

SENATE BILL NO. 466
INTRODUCED BY M. WATERMAN

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE MENTAL HEALTH COMMITMENT STATUTES; ALLOWING THE COURT TO ORDER ASSISTED OUTPATIENT TREATMENT FOR A PERIOD NOT TO EXCEED 12 MONTHS; PROVIDING FOR FINDINGS, TREATMENT PLANS, PROVIDER CHOICE, AND CONDITIONS TO OBTAIN AN ORDER FOR ASSISTED OUTPATIENT TREATMENT; PROVIDING FOR APPEARANCE OF TREATING PROVIDERS AND RESPONDENTS BEFORE THE COURT EVERY 3 MONTHS; PROVIDING FOR WRITTEN REPORTS BY THE TREATING PROVIDER TO THE COURT; PROVIDING THAT A REFERRAL FOR APPROPRIATE MENTAL ILLNESS PROCEEDINGS IS AN APPROPRIATE CONDITION OF PRETRIAL DIVERSION; DEFINING "MENTAL HEALTH PROFESSIONAL"; ALLOWING FOR AN EXTENSION OF THE ASSISTED OUTPATIENT TREATMENT AT THE REQUEST OF THE RESPONDENT; AND AMENDING SECTIONS 46-16-130, 53-21-102, 53-21-104, 53-21-121, 53-21-123, 53-21-124, 53-21-126, 53-21-127, 53-21-128, AND 53-21-181, MCA."

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

NEW SECTION. **Section 1. Conditions of assisted outpatient treatment in a community facility, program, or course of treatment.** If the court orders a disposition under 53-21-127(3)(b), the court may order the following conditions for assisted outpatient treatment in a community facility or program, or may order a course of treatment, including but not limited to:

- (1) following a treatment plan DEVELOPED PURSUANT TO [SECTION 3] that may include case management services, medication, short-term inpatient treatment, ~~or~~ chemical dependency treatment, ASSERTIVE COMMUNITY TREATMENT, OR A COMBINATION, as set forth by the designated community facility or program or the individual responsible for the management and supervision of the respondent's treatment; or
- (2) specific residential or housing requirements that may include being under the care or custody of a relative or guardian.

NEW SECTION. **Section 2. Assisted outpatient treatment -- findings -- inability to make rational treatment decision -- rebuttable presumption.** (1) The court ordering a respondent to receive assisted outpatient treatment shall make the following findings of fact:

(a) that for at least one recent extended period, the respondent has failed substantially to follow a reasonable treatment plan without reasons or without adequate justification, which resulted in at least one of the conditions in 53-21-126(1)(B) OR (1)(C);

(b) subject to the determination required in 53-21-190, that PURSUANT TO THIS PART, the respondent has previously been determined to be suffering from a mental disorder ~~and~~, has received treatment in an inpatient hospital ~~pursuant to this part~~, AND HAS RECEIVED AT LEAST TWO OTHER CIVIL COMMITMENTS; and

(c) as a result of the respondent's mental disorder, that the respondent lacks the capacity to make rational treatment decisions.

(2) For the purposes of this section, "rational treatment decision" means a WELL-REASONED, WILLFUL, AND KNOWING decision based on plausible or good reasons CONCERNING MEDICAL OR PSYCHIATRIC TREATMENT. A respondent's treatment decision that is medically inadvisable or that conflicts with the recommendations of a MENTAL HEALTH professional ~~person~~ treating the respondent may be rational if the decision is based on plausible or good reasons. A respondent's refusal to follow a ~~professional person's~~ MENTAL HEALTH PROFESSIONAL'S reasonable treatment plan remains a rational treatment decision if the refusal reflects a good faith attempt to follow a reasonable WRITTEN alternative treatment plan THAT FOLLOWS ACCEPTED MEDICAL STANDARDS, IS SUPERVISED BY A MENTAL HEALTH PROFESSIONAL, AND DOES NOT RESULT IN ONE OF THE CONDITIONS IN 53-21-126(1) or if it is protected by a constitutional right to refuse treatment.

(3) (A) If the respondent has substantially complied for the prior 12 months with any current treatment plans or recommendations made as a result of proceedings previously initiated under this chapter or with the current treatment recommendations of any other MENTAL HEALTH professional ~~person~~ treating the respondent, a rebuttable presumption arises that the respondent has the capacity to make rational treatment decisions.

(B) (I) In deciding whether that presumption is overcome, the court shall consider, among other factors, how frequently and how recently the respondent has failed to follow reasonable treatment recommendations and whether any failures, if they exist, have led to the respondent's inability to provide for the respondent's basic needs for food, shelter, clothing, health, or safety or have led to self-endangerment or to the respondent being dangerous to others.

(II) IF THE RESPONDENT HAS BEEN PREVIOUSLY ORDERED TO ASSISTED OUTPATIENT TREATMENT AND THE RESPONDENT HAS REQUESTED AN EXTENSION AS PROVIDED IN 53-21-128, THE COURT MAY, IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, CONSIDER THAT THE PRESUMPTION THAT THE RESPONDENT HAS THE CAPACITY TO MAKE RATIONAL TREATMENT DECISIONS HAS BEEN OVERCOME.

NEW SECTION. Section 3. Assisted outpatient treatment plan -- provider choice [-- advanced directive]. (1) Stabilizing treatment must be provided during the development of a treatment plan.

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

(3) A treatment plan must be developed with the respondent and the friend of respondent or respondent's family, IF FAMILY INVOLVEMENT IS DETERMINED BY THE COURT IN CONSULTATION WITH THE MENTAL HEALTH PROFESSIONAL TO BE IN THE BEST INTERESTS OF THE RESPONDENT, and must respect any durable powers of attorney [or advanced directives] in effect at the time of the order.

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

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

(6) If the respondent wishes to receive outpatient treatment from a different mental health professional or a facility or program that is willing to treat the respondent as a court-ordered outpatient under the approved treatment plan, the court shall order the respondent to the care of that professional person, facility, or program upon the respondent's written request.

(7) A respondent may execute a durable power of attorney for health care decisions, in accordance with 72-5-501[, or an advanced directive]. If legally sufficient pursuant to Title 72, chapter 31, part 2, a durable power of attorney for health care decisions [~~for an advance directive pursuant to LC 1415~~] is binding on the court and on any professional person provided that the decisions made by the agent possessing the power of attorney and the instructions, if any, in the executed power of attorney for health care decisions [~~for in the advance directive~~] are within accepted medical standards and practices. This section does not require a mental health professional to accept as an outpatient a respondent who has executed a durable power of attorney for health care decisions [~~for an advance directive~~] that provides for treatment, whether by instructions or by decisions of the person possessing the power of attorney, that in the mental health professional's judgment would not be an appropriate treatment for the respondent's condition.

NEW SECTION. Section 4. Periodic reports -- failure to file. (1) The chief medical officer of the facility or program where the respondent obtains treatment as an outpatient or the chief medical officer's designee shall appear with the respondent before the court and furnish written reports on the respondent's progress every 3 months. At the court appearance OR AT ANY TIME DURING THE COMMITMENT, the respondent and the treating provider may seek amendment of the treatment plan or dismissal of the treatment order as provided in 53-21-181 and 53-21-182.

(2) The chief medical officer shall provide a copy of the report to the respondent, to the respondent's counsel, and to the friend of respondent.

(3) If a progress report required in subsection (1) is not filed ~~in a timely manner~~ AT EACH 3-MONTH COURT APPEARANCE or if services to a respondent are not provided, the court shall inform the department. The department or a designee shall make a determination regarding whether the respondent's treatment is being publicly funded, and if it is publicly funded, the department shall refer the services to utilization review to determine if there is appropriate action to take regarding the treating provider.

NEW SECTION. Section 5. Notification of noncompliance to assisted outpatient treatment -- response. (1) If the respondent does not substantially comply with the treatment plan developed pursuant to the order for assisted outpatient treatment, the chief medical officer or designee shall promptly notify the court upon becoming aware of substantial noncompliance THAT IS LIKELY TO RESULT IN AT LEAST ONE OF THE CONDITIONS IN 53-21-126(1) and shall provide supporting documentation.

(2) The court may take reasonable steps to ensure compliance with the court's outpatient treatment order, including but not limited to the following:

(a) directing that the friend of respondent remind the respondent of the respondent's treatment obligations and attempt to persuade the noncompliant respondent to comply with the treatment plan;

(b) presenting the respondent to the mental health facility or program for treatment, including administration of medication pursuant to 53-21-127(6); or

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

(3) The court may order the respondent and the treating provider to appear before the court. If necessary the court may order the sheriff to bring the respondent before the court.

(4) Unless the court has good reason, based upon past experience with the respondent or the friend of respondent, to believe that the methods in subsections (1) through (3) will not be effective in ensuring compliance

with the court's outpatient treatment order or that immediate treatment is necessary, the court shall attempt to secure compliance by one or more of the reasonable steps provided for in subsections (1) through (3) before ordering the sheriff to bring the noncompliant respondent to treatment. If necessary, the court shall order the sheriff to bring the respondent to the facility or program for treatment.

NEW SECTION. Section 6. Department funding responsibility for assisted outpatient treatment.

The department shall develop a separate funding category and procedure for payment for services that are court-ordered for assisted outpatient treatment ~~if the individual under the commitment.~~ HOWEVER, NOTHING IN THIS CHAPTER OBLIGATES THE DEPARTMENT TO PAY FOR SERVICES ORDERED UNDER 53-21-127 UNLESS THE RESPONDENT is eligible for mental health services under the public mental health system FUNDED BY THE DEPARTMENT, THE SERVICE IS ONE THAT THE DEPARTMENT HAS INCLUDED IN ITS MENTAL HEALTH PROGRAM, AND THE DEPARTMENT DETERMINES THAT THE MENTAL HEALTH SERVICE IS MEDICALLY NECESSARY FOR THE RESPONDENT.

Section 7. Section 46-16-130, MCA, is amended to read:

"46-16-130. Pretrial diversion. (1) (a) Prior to the filing of a charge, the prosecutor and a defendant who has counsel or who has voluntarily waived counsel may agree to the deferral of a prosecution for a specified period of time based on one or more of the following conditions:

- (i) that the defendant may not commit any offense;
 - (ii) that the defendant may not engage in specified activities, conduct, and associations bearing a relationship to the conduct upon which the charge against the defendant is based;
 - (iii) that the defendant shall participate in a supervised rehabilitation program, which may include treatment, counseling, training, or education;
 - (iv) that the defendant shall make restitution in a specified manner for harm or loss caused by the offense;
- or
- (v) any other reasonable conditions.

(b) The agreement must be in writing, must be signed by the parties, and must state that the defendant waives the right to speedy trial for the period of deferral. The agreement may include stipulations concerning the admissibility of evidence, specified testimony, or dispositions if the deferral of the prosecution is terminated and there is a trial on the charge.

(c) The prosecution must be deferred for the period specified in the agreement unless there has been a violation of its terms.

(d) The agreement must be terminated and the prosecution automatically dismissed with prejudice upon expiration and compliance with the terms of the agreement.

(2) A condition of pretrial diversion may be for the court to refer a defendant for evaluation to determine the appropriateness of proceedings pursuant to Title 53, chapter 21.

~~(2)~~(3) After a charge has been filed, a deferral of prosecution may be entered into only with the approval of the court.

~~(3)~~(4) A prosecution for a violation of 61-8-401, 61-8-406, or 61-8-410 may not be deferred."

SECTION 8. SECTION 53-21-102, MCA, IS AMENDED TO READ:

"53-21-102. Definitions. As used in this part, the following definitions apply:

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

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

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

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

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

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

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

- (a) addiction to drugs or alcohol;
- (b) drug or alcohol intoxication;

- (c) mental retardation; or
- (d) epilepsy.

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

(9) "Mental health professional" means:

- (a) a certified professional person;
- (b) a physician licensed under Title 37, chapter 3;
- (c) a professional counselor licensed under Title 37, chapter 23;
- (d) a psychologist licensed under Title 37, chapter 17;
- (e) a social worker licensed under Title 37, chapter 22; or
- (f) an advanced practice registered nurse, as provided for in 37-8-202, with a clinical specialty in psychiatric mental health nursing.

~~(9)~~(10) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

~~(10)~~(11) "Patient" means a person committed by the court for treatment for any period of time or who is voluntarily admitted for treatment for any period of time.

~~(11)~~(12) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(12)~~(13) "Professional person" means:

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

~~(13)~~(14) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(14)~~(15) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

~~(15)~~(16) "State hospital" means the Montana state hospital."

Section 9. Section 53-21-104, MCA, is amended to read:

"53-21-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review to assure that the treatment of all persons either voluntarily or

involuntarily admitted to a mental facility is humane and decent and meets the requirements set forth in this part.

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

(3) The board shall at least annually inspect every mental health facility ~~which~~ that is providing treatment and evaluation to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. ~~It~~ the board shall visit all wards and treatment areas. The board shall inquire concerning all treatment programs being implemented by the facility.

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

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

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

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

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

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

(b) medications involuntarily administered to patients in mental health facilities and the effectiveness of the review procedure required by 53-21-127~~(2)~~(6) in protecting patients from unnecessary or excessive medication."

Section 10. Section 53-21-121, MCA, is amended to read:

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

(2) The petition must contain:

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

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

(c) the purported facts supporting the allegation of mental disorder, including a report by a mental health professional if any, a statement of the disposition sought pursuant to 53-21-127~~(2)~~, and the need for commitment;

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

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

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

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

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

(3) Notice of the petition must be hand-delivered to the respondent and to the respondent's counsel on or before the initial appearance of the respondent before the judge or justice of the peace. The respondent's counsel shall meet with the respondent, explain the substance of the petition, and explain the probable course of the proceedings. Notice of the petition and the order setting the date and time of the hearing and the names

of the respondent's counsel, professional person, and friend of respondent must be hand-delivered or mailed to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, and any other person identified by the county attorney as a possible friend of respondent other than the one named as the friend of respondent. The notice may provide, other than as to the respondent and the respondent's counsel, that no further notice will be given unless written request is filed with the clerk of court."

Section 11. Section 53-21-123, MCA, is amended to read:

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

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

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

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

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

Section 12. Section 53-21-124, MCA, is amended to read:

"53-21-124. Detention of respondent pending hearing or trial -- jail prohibited. (1) The court may not order detention of a respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel must be orally notified immediately. Counsel for the

respondent may then request a detention hearing, which must be held ~~forthwith~~ immediately.

(2) In the event of detention, the respondent must be detained in the least restrictive setting necessary to ~~assure his~~ ensure the respondent's presence and ~~assure his safety and~~ ensure the safety of the respondent and of others as provided in 53-21-120.

(3) If the respondent is detained, ~~he~~ the respondent has the right to be examined additionally by a professional person of ~~his~~ the respondent's choice, which may not depend on the respondent's ability to pay, and the respondent must be informed of this right. Unless objection is made by counsel for the respondent, ~~he~~ the respondent must continue to be evaluated and treated by the professional person pending the hearing.

(4) A respondent may not be detained in a jail or other correctional facility pending a hearing or trial to determine whether the respondent should be committed to a mental health facility."

Section 13. Section 53-21-126, MCA, is amended to read:

"53-21-126. Trial or hearing on petition. (1) The respondent must be present unless the respondent's presence has been waived as provided in 53-21-119(2), and the respondent must be represented by counsel at all stages of the trial. The trial must be limited to the determination of whether or not the respondent is suffering from a mental disorder and requires commitment. At the trial, the court shall consider all the facts relevant to the issues of whether the respondent is suffering from a mental disorder. If the court determines that the respondent is suffering from a mental disorder, the court shall then determine whether the respondent requires commitment. In determining whether the respondent requires commitment, the court shall consider the following:

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

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

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

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

(2) The standard of proof in a hearing held pursuant to this section is proof beyond a reasonable doubt

with respect to any physical facts or evidence and clear and convincing evidence as to all other matters. However, the respondent's mental disorder must be proved to a reasonable medical certainty. Imminent threat of self-inflicted injury or injury to others must be proved by overt acts or omissions, sufficiently recent in time as to be material and relevant as to the respondent's present condition.

(3) The professional person appointed by the court must be present for the trial and subject to cross-examination. The trial is governed by the Montana Rules of Civil Procedure. However, if the issues are tried by a jury, at least two-thirds of the jurors shall concur on a finding that the respondent is suffering from a mental disorder and requires commitment. The written report of the professional person that indicates the professional person's diagnosis may be attached to the petition, but any matter otherwise inadmissible, such as hearsay matter, is not admissible merely because it is contained in the report. The court may order the trial closed to the public for the protection of the respondent.

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

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

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

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

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

(A) has resulted in recent acts, omissions, or behaviors that create difficulty in protecting the respondent's life or health;

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

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

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

(5) If the petition seeks an order for assisted outpatient treatment, as provided in 53-21-127, the evidence

must include testimony REGARDING THE FINDINGS OF FACT REQUIRED IN [SECTION 2]:

(a) that for at least one recent extended period, the respondent has failed to follow any reasonable treatment plan without reasons or without adequate justification, which resulted in at least one of the conditions in 53-21-126(1)(B) OR (1)(C);

(b) that PURSUANT TO THIS PART, the individual has previously been determined to be suffering from a mental disorder and, HAS received treatment in an inpatient hospital pursuant to this part, AND HAS RECEIVED AT LEAST TWO OTHER CIVIL COMMITMENTS; and

(c) as a result of the individual's mental disorder, that the respondent lacks the capacity to make rational treatment decisions AS DEFINED IN [SECTION 2].

~~(5)~~(6) The court, upon the showing of good cause and when it is in the best interests of the respondent, may order a change of venue."

Section 14. Section 53-21-127, MCA, is amended to read:

"53-21-127. Posttrial disposition. (1) If, upon trial, it is determined that the respondent is not suffering from a mental disorder or does not require commitment within the meaning of this part, the respondent must be discharged and the petition dismissed.

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

(3) At the conclusion of the disposition hearing, the court shall:

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

~~(ii)~~(b) order the respondent to receive assisted outpatient treatment pursuant to [sections 1 through 6] for a period not to exceed 12 months; or

(c) commit the respondent to a community facility; or program; or to any appropriate course of treatment, which may include housing or residential requirements, for a period of not more than 3 months;

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

~~—— (iv) order outpatient therapy; or~~

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

~~(b)(4)~~ ~~A~~ Except as provided in subsection (3)(b), a treatment ordered pursuant to this subsection ~~section~~ may not affect the respondent's custody or course of treatment for a period of more than 3 months.

~~(c)(5)~~ In determining which of the alternatives in subsection ~~(2)(a)~~ (3) to order, the court shall choose the least restrictive alternatives necessary to protect the respondent and the public and to permit effective treatment.

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility or a physician designated by the court approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

~~(d)(7)~~ Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may require commitment only to a community facility or program or an appropriate course of treatment ~~or to assisted outpatient treatment as provided in subsection (3)(b) or (3)(c)~~, and may not require commitment at the state hospital.

~~(e)(8)~~ In ordering commitment pursuant to this section, the court shall make the following findings of fact:

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

~~(ii)(b)~~ the alternatives for treatment that were considered;

~~(iii)(c)~~ the alternatives available for treatment of the respondent;

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

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

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

~~(vii)~~(g) if the order includes involuntary medication, the reason involuntary medication was chosen from among other alternatives; and

(h) if the order includes assisted outpatient treatment, the findings required by [section 2]."

Section 15. Section 53-21-128, MCA, is amended to read:

"53-21-128. Petition for extension of commitment period. (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital or to a community facility or program or a course of treatment provided for in 53-21-127~~(2)~~(3)(a) or (3)(c), the professional person in charge of the patient at the place of commitment may petition the district court in the county where the patient is committed for extension of the commitment period unless otherwise ordered by the original committing court. The petition must be accompanied by a written report and evaluation of the patient's mental and physical condition. The report must describe any tests and evaluation devices that have been employed in evaluating the patient, the course of treatment that was undertaken for the patient, and the future course of treatment anticipated by the professional person.

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

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

(d) If upon the hearing the court finds the patient not to be suffering from a mental disorder and requiring commitment within the meaning of this part, the patient must be discharged and the petition dismissed. If the court

finds that the patient continues to suffer from a mental disorder and to require commitment, the court shall order commitment, ~~custody in relatives, outpatient therapy, or other order~~ as set forth in 53-21-127(2)(3). However, an order may not affect the patient's custody for more than 6 months unless it is a new order for assisted outpatient treatment, which may not exceed 12 months. In its order, the court shall describe what alternatives for treatment of the patient are available, what alternatives were investigated, and why the investigated alternatives were not found suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient. A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

(2) PRIOR TO THE END OF THE 12-MONTH PERIOD OF COMMITMENT TO ASSISTED OUTPATIENT TREATMENT AS PROVIDED IN 53-21-127(3)(B), A RESPONDENT MAY REQUEST THAT THE TREATING PROVIDER PETITION THE DISTRICT COURT FOR AN EXTENSION OF THE ASSISTED OUTPATIENT TREATMENT ORDER. THE PETITION MUST BE ACCOMPANIED BY A WRITTEN REPORT AND EVALUATION OF THE RESPONDENT'S MENTAL AND PHYSICAL CONDITION, AN UPDATED TREATMENT PLAN, AND A WRITTEN STATEMENT BY THE RESPONDENT THAT AN EXTENSION OF ASSISTED OUTPATIENT TREATMENT IS DESIRED. THE EXTENSION PROCEDURE MUST FOLLOW THE PROCEDURE REQUIRED IN SUBSECTIONS (1)(B) THROUGH (1)(D).

~~(2)(3)~~ Further extensions UNDER SUBSECTION (1) OR (2) may be obtained under the same procedure described in subsection (1); ~~however~~ However, the patient's custody may not be affected for more than 1 year without a renewal of the commitment under the procedures set forth in subsection (1), including a statement of the findings required by subsection (1)."

Section 16. Section 53-21-181, MCA, is amended to read:

"53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.

(1) At any time within the ~~3-month~~ period of commitment provided for in 53-21-127(2), the patient may be discharged on the written order of the professional person in charge of ~~him~~ the patient. ~~In the event~~ If the patient is not discharged within the ~~3-month~~ period of commitment and if the term is not extended as provided for in 53-21-128, ~~he shall~~ the patient must be discharged by the facility at the end of ~~3 months~~ the period of commitment without further order of the court. Notice of the discharge ~~shall~~ must be filed with the court and the county attorney at least 5 days prior to the discharge.

(2) Upon being discharged, each patient has a right to be referred, as appropriate, to other providers of mental health services."

NEW SECTION. Section 17. Codification instruction. [Sections 1 through 6] are intended to be codified as an integral part of Title 53, chapter 21, part 1, and the provisions of Title 53, chapter 21, part 1, apply to [sections 1 through 6].

NEW SECTION. Section 18. Coordination instruction. (1) If [LC 1415] and [this act] are both passed and approved, then the bracketed references to "advanced directives" must be inserted in [this act].

(2) If [LC 1415] is not passed and approved, then the bracketed references to "advance directives" in [this act] are void.

- END -

