drug or alcohol intoxication;

19           (c) mental retardation; or

20           (d) epilepsy.

21           ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
22 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community  
23 mental health center or any mental health clinic or treatment center approved by the department. A  
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25           ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
26 brothers and sisters of a person.

27           ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or  
28 who is voluntarily admitted for treatment for any period of time.

29           ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or  
30 other peace officer.

1           ~~(11)~~(12) "Professional person" means:

2           (a) a medical doctor; or

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

4           ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards  
5 of a professional person.

6           ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be  
7 ~~seriously mentally ill~~ suffering from a mental disorder and requiring commitment.

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

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

16

17           **Section 16.** Section 53-21-112, MCA, is amended to read:

18           "**53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a  
19 ~~minor who is 16 years of age or older~~ a parent or guardian of a minor may consent to ~~receive~~ mental health  
20 services to be rendered to the minor by:

21           (a) a facility ~~that is not a state institution;~~ or

22           (b) a person licensed in this state to practice medicine; or ~~psychology~~

23           ~~(c) a mental health professional licensed~~ in this state.

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

26           ~~(2)~~(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary  
27 admission of a minor to a mental health facility but not to the state hospital.

28           ~~(3)~~(4) Except as provided by this subsection, voluntary admission of a minor to a mental health  
29 facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A  
30 minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

1 released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The~~ A minor  
 2 ~~himself~~ who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may  
 3 ~~also make such~~ a request and also has the right to be released within 5 days as provided in 53-21-111(3).  
 4 Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian  
 5 in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor  
 6 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel  
 7 ~~shall~~ must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with  
 8 potential legal proceedings.

9 ~~(4) If, in any application for voluntary admission for any period of time to a mental health facility,~~  
 10 ~~a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the~~  
 11 ~~application for admission shall be treated as a petition for involuntary commitment. Notice of the substance~~  
 12 ~~of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous~~  
 13 ~~location on any form or application used for the voluntary admission of a minor to a mental health facility.~~  
 14 ~~The notice shall be explained to the minor."~~

15  
 16 **Section 17.** Section 53-21-115, MCA, is amended to read:

17 **"53-21-115. (Temporary) Procedural rights.** In addition to any other rights ~~which~~ that may be  
 18 guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this  
 19 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has  
 20 the following rights:

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

23 (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who  
 24 will testify in support of the petition;

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

27 ~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any  
 28 proceeding concerning ~~him~~ the person;

29 ~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

30 ~~(5)(6)~~ the right to be represented by counsel;

- 1           ~~(6)~~(7) the right to remain silent;
- 2           ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable  
3 to civil matters generally;
- 4           ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;
- 5           ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~  
6 professional person is willing and reasonably available;
- 7           ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
8 part; and
- 9           ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)
- 11           **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which~~ that  
12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or  
13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this  
14 part has the following rights:
- 15           (1) the right to notice reasonably in advance of any hearing or other court proceeding concerning  
16 ~~him~~ the person;
- 17           (2) the right in any hearing to be present, to offer evidence, and to present witnesses in any  
18 proceeding concerning ~~him~~ the person;
- 19           (3) the right to know, before a hearing, the names and addresses of any witnesses who will testify  
20 in support of a petition;
- 21           ~~(3)~~(4) the right in any hearing to cross-examine witnesses;
- 22           ~~(4)~~(5) the right to be represented by counsel;
- 23           ~~(5)~~(6) the right to remain silent;
- 24           ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable  
25 to civil matters generally;
- 26           ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;
- 27           ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such~~ the  
28 professional person is willing and reasonably available;
- 29           ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
30 part; and



1           ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
2 held pursuant to this part; AND

3           (12) THE RIGHT TO VOLUNTARILY TAKE NECESSARY MEDICATIONS PRIOR TO ANY HEARING  
4 PURSUANT TO THIS PART."

5  
6           **Section 18.** Section 53-21-116, MCA, is amended to read:

7           **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The  
8 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.  
9 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,  
10 who shall be compensated from the public funds of the county where the respondent resides. (Terminates  
11 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

12           **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**  
13 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring  
14 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge  
15 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who shall must be  
16 compensated from the public funds of the county where the respondent resides."

17  
18           **Section 19.** 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 who is seriously mentally ill and requesting that  
23 the person be committed to a mental health facility for a period of no more than 3 months; or

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

26           (2) The petition shall contain:

27           (a) the name and address of the person requesting the petition and his interest in the case;

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

30           (c) the purported facts supporting the allegation of mental illness;

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

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

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

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

11 (h) a statement of the rights of the respondent which shall be in conspicuous print and identified  
12 by a suitable heading.

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

22 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The  
23 county attorney, upon the written request of any person HAVING DIRECT KNOWLEDGE OF THE FACTS,  
24 may file a petition with the court alleging that there is a person within the county who is ~~seriously mentally~~  
25 ~~ill and requesting that the person be committed to a mental health facility for a period of no more than 3~~  
26 ~~months~~ suffering from a mental disorder and who requires commitment pursuant to this chapter.

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

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

30 (b) the name of the respondent and, if known, the address, age, sex, marital status, and

1 occupation of the respondent;

2 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the  
3 disposition sought pursuant to 53-21-127(2), and the need for commitment;

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~~ respondent for whom evaluation is sought;

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 the county attorney believes might be willing and  
9 able to be appointed as friend of respondent;

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

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

17 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the  
18 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of  
19 the peace. THE RESPONDENT'S COUNSEL SHALL MEET WITH THE RESPONDENT, EXPLAIN THE  
20 SUBSTANCE OF THE PETITION, AND EXPLAIN THE PROBABLE COURSE OF THE PROCEEDINGS. Notice  
21 of the petition and the order setting the date and time of the hearing and the names of the respondent's  
22 counsel, professional person, and friend of respondent ~~shall~~ must be hand-delivered or mailed to the person  
23 or persons legally responsible for care, support, and maintenance of the respondent, the next of kin  
24 identified in the petition, and any other person identified by the county attorney as a possible friend of  
25 respondent other than the one named as the friend of respondent. The notice may provide, other than as  
26 to the respondent and ~~his~~ the respondent's counsel, that no further notice will be given unless written  
27 request is filed with the clerk of court."

28

29 **Section 20.** Section 53-21-123, MCA, is amended to read:

30 **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**

1 **of professional person.** (1) Following the initial hearing, whether before a judge or justice of the peace, the  
 2 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination  
 3 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney  
 4 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the  
 5 court, with copies to the respondent's attorney and the county attorney. If the professional person  
 6 recommends commitment, the professional person's written report must contain a statement of the  
 7 professional person's recommendations to the court for disposition under 53-21-127(2).

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

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

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

16 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
 17 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
 18 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

19 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**  
 20 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice  
 21 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable  
 22 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately  
 23 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~  
 24 the examination to the court, with copies to the respondent's attorney and the county attorney. If the  
 25 professional person recommends commitment, the professional person's written report must contain a  
 26 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

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

28 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally  
 29 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county  
 30 attorney may, upon good cause shown, request the court to order an additional, but no more than one,

1 examination by a different professional person for a period of no more than 4 hours.

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

4 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
5 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
6 along with the amount of additional time needed."  
7

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

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

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

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

25 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
26 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on  
27 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in  
28 53-21-102.

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

1           **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be  
 2 present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the  
 3 respondent shall must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to  
 4 the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in~~  
 5 ~~this part~~ suffering from a mental disorder and requires commitment. At the trial, the court shall consider  
 6 all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the  
 7 court determines that the respondent is suffering from a mental disorder, the court shall then determine  
 8 whether the respondent requires commitment. In determining whether the respondent requires commitment,  
 9 the court shall consider the following:

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

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

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

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

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

27           (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject  
 28 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that,~~  
 29 if. However, if the issues are tried by a jury, at least two-thirds of the jurors must shall concur on a finding  
 30 that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The

1 written report of the professional person that indicates the professional person's diagnosis may be attached  
 2 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely  
 3 because it is contained in the report. The court may order the trial closed to the public for the protection  
 4 of the respondent.

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

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

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

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

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

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

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

18 (A) has resulted in behavior RECENT ACTS, OMISSIONS, OR BEHAVIORS that creates CREATE  
 19 difficulty in protecting the respondent's life or health;

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

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

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

27 (5) The court, upon the showing of good cause and when it is in the best interests of the  
 28 respondent, may order a change of venue."  
 29

30 **Section 22.** Section 53-21-127, MCA, is amended to read:

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

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

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

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

12           (iii) order outpatient therapy; or

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

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

16           (c) In determining which of the above alternatives to order, the court shall choose the least  
17 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.  
18 The court shall consider and shall describe in its order what alternatives for treatment of the respondent  
19 are available, what alternatives were investigated, and why the investigated alternatives were not deemed  
20 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication  
21 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the  
22 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient  
23 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary  
24 administration and unless, if possible, a medication review committee reviews it prior to the beginning of  
25 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning  
26 of the involuntary administration. The medication review committee must include at least one person who  
27 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,  
28 must receive adequate written notice of the date, time, and place of the review and must be allowed to  
29 appear and give testimony and evidence. The involuntary administration of medication must be again  
30 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if



1 medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
 2 of the department of public health and human services must be fully informed of the matter within 5  
 3 working days after the beginning of the involuntary administration. The director shall report to the governor  
 4 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it  
 5 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the  
 6 facts upon which it found involuntary medication to be necessary.

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

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

21 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
 22 the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment  
 23 within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

30 (i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;

1           (ii) commit the respondent to a community facility, program, or course of treatment for a period  
2 of not more than 3 months;

3           ~~(iii)(iii)~~ order the respondent to be placed in the care and custody of a relative or guardian or some  
4 other appropriate place other than an institution;

5           ~~(iii)(iv)~~ order outpatient therapy; or

6           ~~(iv)(v)~~ make some other appropriate order for treatment.

7           (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody  
8 or course of treatment for a period of more than 3 months.

9           (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
10 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
11 effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment~~  
12 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~  
13 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician  
14 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary  
15 medication is necessary to protect the respondent ~~and~~ or the public ~~and~~ or to facilitate effective treatment.  
16 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility  
17 or a physician designated by the court approves it prior to the beginning of the involuntary administration  
18 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary  
19 administration or, if prior review is not possible, within 5 working days after the beginning of the  
20 involuntary administration. The medication review committee must include at least one person who is not  
21 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient  
22 has one, must receive adequate written notice of the date, time, and place of the review and must be  
23 allowed to appear and give testimony and evidence. The involuntary administration of medication must be  
24 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration  
25 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
26 of the department of public health and human services must be fully informed of the matter within 5  
27 working days after the beginning of the involuntary administration. The director shall report to the governor  
28 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~  
29 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~  
30 ~~facts upon which it found involuntary medication to be necessary.~~

1           (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to  
2 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court  
3 may require commitment only to a community facility and may not require commitment at the state  
4 hospital.

5           (e) In ordering commitment pursuant to this section, the court shall make the following findings  
6 of fact:

7           (i) a detailed statement of the facts upon which the court found the respondent to be suffering  
8 from a mental disorder and requiring commitment;

9           (ii) the alternatives for treatment that were considered;

10           (iii) the alternatives available for treatment of the respondent;

11           (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

12           (v) the name of the facility, program, or individual to be responsible for the management and  
13 supervision of the respondent's treatment;

14           (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was  
15 chosen from among other alternatives; and

16           (vii) if the order includes involuntary medication, the reason involuntary medication was chosen  
17 from among other alternatives."

18  
19           **Section 23.** Section 53-21-128, MCA, is amended to read:

20           **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month  
21 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be  
22 followed:

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

30           (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to

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

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

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

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

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

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
30 the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,

1 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination  
 2 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date  
 3 not more than 5 days from the receipt of the request and notify the same people, including the professional  
 4 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment  
 5 for a period not to exceed 30 days.

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

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

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

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

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

1 report ~~shall~~ must describe any tests and evaluation devices ~~which that~~ have been employed in evaluating  
 2 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future  
 3 course of treatment anticipated by the professional person.

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

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

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

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

1 required by subsection (1)."

2

3 **Section 24.** Section 53-21-129, MCA, is amended to read:

4 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists,  
5 a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious~~  
6 ~~mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent  
7 danger of death or serious bodily harm to the person or to others into custody only for sufficient time to  
8 contact a professional person for emergency evaluation. If possible, a professional person should be called  
9 prior to taking the person into custody.

10 (2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~  
11 is a danger to the person or to others because of a mental disorder and that an emergency situation exists,  
12 then the person may be detained and treated until the next regular business day. At that time, the  
13 professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if  
14 ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121  
15 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall  
16 file a report with the court explaining ~~his~~ the professional person's actions.

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

24 (4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state  
25 hospital must be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."

26

27 **Section 25.** Section 53-21-132, MCA, is amended to read:

28 **"53-21-132. Cost of examination and commitment.** (1) The cost of ~~the~~ precommitment  
29 examination, committal, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering  
30 from a mental disorder and who requires commitment to a mental health facility must be paid by the county

1 in which ~~he~~ the person resides at the time ~~he~~ that the person is adjudged to be seriously mentally ill  
 2 committed. The sheriff must be allowed the actual expenses incurred in taking a committed person ~~who~~  
 3 ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

4 (2) The county of residence shall also pay all precommitment expenses, including transportation  
 5 to a mental health facility, incurred in connection with the detention, examination, and precommitment  
 6 custody of the respondent. However, the county of residence is not required to pay costs of treatment and  
 7 custody of the respondent after the respondent is committed pursuant to this part. The fact that a person  
 8 is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to  
 9 this part does not relieve a third party from a contractual obligation to pay for the cost of the examination,  
 10 hospitalization, or treatment.

11 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and  
 12 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public  
 13 mental health program funds.

14 (4) A community service provider that is a private, nonpublic provider may not be required to treat  
 15 or treat without compensation a person who has been committed."

16

17 **Section 26.** Section 53-21-134, MCA, is amended to read:

18 "**53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder**  
 19 **pending return to home state.** A person who is ~~seriously mentally ill~~ suffering from a mental disorder and  
 20 in need of commitment and who is not a resident of this state may be received into the state hospital for  
 21 a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."

22

23 **Section 27.** Section 53-21-138, MCA, is amended to read:

24 "**53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail.** (1)  
 25 The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons  
 26 accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental  
 27 disorders and who require commitment, as defined in 53-21-102.

28 (2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~  
 29 suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

30 (a) request services from a crisis intervention program established by the department, as provided



1 for in 53-21-139;

2 (b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

3 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment  
4 and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require  
5 commitment.

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

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

12

13 **Section 28.** Section 53-21-139, MCA, is amended to read:

14 **"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available  
15 appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour  
16 emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and  
17 requiring commitment in a temporary, safe environment in the community as an alternative to placement  
18 in jail.

19 (2) The department shall provide information and technical assistance regarding needed services  
20 and assist counties in developing county plans for crisis intervention services and for the provision of  
21 alternatives to jail placement.

22 (3) The department may provide crisis intervention programs as:

23 (a) a rehabilitative service under 53-6-101(3)(j); and

24 (b) a targeted case management service authorized in 53-6-101(3)(n)."

25

26 **Section 29.** Section 53-21-144, MCA, is amended to read:

27 **"53-21-144. Rights concerning photographs ~~and videotapes~~.** (1) A person admitted to a mental  
28 health facility may be photographed ~~upon admission for identification and the~~ or videotaped for the clinical  
29 or administrative purposes of the facility. Such ~~The photographs shall be or videotapes are~~ confidential ~~and~~  
30 ~~shall not be released by the facility except pursuant to court order.~~ Photographs may be released to a law

1 enforcement agency when needed to aid in the search for a person who has left a facility without  
 2 authorization from the facility's medical staff AND WHEN IT IS DETERMINED THAT THE PERSON IS A  
 3 SELF-THREAT OR SELF-DANGER OR A THREAT OR DANGER TO OTHERS AT THE TIME THAT THE  
 4 PERSON LEFT THE FACILITY. A law enforcement agency may not subsequently release photographs to the  
 5 public or other persons unless authorized by a court order.

6 (2) ~~No other~~ Other nonmedical photographs ~~shall or videotapes~~ may not be taken or used without  
 7 consent of the patient or, if applicable, the patient's legal guardian or without a court order."

8  
 9 **Section 30.** Section 53-21-182, MCA, is amended to read:

10 **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the  
 11 patient's commitment, the court may, on its own initiative or upon application of the professional person  
 12 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party  
 13 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,  
 14 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient  
 15 therapy or other appropriate placement or treatment."

16  
 17 **Section 31.** Section 53-21-195, MCA, is amended to read:

18 **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**  
 19 **-- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient  
 20 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition  
 21 in any district court by the county attorney, the professional person in charge of the patient's case, or the  
 22 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each  
 23 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under  
 24 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded  
 25 to the clerk. The file or files must be promptly forwarded.

26 (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

27 (3) The petition must state:

28 (a) the patient's name and last-known address;

29 (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent  
 30 appointed by the court, if any and if this information is reasonably ascertainable;

1 (c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering  
 2 from a mental disorder and requiring commitment within the meaning of this part and is presently under a  
 3 valid order of commitment pursuant to 53-21-127 or 53-21-128;

4 (d) a simple and precise statement of the facts showing that the patient has violated a condition  
 5 of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a  
 6 result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

7 (e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must  
 8 be in conspicuous print and identified by a suitable heading.

9 (4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

10 (5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing  
 11 must be held no more than 5 days after the date that the petition is filed, including weekends and holidays,  
 12 unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient.  
 13 Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered  
 14 to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

15  
 16 **Section 32.** Section 53-21-197, MCA, is amended to read:

17 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court  
 18 may order that the patient's conditional release status be revoked and that the patient be returned to the  
 19 mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate  
 20 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

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

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

27 (2) A revocation of the patient's conditional release status under subsection (1) must be based on  
 28 the testimony of the professional person responsible for the patient's case.

29 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a  
 30 treatment plan must be updated or a new plan prepared for the patient as required by and within the time

1 set forth in 53-21-162.

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

5

6 **Section 33.** Section 53-21-198, MCA, is amended to read:

7 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be  
8 extended by the district court beyond the expiration date of the order committing the patient under  
9 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear  
10 and convincing evidence that:

11 (a) continuation of the conditions of release is necessary to prevent the deterioration of the  
12 patient's mental disorder; and

13 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~  
14 patient. Predictability may be established by the patient's medical history.

15 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under  
16 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the  
17 professional person responsible for the patient's case may petition the court for extension of the conditions  
18 of release. The petition must be accompanied by a written report and evaluation of the patient's mental  
19 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been  
20 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,  
21 and the future course of treatment anticipated by the professional person.

22 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
23 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the  
24 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the  
25 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place  
26 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
27 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
28 enter an order extending the conditions of release for a period not to exceed 6 months.

29 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing  
30 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,

1 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district  
 2 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by  
 3 the county that paid the same costs in the initial commitment proceeding.

4 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been  
 5 made, the conditions of release may not be extended. If the court finds that the required showing has been  
 6 made, the court may extend the conditions of release as recommended by the professional person. In its  
 7 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives  
 8 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court  
 9 may not order continuation of an alternative that does not include a comprehensive, individualized plan of  
 10 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative  
 11 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

12 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~  
 13 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the  
 14 extension under the procedures set forth in this section, including a hearing and a statement of the findings  
 15 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation  
 16 provided in subsection (1)."

17  
 18 **Section 34.** Section 70-19-413, MCA, is amended to read:

19 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies  
 20 if a person entitled to commence an action for the recovery of real property or for the recovery of the  
 21 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property  
 22 or to rents or services out of the same is, at the same time ~~such~~ the title first descends or accrues:

23 (a) under the age of majority;

24 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or

25 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term  
 26 of less than for life.

27 (2) The time during which disability continues is not considered any portion of the time in this  
 28 chapter limited for the commencement of ~~such~~ the action or the making of ~~such~~ the entry or defense, ~~but~~  
 29 ~~such~~. The action may be commenced or entry or defense made within the period of 5 years after ~~such~~ the  
 30 disability ceases or after the death of the person entitled who dies under ~~such~~ the disability, but ~~such~~ the

1 action may not be commenced or entry or defense made after that period."

2

3 **Section 35.** Section 70-29-113, MCA, is amended to read:

4 **"70-29-113. Death or incompetency of parties -- proceedings not delayed.** (1) If during the  
5 pendency of the action ~~any of the parties~~ a party dies ~~or becomes seriously mentally ill~~ is committed  
6 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be  
7 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~  
8 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to  
9 represent the interest ~~which that~~ was held by the party until ~~his~~ the party's heirs ~~or~~ legal representatives,  
10 or successors in interest have appeared in the action.

11 (2) An attorney ~~so~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a  
12 reasonable compensation for ~~his~~ the attorney's services, ~~which~~. The compensation may be taxed as costs  
13 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share  
14 or interest, in the discretion of the court."

15

16 **Section 36.** Section 70-29-210, MCA, is amended to read:

17 **"70-29-210. Consent of guardian to share of ward.** The general guardian of a minor and the  
18 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed  
19 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who  
20 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~  
21 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or  
22 other person entitled ~~and~~ to the share. The guardian may execute a release, in ~~his~~ the person's behalf, to  
23 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the  
24 court."

25

26 **Section 37.** Section 70-29-328, MCA, is amended to read:

27 **"70-29-328. Incompetent's share of proceeds -- payment to guardian.** The guardian who may be  
28 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant  
29 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest  
30 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the

1 proceeds of ~~such~~ the real property from the referees. The guardian may receive the interest on executing  
 2 an undertaking with sufficient sureties on an undertaking, a surety. The undertaking must be approved by a  
 3 judge of the court, that he and must state that the guardian will faithfully discharge the trust reposed placed  
 4 in him the guardian and will render a true and just make an accurate account to the person entitled to the  
 5 accounting or to ~~his~~ the person's legal representative."

6  
 7 **Section 38.** Section 72-5-322, MCA, is amended to read:

8 **"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the  
 9 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court  
 10 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~  
 11 ~~shall.~~ However, the order may not forcibly detain the ward against ~~his~~ the ward's will for more than 72  
 12 hours.

13 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights  
 14 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment  
 15 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

16  
 17 **NEW SECTION. Section 39. Saving clause.** [This act] does not affect rights and duties that  
 18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
 19 act].

20  
 21 **NEW SECTION. Section 40. Effective date.** [This act] is effective July 1, 1997.

22 -END-

## 1 HOUSE BILL NO. 502

2 INTRODUCED BY SOFT, WATERMAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION  
5 OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS  
6 "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY  
7 OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO  
8 VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND  
9 ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS;  
10 AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323,  
11 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112,  
12 53-21-115, 53-21-116, 53-21-121, 53-21-123, 53-21-126, 53-21-127, 53-21-128, 53-21-129,  
13 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195, 53-21-197,  
14 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND PROVIDING AN  
15 EFFECTIVE DATE."

16

17 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.**



## HOUSE BILL NO. 502

INTRODUCED BY SOFT, WATERMAN

1  
2  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION  
5 OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS  
6 "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY  
7 OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO  
8 VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND  
9 ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS;  
10 AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323,  
11 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112,  
12 53-21-115, 53-21-116, 53-21-121, 53-21-122, 53-21-123, 53-21-126, 53-21-127, 53-21-128,  
13 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195,  
14 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND  
15 PROVIDING AN EFFECTIVE DATE."

16

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

18

19 **Section 1.** Section 2-16-501, MCA, is amended to read:

20 **"2-16-501. Vacancies created.** An office becomes vacant on the happening of any one of the  
21 following events before the expiration of the term of the incumbent:

22 (1) the death of the incumbent;

23 (2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously~~  
24 ~~mentally ill~~ suffers from a mental disorder and is in need of commitment;

25 (3) ~~his~~ resignation of the incumbent;

26 (4) ~~his~~ removal of the incumbent from office;

27 (5) ~~his~~ the incumbent's ceasing to be a resident of the state or, if the office ~~he~~ is local, of the  
28 district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within  
29 which the duties of ~~his~~ the incumbent's office are required to be discharged;

30 (6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period  
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission  
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent of a felony or of ~~any~~ an offense involving moral turpitude or  
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within  
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or  
10 appointment."

11

12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 "**2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~  
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a  
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared  
16 void, the body, judge, or officer before whom the proceedings were ~~had~~ must conducted shall give notice  
17 ~~thereof of the proceedings~~ to the officer authorized to fill the vacancy."

18

19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 "**25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~  
21 ~~or,~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor  
22 or other person ~~must~~ shall appear either by ~~his~~ general guardian, if ~~he~~ the minor or other person has one,  
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,  
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill~~ ~~or,~~ incompetent person, or person who has been committed  
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill~~ ~~or,~~ an  
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
30 of a relative or friend;

1 (c) in ~~any~~ a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the  
2 justice's own motion.

3 (2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed  
4 pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is  
5 returned or before the answer:

6 (a) in the case of a minor who is 14 or more years old and who applies before the summons is  
7 returned or at the time of the return, upon the application of the minor;

8 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an  
9 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
10 of a relative or friend or any other party to the action;

11 (c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the  
12 justice's own motion."

13

14 **Section 4.** Section 27-2-401, MCA, is amended to read:

15 "27-2-401. **When person entitled to bring action is under a disability.** (1) If a person entitled to  
16 bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either  
17 a minor ~~or seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not  
18 a part of the time limit for commencing the action. However, the time limit cannot be extended more than  
19 5 years by the disability of ~~serious mental illness~~ commitment.

20 (2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of  
21 the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities  
22 mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to  
23 recover damages. In the action, the person may recover the sum or the value of the property that the  
24 person would have received upon the final distribution of the estate if an action had been ~~seasonably~~  
25 commenced in a timely manner by the personal representative.

26 (3) A person may not claim a disability unless it existed when the right of action or entry accrued.

27 (4) When both disabilities referred to in subsection (1) coexist at the time that the right of action  
28 or entry accrues, the limitation does not attach until both are removed."

29

30 **Section 5.** Section 27-8-204, MCA, is amended to read:

1           **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested  
 2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or  
 3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~  
 4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal  
 5 relations ~~in respect thereto~~:

6           (1) to ascertain any class of creditors, devisees, heirs, or others;

7           (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular  
 8 act in their fiduciary capacity; or

9           (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including  
 10 questions of construction of wills and other writings."

11  
 12           **Section 6.** Section 33-20-121, MCA, is amended to read:

13           **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not  
 14 be delivered or issued for delivery in this state if it contains a provision:

15           (a) for a period shorter than that provided by statute within which an action at law or in equity may  
 16 be commenced on the policy; or

17           (b) that excludes or restricts liability for death caused in a certain specified manner or occurring  
 18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting  
 19 coverage as specified in the policy in the event of death:

20           (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces  
 21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian  
 22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air  
 23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24           (ii) as a result of aviation ~~or any~~ air travel, or flight;

25           (iii) as a result of a specified hazardous occupation or occupations;

26           (iv) while the insured is a resident outside the continental United States and Canada; or

27           (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~  
 28 ~~mentally ill~~ committed pursuant to 53-21-127, ~~or otherwise~~. If a life insurance policy contains a dependent  
 29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30           (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide

1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the  
2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve  
3 valuation method on the basis of the mortality table and interest rate specified in the policy for the  
4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed  
5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by  
6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,  
8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to  
9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more  
11 favorable to the policyholder than a provision permitted by this section."

12

13 **Section 7.** Section 37-3-323, MCA, is amended to read:

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation  
15 whenever it is brought to its attention that there is reason to suspect that a person having a license or  
16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a  
18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared  
19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared  
20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it  
21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for  
25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of  
28 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
29 the person to submit to a physical examination or a mental examination, or both, by a physician or  
30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part  
 2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or  
 4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~  
 5 ~~ill or to be~~ addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127,  
 6 the person's license may be suspended by the board. The suspension continues until the licensee is found  
 7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to  
 8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of  
 9 the board."  
 10

10

11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for  
 13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus  
 14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed  
 16 podiatrist:

17 (a) is mentally or physically unable to engage safely in the practice of podiatry;

18 (b) has procured the license by fraud, misrepresentation, or through error;

19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later  
 20 been lawfully declared competent;

21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it  
 22 incapacitates the licensee in the safe performance of professional duties;

23 (e) has been found guilty of unprofessional conduct;

24 (f) has practiced podiatry while the license was suspended or revoked;

25 (g) has had the license suspended or revoked by any licensing authority for reasons other than  
 26 nonpayment of fees; or

27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged  
 29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation  
 30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

1 a physician or physicians selected by the board if it appears to be in the best interest of the public that this  
 2 evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the  
 3 examination, and copies ~~shall~~ must be released to the board on written request.

4 (4) If a person holding a license to practice podiatry under this chapter is by a final order or  
 5 adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally~~  
 6 ~~ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license  
 7 may be suspended by the board. The suspension continues until the licensee is found by the court to be  
 8 restored to reason or cured or until the licensee is discharged as restored to reason or cured and the  
 9 licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

10

11 **Section 9.** Section 37-11-321, MCA, is amended to read:

12 **"37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may  
 13 refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser  
 14 disciplinary action on the license of any licensed person who:

15 (1) is habitually intoxicated or is addicted to the use of narcotic drugs;

16 (2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2,  
 17 ~~of this title;~~

18 (3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by  
 19 board rule;

20 (4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this~~  
 21 ~~title;~~

22 (5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy  
 23 or practice as an assistant;

24 (6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

25 (7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of  
 26 competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to ~~be~~  
 27 ~~seriously mentally ill~~ require further commitment;

28 (8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

29 (9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical  
 30 therapist or assistant or of conduct detrimental to the best interests of the public; or

1 (10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation  
2 of the person's training and education."

3

4 **Section 10.** Section 37-12-322, MCA, is amended to read:

5 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever  
6 it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

7 (a) has a mental or physical condition ~~such~~ that renders the person ~~is~~ unable to safely engage in  
8 the practice of chiropractic;

9 (b) has been declared incompetent or ~~seriously mentally ill~~ has been committed pursuant to  
10 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or  
11 released from supervision;

12 (c) has procured the license through mistake;

13 (d) has been guilty of unprofessional conduct;

14 (e) has practiced chiropractic while the license was suspended or revoked;

15 (f) has while under probation violated its terms.

16 (2) The investigation must be for the purpose of determining the probability of the existence of  
17 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
18 the person to submit to a physical or mental examination, or both, by a physician or physicians selected  
19 by the board if it appears to be in the best interests of the public that this evaluation be secured. The board  
20 may examine the hospital records and reports of the licensee as part of the examination, and copies of  
21 these must be released to the board on written request."

22

23 **Section 11.** Section 41-5-523, MCA, is amended to read:

24 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
25 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth  
26 in need of supervision, the youth court may enter its judgment making one or more of the following  
27 dispositions:

28 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

29 (b) place the youth on probation;

30 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state



1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs  
4 the judge that space is available for the youth at that facility. The sentencing judge may not place  
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and  
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider  
10 placement recommendations from the youth placement committee. The judge may not place the youth in  
11 an in-state residence unless the department informs the judge that resources are available for placement  
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to  
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need  
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
19 finds that the placement is necessary for the protection of the public. The court may order the department  
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the  
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,  
30 or the persons having legal custody of the youth;

1 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish  
2 services the court may designate;

3 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the  
4 youth and the community and that does not obligate funding from the department for services outside the  
5 state of Montana without the department's approval, except that a youth may not be placed by a youth  
6 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
7 subsection (1)(f), place a youth in a residential treatment facility.

8 (n) commit the youth to a mental health facility if, based upon the testimony of a professional  
9 person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a  
10 mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights  
11 provided by 53-21-114 through 53-21-119.

12 (i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to  
13 be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a  
14 state youth correctional facility.

15 (ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from  
16 a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional  
17 facility must be moved to a more appropriate placement in response to the youth's mental health needs and  
18 consistent with the disposition alternatives available in 53-21-127.

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

20 (2) When a youth is committed to the department, the department shall determine the appropriate  
21 placement and rehabilitation program for the youth after considering the recommendations made under  
22 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
24 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
26 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
27 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the  
28 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
30 execution of sentence of adults convicted of crimes.

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

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

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

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

12           (d) case management of the youth.

13           (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
14 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
15 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
16 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
17 public or private agencies to obtain evaluation services ordered by the court.

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

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

24           (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
25 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

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

29           (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
30 judgment copies of medical reports, social history material, education records, and any other clinical,

1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

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

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
8 an amount based on the uniform child support guidelines adopted by the department of public health and  
9 human services pursuant to 40-5-209.

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

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

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

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

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

23 (i) a written determination and explanation by the court of the reasons why the implementation of  
24 immediate income withholding is not in the best interests of the youth; and

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

27 (d) An alternative arrangement must:

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

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

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

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

4 (14) (a) If the court orders the payment of contributions under this section, the department shall  
5 apply to the department of public health and human services for support enforcement services pursuant  
6 to Title IV-D of the Social Security Act.

7 (b) The department of public health and human services may collect and enforce a contribution  
8 order under this section by any means available under law, including the remedies provided for in Title 40,  
9 chapter 5, parts 2 and 4."

10  
11 **Section 12.** Section 46-14-206, MCA, is amended to read:

12 **"46-14-206. Report of examination.** (1) A report of the examination must include the following:

13 (a) a description of the nature of the examination;

14 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
15 ~~defendant is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require  
16 commitment, or is seriously developmentally disabled, as defined in 53-20-102;

17 (c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's  
18 capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

19 (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular  
20 state of mind that is an element of the offense charged; and

21 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental  
22 disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's  
23 behavior to the requirement of the law.

24 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to  
25 participate in the examination, the report must state that fact and must include, if possible, an opinion as  
26 to whether the unwillingness of the defendant was the result of mental disease or defect."

27  
28 **Section 13.** Section 53-20-112, MCA, is amended to read:

29 **"53-20-112. Procedural rights.** (1) A respondent has all the rights accorded to a person subject  
30 to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as  
 2 provided in 53-21-115 through 53-21-118.

3 (2) In addition, the parents or guardian of a respondent have the right to:

4 (a) be present at any hearing held pursuant to this part;

5 (b) be represented by counsel in any hearing;

6 (c) offer evidence and cross-examine witnesses in any hearing; and

7 (d) have the respondent examined by a professional of their choice when a professional is  
 8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible  
 9 person appointed by the court."

10

11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 **"53-21-101. Purpose.** The purpose of this part is to:

13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder  
 14 ~~such and requiring commitment~~ the care and treatment as will be suited to the needs of the person and to  
 15 ~~insure~~ ensure that ~~such~~ the care and treatment are skillfully and humanely administered with full respect  
 16 for the person's dignity and personal integrity;

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

18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are  
 19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~  
 20 suffering from a mental disorder and requires commitment; and

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

23

24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

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

29 (3) "Department" means the department of public health and human services provided for in  
 30 2-15-2201.

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

3 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a  
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally  
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of  
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of  
7 a charitable or religious organization, or any other person appointed by the court to perform the functions  
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of  
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider  
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation  
11 of the friend of respondent.

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

14 (a) addiction to drugs or alcohol; or

15 (b) drug or alcohol intoxication.

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

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

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

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

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

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

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
2 be established by the patient's medical history.

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

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

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

8 (12) "Professional person" means:

9 (a) a medical doctor; or

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

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

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

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

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541,  
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
25 apply:

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

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

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.



1           ~~(3)~~(4) "Department" means the department of public health and human services provided for in  
2 2-15-2201.

3           ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death  
4 or ~~serious~~ bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from  
5 a mental disorder and appears to require commitment.

6           ~~(5)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~  
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~  
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including  
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's  
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other  
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only  
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing  
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any  
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15           ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17           (a) addiction to drugs or alcohol; ~~or~~

18           (b) drug or alcohol intoxication;

19           (c) mental retardation; or

20           (d) epilepsy.

21           ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
22 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community  
23 mental health center or any mental health clinic or treatment center approved by the department. A  
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25           ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
26 brothers and sisters of a person.

27           ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or  
28 who is voluntarily admitted for treatment for any period of time.

29           ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~policeman~~ police officer, or  
30 other peace officer.

1 ~~(11)~~(12) "Professional person" means:

2 (a) a medical doctor; or

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

4 ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards  
5 of a professional person.

6 ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be  
7 ~~seriously mentally ill suffering from a mental disorder and requiring commitment.~~

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

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

17 **Section 16.** Section 53-21-112, MCA, is amended to read:

18 **"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a  
19 ~~minor who is 16 years of age or older~~ a parent or guardian of a minor may consent to ~~receive~~ mental health  
20 services to be rendered to the minor by:

21 (a) a facility ~~that is not a state institution; or~~

22 (b) a person licensed in this state to practice medicine; ~~or psychology~~

23 (c) a mental health professional licensed in this state.

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

26 ~~(2)~~(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary  
27 admission of a minor to a mental health facility but not to the state hospital.

28 ~~(3)~~(4) Except as provided by this subsection, voluntary admission of a minor to a mental health  
29 facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A  
30 minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

1 released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The~~ A minor  
 2 himself who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may  
 3 also make ~~such~~ a request and also has the right to be released within 5 days as provided in 53-21-111(3).  
 4 Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian  
 5 in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor  
 6 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel  
 7 ~~shall~~ must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with  
 8 potential legal proceedings.

9 ~~(4) If, in any application for voluntary admission for any period of time to a mental health facility,~~  
 10 ~~a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the~~  
 11 ~~application for admission shall be treated as a petition for involuntary commitment. Notice of the substance~~  
 12 ~~of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous~~  
 13 ~~location on any form or application used for the voluntary admission of a minor to a mental health facility.~~  
 14 ~~The notice shall be explained to the minor."~~

15

16 **Section 17.** Section 53-21-115, MCA, is amended to read:

17 **"53-21-115. (Temporary) Procedural rights.** In addition to any other rights ~~which~~ that may be  
 18 guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this  
 19 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has  
 20 the following rights:

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

23 (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who  
 24 will testify in support of the petition;

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

27 ~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any  
 28 proceeding concerning ~~him~~ the person;

29 ~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

30 ~~(5)(6)~~ the right to be represented by counsel;

1           ~~(6)~~(7) the right to remain silent;

2           ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable  
3 to civil matters generally;

4           ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

5           ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~  
6 professional person is willing and reasonably available;

7           ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
8 part; and

9           ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

11           **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which that~~  
12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or  
13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this  
14 part has the following rights:

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

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

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

21           ~~(3)~~(4) the right in any hearing to cross-examine witnesses;

22           ~~(4)~~(5) the right to be represented by counsel;

23           ~~(6)~~(6) the right to remain silent;

24           ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable  
25 to civil matters generally;

26           ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

27           ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such the~~  
28 professional person is willing and reasonably available;

29           ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
30 part; and

1           ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
2 held pursuant to this part; AND

3           (12) THE RIGHT TO VOLUNTARILY TAKE NECESSARY MEDICATIONS PRIOR TO ANY HEARING  
4 PURSUANT TO THIS PART."

5

6           **Section 18.** Section 53-21-116, MCA, is amended to read:

7           **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The  
8 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.  
9 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,  
10 who shall be compensated from the public funds of the county where the respondent resides. (Terminates  
11 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

12           **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**  
13 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring  
14 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge  
15 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who ~~shall~~ must be  
16 compensated from the public funds of the county where the respondent resides."

17

18           **Section 19.** 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 who is seriously mentally ill and requesting that  
23 the person be committed to a mental health facility for a period of no more than 3 months; or

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

26           (2) The petition shall contain:

27           (a) the name and address of the person requesting the petition and his interest in the case;

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

30           (c) the purported facts supporting the allegation of mental illness;

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

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

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

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

11 (h) a statement of the rights of the respondent which shall be in conspicuous print and identified  
12 by a suitable heading.

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

22 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The  
23 county attorney, upon the written request of any person HAVING DIRECT KNOWLEDGE OF THE FACTS,  
24 may file a petition with the court alleging that there is a person within the county who is ~~seriously mentally~~  
25 ~~ill and requesting that the person be committed to a mental health facility for a period of no more than 3~~  
26 ~~months~~ suffering from a mental disorder and who requires commitment pursuant to this chapter.

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

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

30 (b) the name of the respondent and, if known, the address, age, sex, marital status, and

1 occupation of the respondent;

2 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the  
3 disposition sought pursuant to 53-21-127(2), and the need for commitment;

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~~ respondent for whom evaluation is sought;

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 the county attorney believes might be willing and  
9 able to be appointed as friend of respondent;

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

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

17 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the  
18 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of  
19 the peace. THE RESPONDENT'S COUNSEL SHALL MEET WITH THE RESPONDENT, EXPLAIN THE  
20 SUBSTANCE OF THE PETITION, AND EXPLAIN THE PROBABLE COURSE OF THE PROCEEDINGS. Notice  
21 of the petition and the order setting the date and time of the hearing and the names of the respondent's  
22 counsel, professional person, and friend of respondent ~~shall~~ must be hand-delivered or mailed to the person  
23 or persons legally responsible for care, support, and maintenance of the respondent, the next of kin  
24 identified in the petition, and any other person identified by the county attorney as a possible friend of  
25 respondent other than the one named as the friend of respondent. The notice may provide, other than as  
26 to the respondent and ~~his~~ the respondent's counsel, that no further notice will be given unless written  
27 request is filed with the clerk of court."

28

29 **SECTION 20. SECTION 53-21-122, MCA, IS AMENDED TO READ:**

30 **"53-21-122. (Temporary) Petition for commitment -- filing of -- initial hearing on. (1) The petition**

1 shall be filed with the clerk of court who shall immediately notify the judge.

2 (2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it  
3 shall be dismissed.

4 (b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent,  
5 and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be  
6 advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The  
7 respondent may at this appearance object to the finding of probable cause for filing the petition.

8 (ii) The judge shall:

9 (A) appoint a professional person;

10 (B) appoint a friend of respondent; and

11 (C) set a date and time for the hearing on the petition, which may not exceed 5 days, including  
12 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is  
13 requested on behalf of the respondent.

14 (iii) The desires of the respondent shall be taken into consideration in the appointment of the friend  
15 of respondent and in the confirmation of the appointment of the attorney.

16 (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and  
17 read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge  
18 finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional  
19 person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including  
20 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is  
21 requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith  
22 before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this  
23 part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace  
24 shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall  
25 be immediately communicated to the resident judge. The resident judge may appoint other counsel, may  
26 confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and  
27 may do all things necessary through the clerk of court by telephone as if the resident judge were personally  
28 present. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

29 **53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on. (1)**

30 The petition shall must be filed with the clerk of court who shall immediately notify the judge.



1           (2) If a judge is available, ~~he~~ the judge shall consider the petition, and if ~~he~~ the judge finds no  
 2 probable cause, it ~~shall~~ must be dismissed. If the judge finds probable cause, counsel ~~shall~~ must be  
 3 immediately appointed for the respondent, and the respondent ~~shall~~ must be brought ~~forthwith~~  
 4 court with ~~his~~ the respondent's counsel. The respondent ~~shall~~ must be advised of ~~his~~ the respondent's  
 5 constitutional rights, ~~his~~ the respondent's rights under this part, and the substantive effect of the petition.  
 6 The respondent may at this appearance object to the finding of probable cause for filing the petition. The  
 7 judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing  
 8 on the petition, ~~which that may not be on the same day as the initial appearance and that~~ may not exceed  
 9 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless  
 10 additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ must be taken  
 11 into consideration in the appointment of the friend of respondent and in the confirmation of the appointment  
 12 of the attorney.

13           (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and  
 14 shall read the petition to ~~him~~ the judge. If the judge finds no probable cause, the petition ~~shall~~ must be  
 15 dismissed. If the judge finds probable cause, ~~he~~ the judge shall cause the clerk to issue an order appointing  
 16 counsel and a professional person and setting a date and time for the hearing on the petition, ~~which that~~  
 17 may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends  
 18 and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested  
 19 on behalf of the respondent. The order ~~shall~~ must also direct that the respondent be brought ~~forthwith~~  
 20 before a justice of the peace with ~~his~~ the respondent's counsel to be advised of ~~his~~ the respondent's  
 21 constitutional rights, ~~his~~ the respondent's rights under this part, and the contents of the clerk's order, as  
 22 well as to furnish ~~him~~ the respondent with a copy. The justice of the peace shall ascertain the desires of  
 23 the respondent with respect to the appointment of ~~his~~ counsel, and this ~~shall~~ information must be  
 24 immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer  
 25 with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do  
 26 all things necessary through the clerk of court by telephone as if the resident judge were personally  
 27 present."  
 28

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

30           **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**

1 of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the  
 2 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination  
 3 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney  
 4 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the  
 5 court, with copies to the respondent's attorney and the county attorney. If the professional person  
 6 recommends commitment, the professional person's written report must contain a statement of the  
 7 professional person's recommendations to the court for disposition under 53-21-127(2).

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

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

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

16 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
 17 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
 18 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

19 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**  
 20 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice  
 21 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable  
 22 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately  
 23 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~  
 24 the examination to the court, with copies to the respondent's attorney and the county attorney. If the  
 25 professional person recommends commitment, the professional person's written report must contain a  
 26 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

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

28 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally  
 29 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county  
 30 attorney may, upon good cause shown, request the court to order an additional, but no more than one,

1 examination by a different professional person for a period of no more than 4 hours.

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

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

7

8 **Section 22.** Section 53-21-126, MCA, is amended to read:

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

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

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

25 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
26 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on  
27 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in  
28 53-21-102.

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

1           **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be  
 2 present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the  
 3 respondent shall must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to  
 4 the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in~~  
 5 ~~this part~~ suffering from a mental disorder and requires commitment. At the trial, the court shall consider  
 6 all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the  
 7 court determines that the respondent is suffering from a mental disorder, the court shall then determine  
 8 whether the respondent requires commitment. In determining whether the respondent requires commitment,  
 9 the court shall consider the following:

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

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

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

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

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

27           (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject  
 28 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that,~~  
 29 if. However, if the issues are tried by a jury, at least two-thirds of the jurors ~~must~~ shall concur on a finding  
 30 that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The

1 written report of the professional person that indicates the professional person's diagnosis may be attached  
 2 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely  
 3 because it is contained in the report. The court may order the trial closed to the public for the protection  
 4 of the respondent.

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

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

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

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

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

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

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

18 (A) has resulted in ~~behavior~~ RECENT ACTS, OMISSIONS, OR BEHAVIORS that ~~creates~~ CREATE  
 19 difficulty in protecting the respondent's life or health;

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

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

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

27 (5) The court, upon the showing of good cause and when it is in the best interests of the  
 28 respondent, may order a change of venue."  
 29

30 **Section 23.** Section 53-21-127, MCA, is amended to read:

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

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

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

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

12           (iii) order outpatient therapy; or

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

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

16           (c) In determining which of the above alternatives to order, the court shall choose the least  
17 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.  
18 The court shall consider and shall describe in its order what alternatives for treatment of the respondent  
19 are available, what alternatives were investigated, and why the investigated alternatives were not deemed  
20 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication  
21 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the  
22 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient  
23 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary  
24 administration and unless, if possible, a medication review committee reviews it prior to the beginning of  
25 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning  
26 of the involuntary administration. The medication review committee must include at least one person who  
27 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,  
28 must receive adequate written notice of the date, time, and place of the review and must be allowed to  
29 appear and give testimony and evidence. The involuntary administration of medication must be again  
30 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if

1 medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
 2 of the department of public health and human services must be fully informed of the matter within 5  
 3 working days after the beginning of the involuntary administration. The director shall report to the governor  
 4 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it  
 5 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the  
 6 facts upon which it found involuntary medication to be necessary.

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

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

21 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
 22 the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment  
 23 within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

30 (i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;

1           (ii) commit the respondent to a community facility, program, or course of treatment for a period  
 2 of not more than 3 months;

3           ~~(iii)(iii)~~ order the respondent to be placed in the care and custody of a relative or guardian or some  
 4 other appropriate place other than an institution;

5           ~~(iii)(iv)~~ order outpatient therapy; or

6           ~~(iv)(v)~~ make some other appropriate order for treatment.

7           (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody  
 8 or course of treatment for a period of more than 3 months.

9           (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
 10 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
 11 effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment~~  
 12 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~  
 13 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician  
 14 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary  
 15 medication is necessary to protect the respondent ~~and~~ or the public ~~and~~ or to facilitate effective treatment.  
 16 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility  
 17 or a physician designated by the court approves it prior to the beginning of the involuntary administration  
 18 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary  
 19 administration or, if prior review is not possible, within 5 working days after the beginning of the  
 20 involuntary administration. The medication review committee must include at least one person who is not  
 21 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient  
 22 has one, must receive adequate written notice of the date, time, and place of the review and must be  
 23 allowed to appear and give testimony and evidence. The involuntary administration of medication must be  
 24 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration  
 25 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
 26 of the department of public health and human services must be fully informed of the matter within 5  
 27 working days after the beginning of the involuntary administration. The director shall report to the governor  
 28 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~  
 29 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~  
 30 ~~facts upon which it found involuntary medication to be necessary.~~



1           (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to  
 2 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court  
 3 may require commitment only to a community facility and may not require commitment at the state  
 4 hospital.

5           (e) In ordering commitment pursuant to this section, the court shall make the following findings  
 6 of fact:

7           (i) a detailed statement of the facts upon which the court found the respondent to be suffering  
 8 from a mental disorder and requiring commitment;

9           (ii) the alternatives for treatment that were considered;

10          (iii) the alternatives available for treatment of the respondent;

11          (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

12          (v) the name of the facility, program, or individual to be responsible for the management and  
 13 supervision of the respondent's treatment;

14          (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was  
 15 chosen from among other alternatives; and

16          (vii) if the order includes involuntary medication, the reason involuntary medication was chosen  
 17 from among other alternatives."

18  
 19          **Section 24.** Section 53-21-128, MCA, is amended to read:

20          **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month  
 21 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be  
 22 followed:

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

30          (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to

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

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

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

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

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

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
30 the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,

1 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination  
2 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date  
3 not more than 5 days from the receipt of the request and notify the same people, including the professional  
4 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment  
5 for a period not to exceed 30 days.

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

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

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

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

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

1 report ~~shall~~ must describe any tests and evaluation devices ~~which that~~ have been employed in evaluating  
 2 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future  
 3 course of treatment anticipated by the professional person.

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

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

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

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

1 required by subsection (1)."

2

3 **Section 25.** Section 53-21-129, MCA, is amended to read:

4 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists,  
5 a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious~~  
6 ~~mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent  
7 danger of death or serious bodily harm to the person or to others into custody only for sufficient time to  
8 contact a professional person for emergency evaluation. If possible, a professional person should be called  
9 prior to taking the person into custody.

10 (2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~  
11 is a danger to the person or to others because of a mental disorder and that an emergency situation exists,  
12 then the person may be detained and treated until the next regular business day. At that time, the  
13 professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if  
14 ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121  
15 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall  
16 file a report with the court explaining ~~his~~ the professional person's actions.

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

24 (4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state  
25 hospital must be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."

26

27 **Section 26.** Section 53-21-132, MCA, is amended to read:

28 **"53-21-132. Cost of examination and commitment.** (1) The cost of ~~the~~ precommitment  
29 examination, committal, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering  
30 from a mental disorder and who requires commitment to a mental health facility must be paid by the county

1 in which ~~he~~ the person resides at the time ~~he~~ that the person is ~~adjudged to be seriously mentally ill~~  
 2 committed. The sheriff must be allowed the actual expenses incurred in taking a committed person ~~who~~  
 3 ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

4 (2) The county of residence shall also pay all precommitment expenses, including transportation  
 5 to a mental health facility, incurred in connection with the detention, examination, and precommitment  
 6 custody of the respondent. However, the county of residence is not required to pay costs of treatment and  
 7 custody of the respondent after the respondent is committed pursuant to this part. The fact that a person  
 8 is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to  
 9 this part does not relieve a third party from a contractual obligation to pay for the cost of the examination,  
 10 hospitalization, or treatment.

11 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and  
 12 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public  
 13 mental health program funds.

14 (4) A community service provider that is a private, nonpublic provider may not be required to treat  
 15 or treat without compensation a person who has been committed."

16  
 17 **Section 27.** Section 53-21-134, MCA, is amended to read:

18 **"53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder**  
 19 **pending return to home state.** A person who is ~~seriously mentally ill~~ suffering from a mental disorder and  
 20 in need of commitment and who is not a resident of this state may be received into the state hospital for  
 21 a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."  
 22

23 **Section 28.** Section 53-21-138, MCA, is amended to read:

24 **"53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail.** (1)  
 25 The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons  
 26 accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental  
 27 disorders and who require commitment, as defined in 53-21-102.

28 (2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~  
 29 suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

30 (a) request services from a crisis intervention program established by the department, as provided

1 for in 53-21-139;

2 (b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

3 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment  
4 and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require  
5 commitment.

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

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

12

13 **Section 29.** Section 53-21-139, MCA, is amended to read:

14 **"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available  
15 appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour  
16 emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and  
17 requiring commitment in a temporary, safe environment in the community as an alternative to placement  
18 in jail.

19 (2) The department shall provide information and technical assistance regarding needed services  
20 and assist counties in developing county plans for crisis intervention services and for the provision of  
21 alternatives to jail placement.

22 (3) The department may provide crisis intervention programs as:

23 (a) a rehabilitative service under 53-6-101(3)(j); and

24 (b) a targeted case management service authorized in 53-6-101(3)(n)."

25

26 **Section 30.** Section 53-21-144, MCA, is amended to read:

27 **"53-21-144. Rights concerning photographs ~~and videotapes~~.** (1) A person admitted to a mental  
28 health facility may be photographed ~~upon admission for identification and the~~ ~~or videotaped~~ for the clinical  
29 ~~or~~ administrative purposes of the facility. ~~Such~~ The photographs shall be ~~or videotapes are~~ confidential ~~and~~  
30 ~~shall not be released by the facility except pursuant to court order.~~ Photographs may be released to a law

1 enforcement agency when needed to aid in the search for a person who has left a facility without  
 2 authorization from the facility's medical staff AND WHEN IT IS DETERMINED THAT THE PERSON IS A  
 3 SELF-THREAT OR SELF-DANGER OR A THREAT OR DANGER TO OTHERS AT THE TIME THAT THE  
 4 PERSON LEFT THE FACILITY. A law enforcement agency may not subsequently release photographs to the  
 5 public or other persons unless authorized by a court order.

6 (2) ~~No other~~ Other nonmedical photographs ~~shall or videotapes may not~~ be taken or used without  
 7 consent of the patient or, if applicable, the patient's legal guardian or without a court order."

8

9 **Section 31.** Section 53-21-182, MCA, is amended to read:

10 **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the  
 11 patient's commitment, the court may, on its own initiative or upon application of the professional person  
 12 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party  
 13 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,  
 14 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient  
 15 therapy or other appropriate placement or treatment."

16

17 **Section 32.** Section 53-21-195, MCA, is amended to read:

18 **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**  
 19 **-- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient  
 20 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition  
 21 in any district court by the county attorney, the professional person in charge of the patient's case, or the  
 22 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each  
 23 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under  
 24 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded  
 25 to the clerk. The file or files must be promptly forwarded.

26 (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

27 (3) The petition must state:

28 (a) the patient's name and last-known address;

29 (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent  
 30 appointed by the court, if any and if this information is reasonably ascertainable;



1 (c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering  
 2 from a mental disorder and requiring commitment within the meaning of this part and is presently under a  
 3 valid order of commitment pursuant to 53-21-127 or 53-21-128;

4 (d) a simple and precise statement of the facts showing that the patient has violated a condition  
 5 of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a  
 6 result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

7 (e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must  
 8 be in conspicuous print and identified by a suitable heading.

9 (4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

10 (5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing  
 11 must be held no more than 5 days after the date that the petition is filed, including weekends and holidays,  
 12 unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient.  
 13 Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered  
 14 to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

15  
 16 **Section 33.** Section 53-21-197, MCA, is amended to read:

17 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court  
 18 may order that the patient's conditional release status be revoked and that the patient be returned to the  
 19 mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate  
 20 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

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

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

27 (2) A revocation of the patient's conditional release status under subsection (1) must be based on  
 28 the testimony of the professional person responsible for the patient's case.

29 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a  
 30 treatment plan must be updated or a new plan prepared for the patient as required by and within the time

1 set forth in 53-21-162.

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

5

6 **Section 34.** Section 53-21-198, MCA, is amended to read:

7 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be  
8 extended by the district court beyond the expiration date of the order committing the patient under  
9 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear  
10 and convincing evidence that:

11 (a) continuation of the conditions of release is necessary to prevent the deterioration of the  
12 patient's mental disorder; and

13 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~  
14 patient. Predictability may be established by the patient's medical history.

15 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under  
16 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the  
17 professional person responsible for the patient's case may petition the court for extension of the conditions  
18 of release. The petition must be accompanied by a written report and evaluation of the patient's mental  
19 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been  
20 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,  
21 and the future course of treatment anticipated by the professional person.

22 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
23 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the  
24 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the  
25 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place  
26 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
27 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
28 enter an order extending the conditions of release for a period not to exceed 6 months.

29 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing  
30 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,

1 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district  
 2 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by  
 3 the county that paid the same costs in the initial commitment proceeding.

4 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been  
 5 made, the conditions of release may not be extended. If the court finds that the required showing has been  
 6 made, the court may extend the conditions of release as recommended by the professional person. In its  
 7 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives  
 8 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court  
 9 may not order continuation of an alternative that does not include a comprehensive, individualized plan of  
 10 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative  
 11 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

12 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~  
 13 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the  
 14 extension under the procedures set forth in this section, including a hearing and a statement of the findings  
 15 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation  
 16 provided in subsection (1)."

17  
 18 **Section 35.** Section 70-19-413, MCA, is amended to read:

19 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies  
 20 if a person entitled to commence an action for the recovery of real property or for the recovery of the  
 21 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property  
 22 or to rents or services out of the same is, at the same time ~~such the~~ the title first descends or accrues:

23 (a) under the age of majority;

24 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or

25 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term  
 26 of less than for life.

27 (2) The time during which disability continues is not considered any portion of the time in this  
 28 chapter limited for the commencement of ~~such the~~ the action or the making of ~~such the~~ the entry or defense, ~~but~~  
 29 ~~such.~~ The action may be commenced or entry or defense made within the period of 5 years after ~~such the~~ the  
 30 disability ceases or after the death of the person entitled who dies under ~~such the~~ the disability, but ~~such the~~ the

1 action may not be commenced or entry or defense made after that period."

2

3 **Section 36.** Section 70-29-113, MCA, is amended to read:

4 **"70-29-113. Death or incompetency of parties -- proceedings not delayed.** (1) If during the  
5 pendency of the action ~~any of the parties~~ a party dies ~~or becomes seriously mentally ill~~ , is committed  
6 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be  
7 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~  
8 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to  
9 represent the interest ~~which~~ that was held by the party until ~~his~~ the party's heirs ~~or~~ legal representatives,  
10 or successors in interest have appeared in the action.

11 (2) An attorney ~~so~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a  
12 reasonable compensation for ~~his~~ the attorney's services, ~~which~~ The compensation may be taxed as costs  
13 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share  
14 or interest, in the discretion of the court."

15

16 **Section 37.** Section 70-29-210, MCA, is amended to read:

17 **"70-29-210. Consent of guardian to share of ward.** The general guardian of a minor and the  
18 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed  
19 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who  
20 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~  
21 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or  
22 other person entitled ~~and~~ to the share. The guardian may execute a release, in ~~his~~ the person's behalf, to  
23 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the  
24 court."

25

26 **Section 38.** Section 70-29-328, MCA, is amended to read:

27 **"70-29-328. Incompetent's share of proceeds -- payment to guardian.** The guardian who may be  
28 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant  
29 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest  
30 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the

1 proceeds of ~~such~~ the real property from the referees. The guardian may receive the interest on executing  
 2 an undertaking with ~~sufficient sureties~~ an undertaking, a surety. The undertaking must be approved by a  
 3 judge of the court, ~~that he~~ and must state that the guardian will faithfully discharge the trust ~~reposed~~ placed  
 4 in ~~him~~ the guardian and will ~~render a true and just~~ make an accurate account to the person entitled to the  
 5 accounting or to ~~his~~ the person's legal representative."

6  
 7 **Section 39.** Section 72-5-322, MCA, is amended to read:

8 **"72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the  
 9 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court  
 10 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~  
 11 ~~shall~~. However, the order may not forcibly detain the ward against his the ward's will for more than 72  
 12 hours.

13 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights  
 14 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment  
 15 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

16  
 17 **NEW SECTION. Section 40. Saving clause.** [This act] does not affect rights and duties that  
 18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
 19 act].

20  
 21 **NEW SECTION. Section 41. Effective date.** [This act] is effective July 1, 1997.

22 -END-

## 1 HOUSE BILL NO. 502

2 INTRODUCED BY SOFT, WATERMAN

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO MENTAL HEALTH; DELETING THE DEFINITION  
 5 OF "SERIOUSLY MENTALLY ILL" AND SUBSTITUTING "MENTAL DISORDER"; DEFINING THE TERMS  
 6 "COMMITMENT" AND "MENTAL DISORDER"; ALLOWING COMMITMENT TO A COMMUNITY FACILITY  
 7 OF A PERSON SUFFERING FROM A MENTAL DISORDER; CLARIFYING STATUTES RELATING TO  
 8 VOLUNTARY AND INVOLUNTARY COMMITMENT OF MINORS; ALLOWING CLINICAL AND  
 9 ADMINISTRATIVE USE OF PHOTOGRAPHS AND VIDEOTAPES OF MENTAL HEALTH FACILITY PATIENTS;  
 10 AMENDING SECTIONS 2-16-501, 2-16-503, 25-31-602, 27-2-401, 27-8-204, 33-20-121, 37-3-323,  
 11 37-6-311, 37-11-321, 37-12-322, 41-5-523, 46-14-206, 53-20-112, 53-21-101, 53-21-102, 53-21-112,  
 12 53-21-115, 53-21-116, 53-21-121, 53-21-122, 53-21-123, 53-21-126, 53-21-127, 53-21-128,  
 13 53-21-129, 53-21-132, 53-21-134, 53-21-138, 53-21-139, 53-21-144, 53-21-182, 53-21-195,  
 14 53-21-197, 53-21-198, 70-19-413, 70-29-113, 70-29-210, 70-29-328, AND 72-5-322, MCA; AND  
 15 PROVIDING AN EFFECTIVE DATE."

16

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

18

19 Section 1. Section 2-16-501, MCA, is amended to read:

20 "2-16-501. **Vacancies created.** An office becomes vacant on the happening of any one of the  
 21 following events before the expiration of the term of the incumbent:

22 (1) the death of the incumbent;

23 (2) a determination pursuant to Title 53, chapter 21, part 1, that ~~he~~ the incumbent ~~is seriously~~  
 24 ~~mentally ill~~ suffers from a mental disorder and is in need of commitment;

25 (3) ~~his~~ resignation of the incumbent;26 (4) ~~his~~ removal of the incumbent from office;

27 (5) ~~his~~ the incumbent's ceasing to be a resident of the state or, if the office ~~he~~ is local, of the  
 28 district, city, county, town, or township for which ~~he~~ the incumbent was chosen or appointed or within  
 29 which the duties of ~~his~~ the incumbent's office are required to be discharged;

30 (6) ~~his~~ absence of the incumbent from the state, without the permission of the legislature, beyond

1 the period allowed by law;

2 (7) ~~his~~ the incumbent's ceasing to discharge the duty of ~~his~~ the incumbent's office for the period  
3 of 3 consecutive months, except when prevented by sickness or when absent from the state by permission  
4 of the legislature;

5 (8) ~~his~~ conviction of the incumbent of a felony or of ~~any~~ an offense involving moral turpitude or  
6 a violation of ~~his~~ the incumbent's official duties;

7 (9) ~~his~~ the incumbent's refusal or neglect to file ~~his~~ the incumbent's official oath or bond within  
8 the time prescribed;

9 (10) the decision of a competent tribunal declaring void ~~his~~ the incumbent's election or  
10 appointment."

11

12 **Section 2.** Section 2-16-503, MCA, is amended to read:

13 "**2-16-503. Notice of removal.** Whenever an officer is removed, ~~declared seriously mentally ill~~  
14 committed pursuant to 53-21-127, or convicted of a felony or offense involving moral turpitude or a  
15 violation of ~~his~~ the officer's official duty or whenever ~~his~~ the officer's election or appointment is declared  
16 void, the body, judge, or officer before whom the proceedings were ~~had~~ must ~~conducted~~ shall give notice  
17 ~~thereof of the proceedings~~ to the officer authorized to fill the vacancy."

18

19 **Section 3.** Section 25-31-602, MCA, is amended to read:

20 "**25-31-602. When guardian necessary -- how appointed.** When a minor ~~or seriously mentally ill~~  
21 ~~or~~ incompetent person, or person who has been committed pursuant to 53-21-127 is a party, ~~he~~ the minor  
22 or other person ~~must~~ shall appear either by ~~his~~ general guardian, if ~~he~~ the minor or other person has one,  
23 or by a guardian ad litem appointed by the justice. When a guardian ad litem is appointed by the justice,  
24 ~~he~~ the guardian ad litem must be appointed as follows:

25 (1) If the minor ~~or seriously mentally ill~~ ~~or~~ incompetent person, or person who has been committed  
26 pursuant to 53-21-127 is a plaintiff, the appointment must be made before the summons is issued:

27 (a) in the case of a minor who is 14 or more years old, upon the application of the minor;

28 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill~~ ~~or~~ an  
29 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
30 of a relative or friend;

1 (c) in ~~any~~ a case described in subsection (1)(a) or (1)(b) in which no application is made, upon the  
2 justice's own motion.

3 (2) If the minor ~~or seriously mentally ill or~~, incompetent person, or person who has been committed  
4 pursuant to 53-21-127 is a defendant, the appointment must be made at the time that the summons is  
5 returned or before the answer:

6 (a) in the case of a minor who is 14 or more years old and who applies before the summons is  
7 returned or at the time of the return, upon the application of the minor;

8 (b) in the case of a minor who is less than 14 years old ~~or a seriously mentally ill or~~, an  
9 incompetent person, or a person who has been committed pursuant to 53-21-127, upon the application  
10 of a relative or friend or any other party to the action;

11 (c) in any case described in subsection (2)(a) or (2)(b) in which no application is made, upon the  
12 justice's own motion."

13  
14 **Section 4.** Section 27-2-401, MCA, is amended to read:

15 **"27-2-401. When person entitled to bring action is under a disability.** (1) If a person entitled to  
16 bring an action mentioned in part 2, except 27-2-211(3), is, at the time the cause of action accrues, either  
17 a minor ~~or seriously mentally ill~~ has been committed pursuant to 53-21-127, the time of the disability is not  
18 a part of the time limit for commencing the action. However, the time limit cannot be extended more than  
19 5 years by the disability of ~~serious mental illness~~ commitment.

20 (2) If an action is barred by 27-2-304, any of the heirs, devisees, or creditors who at the time of  
21 the transaction upon which the action might have been founded ~~was~~ were under one of the disabilities  
22 mentioned in subsection (1) may, within 5 years after the cessation of the disability, maintain an action to  
23 recover damages. In the action, the person may recover the sum or the value of the property that the  
24 person would have received upon the final distribution of the estate if an action had been ~~seasonably~~  
25 commenced in a timely manner by the personal representative.

26 (3) A person may not claim a disability unless it existed when the right of action or entry accrued.

27 (4) When both disabilities referred to in subsection (1) coexist at the time that the right of action  
28 or entry accrues, the limitation does not attach until both are removed."

29  
30 **Section 5.** Section 27-8-204, MCA, is amended to read:



1           **"27-8-204. Declarations concerning administration of trusts and estates.** ~~Any~~ A person interested  
 2 as or through an executor, administrator, trustee, guardian, ~~or~~ other fiduciary, creditor, devisee, heir, or  
 3 cestui que trust in the administration of a trust or of the estate of a decedent, minor, ~~seriously mentally ill~~  
 4 person committed pursuant to 53-21-127, or insolvent person may have a declaration of rights or legal  
 5 relations ~~in respect thereto~~:

6           (1) to ascertain any class of creditors, devisees, heirs, or others;

7           (2) to direct the executors, administrators, or trustees to do or abstain from doing ~~any~~ a particular  
 8 act in their fiduciary capacity; or

9           (3) to determine ~~any~~ a question arising in the administration of the estate or trust, including  
 10 questions of construction of wills and other writings."

11

12           **Section 6.** Section 33-20-121, MCA, is amended to read:

13           **"33-20-121. Prohibited provisions -- limitations on liability.** (1) A policy of life insurance may not  
 14 be delivered or issued for delivery in this state if it contains a provision:

15           (a) for a period shorter than that provided by statute within which an action at law or in equity may  
 16 be commenced on the policy; or

17           (b) that excludes or restricts liability for death caused in a certain specified manner or occurring  
 18 while the insured has a specified status, except that a policy may contain provisions excluding or restricting  
 19 coverage as specified in the policy in the event of death:

20           (i) as a result, directly or indirectly, of war, declared or undeclared, or of action by military forces  
 21 or of ~~any~~ an act or hazard of war or action or of service in the military, naval, or air forces or in civilian  
 22 forces auxiliary ~~thereto~~ to those military forces or from any cause while a member of military, naval, or air  
 23 forces of ~~any~~ a country at war, declared or undeclared, or of ~~any~~ a country engaged in military action;

24           (ii) as a result of aviation ~~or any~~ air travel, or flight;

25           (iii) as a result of a specified hazardous occupation or occupations;

26           (iv) while the insured is a resident outside the continental United States and Canada; or

27           (v) within 2 years from the date of issue of the policy as a result of suicide, while ~~seriously~~  
 28 ~~mentally ill~~ committed pursuant to 53-21-127, ~~or otherwise~~. If a life insurance policy contains a dependent  
 29 rider, the dependent coverage may be continued upon payment of the premium for the dependent rider.

30           (2) A policy that contains an exclusion or restriction pursuant to subsection (1) must also provide

1 that in the event of death under the circumstances to which the exclusion or restriction is applicable, the  
 2 insurer will pay an amount not less than a reserve determined according to the commissioner's reserve  
 3 valuation method on the basis of the mortality table and interest rate specified in the policy for the  
 4 calculation of nonforfeiture benefits (or if the policy does not provide for nonforfeiture benefits, computed  
 5 according to a mortality table and interest rate determined by the insurer and specified in the policy) or by  
 6 any other method more favorable to the policyholder, with adjustment for indebtedness or dividend credit.

7 (3) This section does not apply to industrial life insurance, group life insurance, disability insurance,  
 8 reinsurance, or annuities or to a provision in a life insurance policy relating to disability benefits or to  
 9 additional benefits in the event of death by accident or accidental means.

10 (4) This section does not prohibit a provision that in the opinion of the commissioner is more  
 11 favorable to the policyholder than a provision permitted by this section."

12  
 13 **Section 7.** Section 37-3-323, MCA, is amended to read:

14 **"37-3-323. Revocation or suspension of license.** (1) The department may make an investigation  
 15 whenever it is brought to its attention that there is reason to suspect that a person having a license or  
 16 certificate to practice medicine in this state:

17 (a) is mentally or physically unable to safely engage in the practice of medicine, has procured a  
 18 license to practice medicine by fraud or misrepresentation or through mistake, has been declared  
 19 incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later been lawfully declared  
 20 competent, or has a condition that impairs the person's intellect or judgment to the extent that it  
 21 incapacitates the person for the safe performance of professional duties;

22 (b) has been guilty of unprofessional conduct;

23 (c) has practiced medicine with a suspended or revoked license;

24 (d) has had a license to practice medicine suspended or revoked by any licensing authority for  
 25 reasons other than nonpayment of fees; or

26 (e) while under probation has violated its terms.

27 (2) The investigation must be for the purpose of determining the probability of the existence of  
 28 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
 29 the person to submit to a physical examination or a mental examination, or both, by a physician or  
 30 physicians selected by the board if it appears to be in the best interests of the public that this evaluation

1 be secured. The board may examine and scrutinize the hospital records and reports of a licensee as part  
2 of the examination, and copies must be released to the board on written request.

3 (3) If a person holding a license to practice medicine under this chapter is by a final order or  
4 adjudication of a court of competent jurisdiction adjudged to be mentally incompetent, ~~or seriously mentally~~  
5 ~~ill or to be~~ addicted to the use of addictive substances, or to have been committed pursuant to 53-21-127,  
6 the person's license may be suspended by the board. The suspension continues until the licensee is found  
7 or adjudged by the court to be restored to reason or cured or until the person is discharged as restored to  
8 reason or cured and the person's professional competence has been ~~proven~~ proved to the satisfaction of  
9 the board."

10

11 **Section 8.** Section 37-6-311, MCA, is amended to read:

12 **"37-6-311. Refusal or revocation of license -- investigation.** (1) After notice and opportunity for  
13 a hearing, the board may deny, revoke, or refuse to renew a license to practice podiatry if the consensus  
14 of the board is that an applicant is not of good moral character or has engaged in unprofessional conduct.

15 (2) The department may investigate whenever it is brought to its attention that a licensed  
16 podiatrist:

17 (a) is mentally or physically unable to engage safely in the practice of podiatry;

18 (b) has procured the license by fraud, misrepresentation, or through error;

19 (c) has been declared incompetent by a court of competent jurisdiction and ~~thereafter~~ has not later  
20 been lawfully declared competent;

21 (d) has a condition that impairs the licensee's intellect or judgment to the extent that it  
22 incapacitates the licensee in the safe performance of professional duties;

23 (e) has been found guilty of unprofessional conduct;

24 (f) has practiced podiatry while the license was suspended or revoked;

25 (g) has had the license suspended or revoked by any licensing authority for reasons other than  
26 nonpayment of fees; or

27 (h) while under probation has violated its terms.

28 (3) The investigation must be for the purpose of determining the probability that the alleged  
29 conditions exist or that the alleged offenses were committed. Upon order of the board, the investigation  
30 may include requiring the person to submit to a physical examination or a mental examination, or both, by

1 a physician or physicians selected by the board if it appears to be in the best interest of the public that this  
 2 evaluation be secured. The board may examine the hospital records and reports of a licensee as part of the  
 3 examination, and copies ~~shall~~ must be released to the board on written request.

4 (4) If a person holding a license to practice podiatry under this chapter is by a final order or  
 5 adjudication of a court of competent jurisdiction determined to be mentally incompetent, ~~seriously mentally~~  
 6 ~~ill, or to be~~ addicted to the use of narcotics, or to have been committed pursuant to 53-21-127, the license  
 7 may be suspended by the board. The suspension continues until the licensee is found by the court to be  
 8 restored to reason or cured or until the licensee is discharged as restored to reason or cured and the  
 9 licensee's professional competence has been ~~proven~~ proved to the satisfaction of the board."

10  
 11 **Section 9.** Section 37-11-321, MCA, is amended to read:

12 "**37-11-321. Refusal to issue or renew license.** The board, after due notice and hearing, may  
 13 refuse to license any applicant and may refuse to renew, may suspend, may revoke, or may take lesser  
 14 disciplinary action on the license of any licensed person who:

15 (1) is habitually intoxicated or is addicted to the use of narcotic drugs;

16 (2) has been convicted of violating any state or federal narcotic law, subject to chapter 1, part 2,  
 17 ~~of this title;~~

18 (3) is, in the judgment of the board, guilty of immoral or unprofessional conduct as defined by  
 19 board rule;

20 (4) has been convicted of any crime involving moral turpitude, subject to chapter 1, part 2, ~~of this~~  
 21 ~~title;~~

22 (5) is guilty, in the judgment of the board, of gross negligence in the practice of physical therapy  
 23 or practice as an assistant;

24 (6) has obtained or attempted to obtain licensure by fraud or material misrepresentation;

25 (7) has been ~~declared to be seriously mentally ill~~ committed pursuant to 53-21-127 by a court of  
 26 competent jurisdiction and has not been released from ~~treatment~~ commitment and declared not to be  
 27 ~~seriously mentally ill~~ require further commitment;

28 (8) has treated or undertaken to treat ailments of human beings otherwise than by physical therapy;

29 (9) is guilty, in the judgment of the board, of conduct unbecoming a person licensed as a physical  
 30 therapist or assistant or of conduct detrimental to the best interests of the public; or

1 (10) has practiced physical therapy or has practiced as an assistant beyond the scope and limitation  
2 of the person's training and education."

3

4 **Section 10.** Section 37-12-322, MCA, is amended to read:

5 **"37-12-322. Investigation of complaints.** (1) The department may make an investigation whenever  
6 it is brought to its attention that there is reason to suspect that a person licensed to practice chiropractic:

7 (a) has a mental or physical condition ~~such~~ that renders the person ~~is~~ unable to safely engage in  
8 the practice of chiropractic;

9 (b) has been declared incompetent or ~~seriously mentally ill~~ has been committed pursuant to  
10 53-21-127 by a court of competent jurisdiction and ~~thereafter~~ has not later been declared competent or  
11 released from supervision;

12 (c) has procured the license through mistake;

13 (d) has been guilty of unprofessional conduct;

14 (e) has practiced chiropractic while the license was suspended or revoked;

15 (f) has while under probation violated its terms.

16 (2) The investigation must be for the purpose of determining the probability of the existence of  
17 these conditions or the commission of these offenses and may, upon order of the board, include requiring  
18 the person to submit to a physical or mental examination, or both, by a physician or physicians selected  
19 by the board if it appears to be in the best interests of the public that this evaluation be secured. The board  
20 may examine the hospital records and reports of the licensee as part of the examination, and copies of  
21 these must be released to the board on written request."

22

23 **Section 11.** Section 41-5-523, MCA, is amended to read:

24 **"41-5-523. Disposition -- sentence to correctional facility -- commitment to department --**  
25 **placement and evaluation of youth -- restrictions.** (1) If a youth is found to be a delinquent youth or a youth  
26 in need of supervision, the youth court may enter its judgment making one or more of the following  
27 dispositions:

28 (a) retain jurisdiction in a disposition provided under subsection (1)(b) or (1)(d);

29 (b) place the youth on probation;

30 (c) subject to subsections (1)(n)(i), (2)(a), (2)(b), and (6), sentence a youth to one of the state

1 youth correctional facilities established under 52-5-101 and, as part of the sentence, deny the youth  
2 eligibility for release without the express approval of the sentencing judge until the youth reaches 18 years  
3 of age. A youth may not be sentenced to a state youth correctional facility unless the department informs  
4 the judge that space is available for the youth at that facility. The sentencing judge may not place  
5 limitations on the release unless recommended by the youth placement committee.

6 (d) require a youth found to be delinquent to register as a sex offender pursuant to 46-18-254 and  
7 46-23-506;

8 (e) place the youth in an in-state residence that ensures that the youth is accountable, provides  
9 for rehabilitation, and protects the public. Before placement, the sentencing judge shall seek and consider  
10 placement recommendations from the youth placement committee. The judge may not place the youth in  
11 an in-state residence unless the department informs the judge that resources are available for placement  
12 of the youth at that residence.

13 (f) commit the youth to the department. In an order committing a youth to the department:

14 (i) the court shall determine whether continuation in the youth's own home would be contrary to  
15 the welfare of the youth and whether reasonable efforts have been made to prevent or eliminate the need  
16 for removal of the youth from the youth's home;

17 (ii) in the case of a delinquent youth who is determined by the court to be a serious juvenile  
18 offender, the judge may specify that the youth be placed in a state youth correctional facility if the judge  
19 finds that the placement is necessary for the protection of the public. The court may order the department  
20 to notify the court within 5 working days before the proposed release of a youth from a youth correctional  
21 facility. Once a youth is committed to the department for placement in a state youth correctional facility,  
22 the department is responsible for determining an appropriate date of release into an appropriate placement.

23 (g) order restitution by the youth or the youth's parents;

24 (h) impose a fine as authorized by law if the violation alleged would constitute a criminal offense  
25 if committed by an adult;

26 (i) require the performance of community service;

27 (j) require the youth, the youth's parents or guardians, or the persons having legal custody of the  
28 youth to receive counseling services;

29 (k) require the medical and psychological evaluation of the youth, the youth's parents or guardians,  
30 or the persons having legal custody of the youth;

1 (l) require the parents, guardians, or other persons having legal custody of the youth to furnish  
2 services the court may designate;

3 (m) order further care, treatment, evaluation, or relief that the court considers beneficial to the  
4 youth and the community and that does not obligate funding from the department for services outside the  
5 state of Montana without the department's approval, except that a youth may not be placed by a youth  
6 court in a residential treatment facility as defined in 50-5-101. Only the department may, pursuant to  
7 subsection (1)(f), place a youth in a residential treatment facility.

8 (n) commit the youth to a mental health facility if, based upon the testimony of a professional  
9 person as defined in 53-21-102, the court finds that the youth is ~~seriously mentally ill~~ suffering from a  
10 mental disorder and requires commitment as defined in 53-21-102. The youth is entitled to all rights  
11 provided by 53-21-114 through 53-21-119.

12 (i) A youth ~~adjudicated mentally ill or seriously mentally ill as defined in 53-21-102~~ determined to  
13 be suffering from a mental disorder and requiring commitment may not be committed or sentenced to a  
14 state youth correctional facility.

15 (ii) A youth ~~adjudicated to be mentally ill or seriously mentally ill~~ determined to be suffering from  
16 a mental disorder and requiring commitment after placement in or sentencing to a state youth correctional  
17 facility must be moved to a more appropriate placement in response to the youth's mental health needs and  
18 consistent with the disposition alternatives available in 53-21-127.

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

20 (2) When a youth is committed to the department, the department shall determine the appropriate  
21 placement and rehabilitation program for the youth after considering the recommendations made under  
22 41-5-527 by the youth placement committee. Placement is subject to the following limitations:

23 (a) A youth in need of supervision or adjudicated delinquent for commission of an act that would  
24 not be a criminal offense if committed by an adult may not be placed in a state youth correctional facility.

25 (b) A youth may not be held in a state youth correctional facility for a period of time in excess of  
26 the maximum period of imprisonment that could be imposed on an adult convicted of the offense or  
27 offenses that brought the youth under the jurisdiction of the youth court. This section does not limit the  
28 power of the department to enter into an aftercare agreement with the youth pursuant to 52-5-126.

29 (c) A youth may not be placed in or transferred to a penal institution or other facility used for the  
30 execution of sentence of adults convicted of crimes.

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

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

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

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

12           (d) case management of the youth.

13           (4) The youth court may order a youth to receive a medical or psychological evaluation at any time  
14 prior to final disposition if the youth waives the youth's constitutional rights in the manner provided for in  
15 41-5-303. The county determined by the court as the residence of the youth is responsible for the cost of  
16 the evaluation, except as provided in subsection (5). A county may contract with the department or other  
17 public or private agencies to obtain evaluation services ordered by the court.

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

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

24           (7) An evaluation of a youth may not be performed at the Montana state hospital unless the youth  
25 is transferred to the district court under 41-5-206, 41-5-208, or 41-5-1105.

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

29           (9) Whenever the court commits a youth to the department, it shall transmit with the dispositional  
30 judgment copies of medical reports, social history material, education records, and any other clinical,



1 predisposition, or other reports and information pertinent to the care and treatment of the youth.

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

6 (11) If the court determines that the youth's parents or guardians are financially able to pay a  
7 contribution as provided in subsection (10), the court shall order the youth's parents or guardians to pay  
8 an amount based on the uniform child support guidelines adopted by the department of public health and  
9 human services pursuant to 40-5-209.

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

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

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

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

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

23 (i) a written determination and explanation by the court of the reasons why the implementation of  
24 immediate income withholding is not in the best interests of the youth; and

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

27 (d) An alternative arrangement must:

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

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

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

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

4 (14) (a) If the court orders the payment of contributions under this section, the department shall  
5 apply to the department of public health and human services for support enforcement services pursuant  
6 to Title IV-D of the Social Security Act.

7 (b) The department of public health and human services may collect and enforce a contribution  
8 order under this section by any means available under law, including the remedies provided for in Title 40,  
9 chapter 5, parts 2 and 4."

10

11 **Section 12.** Section 46-14-206, MCA, is amended to read:

12 **"46-14-206. Report of examination.** (1) A report of the examination must include the following:

13 (a) a description of the nature of the examination;

14 (b) a diagnosis of the mental condition of the defendant, including an opinion as to whether the  
15 ~~defendant is seriously mentally ill, as defined in 53-21-102~~ suffers from a mental disorder and may require  
16 commitment, or is seriously developmentally disabled, as defined in 53-20-102;

17 (c) if the defendant suffers from a mental disease or defect, an opinion as to the defendant's  
18 capacity to understand the proceedings against the defendant and to assist in the defendant's own defense;

19 (d) when directed by the court, an opinion as to the capacity of the defendant to have a particular  
20 state of mind that is an element of the offense charged; and

21 (e) when directed by the court, an opinion as to the capacity of the defendant, because of a mental  
22 disease or defect, to appreciate the criminality of the defendant's behavior or to conform the defendant's  
23 behavior to the requirement of the law.

24 (2) If the examination cannot be conducted by reason of the unwillingness of the defendant to  
25 participate in the examination, the report must state that fact and must include, if possible, an opinion as  
26 to whether the unwillingness of the defendant was the result of mental disease or defect."

27

28 **Section 13.** Section 53-20-112, MCA, is amended to read:

29 **"53-20-112. Procedural rights.** (1) A respondent has all the rights accorded to a person subject  
30 to involuntary commitment proceedings under the laws of this state relating to involuntary commitment of

1 ~~the seriously mentally ill~~ a person who suffers from a mental disorder and who requires commitment, as  
2 provided in 53-21-115 through 53-21-118.

- 3 (2) In addition, the parents or guardian of a respondent have the right to:
    - 4 (a) be present at any hearing held pursuant to this part;
    - 5 (b) be represented by counsel in any hearing;
    - 6 (c) offer evidence and cross-examine witnesses in any hearing; and
    - 7 (d) have the respondent examined by a professional of their choice when a professional is
- 8 reasonably available, unless the person ~~so~~ chosen is objected to by the respondent or by a responsible  
9 person appointed by the court."

10  
11 **Section 14.** Section 53-21-101, MCA, is amended to read:

12 **"53-21-101. Purpose.** The purpose of this part is to:

- 13 (1) secure for each person who may be ~~seriously mentally ill or~~ suffering from a mental disorder  
14 ~~such and requiring commitment~~ the care and treatment as will be suited to the needs of the person and to  
15 ~~insure~~ ensure that ~~such~~ the care and treatment are skillfully and humanely administered with full respect  
16 for the person's dignity and personal integrity;
- 17 (2) accomplish this goal whenever possible in a community-based setting;
- 18 (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are  
19 unavailable or inadequate and only when a person is ~~so mentally ill as to require institutionalized care~~  
20 suffering from a mental disorder and requires commitment; and
- 21 (4) ~~assure~~ ensure that due process of law is accorded any person coming under the provisions of  
22 this part."

23  
24 **Section 15.** Section 53-21-102, MCA, is amended to read:

25 **"53-21-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

- 26 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors  
27 created by 2-15-211.
- 28 (2) "Court" means any district court of the state of Montana.
- 29 (3) "Department" means the department of public health and human services provided for in  
30 2-15-2201.

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

3 (5) "Friend of respondent" means any person willing and able to assist a mentally ill person, a  
4 person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally  
5 ill in dealing with legal proceedings, including consultation with legal counsel and others. The friend of  
6 respondent may be the next of kin, the person's conservator or legal guardian, if any, a representative of  
7 a charitable or religious organization, or any other person appointed by the court to perform the functions  
8 of a friend of respondent set out in this part. Only one person may at any one time be the friend of  
9 respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider  
10 the preference of the respondent. The court may at any time, for good cause shown, change its designation  
11 of the friend of respondent.

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

14 (a) addiction to drugs or alcohol; or

15 (b) drug or alcohol intoxication.

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

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

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

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

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

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

30 (e) poses a significant risk of the person's becoming seriously mentally ill or will, if untreated,

1 predictably result in further serious deterioration in the mental condition of the person. Predictability may  
2 be established by the patient's medical history.

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

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

7 (11) "Peace officer" means any sheriff, deputy sheriff, marshal, policeman, or other peace officer.

8 (12) "Professional person" means:

9 (a) a medical doctor; or

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

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

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

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

22 (16) "State hospital" means the Montana state hospital. (Terminates July 1, 1997--sec. 1, Ch. 541,  
23 L. 1989.)

24 **53-21-102. (Effective July 1, 1997) Definitions.** As used in this part, the following definitions  
25 apply:

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

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

30 ~~(2)~~(3) "Court" means any district court of the state of Montana.

1           ~~(3)~~(4) "Department" means the department of public health and human services provided for in  
2 2-15-2201.

3           ~~(4)~~(5) "Emergency situation" means a situation in which any person is in imminent danger of death  
4 or ~~serious~~ bodily harm from the activity of a person who appears to be ~~seriously mentally ill~~ suffering from  
5 a mental disorder and appears to require commitment.

6           ~~(6)~~(6) "Friend of respondent" means any person willing and able to assist a ~~seriously mentally ill~~  
7 person suffering from a mental disorder and requiring commitment or person alleged to be ~~seriously mentally~~  
8 ~~ill~~ suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including  
9 consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's  
10 conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other  
11 person appointed by the court to perform the functions of a friend of respondent set out in this part. Only  
12 one person may at any one time be the friend of respondent within the meaning of this part. In appointing  
13 a friend of respondent, the court shall consider the preference of the respondent. The court may at any  
14 time, for good cause ~~shown~~, change its designation of the friend of respondent.

15           ~~(6)~~(7) "Mental disorder" means any organic, mental, or emotional impairment ~~which~~ that has  
16 substantial adverse effects on an individual's cognitive or volitional functions. The term does not include:

17           (a) addiction to drugs or alcohol; ~~or~~

18           (b) drug or alcohol intoxication;

19           ~~(c)~~ mental retardation; or

20           ~~(d)~~ epilepsy.

21           ~~(7)~~(8) "Mental health facility" or "facility" means a public hospital or a licensed private hospital  
22 ~~which~~ that is equipped and staffed to provide treatment for persons with mental disorders or a community  
23 mental health center or any mental health clinic or treatment center approved by the department. A  
24 correctional institution or facility or jail is not a mental health facility within the meaning of this part.

25           ~~(8)~~(9) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult  
26 brothers and sisters of a person.

27           ~~(9)~~(10) "Patient" means a person committed by the court for treatment for any period of time or  
28 who is voluntarily admitted for treatment for any period of time.

29           ~~(10)~~(11) "Peace officer" means any sheriff, deputy sheriff, marshal, ~~police man~~ police officer, or  
30 other peace officer.

1 ~~(11)~~(12) "Professional person" means:

2 (a) a medical doctor; or

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

4 ~~(12)~~(13) "Reasonable medical certainty" means reasonable certainty as judged by the standards  
5 of a professional person.

6 ~~(13)~~(14) "Respondent" means a person alleged in a petition filed pursuant to this part to be  
7 ~~seriously mentally ill~~ suffering from a mental disorder and requiring commitment.

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

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

16

17 **Section 16.** Section 53-21-112, MCA, is amended to read:

18 **"53-21-112. Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a  
19 ~~minor who is 16 years of age or older~~ a parent or guardian of a minor may consent to ~~receive~~ mental health  
20 services to be rendered to the minor by:

21 (a) a facility ~~that is not a state institution;~~ or

22 (b) a person licensed in this state to practice medicine; or ~~psychology~~

23 (c) a mental health professional licensed in this state.

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

26 ~~(2)~~(3) Except as provided by this section, the provisions of 53-21-111 apply to the voluntary  
27 admission of a minor to a mental health facility but not to the state hospital.

28 ~~(3)~~(4) Except as provided by this subsection, voluntary admission of a minor to a mental health  
29 facility for an inpatient course of treatment ~~shall be~~ is for the same period of time as that for an adult. A  
30 minor voluntarily admitted ~~shall have~~ with consent of the minor's parent or guardian has the right to be

1 released within 5 days of ~~his~~ a request by the parent or guardian as provided in 53-21-111(3). ~~The~~ A minor  
 2 himself who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may  
 3 also make such a request and also has the right to be released within 5 days as provided in 53-21-111(3).  
 4 Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian  
 5 in the case of a minor patient and his counsel or consented to by the minor alone in the case of a minor  
 6 patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel  
 7 ~~shall~~ must be appointed for the minor at the minor's request or at any time ~~he~~ that the minor is faced with  
 8 potential legal proceedings.

9 ~~(4) If, in any application for voluntary admission for any period of time to a mental health facility,~~  
 10 ~~a minor fails to join in the consent of his parents or guardian to the voluntary admission, then the~~  
 11 ~~application for admission shall be treated as a petition for involuntary commitment. Notice of the substance~~  
 12 ~~of this subsection and of the right to counsel shall be set forth in conspicuous type in a conspicuous~~  
 13 ~~location on any form or application used for the voluntary admission of a minor to a mental health facility.~~  
 14 ~~The notice shall be explained to the minor."~~

15

16 **Section 17.** Section 53-21-115, MCA, is amended to read:

17 **"53-21-115. (Temporary) Procedural rights.** In addition to any other rights ~~which~~ that may be  
 18 guaranteed by the constitution of the United States and of this state, by the laws of this state, or by this  
 19 part, any person who is involuntarily detained or against whom a petition is filed pursuant to this part has  
 20 the following rights:

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

23 (2) the right to know, in advance of any hearing, the names and addresses of any witnesses who  
 24 will testify in support of the petition;

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

27 ~~(3)(4)~~ the right in any hearing to be present, to offer evidence, and to present witnesses in any  
 28 proceeding concerning ~~him~~ the person;

29 ~~(4)(5)~~ the right in any hearing to cross-examine witnesses;

30 ~~(5)(6)~~ the right to be represented by counsel;



1           ~~(6)~~(7) the right to remain silent;

2           ~~(7)~~(8) the right in any hearing to be proceeded against according to the rules of evidence applicable  
3 to civil matters generally;

4           ~~(8)~~(9) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

5           ~~(9)~~(10) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such a~~  
6 professional person is willing and reasonably available;

7           ~~(10)~~(11) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
8 part; and

9           ~~(11)~~(12) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
10 held pursuant to this part. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

11           **53-21-115. (Effective July 1, 1997) Procedural rights.** In addition to any other rights ~~which~~ that  
12 may be guaranteed by the constitution of the United States and of this state, by the laws of this state, or  
13 by this part, any person who is involuntarily detained or against whom a petition is filed pursuant to this  
14 part has the following rights:

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

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

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

21           ~~(3)~~(4) the right in any hearing to cross-examine witnesses;

22           ~~(4)~~(5) the right to be represented by counsel;

23           ~~(5)~~(6) the right to remain silent;

24           ~~(6)~~(7) the right in any hearing to be proceeded against according to the rules of evidence applicable  
25 to civil matters generally;

26           ~~(7)~~(8) the right to view and copy all petitions on file with the court concerning ~~him~~ the person;

27           ~~(8)~~(9) the right to be examined by a professional person of ~~his~~ the person's choice when ~~such the~~  
28 professional person is willing and reasonably available;

29           ~~(9)~~(10) the right to be dressed in ~~his~~ the person's own clothes at any hearing held pursuant to this  
30 part; ~~and~~

1           ~~(10)~~(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing  
2 held pursuant to this part; AND

3           (12) THE RIGHT TO VOLUNTARILY TAKE NECESSARY MEDICATIONS PRIOR TO ANY HEARING  
4 PURSUANT TO THIS PART."

5

6           **Section 18.** Section 53-21-116, MCA, is amended to read:

7           **"53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.** The  
8 person alleged to be mentally ill or seriously mentally ill has the right to be present at any hearing or trial.  
9 If he has no attorney, the judge shall appoint one to represent him at either the hearing or the trial, or both,  
10 who shall be compensated from the public funds of the county where the respondent resides. (Terminates  
11 July 1, 1997--sec. 1, Ch. 541, L. 1989.)

12           **53-21-116. (Effective July 1, 1997) Right to be present at hearing or trial -- appointment of**  
13 **counsel.** The person alleged to be ~~seriously mentally ill~~ suffering from a mental disorder and requiring  
14 commitment has the right to be present at any hearing or trial. If ~~he~~ the person has no attorney, the judge  
15 shall appoint one to represent ~~him~~ the person at either the hearing or the trial, or both, who ~~shall~~ must be  
16 compensated from the public funds of the county where the respondent resides."

17

18           **Section 19.** 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 who is seriously mentally ill and requesting that  
23 the person be committed to a mental health facility for a period of no more than 3 months; or

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

26           (2) The petition shall contain:

27           (a) the name and address of the person requesting the petition and his interest in the case;

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

30           (c) the purported facts supporting the allegation of mental illness;

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

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

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

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

11 (h) a statement of the rights of the respondent which shall be in conspicuous print and identified  
12 by a suitable heading.

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

22 **53-21-121. (Effective July 1, 1997) Petition for commitment -- contents of -- notice of.** (1) The  
23 county attorney, upon the written request of any person HAVING DIRECT KNOWLEDGE OF THE FACTS,  
24 may file a petition with the court alleging that there is a person within the county who is ~~seriously mentally~~  
25 ~~ill and requesting that the person be committed to a mental health facility for a period of no more than 3~~  
26 ~~months~~ suffering from a mental disorder and who requires commitment pursuant to this chapter.

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

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

30 (b) the name of the respondent and, if known, the address, age, sex, marital status, and

1 occupation of the respondent;

2 (c) the purported facts supporting the allegation of mental ~~illness~~ disorder, a statement of the  
3 disposition sought pursuant to 53-21-127(2), and the need for commitment;

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~~ respondent for whom evaluation is sought;

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 the county attorney believes might be willing and  
9 able to be appointed as friend of respondent;

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

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

17 (3) Notice of the petition ~~shall~~ must be hand-delivered to the respondent and to ~~his~~ the  
18 respondent's counsel on or before the initial appearance of the respondent before the judge or justice of  
19 the peace. THE RESPONDENT'S COUNSEL SHALL MEET WITH THE RESPONDENT, EXPLAIN THE  
20 SUBSTANCE OF THE PETITION, AND EXPLAIN THE PROBABLE COURSE OF THE PROCEEDINGS. Notice  
21 of the petition and the order setting the date and time of the hearing and the names of the respondent's  
22 counsel, professional person, and friend of respondent ~~shall~~ must be hand-delivered or mailed to the person  
23 or persons legally responsible for care, support, and maintenance of the respondent, the next of kin  
24 identified in the petition, and any other person identified by the county attorney as a possible friend of  
25 respondent other than the one named as the friend of respondent. The notice may provide, other than as  
26 to the respondent and ~~his~~ the respondent's counsel, that no further notice will be given unless written  
27 request is filed with the clerk of court."  
28

29 **SECTION 20. SECTION 53-21-122, MCA, IS AMENDED TO READ:**

30 **"53-21-122. (Temporary) Petition for commitment -- filing of -- initial hearing on. (1) The petition**

1 shall be filed with the clerk of court who shall immediately notify the judge.

2 (2) (a) If a judge is available, he shall consider the petition, and if he finds no probable cause, it  
3 shall be dismissed.

4 (b) (i) If the judge finds probable cause, counsel shall be immediately appointed for the respondent,  
5 and the respondent shall be brought forthwith before the court with his counsel. The respondent shall be  
6 advised of his constitutional rights, his rights under this part, and the substantive effect of the petition. The  
7 respondent may at this appearance object to the finding of probable cause for filing the petition.

8 (ii) The judge shall:

9 (A) appoint a professional person;

10 (B) appoint a friend of respondent; and

11 (C) set a date and time for the hearing on the petition, which may not exceed 5 days, including  
12 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is  
13 requested on behalf of the respondent.

14 (iii) The desires of the respondent shall be taken into consideration in the appointment of the friend  
15 of respondent and in the confirmation of the appointment of the attorney.

16 (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and  
17 read the petition to him. If the judge finds no probable cause, the petition shall be dismissed. If the judge  
18 finds probable cause, he shall cause the clerk to issue an order appointing counsel and a professional  
19 person and setting a date and time for the hearing on the petition, which may not exceed 5 days, including  
20 weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is  
21 requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith  
22 before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this  
23 part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace  
24 shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall  
25 be immediately communicated to the resident judge. The resident judge may appoint other counsel, may  
26 confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and  
27 may do all things necessary through the clerk of court by telephone as if the resident judge were personally  
28 present. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

29 **53-21-122. (Effective July 1, 1997) Petition for commitment -- filing of -- initial hearing on. (1)**  
30 The petition shall must be filed with the clerk of court who shall immediately notify the judge.

1           (2) If a judge is available, ~~he~~ the judge shall consider the petition, and if ~~he~~ the judge finds no  
 2 probable cause, it ~~shall~~ must be dismissed. If the judge finds probable cause, counsel ~~shall~~ must be  
 3 immediately appointed for the respondent, and the respondent ~~shall~~ must be brought ~~forthwith~~ before the  
 4 court with ~~his~~ the respondent's counsel. The respondent ~~shall~~ must be advised of ~~his~~ the respondent's  
 5 constitutional rights, ~~his~~ the respondent's rights under this part, and the substantive effect of the petition.  
 6 The respondent may at this appearance object to the finding of probable cause for filing the petition. The  
 7 judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing  
 8 on the petition, ~~which~~ that may not be on the same day as the initial appearance and that may not exceed  
 9 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless  
 10 additional time is requested on behalf of the respondent. The desires of the respondent ~~shall~~ must be taken  
 11 into consideration in the appointment of the friend of respondent and in the confirmation of the appointment  
 12 of the attorney.

13           (3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and  
 14 shall read the petition to ~~him~~ the judge. If the judge finds no probable cause, the petition ~~shall~~ must be  
 15 dismissed. If the judge finds probable cause, ~~he~~ the judge shall cause the clerk to issue an order appointing  
 16 counsel and a professional person and setting a date and time for the hearing on the petition, ~~which~~ that  
 17 may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends  
 18 and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested  
 19 on behalf of the respondent. The order ~~shall~~ must also direct that the respondent be brought ~~forthwith~~  
 20 before a justice of the peace with ~~his~~ the respondent's counsel to be advised of ~~his~~ the respondent's  
 21 constitutional rights, ~~his~~ the respondent's rights under this part, and the contents of the clerk's order, as  
 22 well as to furnish ~~him~~ the respondent with a copy. The justice of the peace shall ascertain the desires of  
 23 the respondent with respect to the appointment of ~~his~~ counsel, and this ~~shall~~ information must be  
 24 immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer  
 25 with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do  
 26 all things necessary through the clerk of court by telephone as if the resident judge were personally  
 27 present."

28  
 29           **Section 21.** Section 53-21-123, MCA, is amended to read:

30           **"53-21-123. (Temporary) Examination of respondent following initial hearing -- recommendation**

1 of professional person. (1) Following the initial hearing, whether before a judge or justice of the peace, the  
 2 respondent ~~shall~~ must be examined by the professional person without unreasonable delay. The examination  
 3 may not exceed a period of 4 hours. The professional person shall immediately notify the county attorney  
 4 of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~ the examination to the  
 5 court, with copies to the respondent's attorney and the county attorney. If the professional person  
 6 recommends commitment, the professional person's written report must contain a statement of the  
 7 professional person's recommendations to the court for disposition under 53-21-127(2).

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

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

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

16 (3) The court may not order further evaluation pending the hearing unless sound medical reasons  
 17 require additional time for a complete evaluation. ~~Such~~ The reasons ~~shall~~ must be set forth in the order,  
 18 along with the amount of additional time needed. (Terminates July 1, 1997--sec. 1, Ch. 541, L. 1989.)

19 **53-21-123. (Effective July 1, 1997) Examination of respondent following initial hearing --**  
 20 **recommendation of professional person.** (1) Following the initial hearing, whether before a judge or justice  
 21 of the peace, the respondent ~~shall~~ must be examined by the professional person without unreasonable  
 22 delay. The examination may not exceed a period of 4 hours. The professional person shall immediately  
 23 notify the county attorney of ~~his~~ the findings in person or by phone and shall make a written report of ~~his~~  
 24 the examination to the court, with copies to the respondent's attorney and the county attorney. If the  
 25 professional person recommends commitment, the professional person's written report must contain a  
 26 statement of the professional person's recommendations to the court for disposition under 53-21-127(2).

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

28 (a) If ~~he~~ the professional person recommends dismissal, ~~he~~ the professional person shall additionally  
 29 notify counsel and the respondent ~~shall~~ must be released and the petition dismissed. However, the county  
 30 attorney may, upon good cause shown, request the court to order an additional, but no more than one,

1 examination by a different professional person for a period of no more than 4 hours.

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

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

7

8 **Section 22.** Section 53-21-126, MCA, is amended to read:

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

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

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

25 (4) The professional person may testify as to the ultimate issue of whether the respondent is  
26 mentally ill or seriously mentally ill. Testimony from a professional person or others must be received on  
27 each element of the definition of mentally ill or seriously mentally ill as those terms are defined in  
28 53-21-102.

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



1           **53-21-126. (Effective July 1, 1997) Trial or hearing on petition.** (1) The respondent ~~shall~~ must be  
 2 present unless ~~his~~ the respondent's presence has been waived as provided in 53-21-119(2), and ~~he~~ the  
 3 respondent shall must be represented by counsel at all stages of the trial. The trial ~~shall~~ must be limited to  
 4 the determination of whether or not the respondent is ~~seriously mentally ill within the meaning set forth in~~  
 5 ~~this part~~ suffering from a mental disorder and requires commitment. At the trial, the court shall consider  
 6 all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the  
 7 court determines that the respondent is suffering from a mental disorder, the court shall then determine  
 8 whether the respondent requires commitment. In determining whether the respondent requires commitment,  
 9 the court shall consider the following:

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

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

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

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

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

27           (3) The professional person appointed by the court ~~shall~~ must be present for the trial and subject  
 28 to cross-examination. The trial ~~shall be~~ is governed by the Montana Rules of Civil Procedure ~~except that,~~  
 29 ~~if.~~ However, if the issues are tried by a jury, at least two-thirds of the jurors must shall concur on a finding  
 30 that the respondent is ~~seriously mentally ill~~ suffering from a mental disorder and requires commitment. The

1 written report of the professional person that indicates the professional person's diagnosis may be attached  
 2 to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely  
 3 because it is contained in the report. The court may order the trial closed to the public for the protection  
 4 of the respondent.

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

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

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

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

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

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

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

18 (A) has resulted in behavior RECENT ACTS, OMISSIONS, OR BEHAVIORS that creates CREATE  
 19 difficulty in protecting the respondent's life or health;

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

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

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

27 (5) The court, upon the showing of good cause and when it is in the best interests of the  
 28 respondent, may order a change of venue."  
 29

30 **Section 23.** Section 53-21-127, MCA, is amended to read:

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

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

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

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

12           (iii) order outpatient therapy; or

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

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

16           (c) In determining which of the above alternatives to order, the court shall choose the least  
17 restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.  
18 The court shall consider and shall describe in its order what alternatives for treatment of the respondent  
19 are available, what alternatives were investigated, and why the investigated alternatives were not deemed  
20 suitable. The court may authorize the chief medical officer of a facility to administer appropriate medication  
21 involuntarily if the court finds that involuntary medication is necessary to protect the respondent and the  
22 public and to facilitate effective treatment. Medication may not be involuntarily administered to a patient  
23 unless the chief medical officer of the facility approves it prior to the beginning of the involuntary  
24 administration and unless, if possible, a medication review committee reviews it prior to the beginning of  
25 the involuntary administration or, if prior review is not possible, within 5 working days after the beginning  
26 of the involuntary administration. The medication review committee must include at least one person who  
27 is not an employee of the facility. The patient and the patient's attorney or advocate, if the patient has one,  
28 must receive adequate written notice of the date, time, and place of the review and must be allowed to  
29 appear and give testimony and evidence. The involuntary administration of medication must be again  
30 reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if

1 medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
 2 of the department of public health and human services must be fully informed of the matter within 5  
 3 working days after the beginning of the involuntary administration. The director shall report to the governor  
 4 on an annual basis. The court shall enter into the record a detailed statement of the facts upon which it  
 5 found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the  
 6 facts upon which it found involuntary medication to be necessary.

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

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

21 **53-21-127. (Effective July 1, 1997) Posttrial disposition.** (1) If, upon trial, it is determined that  
 22 the respondent is not ~~seriously mentally ill~~ suffering from a mental disorder or does not require commitment  
 23 within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

30 (i) commit the respondent to ~~a facility~~ the state hospital for a period of not more than 3 months;

1           (ii) commit the respondent to a community facility, program, or course of treatment for a period  
2 of not more than 3 months;

3           ~~iii~~(iii) order the respondent to be placed in the care and custody of a relative or guardian or some  
4 other appropriate place other than an institution;

5           ~~iii~~(iv) order outpatient therapy; or

6           ~~iv~~(v) make some other appropriate order for treatment.

7           (b) ~~No~~ A treatment ordered pursuant to this subsection may not affect the respondent's custody  
8 or course of treatment for a period of more than 3 months.

9           (c) In determining which of the ~~above~~ alternatives in subsection (2)(a) to order, the court shall  
10 choose the least restrictive alternatives necessary to protect the respondent and the public and to permit  
11 effective treatment. ~~The court shall consider and shall describe in its order what alternatives for treatment~~  
12 ~~of the respondent are available, what alternatives were investigated, and why the investigated alternatives~~  
13 ~~were not deemed suitable.~~ The court may authorize the chief medical officer of a facility or a physician  
14 designated by the court to administer appropriate medication involuntarily if the court finds that involuntary  
15 medication is necessary to protect the respondent ~~and~~ or the public ~~and~~ or to facilitate effective treatment.  
16 Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility  
17 or a physician designated by the court approves it prior to the beginning of the involuntary administration  
18 and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary  
19 administration or, if prior review is not possible, within 5 working days after the beginning of the  
20 involuntary administration. The medication review committee must include at least one person who is not  
21 an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient  
22 has one, must receive adequate written notice of the date, time, and place of the review and must be  
23 allowed to appear and give testimony and evidence. The involuntary administration of medication must be  
24 again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration  
25 if medication is still being involuntarily administered. The mental disabilities board of visitors and the director  
26 of the department of public health and human services must be fully informed of the matter within 5  
27 working days after the beginning of the involuntary administration. The director shall report to the governor  
28 on an annual basis. ~~The court shall enter into the record a detailed statement of the facts upon which it~~  
29 ~~found the respondent to be seriously mentally ill and, if the court authorized involuntary medication, of the~~  
30 ~~facts upon which it found involuntary medication to be necessary.~~

1           (d) Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to  
 2 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court  
 3 may require commitment only to a community facility and may not require commitment at the state  
 4 hospital.

5           (e) In ordering commitment pursuant to this section, the court shall make the following findings  
 6 of fact:

7           (i) a detailed statement of the facts upon which the court found the respondent to be suffering  
 8 from a mental disorder and requiring commitment;

9           (ii) the alternatives for treatment that were considered;

10          (iii) the alternatives available for treatment of the respondent;

11          (iv) the reason that any treatment alternatives were determined to be unsuitable for the respondent;

12          (v) the name of the facility, program, or individual to be responsible for the management and  
 13 supervision of the respondent's treatment;

14          (vi) if the order includes a requirement for inpatient treatment, the reason inpatient treatment was  
 15 chosen from among other alternatives; and

16          (vii) if the order includes involuntary medication, the reason involuntary medication was chosen  
 17 from among other alternatives."

18  
 19          **Section 24.** Section 53-21-128, MCA, is amended to read:

20          **"53-21-128. (Temporary) Petition for extension of commitment period.** (1) To extend the 3-month  
 21 period of detention provided for in 53-21-127(2), the procedure set forth in this subsection (1) must be  
 22 followed:

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

30          (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to

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

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

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

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

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

29 (b) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
30 the respondent, his next of kin, if reasonably available, the friend of respondent appointed by the court,

1 if any, and the respondent's counsel. If any person so notified requests a hearing prior to the termination  
2 of the previous detention authority, the court shall immediately set a time and place for a hearing on a date  
3 not more than 5 days from the receipt of the request and notify the same people, including the professional  
4 person in charge of the respondent. If a hearing is not requested, the court shall enter an order of treatment  
5 for a period not to exceed 30 days.

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

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

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

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

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



1 report ~~shall~~ must describe any tests and evaluation devices ~~which~~ that have been employed in evaluating  
2 the patient, the course of treatment ~~which has been~~ that was undertaken for the patient, and the future  
3 course of treatment anticipated by the professional person.

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

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

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

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

1 required by subsection (1)."

2

3 **Section 25.** Section 53-21-129, MCA, is amended to read:

4 **"53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists,  
5 a peace officer may take any person who appears to ~~be seriously mentally ill and as a result of serious~~  
6 ~~mental illness to be a danger to others or to himself~~ have a mental disorder and to present an imminent  
7 danger of death or serious bodily harm to the person or to others into custody only for sufficient time to  
8 contact a professional person for emergency evaluation. If possible, a professional person should be called  
9 prior to taking the person into custody.

10 (2) If the professional person agrees that the person detained ~~appears to be seriously mentally ill~~  
11 is a danger to the person or to others because of a mental disorder and that an emergency situation exists,  
12 then the person may be detained and treated until the next regular business day. At that time, the  
13 professional person shall release the detained person or file ~~his~~ findings with the county attorney who, if  
14 ~~he~~ the county attorney determines probable cause to exist, shall file the petition provided for in 53-21-121  
15 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall  
16 file a report with the court explaining ~~his~~ the professional person's actions.

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

24 (4) However, before ~~any~~ a person is transferred to the state hospital under this section, the state  
25 hospital ~~must~~ shall be notified prior to transfer and ~~must~~ shall state that a bed is available for the person."

26

27 **Section 26.** Section 53-21-132, MCA, is amended to read:

28 **"53-21-132. Cost of examination and commitment.** (1) The cost of ~~the~~ precommitment  
29 examination, commitment, detention, treatment, and taking a person who is ~~seriously mentally ill~~ suffering  
30 from a mental disorder and who requires commitment to a mental health facility must be paid by the county

1 in which ~~he~~ the person resides at the time ~~he~~ that the person is ~~adjudged to be seriously mentally ill~~  
 2 committed. The sheriff must be allowed the actual expenses incurred in taking a committed person ~~who~~  
 3 ~~is seriously mentally ill~~ to the facility, as provided by 7-32-2144.

4 (2) The county of residence shall also pay all precommitment expenses, including transportation  
 5 to a mental health facility, incurred in connection with the detention, examination, and precommitment  
 6 custody of the respondent. However, the county of residence is not required to pay costs of treatment and  
 7 custody of the respondent after the respondent is committed pursuant to this part. The fact that a person  
 8 is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to  
 9 this part does not relieve a third party from a contractual obligation to pay for the cost of the examination,  
 10 hospitalization, or treatment.

11 (3) The adult respondent or the parent or guardian of a minor shall pay the cost of treatment and  
 12 custody ordered pursuant to 53-21-127, except to the extent that the adult or minor is eligible for public  
 13 mental health program funds.

14 (4) A community service provider that is a private, nonpublic provider may not be required to treat  
 15 or treat without compensation a person who has been committed."

16  
 17 **Section 27.** Section 53-21-134, MCA, is amended to read:

18 "**53-21-134. Receipt of ~~seriously mentally ill~~ nonresident person suffering from a mental disorder**  
 19 **pending return to home state.** A person who is ~~seriously mentally ill~~ suffering from a mental disorder and  
 20 in need of commitment and who is not a resident of this state may be received into the state hospital for  
 21 a period not to exceed 30 days pending return to the state of ~~his~~ the person's residence."

22  
 23 **Section 28.** Section 53-21-138, MCA, is amended to read:

24 "**53-21-138. Diversion of certain ~~mentally ill~~ persons suffering from mental disorders from jail.** (1)  
 25 The sheriff or administrator of a jail in each county shall require screening of inmates to identify persons  
 26 accused of minor misdemeanor offenses who appear to be ~~seriously mentally ill~~ suffering from mental  
 27 disorders and who require commitment, as defined in 53-21-102.

28 (2) If as a result of screening and observation it is believed that an inmate is ~~seriously mentally ill~~  
 29 suffering from a mental disorder and requires commitment, the sheriff or administrator of the jail shall:

30 (a) request services from a crisis intervention program established by the department, as provided

1 for in 53-21-139;

2 (b) refer the inmate to the nearest community mental health center, as defined in 53-21-201; or

3 (c) transfer the inmate to a private mental health facility or hospital equipped to provide treatment  
4 and care of persons who are ~~seriously mentally ill~~ suffering from a mental disorder and who require  
5 commitment.

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

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

12

13 **Section 29.** Section 53-21-139, MCA, is amended to read:

14 **"53-21-139. Crisis intervention programs.** (1) The department shall, subject to available  
15 appropriations, establish crisis intervention programs. The programs must be designed to provide 24-hour  
16 emergency admission and care of ~~seriously mentally ill~~ persons suffering from a mental disorder and  
17 requiring commitment in a temporary, safe environment in the community as an alternative to placement  
18 in jail.

19 (2) The department shall provide information and technical assistance regarding needed services  
20 and assist counties in developing county plans for crisis intervention services and for the provision of  
21 alternatives to jail placement.

22 (3) The department may provide crisis intervention programs as:

23 (a) a rehabilitative service under 53-6-101(3)(j); and

24 (b) a targeted case management service authorized in 53-6-101(3)(n)."

25

26 **Section 30.** Section 53-21-144, MCA, is amended to read:

27 **"53-21-144. Rights concerning photographs ~~and videotapes~~.** (1) A person admitted to a mental  
28 health facility may be photographed ~~upon admission for identification and the~~ or videotaped for the clinical  
29 or administrative purposes of the facility. Such ~~The photographs shall be~~ or videotapes are confidential and  
30 ~~shall not be released by the facility except pursuant to court order.~~ Photographs may be released to a law

1 enforcement agency when needed to aid in the search for a person who has left a facility without  
 2 authorization from the facility's medical staff AND WHEN IT IS DETERMINED THAT THE PERSON IS A  
 3 SELF-THREAT OR SELF-DANGER OR A THREAT OR DANGER TO OTHERS AT THE TIME THAT THE  
 4 PERSON LEFT THE FACILITY. A law enforcement agency may not subsequently release photographs to the  
 5 public or other persons unless authorized by a court order.

6 (2) ~~No other~~ Other nonmedical photographs ~~shall or videotapes~~ may not be taken or used without  
 7 consent of the patient or, if applicable, the patient's legal guardian or without a court order."

8  
 9 **Section 31.** Section 53-21-182, MCA, is amended to read:

10 **"53-21-182. Court-ordered release to alternative placement or treatment.** At any time during the  
 11 patient's commitment, the court may, on its own initiative or upon application of the professional person  
 12 in charge of the patient, the patient, ~~his~~ the patient's next of kin, ~~his~~ the patient's attorney, a third party  
 13 responsible for payment for the care of the patient, or the friend of respondent appointed by the court,  
 14 order the patient to be placed in the care and custody of relatives or guardians or to be provided outpatient  
 15 therapy or other appropriate placement or treatment."

16  
 17 **Section 32.** Section 53-21-195, MCA, is amended to read:

18 **"53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities**  
 19 **-- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient  
 20 mental health facility pursuant to 53-21-182 or 53-21-183 is commenced by the filing of a written petition  
 21 in any district court by the county attorney, the professional person in charge of the patient's case, or the  
 22 patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each  
 23 district court that committed the patient for the period of ~~his~~ the patient's present hospitalization under  
 24 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded  
 25 to the clerk. The file or files must be promptly forwarded.

26 (2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

27 (3) The petition must state:

28 (a) the patient's name and last-known address;

29 (b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent  
 30 appointed by the court, if any and if this information is reasonably ascertainable;

1 (c) that the patient has been determined by the district court to be ~~seriously mentally ill~~ suffering  
 2 from a mental disorder and requiring commitment within the meaning of this part and is presently under a  
 3 valid order of commitment pursuant to 53-21-127 or 53-21-128;

4 (d) a simple and precise statement of the facts showing that the patient has violated a condition  
 5 of the release, that the violation has caused a deterioration of the patient's mental disorder, and that as a  
 6 result of this deterioration, the patient can no longer be appropriately served by outpatient care; and

7 (e) a statement of the rights of the respondent, including those set forth in 53-21-115, which must  
 8 be in conspicuous print and identified by a suitable heading.

9 (4) The petition must be filed with the clerk of court, who shall immediately notify the judge.

10 (5) The judge shall issue notice of the time and place of the hearing on the petition. The hearing  
 11 must be held no more than 5 days after the date that the petition is filed, including weekends and holidays,  
 12 unless the fifth day falls upon a weekend or holiday or unless additional time is requested by the patient.  
 13 Further, the judge ~~must~~ shall ensure that the notice and copy of the petition are immediately hand-delivered  
 14 to the patient, to ~~his~~ the patient's friend of respondent, if any, and to ~~his~~ the patient's counsel."

15  
 16 **Section 33.** Section 53-21-197, MCA, is amended to read:

17 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The court  
 18 may order that the patient's conditional release status be revoked and that the patient be returned to the  
 19 mental health facility from which ~~he~~ the patient was conditionally released or be sent to another appropriate  
 20 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

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

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

27 (2) A revocation of the patient's conditional release status under subsection (1) must be based on  
 28 the testimony of the professional person responsible for the patient's case.

29 (3) If the court revokes the patient's conditional release status pursuant to subsection (1), a  
 30 treatment plan must be updated or a new plan prepared for the patient as required by and within the time

1 set forth in 53-21-162.

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

5

6 **Section 34.** Section 53-21-198, MCA, is amended to read:

7 **"53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be  
8 extended by the district court beyond the expiration date of the order committing the patient under  
9 53-21-127 or 53-21-128, but in no case for longer than 2 years beyond that date, upon a showing by clear  
10 and convincing evidence that:

11 (a) continuation of the conditions of release is necessary to prevent the deterioration of the  
12 patient's mental disorder; and

13 (b) the deterioration will predictably result in the necessity of further inpatient care for the ~~person~~  
14 patient. Predictability may be established by the patient's medical history.

15 (2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under  
16 53-21-127 or 53-21-128 or the period of extension ordered under subsection (5) of this section, the  
17 professional person responsible for the patient's case may petition the court for extension of the conditions  
18 of release. The petition must be accompanied by a written report and evaluation of the patient's mental  
19 and physical condition. The report must describe any tests and evaluation devices ~~which~~ that have been  
20 employed in evaluating the patient, the course of treatment ~~which~~ that has been undertaken for the patient,  
21 and the future course of treatment anticipated by the professional person.

22 (3) Upon the filing of the petition, the court shall give written notice of the filing of the petition to  
23 the patient, ~~his~~ the patient's next of kin, if reasonably available, the friend of respondent appointed by the  
24 court, if any, and the patient's counsel. If any person ~~so~~ notified requests a hearing prior to the end of the  
25 period of detention ordered under 53-21-127 or 53-21-128, the court shall immediately set a time and place  
26 for a hearing on a date not more than 10 days from the receipt of the request and notify the same people,  
27 including the professional person in charge of the patient. If a hearing is not requested, the court shall  
28 enter an order extending the conditions of release for a period not to exceed 6 months.

29 (4) Procedure on the petition for extension is the same in all respects as the procedure for hearing  
30 on a rehospitalization petition pursuant to 53-21-197 ~~except that~~. However, in an extension proceeding,

1 the finding required is that set forth in subsection (1) of this section. The hearing must be held in the district  
 2 court for the county in which the patient is residing. Court costs and witness fees, if any, must be paid by  
 3 the county that paid the same costs in the initial commitment proceeding.

4 (5) If upon the hearing the court finds that the showing required by subsection (1) has not been  
 5 made, the conditions of release may not be extended. If the court finds that the required showing has been  
 6 made, the court may extend the conditions of release as recommended by the professional person. In its  
 7 order, the court shall describe what alternatives for treatment of the patient are available, what alternatives  
 8 were investigated, and why the investigated alternatives were not ~~deemed~~ considered suitable. The court  
 9 may not order continuation of an alternative that does not include a comprehensive, individualized plan of  
 10 treatment for the patient, as required by 53-21-162. A court order for the continuation of an alternative  
 11 ~~shall~~ must include a specific finding that a comprehensive, individualized plan of treatment exists.

12 (6) Further extensions may be obtained under the same procedure described in this section ~~except~~  
 13 ~~that.~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the  
 14 extension under the procedures set forth in this section, including a hearing and a statement of the findings  
 15 required by subsection (5). Extensions under this subsection may not extend the 2-year extension limitation  
 16 provided in subsection (1)."

17  
 18 **Section 35.** Section 70-19-413, MCA, is amended to read:

19 **"70-19-413. Certain disabilities to suspend running of statutory period.** (1) Subsection (2) applies  
 20 if a person entitled to commence an action for the recovery of real property or for the recovery of the  
 21 possession ~~thereof~~ of real property or to make any entry or defense founded on the title to real property  
 22 or to rents or services out of the same is, at the same time ~~such the~~ title first descends or accrues:

23 (a) under the age of majority;

24 (b) ~~seriously mentally ill~~ committed pursuant to 53-21-127; or

25 (c) imprisoned on a criminal charge or in execution upon conviction of a criminal offense for a term  
 26 of less than for life.

27 (2) The time during which disability continues is not considered any portion of the time in this  
 28 chapter limited for the commencement of ~~such the~~ action or the making of ~~such the~~ entry or defense, ~~but~~  
 29 ~~such.~~ The action may be commenced or entry or defense made within the period of 5 years after ~~such the~~  
 30 disability ceases or after the death of the person entitled who dies under ~~such the~~ disability, but ~~such the~~



1 action may not be commenced or entry or defense made after that period."

2

3 **Section 36.** Section 70-29-113, MCA, is amended to read:

4 "**70-29-113. Death or incompetency of parties -- proceedings not delayed.** (1) If during the  
5 pendency of the action ~~any of the parties~~ a party dies or becomes seriously mentally ill, is committed  
6 pursuant to 53-21-127, or otherwise becomes incompetent, the proceedings may not for that cause be  
7 delayed or suspended, but the attorney who has appeared for the party may continue to represent ~~such~~  
8 the party's interest. If any party has not appeared by an attorney, the court shall appoint an attorney to  
9 represent the interest ~~which that~~ was held by the party until ~~his~~ the party's heirs ~~or~~ legal representatives,  
10 or successors in interest have appeared in the action.

11 (2) An attorney ~~so~~ appointed ~~shall~~ pursuant to subsection (1) must be allowed by the court a  
12 reasonable compensation for ~~his~~ the attorney's services, ~~which~~. The compensation may be taxed as costs  
13 against the share or interest represented by the attorney and may be adjudged a lien ~~thereon~~ on the share  
14 or interest, in the discretion of the court."

15

16 **Section 37.** Section 70-29-210, MCA, is amended to read:

17 "**70-29-210. Consent of guardian to share of ward.** The general guardian of a minor and the  
18 guardian entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed  
19 pursuant to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, who  
20 is interested in real estate held in joint tenancy or in common or in any other manner so as to authorize ~~his~~  
21 the person being made a party to an action, may agree upon the share to be set off to ~~such~~ the minor or  
22 other person entitled ~~and~~ to the share. The guardian may execute a release, in ~~his~~ the person's behalf, to  
23 the owners of the shares of the parts to which they may be respectively entitled, upon an order of the  
24 court."

25

26 **Section 38.** Section 70-29-328, MCA, is amended to read:

27 "**70-29-328. Incompetent's share of proceeds -- payment to guardian.** The guardian who may be  
28 entitled to the custody and management of the estate of a ~~seriously mentally ill~~ person committed pursuant  
29 to 53-21-127 or other person adjudged incapable of conducting ~~his~~ the person's own affairs, whose interest  
30 in real property has been sold, may receive ~~in~~ on behalf of ~~such~~ the person ~~his~~ the person's share of the

1 proceeds of ~~such~~ the real property from the referees. The guardian may receive the interest on executing  
 2 an undertaking with sufficient sureties ~~an undertaking, a surety.~~ The undertaking must be approved by a  
 3 judge of the court, ~~that he~~ and must state that the guardian will faithfully discharge the trust ~~reposed~~ placed  
 4 in him the guardian and will ~~render a true and just~~ make an accurate account to the person entitled to the  
 5 accounting or to ~~his~~ the person's legal representative."

6

7 **Section 39.** Section 72-5-322, MCA, is amended to read:

8 "**72-5-322. Petition of guardian for treatment of ward.** (1) If a guardian believes ~~his~~ that the  
 9 guardian's ward should receive medical treatment for a mental disorder and the ward refuses, the court  
 10 may, upon petition by the guardian, grant an order for evaluation or treatment, ~~provided that no such order~~  
 11 ~~shall.~~ However, the order may not forcibly detain the ward against ~~his~~ the ward's will for more than 72  
 12 hours.

13 (2) The ward is entitled to an appointment of counsel and a hearing along with all the other rights  
 14 guaranteed ~~seriously mentally ill persons~~ to a person with a mental disorder and who requires commitment  
 15 under 53-21-114, 53-21-115, 53-21-119, and 53-21-120."

16

17 **NEW SECTION. Section 40. Saving clause.** [This act] does not affect rights and duties that  
 18 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this  
 19 act].

20

21 **NEW SECTION. Section 41. Effective date.** [This act] is effective July 1, 1997.

22

-END-