*** Bill No. ***

Introduced By *********

By Request of the Department of Public Health and Human Services

A Bill for an Act entitled: "An act revising laws related to Civil Mental Health Commitment and Emergency Detention; amending sections 53-21-102, 53-21-127, 53-21-129 and 53-21-193, MCA; and providing an effective date."

Be it enacted by the Legislature of the State of Montana:

Section 1. Section 53-21-102 is amended to read:

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

(1) "Abuse" means any willful, negligent, or reckless mental, physical, sexual, or verbal mistreatment or maltreatment or misappropriation of personal property of any person receiving treatment in a mental health facility that insults the psychosocial, physical, or sexual integrity of any person receiving treatment in a mental health facility.

(2) "Behavioral health inpatient facility" means a facility, or a distinct part of a facility, of 16 beds or

less licensed by the department that is capable of providing secure, inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency.

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

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

(5) "Community facility" means a facility that provides psychiatric and/or chemical dependency evaluation, treatment, and short-term habilitation of persons with a mental illness or disorder in a community setting and that provides case management services, medication, stabilizing treatment, short-term inpatient treatment, chemical dependency treatment, assertive community treatment, or a combination thereof.

~~(5)~~(6) "Court" means any district court of the state of Montana.

~~(6)~~(7) "Department" means the department of public health and human services provided for in 2-15-2201.

~~(7)~~(8) "Emergency situation" means~~: (a)~~ a situation in which any person appears to be ~~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.~~ due to a mental illness or disorder and as a result of their activity, in imminent danger of death or bodily harm to themself or an imminent threat of death or bodily harm to another, and appears to require commitment.~~; or~~

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

~~(8)~~(9) "Friend of respondent" means any person willing and able to assist a person suffering from a mental disorder and requiring commitment or a person alleged to be suffering from a mental disorder and requiring commitment in dealing with legal proceedings, including consultation with legal counsel and others.

~~(9)~~(10) (a) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions.

(b) The term does not include:

(i) addiction to drugs or alcohol;

(ii) drug or alcohol intoxication;

(iii) intellectual disability; or

(iv) epilepsy.

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

~~(10)~~(11) "Mental health facility" or "facility" means a behavioral health inpatient facility, a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, , ~~or~~ a hospital, , ~~or~~ ~~a behavioral health inpatient facility~~, a mental health center, a residential treatment facility, ~~or~~ a residential treatment center licensed or certified by the department that provides treatment to children or adults with a mental illness or disorder, the Montana state hospital, or the Montana mental health nursing care center. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

~~(11)~~(12) "Mental health professional" means:

(a) a certified professional person;

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

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

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

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

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

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

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

~~(12)~~(13) (a) "Neglect" means failure to provide for the biological and psychosocial needs of any person receiving treatment in a mental health facility, failure to report abuse, or failure to exercise supervisory responsibilities to protect patients from abuse and neglect.

(b) The term includes but is not limited to:

(i) deprivation of food, shelter, appropriate clothing, nursing care, or other services;

(ii) failure to follow a prescribed plan of care and treatment; or

(iii) failure to respond to a person in an emergency situation by indifference, carelessness, or intention.

~~(13)~~(14) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

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

~~(15)~~(16) "Peace officer" means any sheriff, deputy sheriff, marshal, police officer, or other peace officer.

~~(16)~~(17) "Professional person" means:

(a) a medical doctor;

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

(c) a licensed psychologist;

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

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

~~(17)~~(18) "Reasonable medical certainty" means reasonable certainty as judged by the standards of a professional person.

~~(18)~~(19) "Respondent" means a person alleged in a petition filed pursuant to this part to be suffering from a mental disorder and requiring commitment.

(20) "Short-term" means a period of not more than 6 months.

~~(19)~~(21) "State hospital" means the Montana state hospital."

{*Internal References to 53-21-102:*
2-15-2302 *39-51-2111* *41-5-1504* *41-5-1512*
45-5-206 *45-5-212* *45-5-501* *45-5-502*
46-1-1203 *46-14-206* *46-14-221* *46-14-312*
53-20-130 *53-21-105* *53-21-106* *53-21-129*
53-21-411 *53-21-601* *53-21-1201* *72-5-408*
72-5-415 *72-38-704*}

Section 2. Section 53-21-127, MCA, is amended to read: **53-21-127.** *(Effective July 1, 2025)* **Posttrial disposition.** (1) A respondent must be discharged and the petition dismissed if, upon trial, it is determined that the respondent:

(a) is not suffering from a mental disorder;

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

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

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

(3) At the conclusion of the disposition hearing and pursuant to the provisions in subsection (7), the court shall:

(a) subject to the provisions of 53-21-193, commit the respondent to the state hospital or to a behavioral health inpatient facility for a period of not more than 3 months;

(b) commit the respondent to a community facility, which may include a category D assisted living facility, or a community program or to any appropriate course of

treatment, which may include housing or residential requirements or conditions as provided in 53-21-149, for a period of:

(i) not more than 3 months; or

(ii) not more than 6 months in order to provide the respondent with a less restrictive commitment in the community rather than a more restrictive placement in the state hospital if a respondent has been previously involuntarily committed for inpatient treatment in a mental health facility and the court determines that the admission of evidence of the previous involuntary commitment is relevant to the criterion of predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided in 53-21-190; or

(c) commit the respondent to the Montana mental health nursing care center for a period of not more than 3 months if the following conditions are met:

(i) the respondent meets the admission criteria of the center as described in 53-21-411 and established in administrative rules of the department; and

(ii) the superintendent of the center has issued a written authorization specifying a date and time for admission.

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

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

(6) The court may authorize the chief medical officer of a facility or a physician designated by the court to administer appropriate medication involuntarily if the court finds that involuntary medication is necessary to protect the respondent or the public or to facilitate effective treatment. Medication may not be involuntarily administered to a patient unless the chief medical officer of the facility, or a physician designated by the court, approves it prior to the beginning of the involuntary administration and unless, if possible, a medication review committee reviews it prior to the beginning of the involuntary administration or, if prior review is not possible, within 5 working days after the beginning of the involuntary administration. The medication review committee

must include at least one person who is not an employee of the facility or program. The patient and the patient's attorney or advocate, if the patient has one, must receive adequate written notice of the date, time, and place of the review and must be allowed to appear and give testimony and evidence. The involuntary administration of medication must be again reviewed by the committee 14 days and 90 days after the beginning of the involuntary administration if medication is still being involuntarily administered. The mental disabilities board of visitors and the director of the department of public health and human services must be fully informed of the matter within 5 working days after the beginning of the involuntary administration. The director shall report to the governor on an annual basis.

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

health inpatient facility, or the Montana mental health nursing care center.

(8) In ordering commitment pursuant to this section, the court shall attest that the court has not relied solely upon the criteria provided in Mont. Code Ann. § 53-21-126(1)(d) and make the following findings of fact:

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

(b) the alternatives for treatment that were considered;

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

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

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

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

(g) if the order commits the respondent to the Montana mental health nursing care center, a finding that the

respondent meets the admission criteria of the center and that the superintendent of the center has issued a written authorization specifying a date and time for admission;

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

(i) the respondent meets the admission criteria;

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

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

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

(j) Any mental health evaluation report of a professional person who evaluated the patient in connection with the commitment must be filed, under seal, at the time of the filing of the court's order, but shall be made available to the behavioral health inpatient facility, community facility, category D assisted living facility, community program, or course of treatment to which the

individual is committed, the Montana state hospital, or the Montana mental health nursing care center.

(9) A court may not order the commitment, transfer, or transport of a respondent or individual to the Montana state hospital unless that facility has confirmed in writing that:

(a) a bed is available for the respondent or individual;

(b) admission of the respondent or individual will not cause the census at the Montana state hospital to exceed its licensed capacity; and

(c) the committing county has provided the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required by this part and by the Administrative Rules of Montana, sufficient to evaluate the immediate treatment needs and appropriate placement of the respondent or individual, including whether less restrictive and medically appropriate facilities are available, and sufficient to coordinate patient care during the admission process with professional persons, the county attorney, the court, or

the person or entity transporting the respondent or individual.

(10) The respondent or individual may not be transported to the Montana state hospital until the provisions of (9) have been fulfilled.

(11) The Montana state hospital may refuse to admit into its custody any respondent or individual whose order of commitment, transfer, or transport is issued in violation of this section. Refusal to admit a respondent or individual under such circumstances may not be used as a basis for contempt of court. A court may not suspend any provision of this section."

{*Internal References to 53-21-127:*
2-16-503 *25-31-602* *27-2-401* *27-8-204*
37-3-323 *37-6-311* *37-11-321* *37-12-322*
41-5-1504 *53-21-104* *53-21-121* *53-21-123*
53-21-126 *53-21-128* *53-21-132* *53-21-140*
53-21-149 *53-21-151* *53-21-152* *53-21-181*
53-21-193 *53-21-195* *53-21-197* *53-21-198*
53-21-414 *70-19-413* *70-29-113* *70-29-210*
70-29-328}

Section 3. Section 53-21-129, MCA, is amended to read: "**53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation as defined in 53-21-102 exists, a peace officer may take any person who appears to have a mental illness or disorder and their activity to present an imminent danger of death or bodily

harm to the person or to others ~~or who appears to have a mental disorder and to be substantially unable to provide for the person's own basic needs of food, clothing, shelter, health, or safety~~ into custody only for sufficient time to contact a professional person for emergency evaluation. If possible, a professional person should be called prior to taking the person into custody.

(2) If the professional person agrees that the person detained is a danger to the person or to others and that an emergency situation as defined in 53-21-102 exists, then the person may be detained and treated until the next regular business day. At that time, the professional person shall release the detained person or file findings with the county attorney. ~~who, i~~If the county attorney determines probable cause to believe that an emergency situation, as defined in 53-21-102, exists ~~to exist~~, the county attorney shall file the petition provided for in 53-21-121 through 53-21-126 in the county of the respondent's residence. In either case, the professional person shall file a report with the court explaining the professional person's actions.

(3) The county attorney of a county may make arrangements with a federal, state, regional, or private

mental facility or with a mental health facility in a county for the detention of persons held pursuant to this section. If an arrangement has been made with a facility that does not, at the time of the emergency, have a bed available to detain the person at that facility, the person may be transported to ~~the state hospital or to~~ any other community facility, category D assisted living facility, community program, or any appropriate course of treatment, or to a behavioral health inpatient facility, subject to 53-21-193 and subsection ~~(4)~~(5) of this section, for detention and treatment as provided in this part. This determination must be made on an individual basis in each case, and the professional person at the local facility shall certify in writing to the county attorney that the facility does not have adequate room at that time.

(4) A person may not be transported to, detained at, or placed in the physical custody of the Montana state hospital unless that facility has confirmed in writing that:

(a) a bed is available for the person;

(b) admission of the person will not cause the census at the Montana state hospital to exceed its licensed capacity; and

(c) the committing county has provided the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required by this part and by the Administrative Rules of Montana, sufficient to evaluate the immediate treatment needs and appropriate placement of the person, including whether less restrictive and medically appropriate facilities are available, and sufficient to coordinate patient care during the admission process with professional persons, the county attorney, the court, or the person or entity transporting the person.

(5) Before a person may be transferred to ~~the state hospital or to~~ a behavioral health inpatient facility, a community facility, a category D assisted living facility, a community program, or any appropriate course of treatment under this section, the community facility, category D assisted living facility, community program, course of treatment, or ~~the state hospital or~~ the behavioral health inpatient facility must be notified prior to transfer and shall state whether a bed is available for the person. If the professional person determines that a community facility, a category D assisted living facility, a

community program, an appropriate course of treatment, or a behavioral health inpatient facility is the appropriate facility for the emergency detention and a bed is available, the county attorney shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

(6) The Montana state hospital may refuse to admit into its custody any person whose order of commitment, transfer, or transport is issued in violation of this section. Refusal to admit a person under such circumstances may not be used as a basis for contempt of court. A court may not suspend any provision of this section."

{*Internal References to 53-21-129:*
53-21-193 *53-21-1204*}

Section 4. Section 53-21-193, MCA, is amended to read: **"53-21-193. Commitment and transportation to community facilities, category D assisted living facilities, community programs, appropriate courses of treatment, behavioral health inpatient facilities, or Montana state hospital — preference — voluntary treatment.**

(1)(a) If a respondent is committed to the Montana state hospital under 53-21-127, or if a person in an emergency situation requires detention under 53-21-129, and a bed is

available at a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, or a behavioral health inpatient facility, the professional person shall inform the county attorney who shall inform the person who is responsible for transporting the individual as to the appropriate facility to which the individual is to be transported for admission.

(b) A county attorney may not direct the person responsible for transporting any respondent or individual to transport to, detain at, or place the respondent or individual in the physical custody of the Montana state hospital until the provisions of 53-21-129(4) or this section have been fulfilled.

(2) If a respondent is committed to, or an individual requires emergency detention in, a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, or a behavioral health inpatient facility, the facility, program, or course of treatment must be notified and the facility, program or course of treatment shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before ~~a~~ respondent or individual may be

transferred to the ~~behavioral health inpatient~~ facility, program, or course of treatment under this section.

(3) A respondent who is committed to, or an individual who is transferred to, a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, or a behavioral health inpatient facility may only be transferred to the Montana state hospital for the remaining period of commitment upon acceptance, in writing, by the Montana state hospital, and after the facility, program, or course of treatment has received written confirmation that a bed is available for the respondent or individual, that admission of the respondent or individual will not cause the census at the Montana state hospital to exceed its licensed capacity, and written confirmation from the Montana state hospital that it has received the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required by this part and by the Administrative Rules of Montana, sufficient to evaluate the immediate treatment needs and appropriate placement of the respondent or individual, including whether less restrictive and medically appropriate facilities are

available, and sufficient to coordinate patient care during the admission process with professional persons, the county attorney, the court, or the person or entity transporting the person. Any such transfer must also comply ~~in accordance~~ with criteria established by the department by rule pursuant to 53-21-194. A court order for commitment, ~~or~~ transfer, or transport must include the commitment, transfer, or transport authority, and all conditions or requirements imposed on the Montana state hospital contained in the court order apply only after ~~a transfer~~ the transport of the respondent or individual that complies with the requirements of this provision.

(4) The court may not order commitment, transfer, or transport of any ~~the~~ respondent or ~~transfer of an~~ individual to a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, or a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

(5) If a bed is available, a community facility, a category D assisted living facility, a community program, any appropriate course of treatment, or a behavioral health

inpatient facility may admit a person for voluntary treatment.

(6) A court may not order commitment, transfer, or transport of any respondent or individual to the Montana state hospital unless that facility has confirmed in writing that:

(a) a bed is available for the respondent or individual;

(b) admission of the respondent or individual will not cause the census at the Montana state hospital to exceed its licensed capacity; and

(c) the committing county has provided the information and records requested by the Montana state hospital, including both physical and psychiatric medical information and documentation of legal authority to admit, as required in this part and by the Administrative Rules of Montana, sufficient to evaluate the immediate treatment needs and appropriate placement of the respondent or individual, including whether less restrictive and medically appropriate facilities are available, and sufficient to coordinate patient care during the admission process with professional persons, the county attorney, the court, or the person or entity transporting the person .

(7) The Montana state hospital may refuse to admit into its custody any respondent or individual whose order of commitment, transfer, or transport is issued in violation of this section. Refusal to admit a respondent or individual under such circumstances may not be used as a basis for contempt of court. A court may not suspend any provision of this section."

{*Internal References to 53-21-193:*
53-21-120 *53-21-127* *53-21-129* *53-21-1201*}

NEW SECTION. **Section 5. Effective date.** [This act] is effective immediately upon passage.

-END-