

# Montana Code Annotated 2005

## Title 53, Chapter 21, Mentally III

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

- (1) secure for each person who may be suffering from a mental disorder and requiring commitment the care and treatment suited to the needs of the person and to ensure that the care and treatment are skillfully and humanely administered with full respect for the person's dignity and personal integrity;
- (2) accomplish this goal whenever possible in a community-based setting;
- (3) accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is suffering from a mental disorder and requires commitment; and
- (4) ensure that due process of law is accorded any person coming under the provisions of this part.

**History:** En. 38-1301 by Sec. 1, Ch. 466, L. 1975; amd. Sec. 1, Ch. 546, L. 1977; R.C.M. 1947, 38-1301; amd. Sec. 14, Ch. 490, L. 1997.

**53-21-102. Definitions.** As used in this part, 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 licensed facility of 16 beds or less designated by the department that:
  - (a) may be a freestanding licensed hospital or a distinct part of another licensed hospital and that is capable of providing inpatient psychiatric services, including services to persons with mental illness and co-occurring chemical dependency; and
  - (b) has contracted with the department to provide services to persons who have been involuntarily committed for care and treatment of a mental disorder pursuant to this title.
- (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) "Court" means any district court of the state of Montana.
- (6) "Department" means the department of public health and human services provided for in [2-15-2201](#).
- (7) "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.
- (8) "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. 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.

(9) (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) mental retardation; or
- (iv) epilepsy.

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

(10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing care center, or a hospital, 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 disorder. A correctional institution or facility or jail is not a mental health facility within the meaning of this part.

(11) "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.

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

(14) "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.

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

(16) "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; or

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

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

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

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

**History:** Ap. p. 38-1302 by Sec. 2, Ch. 466, L. 1975; amd. Sec. 9, Ch. 37, L. 1977; amd. Sec. 2, Ch. 546, L. 1977; Sec. 38-1302, R.C.M. 1947; (15)En. 38-106.1 by Sec. 3, Ch. 120, L. 1974; Sec. 38-106.1, R.C.M. 1947; R.C.M. 1947, 38-106.1, 38-1302; amd. Sec. 1, Ch. 547, L. 1979; amd. Sec. 18, Ch. 361, L. 1983; amd. Sec. 1, Ch. 578, L. 1983; amd. Sec. 1, Ch. 376, L. 1987; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1993; amd. Sec. 486, Ch. 546, L. 1995; amd. Sec. 15, Ch. 490, L. 1997; amd. Sec. 2, Ch. 310, L. 2001; amd. Sec. 6, Ch. 342, L. 2001; amd. Sec. 2, Ch. 344, L. 2001; amd. Sec. 3, Ch. 513, L. 2003; amd. Sec. 1, Ch. 81, L. 2005.

**53-21-103. Court records to be kept separate.** Records and papers in proceedings under this part shall be maintained separately by the clerks of the several courts. Five days prior to the release of a respondent or patient committed to a mental health facility, the facility shall notify the clerk of the court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or patient from the index or indexes of cases in the court unless the court orders the record opened for good cause shown.

**History:** En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(5); amd. Sec. 2, Ch. 547, L. 1979.

**53-21-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an independent board of inquiry and review that is responsible to ensure that the treatment of all persons either voluntarily or involuntarily admitted to a mental facility in Montana is humane, is consistent with established clinical and other professional standards, 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 ensure that each 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 and human services. An activity considered to be an experimental research project and that involves a person or 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) (a) The board shall inspect every mental health facility that provides treatment or evaluation to any person pursuant to this part.

(b) The board shall annually establish a schedule for the inspection of mental health facilities that enables the board to meet its obligation under subsection (1).

(c) The board's authority to inspect mental health facilities may not be waived or precluded by other treatment review, licensing, or accreditation requirements or protocols. The board may exercise the prerogative to inspect any mental health facility at any time independent of its facility inspection schedule.

(d) The board shall produce a written report of each inspection of a mental health facility that

must include specific recommendations for improvements that the board concludes are necessary in order for the inspected facility to meet the requirements in this part.

(e) The board shall provide a draft of each written report within 30 calendar days of the completion of each mental health facility inspection to the professional person in charge of the inspected facility for review prior to publication.

(f) The professional person in charge of the inspected facility shall provide a written response to the board's written report within 30 calendar days of receipt of the report. The response must include one of the following for each recommendation:

(i) a specific plan for implementation of the recommended action; or

(ii) a specific rationale that explains why the recommendation cannot be implemented.

(g) The board shall include the inspected facility's written response in the board's final published written report.

(h) The board shall include in subsequent inspections an assessment of each facility's implementation of the recommendations.

(i) The board shall report in writing to the director of the department and the governor when it determines that a mental health facility has not either implemented written recommendations or provided a specific rationale that explains why any recommendations cannot be implemented.

(4) (a) The board, by applying a sampling process during a scheduled inspection of a mental health facility, shall ensure that a treatment plan and a discharge plan exists and is being implemented for each patient admitted or committed to the mental health facility being inspected under this part.

(b) The board, during a scheduled inspection of a mental health facility, shall review all aspects of the treatment of persons admitted to mental health facilities and review the use of treatment procedures that involve behavior control, including but not limited to the use of any type of mechanical restraints, locked and unlocked seclusion or isolation, time out, or any other procedure involving physical control.

(c) The board shall ensure that the use of treatment procedures described in subsection (4)(b) at inspected mental health facilities is clinically justified, is monitored closely by a medical doctor and other mental health professionals, is implemented only when other less restrictive measures have failed, and is implemented to the least extent necessary to protect the safety and health of the affected individual or others in the immediate environment.

(d) The board may exercise the prerogative to inquire about and ensure the existence and implementation of treatment plans and discharge plans for any person admitted to a mental health facility and to inquire about and ensure the appropriate use of treatment procedures described in subsection (4)(b) with any person admitted to a mental health facility independent of its facility inspection schedule.

(5) The board may assist any person who is receiving or who has received treatment at a mental health facility in resolving any grievance the person may have concerning the person's admission or course of treatment in the facility.

(6) The board shall employ and is responsible for full-time legal counsel at the state hospital, whose responsibility is to act on behalf of all patients at the state hospital. The board shall ensure that there are sufficient legal staff and facilities to ensure 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) (a) 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 person, it shall report its findings in writing to the professional person in charge of the facility and the director of the department.

(b) The professional person in charge of the facility shall submit a written response to the board within 10 working days of the receipt of the board's written findings provided for in subsection (7)(a) that includes an explanation of the facility's point of view regarding the board's concerns, including areas of disagreement and agreement. If the facility is in full or partial agreement with the board's concerns, its written response must include actions that it has taken or that it plans to take to address the concerns.

(c) If the facility's written response does not resolve the concerns to the board's satisfaction, the board and the professional person in charge of the facility shall meet in person within 15 working days of the board's receipt of the facility's response to seek a mutually agreed upon resolution.

(8) The board shall publish standards for its inspections of mental health facilities.

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

(a) the status of the mental health facilities and treatment programs that it has inspected since the last annual report; and

(b) occurrences of the administration of medications against the wishes of persons receiving treatment in mental health facilities and the effectiveness of the review procedure required by [53-21-127](#)(6) in protecting persons from unnecessary or excessive medication.

**History:** En. 38-1330 by Sec. 30, Ch. 466, L. 1975; amd. Sec. 16, Ch. 546, L. 1977; R.C.M. 1947, 38-1330(2) thru (9); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 41, Ch. 112, L. 1991; amd. Sec. 37, Ch. 349, L. 1993; amd. Sec. 1, Ch. 434, L. 1995; amd. Sec. 7, Ch. 342, L. 2001; amd. Sec. 3, Ch. 344, L. 2001; amd. Sec. 13, Ch. 602, L. 2003.

**53-21-105. Certification of professional persons required.** No person may act in a professional capacity as provided for in this part unless he is a professional person as defined in [53-21-102](#).

**53-21-106. Certification of professional persons.** (1) The department shall certify professional persons as defined in [53-21-102](#) for the purpose of this part.

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

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

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

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

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

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

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

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

**History:** En. Sec. 3, Ch. 578, L. 1983; amd. Sec. 2, Ch. 376, L. 1987; amd. Sec. 487, Ch. 546, L. 1995.

**53-21-107. Abuse and neglect of persons admitted to mental health facility prohibited -- reporting -- investigations.** (1) Any form of abuse or neglect of a person admitted to a mental health facility is prohibited.

(2) Each mental health facility shall publish policies and procedures that define the facility's guidelines for detecting, reporting, investigating, determining the validity, and resolving allegations of abuse or neglect.

(3) Each allegation of abuse or neglect must be reported as follows:

(a) Any employee of the mental health facility with knowledge of the allegation shall immediately report the allegation to the professional person in charge of the facility.

(b) The professional person in charge of the mental health facility shall report the allegation by the end of the next business day, in writing, to the board.

(c) When the allegation of abuse or neglect may constitute a criminal act, the professional person in charge of the mental health facility shall immediately report the allegation to the appropriate law enforcement authority.

(4) Each mental health facility shall provide a mechanism for reporting allegations of abuse or neglect that in no way deters or discourages an individual from reporting the allegations.

(5) Investigations of allegations of abuse or neglect must be initiated by the professional person in charge of the facility as soon as possible after the initial report of the incident, but not later than by the end of the next business day. Initiation of each investigation may not be delayed in any way that adversely affects the efficacy of the investigation. However, the investigation must be initiated immediately when there is a report of an alleged criminal act.

(6) The investigation of each allegation of abuse or neglect must be concluded within the minimum period of time necessary to gather the information relative to each allegation and to come to a conclusion following the initial report of the allegation.

(7) Each mental health facility shall document the following in writing regarding each allegation of abuse or neglect:

(a) details of each allegation of abuse or neglect, including the names of any facility staff against whom the allegation is made;

(b) a description of the rationale for conducting the investigation with either in-house or outside personnel;

(c) details of the process of the investigation of each allegation of abuse or neglect;

(d) details of the conclusions of the investigation; and

(e) details of corrective action taken.

(8) Mental health facilities shall provide a copy of the written report described in subsections (7)(a) through (7)(e) within 5 working days of the completion of each investigation to the director of the department and to the board.

**History:** En. Sec. 4, Ch. 344, L. 2001.

**53-21-108 through 53-21-110 reserved.**

**53-21-111. Voluntary admission -- content of admission form -- requirements for valid admission.** (1) (a) This part may not be construed to limit the right of a person to make voluntary

application for admission at any time to a mental health facility or professional person.

(b) An application for admission to a mental health facility must be in writing on a form prescribed by the facility. The form must explain:

- (i) the process for requesting release and that the request must be in writing;
- (ii) that the individual applying for release may be held involuntarily for up to 5 days after requesting release; and
- (iii) that the facility may request a court to involuntarily commit the applicant.

(c) A statement of the rights of the person voluntarily applying for admission, as set out in this part, must be furnished to the patient within 12 hours.

(2) An applicant who wishes to voluntarily apply for admission to the state hospital shall first obtain certification from a professional person that the applicant is suffering from a mental disorder. The professional person shall then obtain confirmation from the department or the department's designee that the facilities available to the mental health region in which the applicant resides are unable to provide adequate evaluation and treatment. The department shall adopt rules to establish a procedure whereby a professional person shall obtain the confirmation from the department or the department's designee as required in this section.

(3) An application for voluntary admission must give the facility the right to detain the applicant for no more than 5 days, excluding weekends and holidays, past the applicant's written request for release. A mental health facility may adopt rules providing for detention of the applicant for less than 5 days. The facility shall notify all applicants of the rules and post the rules as provided in [53-21-168](#).

(4) An individual applying for voluntary admission pursuant to this section may not be admitted unless:

- (a) the admission is approved by a professional person;
- (b) the individual applying for admission has been informed orally of the matters required by subsection (1)(b) to be stated in the written application for admission;
- (c) a copy of the written application for admission has been given to the applicant; and
- (d) the admission otherwise complies with the requirements of this section.

(5) A person voluntarily entering or remaining in a mental health facility shall enjoy all the rights secured to a person involuntarily committed to the facility.

**History:** En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(1) thru (3), (6); amd. Sec. 3, Ch. 547, L. 1979; amd. Sec. 1, Ch. 603, L. 1985; amd. Sec. 10, Ch. 590, L. 1995; amd. Sec. 1, Ch. 247, L. 1999.

**53-21-112. (Temporary) Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

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

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

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health

facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in [53-21-111](#)(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in [53-21-111](#)(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. Counsel must be appointed for the minor at the minor's request or at any time that the minor is faced with potential legal proceedings.

**53-21-112. (Effective July 1, 2006). Voluntary admission of minors.** (1) Notwithstanding any other provision of law, a parent or guardian of a minor may consent to mental health services to be rendered to the minor by:

- (a) a facility;
- (b) a person licensed in this state to practice medicine; or
- (c) a mental health professional licensed in this state.

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

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

(4) Except as provided by this subsection, voluntary admission of a minor to a mental health facility for an inpatient course of treatment is for the same period of time as that for an adult. A minor voluntarily admitted with consent of the minor's parent or guardian has the right to be released within 5 days of a request by the parent or guardian as provided in [53-21-111](#)(3). A minor who has been admitted without consent by a parent or guardian, pursuant to subsection (2), may also make a request and also has the right to be released within 5 days as provided in [53-21-111](#)(3). Unless there has been a periodic review and a voluntary readmission consented to by the parent or guardian in the case of a minor patient or consented to by the minor alone in the case of a minor patient who is at least 16 years of age, voluntary admission terminates at the expiration of 1 year. At the minor's request or at any time that the minor is faced with potential legal proceedings, the court shall order the office of state public defender, provided for in [47-1-201](#), to assign counsel for the minor.

**History:** En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(7) thru (9); amd. Sec. 14, Ch. 38, L. 1979; amd. Sec. 4, Ch. 547, L. 1979; amd. Sec. 12, Ch. 363, L. 1983; amd. Sec. 12, Ch. 14, Sp. L. June 1986; amd. Sec. 16, Ch. 490, L. 1997; amd. Sec. 57, Ch. 449, L. 2005.

**53-21-113. Costs of committing a patient already voluntarily admitted -- transportation costs for voluntary admission.** (1) The cost of involuntarily committing a patient who is voluntarily admitted to a mental health facility at the time the involuntary proceedings are commenced must be paid by the county of the patient's residence at the time of admission.

(2) The costs of transportation to a mental health facility under [53-21-111](#) and [53-21-112](#) must be provided by the local office of public assistance located in the county of the patient's residence. However, if protective proceedings under Title 72, chapter 5, have been or are

initiated with respect to the person, the local office of public assistance may seek reimbursement. If no one else is available to transport the person, the sheriff shall transport the person.

**History:** En. 38-1303 by Sec. 3, Ch. 466, L. 1975; amd. Sec. 3, Ch. 546, L. 1977; R.C.M. 1947, 38-1303(4), (5); amd. Sec. 42, Ch. 571, L. 2001.

**53-21-114. Notice of rights to be given.** (1) Whenever a person is involuntarily detained pursuant to [53-21-121](#) through [53-21-126](#), the person shall at the time of detention be informed of his constitutional rights and his rights under this part. Within 3 days of such detention, he must also be informed in writing by the county attorney of such rights.

(2) Every respondent subject to an order for short-term treatment or long-term care and treatment shall be advised in writing of his right to appeal the order by the court at the conclusion of any hearing the result of which such an order may be entered.

**History:** (1)En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1304, R.C.M. 1947; R.C.M. 1947, 38-1304(part), 38-1309(4); amd. Sec. 1, Ch. 522, L. 1983; amd. Sec. 1, Ch. 537, L. 1991.

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

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

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

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

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

(5) the right to be represented by counsel;

(6) the right to remain silent;

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

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

(9) the right to be examined by a professional person of the person's choice when the professional person is willing and reasonably available;

(10) the right to be dressed in the person's own clothes at any hearing held pursuant to this part;

(11) the right to refuse any but lifesaving medication for up to 24 hours prior to any hearing held pursuant to this part; and

(12) the right to voluntarily take necessary medications prior to any hearing pursuant to this part.

**History:** En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(4); amd. Sec. 5, Ch. 547, L. 1979; amd. Sec. 3, Ch. 376, L. 1987; amd. Sec. 17, Ch. 490, L. 1997.

**53-21-116. (Temporary) Right to be present at hearing or trial -- appointment of counsel.**

The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present at any hearing or trial. If the person is indigent, the judge shall appoint counsel to represent the person at either the hearing or the trial, or both, and the counsel must be compensated pursuant to [3-5-901](#)(1)(f).

**53-21-116. (Effective July 1, 2006). Right to be present at hearing or trial -- assignment of counsel.** The person alleged to be suffering from a mental disorder and requiring commitment has the right to be present and the right to counsel at any hearing or trial. If the person is indigent or if in the court's discretion assignment of counsel is in the best interest of justice, the judge shall order the office of state public defender, provided for in [47-1-201](#), to immediately assign counsel to represent the person at either the hearing or the trial, or both.

**History:** En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 4, Ch. 376, L. 1987; amd. Sec. 18, Ch. 490, L. 1997; amd. Sec. 7, Ch. 583, L. 2003; amd. Sec. 58, Ch. 449, L. 2005.

**53-21-117. Right to representation by own attorney.** The respondent or the friend of respondent appointed by the court may secure an attorney of his own choice and at his own expense to represent the respondent.

**History:** En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

**53-21-118. Right to examination by professional person of own choosing.** (1) The respondent, his attorney, or the friend of respondent appointed by the court may secure a professional person of his own choice to examine the respondent and to testify at the hearing before the court or jury as to the results of his examination.

(2) If the person wishing to secure the testimony of a professional person is unable to do so because of financial reasons and if the respondent joins in the request for the examination, the court shall appoint a professional person other than the professional person requesting the commitment to perform the examination. Whenever possible, the court shall allow the respondent a reasonable choice of an available professional person qualified to perform the requested examination who will be compensated from the public funds of the county where the respondent resides.

**History:** En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; R.C.M. 1947, 38-1309(part); amd. Sec. 14, Ch. 547, L. 1979.

**53-21-119. Waiver of rights.** (1) A person may waive his rights, or if the person is not capable of making an intentional and knowing decision, these rights may be waived by his counsel and friend of respondent acting together if a record is made of the reasons for the waiver. The right to counsel may not be waived. The right to treatment provided for in this part may not be waived.

(2) The right of the respondent to be physically present at a hearing may also be waived by his attorney and the friend of respondent with the concurrence of the professional person and the judge upon a finding supported by facts that:

(a) the presence of the respondent at the hearing would be likely to seriously adversely affect

his mental condition; and

(b) an alternative location for the hearing in surroundings familiar to the respondent would not prevent such adverse effects on his mental condition.

(3) (a) In the case of a minor, provided that a record is made of the reasons for the waiver, his rights may be waived by the mutual consent of his counsel and parents or guardian or guardian ad litem if there are no parents or guardian.

(b) If there is an apparent conflict of interest between a minor and his parents or guardian, the court shall appoint a guardian ad litem for him.

**History:** En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(part); amd. Secs. 6, 14, Ch. 547, L. 1979.

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

(2) Whenever possible, a person detained pursuant to this part must be detained in a mental health facility and in the county of residence. If the person detained demands a jury trial and the trial cannot be held within 7 days, subject to the provisions in [53-21-193](#), the individual may be sent to the state hospital or a behavioral health inpatient facility until the time of trial if arrangements can be made to return the person to trial. The trial must be held within 30 days. The county of residence shall pay the cost of travel and professional services associated with the trial. A person may not be detained in any hospital or other medical facility that is not a mental health facility unless the hospital or facility has agreed in writing to admit the person.

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

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

**History:** En. 38-1304 by Sec. 4, Ch. 466, L. 1975; amd. Sec. 4, Ch. 546, L. 1977; R.C.M. 1947, 38-1304(5); amd. Sec. 7, Ch. 547, L. 1979; amd. Sec. 5, Ch. 376, L. 1987; amd. Sec. 1, Ch. 360, L. 1989; amd. Sec. 1, Ch. 636, L. 1991; amd. Sec. 4, Ch. 513, L. 2003.

**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](#), 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;

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

(i) the name and address of the mental health facility to which it is proposed that the respondent may be committed, if known.

(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, mailed, or sent by a facsimile transmission to the person or persons legally responsible for care, support, and maintenance of the respondent, the next of kin identified in the petition, 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 director of the department or the director's designee, and the mental health facility to which the respondent may be committed, if known. 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.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 376, L. 1987; amd. Sec. 19, Ch. 490, L. 1997; amd. Sec. 8, Ch. 342, L. 2001; amd. Sec. 1, Ch. 165, L. 2003.

**53-21-122. (Temporary) Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) If a judge is available, the judge shall consider the petition, and if the judge finds no probable cause, it must be dismissed. If the judge finds probable cause, counsel must be immediately appointed for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of

respondent and in the confirmation of the appointment of the attorney.

(3) If a judge is not available in the county, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause, the judge shall cause the clerk to issue an order appointing counsel and a professional person and setting a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order must also direct that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the clerk's order, as well as to furnish the respondent with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of counsel, and this information must be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present.

**53-21-122. (Effective July 1, 2006). Petition for commitment -- filing of -- initial hearing on.** (1) The petition must be filed with the clerk of court who shall immediately notify the judge.

(2) The judge shall consider the petition. If the judge finds no probable cause, the petition must be dismissed. If the judge finds probable cause and the respondent does not have private counsel present, the judge may order the office of state public defender, provided for in [47-1-201](#), to immediately assign counsel for the respondent, and the respondent must be brought before the court with the respondent's counsel. The respondent must be advised of the respondent's constitutional rights, the respondent's rights under this part, and the substantive effect of the petition. The respondent may at this appearance object to the finding of probable cause for filing the petition. The judge shall appoint a professional person and a friend of respondent and set a date and time for the hearing on the petition that may not be on the same day as the initial appearance and that may not exceed 5 days, including weekends and holidays, unless the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The desires of the respondent must be taken into consideration in the appointment of the friend of respondent.

(3) If a judge is not available in the county in person, the clerk shall notify a resident judge by telephone and shall read the petition to the judge. The judge may do all things necessary through the clerk of court by telephone as if the judge were personally present, including ordering the office of state public defender, provided for in [47-1-201](#), to immediately provide assigned counsel. The judge, through the clerk of court, may also order that the respondent be brought before a justice of the peace with the respondent's counsel to be advised of the respondent's constitutional rights, the respondent's rights under this part, and the contents of the order, as well as to furnish the respondent with a copy of the order. The justice of the peace shall ascertain the desires of the respondent with respect to the assignment of counsel or the hiring of private counsel, pursuant to [53-21-116](#) and [53-21-117](#), and this information must be immediately communicated to the resident judge.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(3); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 7, Ch. 376, L. 1987; amd. Sec. 20, Ch. 490, L. 1997; amd. Sec. 59, Ch. 449, L. 2005.

**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) 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.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(4); amd. Sec. 8, Ch. 376, L. 1987; amd. Sec. 21, Ch. 490, L. 1997; amd. Sec. 9, Ch. 342, L. 2001.

**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 immediately.

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

(3) If the respondent is detained, the respondent has the right to be examined additionally by a professional person of 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, 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.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(5); amd. Sec. 2, Ch. 360, L. 1989; amd. Sec. 4, Ch. 312, L. 1991; amd. Sec. 2, Ch. 636, L. 1991; amd. Sec. 10, Ch. 342, L. 2001.

**53-21-125. Request for jury trial.** At any time prior to the date set for hearing, the

respondent, through his counsel, may request a jury trial, whereupon the time set for hearing shall be vacated and the matter set on the court's jury calendar at the earliest date possible, the matter taking precedence over all other matters. If there is not a jury in attendance, a jury shall be selected in the manner provided in [3-15-506](#) and a date set for trial by jury not later than 7 days, exclusive of Saturdays, Sundays, and holidays.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part).

**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 and the appropriate disposition under [53-21-127](#), 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) 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.

(6) An individual with a primary diagnosis of a mental disorder who also has a co-occurring diagnosis of chemical dependency may satisfy criteria for commitment under this part.

**History:** En. 38-1305 by Sec. 5, Ch. 466, L. 1975; amd. Sec. 5, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part); amd. Sec. 8, Ch. 547, L. 1979; amd. Sec. 9, Ch. 376, L. 1987; amd. Sec. 22, Ch. 490, L. 1997; amd. Sec. 11, Ch. 342, L. 2001; amd. Sec. 2, Ch. 81, L. 2005.

**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) 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 or 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 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.

(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, 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 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; and

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

**History:** En. 38-1305, 38-1306 by Secs. 5, 6, Ch. 466, L. 1975; amd. Secs. 5, 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1305(part), 38-1306(1); amd. Sec. 9, Ch. 547, L. 1979; amd. Sec. 10, Ch. 376, L. 1987; amd. Sec. 2, Ch. 434, L. 1995; amd. Sec. 23, Ch. 490, L. 1997; amd. Sec. 12, Ch. 342, L. 2001; amd. Sec. 1, Ch. 163, L. 2003; amd. Sec. 5, Ch. 513, L. 2003; amd. Sec. 1, Ch. 554, L. 2003.

**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, a behavioral health inpatient facility, or the Montana mental health nursing care center or the period of commitment to a community facility or program or a course of treatment provided for in [53-21-127](#), 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, not including Saturdays, Sundays, and holidays, from the receipt of the request and notify the same people, including the professional person in charge of the patient. When a hearing is requested less than 10 days prior to the termination of the previous commitment authority, the previous commitment is considered extended until the hearing is held. The notice of hearing must include a notice of this extension. 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 that the patient is not entitled to a 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 as set forth in [53-21-127](#). However, an order extending the commitment period may not affect the patient's custody for more than 6 months and may not commit the patient to a behavioral health inpatient facility. 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 period of commitment to a community facility or program or course of treatment, a respondent may request that the treating provider petition the district court for an extension of the commitment 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 is desired. The extension procedure must follow the procedure required in subsections (1)(b) through (1)(d).

(3) Further extensions under subsection (1) or (2) may be obtained under the same procedure described in subsection (1). 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).

**History:** En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(3), (4); amd. Secs. 10, 14, Ch. 547, L. 1979; amd. Sec. 11, Ch. 376, L. 1987; amd. Sec. 1, Ch. 434, L. 1987; amd. Sec. 24, Ch. 490, L. 1997; amd. Sec. 13, Ch. 342, L. 2001; amd. Sec. 6, Ch. 513, L. 2003; amd. Sec. 2, Ch. 554, L. 2003.

**53-21-129. Emergency situation -- petition -- detention.** (1) When an emergency situation exists, a peace officer may take any person who appears to have a mental disorder and to present an imminent danger of death or bodily harm to the person or to others 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 because of a mental disorder and that an emergency situation 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, if the county attorney determines probable cause to exist, 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 a behavioral health inpatient facility, subject to [53-21-193](#) and subsection (4) 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 to the county attorney that the facility does not have adequate room at that time.

(4) Before a person may be transferred to the state hospital or to a behavioral health inpatient facility under this section, 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 Montana state hospital determines that a behavioral health inpatient facility is the appropriate facility for

the emergency detention, it shall direct the person to the appropriate facility to which the person must be transported for emergency detention.

**History:** En. 38-1307 by Sec. 7, Ch. 466, L. 1975; amd. Sec. 7, Ch. 546, L. 1977; R.C.M. 1947, 38-1307; amd. Sec. 1, Ch. 560, L. 1983; amd. Sec. 25, Ch. 490, L. 1997; amd. Sec. 7, Ch. 513, L. 2003.

**53-21-130. Transfer or commitment to mental health facility from other institutions.** (1) A person who is in the custody of the department for any purpose other than treatment of severe mental illness may not be transferred or committed to a mental health facility for more than 10 days unless the transfer or commitment is effected according to the procedures set out in this part. However, proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is, in the county of the institution from which the person was transferred to the mental health facility, or in the county of the person's residence. Notice of a transfer must be given immediately to the assigned counsel at the mental health facility and to the parents of minors, guardians, friends of respondent, or conservators.

(2) A person who is in the custody of the department of corrections may be transferred for placement in a mental health facility for a period of up to 10 days, subject to the approval of the mental health facility. A placement in excess of 10 days must be performed according to the procedures for voluntary admission or involuntary commitment as provided in this part. Proceedings for involuntary commitment may be commenced in the county of the mental health facility where the person is placed or in the county of the correctional facility from which the person was transferred. Notice of a transfer must be given to the legal counsel for the person and to the parents of minors, guardians, friends of respondent, or conservators.

**History:** En. 38-1310 by Sec. 10, Ch. 466, L. 1975; amd. Sec. 10, Ch. 546, L. 1977; R.C.M. 1947, 38-1310; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 2, Ch. 247, L. 1999.

**53-21-131. Appeal procedure.** Appellate review of any order of short-term evaluation and treatment or long-term commitment may be had by appeal to the supreme court of Montana in the manner as other civil cases, except that the appeal may be taken at any time within 90 days of the actual service of the written notice of the right to appeal required by [53-21-114](#) or within 90 days after discharge, whichever is later. The patient shall not be released pending appeal unless ordered by the court. The appeal shall have priority above all other matters before the supreme court.

**History:** En. 38-1311 by Sec. 11, Ch. 466, L. 1975; R.C.M. 1947, 38-1311; amd. Sec. 2, Ch. 522, L. 1983.

**53-21-132. Cost of examination and commitment.** (1) The cost of psychiatric precommitment examination, detention, treatment, and taking a person who is suffering from a mental disorder and who requires commitment to a mental health facility must be paid pursuant to subsection (2)(a). The sheriff must be allowed the actual expenses incurred in taking a committed person to the facility, as provided by [7-32-2144](#).

(2) (a) The costs of precommitment psychiatric detention, precommitment psychiatric examination, and precommitment psychiatric treatment of the respondent and any cost associated with testimony during an involuntary commitment proceeding by a professional person acting pursuant to [53-21-123](#) must be billed to the following entities in the listed order of priority:

(i) the respondent, the parent or guardian of a respondent who is a minor, or the respondent's private insurance carrier, if any;

(ii) a public assistance program, such as medicaid, for a qualifying respondent; or

(iii) the county of residence of the respondent in an amount not to exceed the amount paid for the service by a public assistance program.

(b) The county of residence is not required to pay costs of treatment and custody of the respondent after the respondent is committed pursuant to this part. Precommitment costs related to the use of two-way electronic audio-video communication in the county of commitment must be paid by the county in which the person resides at the time that the person is committed. The costs of the use of two-way electronic audio-video communication from the state hospital for a patient who is under a voluntary or involuntary commitment to the state hospital must be paid by the state. The fact that a person is examined, hospitalized, or receives medical, psychological, or other mental health treatment pursuant to this part does not relieve a third party from a contractual obligation to pay for the cost of the examination, hospitalization, or treatment.

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

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

**History:** (1)En. Sec. 2311, Pol. C. 1895; re-en. Sec. 1145, Rev. C. 1907; re-en. Sec. 1442, R.C.M. 1921; Cal Pol. C. Sec. 2175; re-en. Sec. 1442, R.C.M. 1935; amd. Sec. 33, Ch. 466, L. 1975; Sec. 38-212, R.C.M. 1947; (2)En. 38-1309 by Sec. 9, Ch. 466, L. 1975; amd. Sec. 9, Ch. 546, L. 1977; Sec. 38-1309, R.C.M. 1947; R.C.M. 1947, 38-212, 38-1309(part); amd. Sec. 26, Ch. 490, L. 1997; amd. Sec. 2, Ch. 212, L. 2001; amd. Sec. 8, Ch. 583, L. 2003; amd. Sec. 1, Ch. 480, L. 2005.

**53-21-133. Transfer to nonstate facilities.** (1) If a person is committed under the provisions of this part and is eligible for hospital care or treatment by an agency of the United States and if a certificate of notification from such agency showing that facilities are available and that the person is eligible for care or treatment therein is received, the court may order the person to be placed in the custody of the agency for hospitalization. The chief officer of any hospital or institution operated by such an agency and in which a person is so hospitalized shall be vested with the same powers as the superintendent of the state hospital with respect to detention, custody, transfer, conditional release, or discharge of the person. Jurisdiction shall be retained in the appropriate courts of this state to inquire into the mental condition of persons so hospitalized and to determine the necessity for continuance of their hospitalization.

(2) Consistent with other provisions of this part, a person committed under this part for a period of 3 months or longer may be committed by the court to the custody of friends or next of kin residing outside the state or to a mental health facility located outside the state if the out-of-state facility agrees to receive the patient. No such commitment shall be for a longer period of time than is permitted within the state. If the patient is indigent, the expense of supporting him in an out-of-state facility and the expense of transportation shall be borne by the state of Montana.

(3) The transfer out of Montana of persons committed under the provisions of this part or into Montana under the laws of another jurisdiction shall be governed by the provisions of the Interstate Compact on Mental Health.

**History:** En. 38-1314 by Sec. 14, Ch. 466, L. 1975; R.C.M. 1947, 38-1314.

**53-21-134. Receipt of nonresident person suffering from a mental disorder pending return to home state.** A person who is suffering from a mental disorder and in need of commitment and who is not a resident of this state may be committed to the state hospital pursuant to this part. The state hospital shall make every effort to return the nonresident to the state of the person's residence as provided in chapter 22, part 1, of this title.

**History:** En. Sec. 1, Ch. 198, L. 1963; amd. Sec. 8, Ch. 120, L. 1974; amd. Sec. 2, Ch. 37, L. 1977; R.C.M. 1947, 38-120; amd. Sec. 27, Ch. 490, L. 1997; amd. Sec. 3, Ch. 247, L. 1999.

**53-21-135. Terminated.** Sec. 1, Ch. 541, L. 1989.

**History:** En. Sec. 12, Ch. 376, L. 1987.

**53-21-136. Terminated.** Sec. 1, Ch. 541, L. 1989.

**History:** En. Sec. 13, Ch. 376, L. 1987.

**53-21-137. Terminated.** Sec. 1, Ch. 541, L. 1989.

**History:** En. Sec. 14, Ch. 376, L. 1987.

**53-21-138. Diversion of certain persons suffering from mental disorders from detention center.** (1) The sheriff or administrator of a detention center in each county shall require screening of inmates to identify persons accused of minor misdemeanor offenses who appear to be suffering from mental disorders and who may require commitment, as defined in [53-21-102](#).

(2) If as a result of screening and observation it is believed that an inmate is suffering from a mental disorder and may require commitment, the sheriff or administrator of the detention center shall:

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

(b) refer the inmate to the nearest qualified mental health care provider as arranged by the county; or

(c) subject to [53-21-193](#) and subsection (3) of this section, transfer the inmate to a private mental health facility, a behavioral health inpatient facility, or a hospital equipped to provide treatment and care of persons who are suffering from a mental disorder and who require commitment.

(3) The facility must be notified, and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before a person may be transferred under this section.

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

(5) A person intoxicated by drugs or alcohol who is accused of a minor misdemeanor offense

may be detained in a jail until the level of intoxication is reduced to the point that screening for a mental disorder and the need for commitment can be performed.

**History:** En. Sec. 3, Ch. 636, L. 1991; amd. Sec. 2, Ch. 312, L. 1993; amd. Sec. 488, Ch. 546, L. 1995; amd. Sec. 28, Ch. 490, L. 1997; amd. Sec. 4, Ch. 247, L. 1999; amd. Sec. 8, Ch. 513, L. 2003; amd. Sec. 4, Ch. 561, L. 2003; amd. Sec. 14, Ch. 602, L. 2003.

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

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

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

(a) a rehabilitative service under [53-6-101\(4\)\(j\)](#); and

(b) a targeted case management service authorized in [53-6-101\(4\)\(n\)](#).

**History:** En. Sec. 4, Ch. 636, L. 1991; amd. Sec. 489, Ch. 546, L. 1995; amd. Sec. 29, Ch. 490, L. 1997; amd. Sec. 2, Ch. 530, L. 2005.

**53-21-140. Use of two-way electronic audio-video communication.** (1) For purposes of this chapter, a hearing that is conducted by the use of two-way electronic audio-video communication, allowing all of the participants to be observed and heard by all present, is considered to be a hearing in open court.

(2) Whenever the law requires that a respondent or patient in any of the hearings provided for in subsection (3) be present before a court, this requirement may, in the discretion of the court, be satisfied either by the respondent's or patient's physical appearance before the court or by two-way electronic audio-video communication. The audio-video communication must operate so that the respondent or patient, the respondent's or patient's counsel, and the judge can see each other simultaneously and converse with each other, so that the respondent or patient and the respondent's or patient's counsel can communicate privately, and so that the respondent or patient and counsel are both present during the two-way electronic audio-video communication. A respondent or patient may request that counsel from the board be present, for consulting purposes only, if the respondent or patient is located at the state hospital.

(3) At the discretion of the court, the following hearings may be conducted through two-way electronic audio-video communication:

(a) the initial hearing provided for in [53-21-122](#);

(b) the detention hearing provided for in [53-21-124](#);

(c) the trial or hearing on a petition provided for in [53-21-126](#);

(d) a hearing on posttrial disposition as provided for in [53-21-127](#);

(e) a hearing on the extension of a commitment period as provided for in [53-21-128](#);

(f) a hearing on rehospitalization of a person conditionally released from an inpatient treatment facility as provided for in [53-21-197](#);

(g) a hearing on an extension of the conditions of release as provided for in [53-21-198](#).

(4) This section does not abrogate a person's rights under [53-21-115](#), [53-21-116](#), or [53-21-117](#). A respondent or patient, the respondent's or patient's counsel, and a friend of respondent or patient, if any, must be informed of these rights prior to a hearing by two-way electronic audio-video communication in lieu of a hearing in person. A respondent or patient or the respondent's or patient's counsel and a friend of respondent or patient, acting together, may waive any of the rights, as provided under [53-21-119](#).

(5) If a respondent or patient, the respondent's or patient's counsel, or the professional person object to two-way electronic audio-video communication in lieu of a hearing in person, the court may not allow a two-way electronic audio-video communication.

**History:** En. Sec. 1, Ch. 212, L. 2001.

**53-21-141. Civil and legal rights of person committed.** (1) Unless specifically stated in an order by the court, a person involuntarily committed to a facility for a period of evaluation or treatment does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part except insofar as it may be necessary to detain the person for treatment, evaluation, or care. All communication between an alleged mentally ill person and a professional person is privileged under normal privileged communication rules unless it is clearly explained to the person in advance that the purpose of an interview is for evaluation and not treatment.

(2) Whenever a person is committed to a mental health facility for a period of 3 months or longer, the court ordering the commitment may make an order stating specifically any legal rights which are denied the respondent and any legal disabilities which are imposed on him. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the involuntary commitment if not sooner terminated by the court. A conservatorship or guardianship extending beyond the period of involuntary commitment may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally. In the case of a person admitted to a program or facility for the purpose of receiving mental health services, an individual employed by or receiving remuneration from the program or facility may not act as the person's guardian or representative unless the program or facility can demonstrate that no other person is available or willing to act as the person's guardian or representative.

(3) A person who has been committed to a mental health facility pursuant to this part is automatically restored upon the termination of the commitment to all of his civil and legal rights which may have been lost when he was committed. This subsection does not affect, however, a guardianship or conservatorship created independently of the commitment proceedings according to the provisions of Montana law relating to the appointment of conservators and guardians generally. A person who leaves a mental health facility following a period of evaluation and treatment shall be given a written statement setting forth the substance of this subsection.

(4) A person committed to a mental health facility prior to July 1, 1975, enjoys all the rights and privileges of a person committed after that date.

**History:** En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(1) thru (4); amd. Sec. 11, Ch. 547, L. 1979; amd. Sec. 2, Ch. 579, L. 1991.

**53-21-142. Rights of persons admitted to facility.** Patients admitted to a mental health facility, whether voluntarily or involuntarily, shall have the following rights:

- (1) Patients have a right to privacy and dignity.
- (2) Patients have a right to the least restrictive conditions necessary to achieve the purposes of commitment. Patients must be accorded the right to appropriate treatment and related services in a setting and under conditions that:
  - (a) are the most supportive of the patient's personal liberty; and
  - (b) restrict the patient's liberty only to the extent necessary and consistent with the patient's treatment need, applicable requirements of law, and judicial orders.
- (3) Patients shall have the same rights to visitation and reasonable access to telephone communications, including the right to converse with others privately, except to the extent that the professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued. Patients shall have an unrestricted right to visitation with attorneys, with spiritual counselors, and with private physicians and other professional persons.
- (4) Patients shall have an unrestricted right to send sealed mail. Patients shall have an unrestricted right to receive sealed mail from their attorneys, private physicians and other professional persons, the mental disabilities board of visitors, courts, and government officials. Patients shall have a right to receive sealed mail from others except to the extent that a professional person responsible for formulation of a particular patient's treatment plan writes an order imposing special restrictions on receipt of sealed mail. The written order must be renewed after each periodic review of the treatment plan if any restrictions are to be continued.
- (5) Patients have an unrestricted right to have access to letter-writing materials, including postage, and have a right to have staff members of the facility assist persons who are unable to write, prepare, and mail correspondence.
- (6) Patients have a right to wear their own clothes and to keep and use their own personal possessions, including toilet articles, except insofar as such clothes or personal possessions may be determined by a professional person in charge of the patient's treatment plan to be dangerous or otherwise inappropriate to the treatment regimen. The facility has an obligation to supply an adequate allowance of clothing to any patients who do not have suitable clothing of their own. Patients shall have the opportunity to select from various types of neat, clean, and seasonable clothing. Such clothing shall be considered the patient's throughout his stay at the facility. The facility shall make provision for the laundering of patient clothing.
- (7) Patients have the right to keep and be allowed to spend a reasonable sum of their own money.
- (8) Patients have the right to religious worship. Provisions for such worship shall be made available to all patients on a nondiscriminatory basis. No individual shall be required to engage in any religious activities.
- (9) Patients have a right to regular physical exercise several times a week. Moreover, it shall be the duty of the facility to provide facilities and equipment for such exercise. Patients have a right to be outdoors at regular and frequent intervals in the absence of contrary medical considerations.
- (10) Patients have the right to be provided, with adequate supervision, suitable opportunities for interaction with members of the opposite sex except to the extent that a professional person in charge of the patient's treatment plan writes an order stating that such interaction is inappropriate

to the treatment regimen.

(11) Patients have a right to receive prompt and adequate medical treatment for any physical ailments. In providing medical care, the mental health facility shall take advantage of whatever community-based facilities are appropriate and available and shall coordinate the patient's treatment for mental illness with his medical treatment.

(12) Patients have a right to a diet that will provide at a minimum the recommended daily dietary allowances as developed by the national academy of sciences. Provisions shall be made for special therapeutic diets and for substitutes at the request of the patient or the friend of respondent in accordance with the religious requirements of any patient's faith. Denial of a nutritionally adequate diet shall not be used as punishment.

(13) Patients have a right to a humane psychological and physical environment within the mental health facilities. These facilities shall be designed to afford patients with comfort and safety, promote dignity, and ensure privacy. The facilities shall be designed to make a positive contribution to the efficient attainment of the treatment goals set for the patient. In order to assure the accomplishment of this goal:

(a) regular housekeeping and maintenance procedures which will ensure that the facility is maintained in a safe, clean, and attractive condition shall be developed and implemented;

(b) there must be special provision made for geriatric and other nonambulatory patients to assure their safety and comfort, including special fittings on toilets and wheelchairs. Appropriate provision shall be made to permit nonambulatory patients to communicate their needs to the facility staff.

(c) pursuant to an established routine maintenance and repair program, the physical plant of every facility shall be kept in a continuous state of good repair and operation in accordance with the needs of the health, comfort, safety, and well-being of the patients;

(d) every facility must meet all fire and safety standards established by the state and locality. In addition, any hospital shall meet such provisions of the life safety code of the national fire protection association as are applicable to hospitals. Any hospital shall meet all standards established by the state for general hospitals insofar as they are relevant to psychiatric facilities.

(14) A patient at a facility has the right:

(a) to be informed of the rights described in this section at the time of his admission and periodically thereafter, in language and terms appropriate to the patient's condition and ability to understand;

(b) to assert grievances with respect to infringement of the rights described in this section, including the right to have a grievance considered in a fair and timely manner according to an impartial grievance procedure that must be provided for by the facility; and

(c) to exercise the rights described in this section without reprisal and may not be denied admission to the facility as reprisal for the exercise of the rights described in this section.

(15) In order to assist a person admitted to a program or facility in the exercise or protection of the patient's rights, the patient's attorney, advocate, or legal representatives shall have reasonable access to:

(a) the patient;

(b) the program or facility areas where the patient has received treatment or has resided or the areas to which he has had access; and

(c) pursuant to the written authorization of the patient, records and information pertaining to the patient's diagnosis, treatment, and related services.

(16) A person admitted to a facility shall have access to any available individual or service

that provides advocacy for the protection of the person's rights and that assists the person in understanding, exercising, and protecting his rights as described in this section.

(17) This section may not:

(a) obligate a professional person to administer treatment contrary to the professional's clinical judgment;

(b) prevent a facility from discharging a patient for whom appropriate treatment, consistent with the clinical judgment of a professional person responsible for the patient's treatment, is or has become impossible to administer because of the patient's refusal to consent to the treatment;

(c) require a facility to admit a person who has, on prior occasions, repeatedly withheld consent to appropriate treatment; or

(d) obligate a facility to treat a person admitted to the facility solely for diagnostic evaluation.

**History:** En. 38-1317 by Sec. 17, Ch. 466, L. 1975; R.C.M. 1947, 38-1317; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 3, Ch. 579, L. 1991.

**53-21-143. Right not to be fingerprinted.** No person admitted to or in a mental health facility shall be fingerprinted unless required by other provisions of law.

**History:** En. 38-1315 by Sec. 15, Ch. 466, L. 1975; R.C.M. 1947, 38-1315.

**53-21-144. Rights concerning photographs.** (1) A person admitted to a mental health facility may be photographed for the clinical or administrative purposes of the facility. The photographs are confidential. Photographs may be released to a law enforcement agency when needed to aid in the search for a person who has left a facility without authorization from the facility's medical staff and when it is determined that the person is a self-threat or self-danger or a threat or danger to others at the time that the person left the facility. A law enforcement agency may not subsequently release photographs to the public or other persons unless authorized by a court order.

(2) Other nonmedical photographs may not be taken or used without consent of the patient or, if applicable, the patient's legal guardian or without a court order.

**History:** En. 38-1316 by Sec. 16, Ch. 466, L. 1975; R.C.M. 1947, 38-1316; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 4, Ch. 579, L. 1991; amd. Sec. 30, Ch. 490, L. 1997.

**53-21-145. Right to be free from unnecessary or excessive medication.** Patients have a right to be free from unnecessary or excessive medication. A medication may not be administered unless at the written order of a physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing. The attending physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing is responsible for all medication given or administered to a patient. The use of medication may not exceed standards of use that are advocated by the United States food and drug administration. Notation of each individual's medication must be kept in the individual's medical records. The department shall adopt rules governing attending physician or advanced practice registered nurse with a clinical specialty in psychiatric mental health nursing review of the drug regimen of each patient under the physician's or the advanced practice registered nurse's care in a mental health facility, except that the drug regimen of inpatients in hospitals must be reviewed no less than weekly.

Except in the case of outpatients, all prescriptions must be written with a termination date, which may not exceed 30 days. Medication may not be used as punishment, for the convenience of staff, as a substitute for a treatment program, or in quantities that interfere with the patient's treatment program.

**History:** En. 38-1319 by Sec. 19, Ch. 466, L. 1975; R.C.M. 1947, 38-1319; amd. Sec. 1, Ch. 429, L. 1987; amd. Sec. 166, Ch. 418, L. 1995; amd. Sec. 490, Ch. 546, L. 1995; amd. Sec. 3, Ch. 310, L. 2001.

**53-21-146. Right to be free from physical restraint and isolation.** Patients have a right to be free from physical restraint and isolation. Except for emergency situations in which it is likely that patients could harm themselves or others and in which less restrictive means of restraint are not feasible, patients may be physically restrained or placed in isolation only on a professional person's written order which explains the rationale for such action. The written order may be entered only after the professional person has personally seen the patient concerned and evaluated whatever episode or situation is said to call for restraint or isolation. Emergency use of restraints or isolation shall be for no more than 1 hour, by which time a professional person shall have been consulted and shall have entered an appropriate order in writing. Such written order shall be effective for no more than 24 hours and must be renewed if restraint and isolation are to be continued. Whenever a patient is subject to restraint or isolation, adequate care shall be taken to monitor his physical and psychiatric condition and to provide for his physical needs and comfort. Physical restraint may not be used as punishment, for the convenience of the staff, or as a substitute for a treatment program.

**History:** En. 38-1320 by Sec. 20, Ch. 466, L. 1975; R.C.M. 1947, 38-1320; amd. Sec. 5, Ch. 579, L. 1991.

**53-21-147. Right not to be subjected to experimental research.** (1) Patients have a right not to be subjected to experimental research without the express and informed consent of the patient, if the patient is able to give consent, and of the patient's guardian, if any, and the friend of respondent appointed by the court after opportunities for consultation with independent specialists and with legal counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility, the department, or the research project must be appointed prior to the involvement of the patient in any experimental research. At least 10 days prior to the commencement of experimental research, the facility shall send notice of intent to involve the patient in experimental research to the patient, the patient's next of kin, if known, the patient's legal guardian, if any, the attorney who most recently represented the patient, and the friend of respondent appointed by the court.

(2) The proposed research must have been reviewed and approved by the mental disabilities board of visitors before consent may be sought. Prior to approval, the board shall determine that the research 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 and human services for projects supported by that agency.

(3) A patient has the right to appropriate protection before participating in an experimental treatment, including the right to a reasonable explanation of the procedure to be followed, expected benefits, relative advantages, and the potential risks and discomforts of any

experimental treatment. A patient has the right to revoke at any time consent to an experimental treatment.

**History:** En. 38-1321 by Sec. 21, Ch. 466, L. 1975; R.C.M. 1947, 38-1321; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 6, Ch. 579, L. 1991; amd. Sec. 72, Ch. 10, L. 1993.

**53-21-148. Right not to be subjected to hazardous treatment.** Patients have a right not to be subjected to treatment procedures such as lobotomy, aversive reinforcement conditioning, or other unusual or hazardous treatment procedures without their express and informed consent after consultation with counsel, the legal guardian, if any, the friend of respondent appointed by the court, and any other interested party of the patient's choice. At least one of those consulted must consent to the treatment, along with the patient's counsel. If there is no friend of respondent or if the friend of respondent appointed by the court is no longer available, then a friend of respondent who is in no way connected with the facility or with the department shall be appointed before any such treatment procedure can be employed. At least 10 days prior to the commencement of the extraordinary treatment program, the facility shall send notice of intent to employ extraordinary treatment procedures to the patient, his next of kin, if known, the legal guardian, if any, the attorney who most recently represented him, and the friend of respondent appointed by the court.

**History:** En. 38-1322 by Sec. 22, Ch. 466, L. 1975; amd. Sec. 12, Ch. 546, L. 1977; R.C.M. 1947, 38-1322; amd. Sec. 14, Ch. 547, L. 1979.

**53-21-149. Conditions of treatment in 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 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 [53-21-150](#) that may include case management services, medication, short-term inpatient treatment, 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.

**History:** En. Sec. 1, Ch. 342, L. 2001.

**53-21-150. Treatment plan -- provider choice.** (1) Stabilizing treatment must be provided during the development of a treatment plan.

(2) If the court orders a treatment plan under this section as a condition of a commitment for treatment in a community facility, program, or course of treatment, 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.

(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.

**History:** En. Sec. 2, Ch. 342, L. 2001.

**53-21-151. Notification of noncompliance of condition for treatment plan -- response.** (1) If the respondent has been ordered to follow a treatment plan and the respondent does not substantially comply with the treatment plan developed pursuant to the order for treatment pursuant to a commitment to a community facility or program or course of 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.

**History:** En. Sec. 3, Ch. 342, L. 2001.

**53-21-152. Department funding responsibility.** The department shall develop a separate funding category and procedure for payment for services that are court-ordered for a commitment to a community facility or program or course of treatment. 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.

**History:** En. Sec. 4, Ch. 342, L. 2001.

**53-21-153. Mental health advance directive authorized -- content -- cause of action created -- definitions.** (1) An individual 18 years of age or older with mental capacity may voluntarily execute a mental health advance directive providing that if the individual is treated for a mental

disorder at an inpatient facility, the directions concerning who must be notified and who may visit the individual, as provided in this section, are to be followed. An inpatient facility that is furnished a copy of a mental health advance directive shall comply with the directive and shall make the directive a part of the individual's medical record.

(2) The directive may address any combination of the following subjects:

(a) who should be notified promptly in the event of the individual's admission to or treatment at the facility;

(b) who should or should not be allowed to visit the individual at the facility; and

(c) the duration of the directive.

(3) The directive authorized in subsection (1) must be in writing and must contain:

(a) a statement that the individual has the mental capacity to execute the directive and that the directive is executed voluntarily;

(b) a statement that once signed, a directive of which the facility is furnished a copy takes effect upon the determination of the lack of mental capacity by the treating mental health professional of the individual and remains in effect until:

(i) revoked by the individual, orally or in writing, at a time that the individual has the mental capacity to revoke the advance directive, as determined by the treating mental health professional;

(ii) the directive expires by its own terms; or

(iii) the individual dies;

(c) the signature of the individual; and

(d) the signature of two witnesses.

(4) (a) An individual may revoke a mental health advance directive provided that the mental health professional chosen by or provided for the individual determines in good faith that the individual has sufficient mental capacity to revoke the directive. The inpatient facility shall make a valid revocation a part of the individual's medical record.

(b) An advance directive is valid and enforceable only with respect to the matters provided for in subsection (2) even if the directive addresses subjects in addition to those provided for in this section.

(5) If an inpatient facility fails to act in accordance with a mental health advance directive of which the facility was furnished a copy, an individual who has executed the mental health advance directive or who has the right to be notified or to visit the individual at the facility pursuant to a mental health advance directive has a cause of action against the facility for injunctive relief and reasonable costs and attorney fees incurred in bringing the action.

(6) As used in this section, the following definitions apply:

(a) "Advance directive" or "directive" means a writing complying with the requirements of this section.

(b) "Inpatient facility" or "facility" means a health care facility that provides emergency, crisis, or acute care to a person with a mental disorder.

(c) (i) "Lack of mental capacity" means that an individual does not have sufficient ability to make or communicate decisions regarding a need for treatment.

(ii) The lack of mental capacity does not require that a person be legally determined to be an incapacitated person, as defined in [72-5-101](#). However, a person who is under a current legal determination of being an incapacitated person has a lack of mental capacity.

(d) "Mental capacity" means sufficient ability to make or communicate decisions regarding a need for treatment.

**History:** En. Sec. 1, Ch. 533, L. 2001.

**53-21-154 through 53-21-160 reserved.**

**53-21-161. Qualifications of professional persons.** In every mental health facility to which a person is admitted pursuant to this part:

- (1) each professional person and other staff member employed by the facility shall meet all certification requirements promulgated by the department;
- (2) all nonprofessional staff members who have not had prior clinical experience in a mental institution shall have substantial orientation training;
- (3) staff members on all levels shall have regularly scheduled inservice training;
- (4) each nonprofessional staff member shall be under the direct supervision of a professional person.

**History:** En. 38-1323 by Sec. 23, Ch. 466, L. 1975; R.C.M. 1947, 38-1323.

**53-21-162. Establishment of patient treatment plan -- patient's rights.** (1) Each patient admitted as an inpatient to a mental health facility must have a comprehensive physical and mental examination and review of behavioral status within 48 hours after admission to the mental health facility.

(2) Each patient must have an individualized treatment plan. This plan must be developed by appropriate professional persons, including a psychiatrist, and must be implemented no later than 10 days after the patient's admission. Each individualized treatment plan must contain:

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

(3) Overall development, implementation, and supervision of the treatment plan must be assigned to an appropriate professional person.

(4) The inpatient mental health facility shall periodically reevaluate the patient and revise the individualized treatment plan based on changes in the patient's condition. At a minimum, the treatment plan must be reviewed:

- (a) at the time of any transfer within the facility;
- (b) at the time of discharge;
- (c) upon any major change in the patient's condition;
- (d) at the conclusion of the initial estimated length of stay and subsequent estimated lengths of stay;
- (e) no less than every 90 days; and
- (f) at each of the times specified in subsections (4)(a) through (4)(e), by a treatment team that includes at least one professional person who is not primarily responsible for the patient's

treatment plan.

(5) A patient has the right:

(a) to ongoing participation, in a manner appropriate to the patient's capabilities, in the planning of mental health services to be provided and in the revision of the plan;

(b) to a reasonable explanation of the following, in terms and language appropriate to the patient's condition and ability to understand:

(i) the patient's general mental condition and, if given a physical examination, the patient's physical condition;

(ii) the objectives of treatment;

(iii) the nature and significant possible adverse effects of recommended treatments;

(iv) the reasons why a particular treatment is considered appropriate;

(v) the reasons why access to certain visitors may not be appropriate; and

(vi) any appropriate and available alternative treatments, services, or providers of mental health services; and

(c) not to receive treatment established pursuant to the treatment plan in the absence of the patient's informed, voluntary, and written consent to the treatment, except treatment:

(i) during an emergency situation if the treatment is pursuant to or documented contemporaneously by the written order of a responsible mental health professional; or

(ii) permitted under the applicable law in the case of a person committed to a facility by a court.

(6) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (5)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(7) The department shall develop procedures for initiating limited guardianship proceedings in the case of a patient who appears to lack the capacity to exercise the right to consent described in subsection (5)(c).

**History:** En. 38-1324 by Sec. 24, Ch. 466, L. 1975; amd. Sec. 13, Ch. 546, L. 1977; R.C.M. 1947, 38-1324; amd. Sec. 7, Ch. 579, L. 1991; amd. Sec. 1, Ch. 293, L. 1993.

**53-21-163. Examination following commitment.** No later than 30 days after a patient is committed to a mental health facility, the professional person in charge of the facility or his appointed, professionally qualified agent shall reexamine the committed patient and shall determine whether he continues to require commitment to the facility and whether a treatment plan complying with this part has been implemented. If the patient no longer requires commitment to the facility in accordance with the standards for commitment, he must be released immediately unless he agrees to continue with treatment on a voluntary basis. If for sound professional reasons a treatment plan has not been implemented, this fact shall be reported immediately to the professional person in charge of the facility, the director of the department, the mental disabilities board of visitors, and the patient's counsel.

**History:** En. 38-1325 by Sec. 25, Ch. 466, L. 1975; amd. Sec. 14, Ch. 546, L. 1977; R.C.M. 1947, 38-1325.

**53-21-164. Repealed.** Sec. 15, Ch. 14, Sp. L. June 1986.

**History:** En. 38-1327 by Sec. 27, Ch. 466, L. 1975; R.C.M. 1947, 38-1327; amd. Sec. 13, Ch. 363, L. 1983.

**53-21-165. Records to be maintained.** Complete patient records must be kept by the mental health facility for the length of time required by rules established by the department. All records kept by the mental health facility must be available to any person authorized by the patient in writing to receive these records and upon approval of the authorization by the board. The records must also be made available to any attorney charged with representing the patient or any professional person charged with evaluating or treating the patient. These records must include:

- (1) identification data, including the patient's legal status;
- (2) a patient history, including but not limited to:
  - (a) family data, educational background, and employment record;
  - (b) prior medical history, both physical and mental, including prior hospitalization;
- (3) the chief complaints of the patient and the chief complaints of others regarding the patient;
- (4) an evaluation that notes the onset of illness, the circumstances leading to admission, attitudes, behavior, estimate of intellectual functioning, memory functioning, orientation, and an inventory of the patient's assets in descriptive rather than interpretative fashion;
- (5) a summary of each physical examination that describes the results of the examination;
- (6) a copy of the individual treatment plan and any modifications to the plan;
- (7) a detailed summary of the findings made by the reviewing professional person after each periodic review of the treatment plan, required under [53-21-162](#)(4), that analyzes the successes and failures of the treatment program and includes recommendations for appropriate modification of the treatment plan;
- (8) a copy of the individualized discharge plan and any modifications to the plan and a summary of the steps that have been taken to implement that plan;
- (9) a medication history and status that includes the signed orders of the prescribing physician or advanced practice registered nurse. The staff person administering the medication shall indicate by signature that orders have been carried out.
- (10) a summary of each significant contact by a professional person with the patient;
- (11) documentation of the implementation of the treatment plan;
- (12) documentation of all treatment provided to the patient;
- (13) chronological documentation of the patient's clinical course;
- (14) descriptions of any changes in the patient's condition;
- (15) a signed order by a professional person for any restrictions on visitations and communications;
- (16) a signed order by a professional person for any physical restraints and isolation;
- (17) a detailed summary of any extraordinary incident in the facility involving the patient, to be entered by a staff member noting that the staff member has personal knowledge of the incident or specifying any other source of information. The summary of the incident must be initialed within 24 hours by a professional person.
- (18) a summary by the professional person in charge of the facility or by an appointed agent of the determination made after the 30-day review provided for in [53-21-163](#).

**History:** En. 38-1328 by Sec. 28, Ch. 466, L. 1975; amd. Sec. 15, Ch. 546, L. 1977; R.C.M. 1947, 38-1328; amd. Sec. 12, Ch. 547, L. 1979; amd. Sec. 1, Ch. 333, L. 1987; amd. Sec. 2, Ch. 293, L. 1993; amd. Sec. 167, Ch. 418, L. 1995; amd. Sec. 491, Ch. 546, L. 1995; amd. Sec. 4, Ch. 310, L. 2001.

**53-21-166. Records to be confidential -- exceptions.** All information obtained and records prepared in the course of providing any services under this part to individuals under any

provision of this part are confidential and privileged matter and must remain confidential and privileged after the individual is discharged from the facility. Except as provided in Title 50, chapter 16, part 5, information and records may be disclosed only:

- (1) in communications between qualified professionals in the provision of services or appropriate referrals;
- (2) when the recipient of services designates persons to whom information or records may be released or if a recipient of services is a ward and the recipient's guardian or conservator designates in writing persons to whom records or information may be disclosed. However, this section may not be construed to compel a physician, psychologist, social worker, nurse, attorney, or other professional person to reveal information that has been given to the physician, psychologist, social worker, nurse, attorney, or other professional person in confidence by members of a patient's family.
- (3) to the extent necessary to make claims on behalf of a recipient of aid, insurance, or medical assistance to which a recipient may be entitled;
- (4) for research if the department has promulgated rules for the conduct of research. Rules must include but are not limited to the requirement that all researchers shall sign an oath of confidentiality.
- (5) to the courts as necessary for the administration of justice;
- (6) to persons authorized by an order of court, after notice and opportunity for hearing to the person to whom the record or information pertains and the custodian of the record or information pursuant to the rules of civil procedure;
- (7) to members of the mental disabilities board of visitors or their agents when necessary to perform their functions as set out in [53-21-104](#); and
- (8) to the mental health ombudsman when necessary to perform the ombudsman functions as provided in [2-15-210](#).

**History:** En. 38-1329 by Sec. 29, Ch. 466, L. 1975; R.C.M. 1947, 38-1329; amd. Sec. 28, Ch. 632, L. 1987; amd. Sec. 8, Ch. 579, L. 1991; amd. Sec. 2, Ch. 544, L. 2001.

**53-21-167. Patient labor.** The following rules shall govern patient labor:

- (1) No patient shall be required to perform labor which involves the operation and maintenance of a facility or for which the facility is under contract with an outside organization. Privileges or release from the facility shall not be conditioned upon the performance of labor covered by this provision. Patients may voluntarily engage in such labor if the labor is compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.
  - (2) (a) Patients may be required to perform therapeutic tasks which do not involve the operation and maintenance of the facility, provided the specific task or any change in assignment is:
    - (i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a professional person responsible for supervising the patient's treatment; and
    - (ii) supervised by a staff member to oversee the therapeutic aspects of the activity.
  - (b) Patients may voluntarily engage in therapeutic labor for which the facility would otherwise have to pay an employee, provided the specific labor or any change in labor assignment is:
    - (i) an integrated part of the patient's treatment plan and approved as a therapeutic activity by a

professional person responsible for supervising the patient's treatment;

(ii) supervised by a staff member to oversee the therapeutic aspects of the activity; and

(iii) compensated in accordance with the minimum wage laws of the Fair Labor Standards Act of 1938, 29 U.S.C. 206, as amended.

(3) If any patient performs therapeutic labor which involves the operation and maintenance of a facility but due to physical or mental disability is unable to perform the labor as efficiently as a person not so physically or mentally disabled, then the patient may be compensated at a rate which bears the same approximate relation to the statutory minimum wage as his ability to perform that particular job bears to the ability of a person not so afflicted.

(4) Patients may be required to perform tasks of a personal housekeeping nature, such as the making of one's own bed.

(5) Deductions or payments for care and other charges shall not deprive a patient of a reasonable amount of the compensation received pursuant to this section for personal and incidental purchases and expenses.

**History:** En. 38-1318 by Sec. 18, Ch. 466, L. 1975; R.C.M. 1947, 38-1318.

**53-21-168. Statement of rights to be furnished and posted.** Each patient shall promptly upon his admission receive in language he understands a written statement of all of his rights under this part, including the right to treatment, the right to the development of a treatment plan, the right to and the availability of legal counsel, and the rules for patient labor. In addition, a copy of the foregoing statement shall be posted in each ward.

**History:** En. 38-1331 by Sec. 31, Ch. 466, L. 1975; amd. Sec. 17, Ch. 546, L. 1977; R.C.M. 1947, 38-1331.

**53-21-169. Protection and advocacy system -- designation and authority.** (1) A protection and advocacy system for individuals with a significant mental illness or emotional impairment is designated by the governor and may be administered in the state under the provisions of 42 U.S.C. 10801 through 10851. An eligible mental health protection and advocacy system under the provisions of 42 U.S.C. 10801 through 10851 must have as its primary goals:

(a) the protection and advocacy of the rights of mentally ill individuals who are defined in 42 U.S.C. 10802 as individuals with a significant mental illness or emotional impairment; and

(b) the investigation of incidents of abuse and neglect, as defined in 42 U.S.C. 10802, of mentally ill individuals.

(2) Pursuant to 42 U.S.C. 10801 and 10802, the protection and advocacy system may:

(a) investigate incidents of abuse and neglect of mentally ill individuals;

(b) pursue administrative, legal, and other appropriate remedies to ensure the protection of mentally ill individuals who are residents of the state and are receiving care or treatment in the state;

(c) have access to all mentally ill individuals and all facilities, wards, and living quarters as necessary to fulfill the goals described in subsection (1); and

(d) pursuant to 42 U.S.C. 10801 through 10851 and Title 50, chapter 16, part 5, have access to records, including:

(i) reports prepared by the staff of a mental health care and treatment facility;

(ii) reports prepared by an agency investigating reports of abuse, neglect, and injury occurring at a facility and that describe the incidents and the steps taken to investigate the reports; and

(iii) discharge planning records.

(3) All information obtained under this section must be kept confidential pursuant to 42 U.S.C. 10806.

(4) The protection and advocacy system described in this section is independent of any public or private agency that provides treatment or services to the mentally ill.

**History:** En. Sec. 1, Ch. 579, L. 1991.

**53-21-170 through 53-21-179 reserved.**

**53-21-180. Discharge plan.** Each patient admitted as an inpatient to a mental health facility must have an individualized discharge plan developed within 10 days after admission. The discharge plan must be updated as necessary. Each individualized discharge plan must contain:

- (1) an anticipated discharge date;
- (2) criteria for discharge;
- (3) identification of the facility staff member responsible for discharge planning;
- (4) identification of the community-based agency or individual who is assisting in arranging postdischarge services;
- (5) referrals for financial assistance needed by the patient upon discharge; and
- (6) other information necessary to ensure an appropriate discharge and adequate postdischarge services.

**History:** En. Sec. 3, Ch. 293, L. 1993; amd. Sec. 5, Ch. 247, L. 1999.

**53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.** (1) At any time within the period of commitment provided for in [53-21-127](#), the patient may be discharged on the written order of the professional person in charge of the patient. If the patient is not discharged within the period of commitment and if the term is not extended as provided for in [53-21-128](#), the patient must be discharged by the facility at the end of the period of commitment without further order of the court. Notice of the discharge 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.

**History:** En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(2); amd. Sec. 9, Ch. 579, L. 1991; amd. Sec. 14, Ch. 342, L. 2001.

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

**History:** En. 38-1306 by Sec. 6, Ch. 466, L. 1975; amd. Sec. 6, Ch. 546, L. 1977; R.C.M. 1947, 38-1306(5); amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 31, Ch. 490, L. 1997.

**53-21-183. Release conditioned on receipt of outpatient care.** (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, except as provided in [53-21-198](#), may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

(4) This section and [53-21-195](#) through [53-21-198](#) do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

**History:** En. 38-1308 by Sec. 8, Ch. 466, L. 1975; amd. Sec. 8, Ch. 546, L. 1977; R.C.M. 1947, 38-1308; amd. Sec. 14, Ch. 547, L. 1979; amd. Sec. 1, Ch. 541, L. 1985.

**53-21-184. Patients for whom release and discharge provisions inapplicable.** The release and discharge provisions of this part shall not apply to any patient held upon an order of court or judge in a proceeding arising out of a criminal act.

**History:** En. Sec. 1, Ch. 145, L. 1941; R.C.M. 1947, 38-501.

**53-21-185. Care and treatment following release.** The department and its agents have an affirmative duty to provide adequate transitional treatment and care for all patients released after a period of involuntary confinement. Transitional care and treatment possibilities include but are not limited to psychiatric day care, treatment in the home by a visiting therapist, nursing home or extended care, a halfway house, outpatient treatment, and treatment in the psychiatric ward of a general hospital.

**History:** En. 38-1326 by Sec. 26, Ch. 466, L. 1975; R.C.M. 1947, 38-1326.

**53-21-186. Support of patient conditionally released.** When a mental health facility conditionally releases a patient committed to its care, it is not liable for the patient's support while conditionally released. Liability transfers to the legal guardian, parent, or person under

whose care the patient is placed when conditionally released or to any other person legally liable for the patient's support. The local office of public assistance in the county where the patient resides or is found is responsible for providing relief and care for a conditionally released patient who is unable to be self-supporting or who is unable to secure support from the person under whose care the patient was placed on convalescent leave, like any other person in need of relief and care, under the public assistance laws.

**History:** En. Sec. 6, Ch. 145, L. 1941; amd. Sec. 1, Ch. 149, L. 1953; amd. Sec. 5, Ch. 152, L. 1957; amd. Sec. 32, Ch. 120, L. 1974; amd. Sec. 34, Ch. 466, L. 1975; amd. Sec. 3, Ch. 37, L. 1977; R.C.M. 1947, 38-506; amd. Sec. 111, Ch. 114, L. 2003.

**53-21-187. Clothing for patients discharged or conditionally released.** A patient may not be discharged or conditionally released from a mental health facility without suitable clothing adapted to the season in which he is discharged.

**History:** En. Sec. 7, Ch. 145, L. 1941; amd. Sec. 6, Ch. 152, L. 1957; amd. Sec. 33, Ch. 120, L. 1974; amd. Sec. 35, Ch. 466, L. 1975; R.C.M. 1947, 38-507.

**53-21-188. Repealed.** Sec. 7, Ch. 247, L. 1999.

**History:** En. Sec. 2, Ch. 165; L. 1943; amd. Sec. 24, Ch. 266, L. 1963; amd. Sec. 7, Ch. 120, L. 1974; amd. Sec. 32, Ch. 466, L. 1975; amd. Sec. 1, Ch. 37, L. 1977; R.C.M. 1947, 38-110; amd. Sec. 13, Ch. 547, L. 1979.

**53-21-189. Fact of evaluation or treatment not to be used for discrimination.** No person who has received evaluation or treatment under any of the provisions of this part may be discriminated against because of that status. For purposes of this section, "discrimination" means giving any unfavorable weight to the fact of hospitalization or outpatient care and treatment unrelated to a person's present capacity to meet standards applicable to all persons.

**History:** En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

**53-21-190. Fact of evaluation or treatment not to be used in subsequent court proceeding -- exception.** The fact that a person has received evaluation and treatment, whether voluntarily or involuntarily, at a mental health facility may not be admitted into evidence in a subsequent proceeding for involuntary commitment or for the appointment of a guardian or conservator unless it is necessary to a determination of the present condition of the respondent or the prognosis for treatment in the present case and the judge determines that the need for the evidence outweighs the prejudicial effect of its admission.

**History:** En. 38-1313 by Sec. 13, Ch. 466, L. 1975; amd. Sec. 11, Ch. 546, L. 1977; R.C.M. 1947, 38-1313(part).

**53-21-191 through 53-21-192 reserved.**

**53-21-193. Commitment to behavioral health inpatient facilities -- preference.** (1) If a respondent is committed to the state hospital under [53-21-127](#) or a person in an emergency situation requires detention under [53-21-129](#) and a bed is available at a behavioral health inpatient facility, the Montana state hospital shall direct the person who is responsible for transporting the individual to the appropriate facility to which the person shall transport the individual for admission.

(2) If a respondent is committed to or an individual requires emergency detention in a behavioral health inpatient facility, the facility must be notified and the facility shall state that a bed is available and agree to accept transfer of the patient based on admission criteria before an individual may be transferred to the behavioral health inpatient facility under this section.

(3) A respondent who is committed to or an individual who is transferred to a behavioral health inpatient facility may be transferred to the state hospital for the remaining period of commitment in accordance with criteria established by the department by rule pursuant to [53-21-194](#). A court order for commitment or transfer must include the transfer authority, and all conditions contained in the court order apply after a transfer.

(4) The court may not order commitment of the respondent or transfer of an individual to a behavioral health inpatient facility under this part if a bed is not available or if the licensed capacity would be exceeded.

**History:** En. Sec. 1, Ch. 513, L. 2003.

**53-21-194. Department contract with behavioral health inpatient facilities -- rulemaking authority -- rates and transfer criteria.** (1) The department may contract with one or more behavioral health inpatient facilities to provide inpatient psychiatric care to persons involuntarily committed or detained under this title.

(2) The department shall adopt rules:

(a) governing the number, geographic distribution, capacity, and qualifications of behavioral health inpatient facilities; and

(b) establishing criteria pursuant to subsection (3) for admission to a behavioral health inpatient facility or transfer of a patient from a behavioral health inpatient facility to the state hospital.

(3) The criteria for admission or transfer of an individual must reflect:

(a) individualized consideration of the patient's treatment needs and the safety of the public, including the prospects for the patient's successful transition to community care within the current period of commitment;

(b) the appropriateness of specialized programs or facilities at the state hospital; and

(c) the recommendations of the individual's treating professionals and state hospital staff.

(4) The department shall provide notice to the district courts of the designation of any mental health facility as a behavioral health inpatient facility, the facility's capacity, and the criteria for admission and transfer.

**History:** En. Sec. 2, Ch. 513, L. 2003.

**53-21-195. Rehospitalization of patient conditionally released from inpatient treatment facilities -- petition.** (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to [53-21-182](#) or [53-21-183](#) is commenced by the

filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of the patient's present hospitalization under [53-21-127](#) or [53-21-128](#) and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

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

(3) The petition must state:

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

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

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

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

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

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

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

**History:** En. Sec. 2, Ch. 541, L. 1985; amd. Sec. 32, Ch. 490, L. 1997.

**53-21-196. Detention of conditionally released patient pending hearing.** The court may not order detention of the conditionally released patient pending the hearing, except as permitted under [53-21-124](#).

**History:** En. Sec. 3, Ch. 541, L. 1985.

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

(a) the conditionally released patient has been determined by the district court to be suffering from a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to [53-21-127](#) or [53-21-128](#); and

(b) the conditionally released patient has violated a condition of the release, that the violation has caused a deterioration of the patient's mental condition, and that as a result of this

deterioration, the patient can no longer be appropriately served by outpatient care.

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

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

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

**History:** En. Sec. 4, Ch. 541, L. 1985; amd. Sec. 33, Ch. 490, L. 1997.

**53-21-198. Extension of conditions of release -- hearing.** (1) Conditions of release may be extended by the district court beyond the expiration date of the order committing the patient under [53-21-127](#) or [53-21-128](#), but in no case for longer than 2 years beyond that date, upon a showing by clear and convincing evidence that:

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

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

(2) Not less than 2 calendar weeks prior to the end of the period of detention ordered under [53-21-127](#) or [53-21-128](#) or the period of extension ordered under subsection (5) of this section, the professional person responsible for the patient's case may petition the court for extension of the conditions of release. 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 has been undertaken for the patient, and the future course of treatment anticipated by the professional person.

(3) 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, if any, and the patient's counsel. If any person notified requests a hearing prior to the end of the period of detention ordered under [53-21-127](#) or [53-21-128](#), 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 extending the conditions of release for a period not to exceed 6 months.

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

(5) If upon the hearing the court finds that the showing required by subsection (1) has not been made, the conditions of release may not be extended. If the court finds that the required showing has been made, the court may extend the conditions of release as recommended by the professional person. 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 considered suitable. The court may not order continuation of an alternative that does not include a comprehensive, individualized plan of treatment for the patient, as required by [53-21-162](#). A court order for the continuation of an alternative must include a specific finding that a comprehensive, individualized plan of treatment exists.

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

**History:** En. Sec. 5, Ch. 541, L. 1985; amd. Sec. 34, Ch. 490, L. 1997.

**53-21-201. Repealed.** Secs. 16(2), 19(2), Ch. 602, L. 2003.

**History:** En. 80-2801 by Sec. 1, Ch. 509, L. 1975; R.C.M. 1947, 80-2801; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 1, Ch. 312, L. 1991; amd. Sec. 168, Ch. 418, L. 1995; amd. Sec. 492, Ch. 546, L. 1995.

**53-21-202. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. 80-2802 by Sec. 2, Ch. 509, L. 1975; amd. Sec. 52, Ch. 37, L. 1977; R.C.M. 1947, 80-2802; amd. Sec. 19, Ch. 361, L. 1983; amd. Sec. 2, Ch. 312, L. 1991; amd. Sec. 12, Ch. 579, L. 1993; amd. Sec. 493, Ch. 546, L. 1995; amd. Sec. 15, Ch. 171, L. 1997.

**53-21-203. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. 80-2803 by Sec. 3, Ch. 509, L. 1975; R.C.M. 1947, 80-2803; amd. Sec. 20, Ch. 361, L. 1983; amd. Sec. 1, Ch. 124, L. 1985.

**53-21-204. Repealed.** Secs. 16(2), 19(2), Ch. 602, L. 2003.

**History:** En. 20-2804 by Sec. 4, Ch. 509, L. 1975; R.C.M. 1947, 80-2804; amd. Sec. 1, Ch. 29, L. 1987; amd. Sec. 1, Ch. 806, L. 1991; amd. Sec. 1, Ch. 37, L. 1993; amd. Sec. 169, Ch. 418, L. 1995; amd. Sec. 494, Ch. 546, L. 1995; amd. Sec. 43, Ch. 58, L. 1999; amd. Sec. 160, Ch. 574, L. 2001.

**53-21-205. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. 80-2805 by Sec. 5, Ch. 509, L. 1975; R.C.M. 1947, 80-2805.

**53-21-206. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. 80-2806 by Sec. 6, Ch. 509, L. 1975; amd. Sec. 17, Ch. 38, L. 1977; R.C.M. 1947, 80-2806; amd. Sec. 11, Ch. 590, L. 1995.

**53-21-207 through 53-21-210 reserved.**

**53-21-211. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. Sec. 1, Ch. 619, L. 1989.

**53-21-212. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. Sec. 2, Ch. 619, L. 1989; amd. Sec. 1, Ch. 262, L. 1991; amd. Sec. 3, Ch. 312, L. 1991; amd. Sec. 170, Ch. 418, L. 1995; amd. Sec. 495, Ch. 546, L. 1995.

**53-21-213. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. Sec. 3, Ch. 619, L. 1989.

**53-21-214. Repealed.** Sec. 16, Ch. 602, L. 2003.

**History:** En. Sec. 4, Ch. 619, L. 1989.

**53-21-301. Repealed.** Sec. 26, Ch. 361, L. 1983.

**History:** En. Sec. 67, Ch. 199, L. 1965; amd. Sec. 31, Ch. 320, L. 1967; amd. Sec. 3, Ch. 90, L. 1974; amd. Sec. 60, Ch. 120, L. 1974; R.C.M. 1947, 80-2401