

HOUSE BILL NO. 395

INTRODUCED BY B. MITCHELL, D. LENZ

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING VOTING LAWS RELATED TO INDIVIDUALS WHO ARE OF UNSOUND MIND; PROVIDING DEFINITIONS OF "PENAL INSTITUTION" AND "UNSOOUND MIND"; REVISING THE DEFINITION OF "MENTAL HEALTH FACILITY"; AND AMENDING SECTIONS 13-1-101, 46-14-312, 53-21-102, 53-21-127, 53-21-181, AND 53-21-197, MCA."

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

Section 1. Section 13-1-101, MCA, is amended to read:

"13-1-101. Definitions. As used in this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Active elector" means an elector whose name has not been placed on the inactive list due to failure to respond to confirmation notices pursuant to 13-2-220 or 13-19-313.

(2) "Active list" means a list of active electors maintained pursuant to 13-2-220.

(3) "Anything of value" means any goods that have a certain utility to the recipient that is real and that is ordinarily not given away free but is purchased.

(4) "Application for voter registration" means a voter registration form prescribed by the secretary of state that is completed and signed by an elector, is submitted to the election administrator, and contains voter registration information subject to verification as provided by law.

(5) "Ballot" means a paper ballot counted manually or a paper ballot counted by a machine, such as an optical scan system or other technology that automatically tabulates votes cast by processing the paper ballots.

(6) (a) "Ballot issue" or "issue" means a proposal submitted to the people at an election for their approval or rejection, including but not limited to an initiative, referendum, proposed constitutional amendment, recall question, school levy question, bond issue question, or ballot question.

(b) For the purposes of chapters 35 and 37, an issue becomes a "ballot issue" upon certification by

1 the proper official that the legal procedure necessary for its qualification and placement on the ballot has been
2 completed, except that a statewide issue becomes a "ballot issue" upon preparation and transmission by the
3 secretary of state of the form of the petition or referral to the person who submitted the proposed issue.

4 (7) "Ballot issue committee" means a political committee specifically organized to support or
5 oppose a ballot issue.

6 (8) "Candidate" means:

7 (a) an individual who has filed a declaration or petition for nomination, acceptance of nomination,
8 or appointment as a candidate for public office as required by law;

9 (b) for the purposes of chapter 35, 36, or 37, an individual who has solicited or received and
10 retained contributions, made expenditures, or given consent to an individual, organization, political party, or
11 committee to solicit or receive and retain contributions or make expenditures on the individual's behalf to secure
12 nomination or election to any office at any time, whether or not the office for which the individual will seek
13 nomination or election is known when the:

14 (i) solicitation is made;

15 (ii) contribution is received and retained; or

16 (iii) expenditure is made; or

17 (c) an officeholder who is the subject of a recall election.

18 (9) (a) "Contribution" means:

19 (i) the receipt by a candidate or a political committee of an advance, gift, loan, conveyance,
20 deposit, payment, or distribution of money or anything of value to support or oppose a candidate or a ballot
21 issue;

22 (ii) an expenditure, including an in-kind expenditure, that is made in coordination with a candidate
23 or ballot issue committee and is reportable by the candidate or ballot issue committee as a contribution;

24 (iii) the receipt by a political committee of funds transferred from another political committee; or

25 (iv) the payment by a person other than a candidate or political committee of compensation for the
26 personal services of another person that are rendered to a candidate or political committee.

27 (b) The term does not mean:

28 (i) services provided without compensation by individuals volunteering a portion or all of their time

1 on behalf of a candidate or political committee;

2 (ii) meals and lodging provided by individuals in their private residences for a candidate or other
3 individual;

4 (iii) the use of a person's real property for a fundraising reception or other political event; or

5 (iv) the cost of a communication not for distribution to the general public by a religious organization
6 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
7 religious beliefs or practices.

8 (c) This definition does not apply to Title 13, chapter 37, part 6.

9 (10) "Coordinated", including any variations of the term, means made in cooperation with, in
10 consultation with, at the request of, or with the express prior consent of a candidate or political committee or an
11 agent of a candidate or political committee.

12 (11) "De minimis act" means an action, contribution, or expenditure that is so small that it does not
13 trigger registration, reporting, disclaimer, or disclosure obligations under Title 13, chapter 35 or 37, or warrant
14 enforcement as a campaign practices violation under Title 13, chapter 37.

15 (12) "Disability" means a temporary or permanent mental or physical impairment such as:

16 (a) impaired vision;

17 (b) impaired hearing;

18 (c) impaired mobility. Individuals having impaired mobility include those who require use of a
19 wheelchair and those who are ambulatory but are physically impaired because of age, disability, or disease.

20 (d) impaired mental or physical functioning that makes it difficult for the person to participate in the
21 process of voting.

22 (13) "Election" means a general, special, or primary election held pursuant to the requirements of
23 state law, regardless of the time or purpose.

24 (14) (a) "Election administrator" means, except as provided in subsection (14)(b), the county clerk
25 and recorder or the individual designated by a county governing body to be responsible for all election
26 administration duties, except that with regard to school elections not administered by the county, the term
27 means the school district clerk.

28 (b) As used in chapter 2 regarding voter registration, the term means the county clerk and recorder

1 or the individual designated by a county governing body to be responsible for all election administration duties
2 even if the school election is administered by the school district clerk.

3 (15) (a) "Election communication" means the following forms of communication to support or
4 oppose a candidate or ballot issue:

5 (i) a paid advertisement broadcast over radio, television, cable, or satellite;

6 (ii) paid placement of content on the internet or other electronic communication network;

7 (iii) a paid advertisement published in a newspaper or periodical or on a billboard;

8 (iv) a mailing; or

9 (v) printed materials.

10 (b) The term does not mean:

11 (i) an activity or communication for the purpose of encouraging individuals to register to vote or to
12 vote, if that activity or communication does not mention or depict a clearly identified candidate or ballot issue;

13 (ii) a communication that does not support or oppose a candidate or ballot issue;

14 (iii) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
15 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
16 circulation;

17 (iv) a communication by any membership organization or corporation to its members, stockholders,
18 or employees;

19 (v) a communication not for distribution to the general public by a religious organization exempt
20 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious
21 beliefs or practices; or

22 (vi) a communication that the commissioner determines by rule is not an election communication.

23 (16) "Election judge" means a person who is appointed pursuant to Title 13, chapter 4, part 1, to
24 perform duties as specified by law.

25 (17) "Election official" means an election administrator, election deputy, or election judge.

26 (18) "Election worker" means an individual designated by an election official to perform election
27 support duties.

28 (19) (a) "Electioneering communication" means a paid communication that is publicly distributed by

- 1 radio, television, cable, satellite, internet website, newspaper, periodical, billboard, mail, or any other
2 distribution of printed materials, that is made within 60 days of the initiation of voting in an election, that does
3 not support or oppose a candidate or ballot issue, that can be received by more than 100 recipients in the
4 district voting on the candidate or ballot issue, and that:
- 5 (i) refers to one or more clearly identified candidates in that election;
 - 6 (ii) depicts the name, image, likeness, or voice of one or more clearly identified candidates in that
7 election; or
 - 8 (iii) refers to a political party, ballot issue, or other question submitted to the voters in that election.
- 9 (b) The term does not mean:
- 10 (i) a bona fide news story, commentary, blog, or editorial distributed through the facilities of any
11 broadcasting station, newspaper, magazine, internet website, or other periodical publication of general
12 circulation unless the facilities are owned or controlled by a candidate or political committee;
 - 13 (ii) a communication by any membership organization or corporation to its members, stockholders,
14 or employees;
 - 15 (iii) a commercial communication that depicts a candidate's name, image, likeness, or voice only in
16 the candidate's capacity as owner, operator, or employee of a business that existed prior to the candidacy;
 - 17 (iv) a communication that constitutes a candidate debate or forum or that solely promotes a
18 candidate debate or forum and is made by or on behalf of the person sponsoring the debate or forum;
 - 19 (v) a communication not for distribution to the general public by a religious organization exempt
20 from federal income tax when compliance with Title 13 would burden the organization's sincerely held religious
21 beliefs or practices; or
 - 22 (vi) a communication that the commissioner determines by rule is not an electioneering
23 communication.
- 24 (20) "Elector" means an individual qualified to vote under state law.
- 25 (21) (a) "Expenditure" means a purchase, payment, distribution, loan, advance, promise, pledge, or
26 gift of money or anything of value:
- 27 (i) made by a candidate or political committee to support or oppose a candidate or a ballot issue;
 - 28 (ii) made by a candidate while the candidate is engaging in campaign activity to pay child-care

1 expenses as provided in 13-37-220; or

2 (iii) used or intended for use in making independent expenditures or in producing electioneering
3 communications.

4 (b) The term does not mean:

5 (i) services, food, or lodging provided in a manner that they are not contributions under subsection
6 (9);

7 (ii) except as provided in subsection (21)(a)(ii), payments by a candidate for personal travel
8 expenses, food, clothing, lodging, or personal necessities for the candidate and the candidate's family;

9 (iii) the cost of any bona fide news story, commentary, blog, or editorial distributed through the
10 facilities of any broadcasting station, newspaper, magazine, or other periodical publication of general
11 circulation;

12 (iv) the cost of any communication by any membership organization or corporation to its members
13 or stockholders or employees;

14 (v) the use of a person's real property for a fundraising reception or other political event; or

15 (vi) the cost of a communication not for distribution to the general public by a religious organization
16 exempt from federal income tax when compliance with Title 13 would burden the organization's sincerely held
17 religious beliefs or practices.

18 (c) This definition does not apply to Title 13, chapter 37, part 6.

19 (22) "Federal election" means an election in even-numbered years in which an elector may vote for
20 individuals for the office of president of the United States or for the United States congress.

21 (23) "General election" means an election that is held for offices that first appear on a primary
22 election ballot, unless the primary is canceled as authorized by law, and that is held on a date specified in 13-1-
23 104.

24 (24) "Inactive elector" means an individual who failed to respond to confirmation notices and whose
25 name was placed on the inactive list pursuant to 13-2-220 or 13-19-313.

26 (25) "Inactive list" means a list of inactive electors maintained pursuant to 13-2-220 or 13-19-313.

27 (26) (a) "Incidental committee" means a political committee that is not specifically organized or
28 operating for the primary purpose of supporting or opposing candidates or ballot issues but that may

1 incidentally become a political committee by receiving a contribution or making an expenditure.

2 (b) For the purpose of this subsection (26), the primary purpose is determined by the
3 commissioner by rule and includes criteria such as the allocation of budget, staff, or members' activity or the
4 statement of purpose or goal of the person or individuals that form the committee.

5 (27) "Independent committee" means a political committee organized for the primary purpose of
6 receiving contributions and making expenditures that is not controlled either directly or indirectly by a candidate
7 and that does not coordinate with a candidate in conjunction with the making of expenditures except pursuant
8 to the limits set forth in 13-37-216(1).

9 (28) "Independent expenditure" means an expenditure for an election communication to support or
10 oppose a candidate or ballot issue made at any time that is not coordinated with a candidate or ballot issue
11 committee.

12 (29) "Individual" means a human being.

13 (30) "Legally registered elector" means an individual whose application for voter registration was
14 accepted, processed, and verified as provided by law.

15 (31) "Mail ballot election" means any election that is conducted under Title 13, chapter 19, by
16 mailing ballots to all active electors.

17 (32) "Penal institution" means any penal or correctional facility, including but not limited to a facility
18 for the mentally ill or mentally defective, in which inmates may lawfully be confined as a consequence of a
19 felony conviction.

20 ~~(32)~~(33)"Person" means an individual, corporation, association, firm, partnership, cooperative,
21 committee, including a political committee, club, union, or other organization or group of individuals or a
22 candidate as defined in subsection (8).

23 ~~(33)~~(34)"Place of deposit" means a location designated by the election administrator pursuant to 13-19-
24 307 for a mail ballot election conducted under Title 13, chapter 19.

25 ~~(34)~~(35)(a) "Political committee" means a combination of two or more individuals or a person other than
26 an individual who receives a contribution or makes an expenditure:

27 (i) to support or oppose a candidate or a committee organized to support or oppose a candidate
28 or a petition for nomination;

1 (ii) to support or oppose a ballot issue or a committee organized to support or oppose a ballot
2 issue; or

3 (iii) to prepare or disseminate an election communication, an electioneering communication, or an
4 independent expenditure.

5 (b) Political committees include ballot issue committees, incidental committees, independent
6 committees, and political party committees.

7 (c) A candidate and the candidate's treasurer do not constitute a political committee.

8 (d) A political committee is not formed when a combination of two or more individuals or a person
9 other than an individual makes an election communication, an electioneering communication, or an
10 independent expenditure of \$250 or less.

11 (e) A joint fundraising committee is not a political committee.

12 ~~(35)~~(36)"Political party committee" means a political committee formed by a political party organization
13 and includes all county and city central committees.

14 ~~(36)~~(37)"Political party organization" means a political organization that:

15 (a) was represented on the official ballot in either of the two most recent statewide general
16 elections; or

17 (b) has met the petition requirements provided in Title 13, chapter 10, part 5.

18 ~~(37)~~(38)"Political subdivision" means a county, consolidated municipal-county government,
19 municipality, special purpose district, or any other unit of government, except school districts, having authority
20 to hold an election.

21 ~~(38)~~(39)"Polling place election" means an election primarily conducted at polling places rather than by
22 mail under the provisions of Title 13, chapter 19.

23 ~~(39)~~(40)"Primary" or "primary election" means an election held on a date specified in 13-1-107 to
24 nominate candidates for offices filled at a general election.

25 ~~(40)~~(41)"Provisional ballot" means a ballot cast by an elector whose identity or eligibility to vote has not
26 been verified as provided by law.

27 ~~(41)~~(42)"Provisionally registered elector" means an individual whose application for voter registration
28 was accepted but whose identity or eligibility has not yet been verified as provided by law.

1 ~~(42)~~(43)"Public office" means a state, county, municipal, school, or other district office that is filled by
2 the people at an election.

3 ~~(43)~~(44)"Random-sample audit" means an audit involving a manual count of ballots from designated
4 races and ballot issues in precincts selected through a random process as provided in 13-17-503 and 13-17-
5 510.

6 ~~(44)~~(45)"Registrar" means the county election administrator and any regularly appointed deputy or
7 assistant election administrator.

8 ~~(45)~~(46)"Regular school election" means the school trustee election provided for in 20-20-105(1).

9 ~~(46)~~(47)"Religious organization" means a house of worship with the major purpose of supporting
10 religious activities, including but not limited to a church, mosque, shrine, synagogue, or temple. The organic
11 documents of the organization must list a formal code of doctrine and discipline, and the organization must
12 spend the majority of its money on religious activities such as regular religious services, educational
13 preparation for its ministers, development and support of its ministers, membership development, outreach and
14 support, and the production and distribution of religious literature developed by the organization.

15 ~~(47)~~(48)"School election" has the meaning provided in 20-1-101.

16 ~~(48)~~(49)"School election filing officer" means the filing officer with whom the declarations for nomination
17 for school district office were filed or with whom the school ballot issue was filed.

18 ~~(49)~~(50)"School recount board" means the board authorized pursuant to 20-20-420 to perform recount
19 duties in school elections.

20 ~~(50)~~(51)"Signature envelope" means an envelope that contains a secrecy envelope and ballot and that
21 is designed to:

22 (a) allow election officials, upon examination of the outside of the envelope, to determine that the
23 ballot is being submitted by someone who is in fact a qualified elector and who has not already voted; and

24 (b) allow it to be used in the United States mail.

25 ~~(51)~~(52)"Special election" means an election held on a day other than the day specified for a primary
26 election, general election, or regular school election.

27 ~~(52)~~(53)"Special purpose district" means an area with special boundaries created as authorized by law
28 for a specialized and limited purpose.

1 ~~(53)~~(54)"Statewide voter registration list" means the voter registration list established and maintained
2 pursuant to 13-2-107 and 13-2-108.

3 ~~(54)~~(55)"Support or oppose", including any variations of the term, means:

4 (a) using express words, including but not limited to "vote", "oppose", "support", "elect", "defeat", or
5 "reject", that call for the nomination, election, or defeat of one or more clearly identified candidates, the election
6 or defeat of one or more political parties, or the passage or defeat of one or more ballot issues submitted to
7 voters in an election; or

8 (b) otherwise referring to or depicting one or more clearly identified candidates, political parties, or
9 ballot issues in a manner that is susceptible of no reasonable interpretation other than as a call for the
10 nomination, election, or defeat of the candidate in an election, the election or defeat of the political party, or the
11 passage or defeat of the ballot issue or other question submitted to the voters in an election.

12 ~~(56)~~ "Unsound mind" has the same meaning as provided in 53-21-102.

13 ~~(55)~~(57)"Valid vote" means a vote that has been counted as valid or determined to be valid as provided
14 in 13-15-206.

15 ~~(56)~~(58)"Voted ballot" means a ballot that is:

- 16 (a) deposited in the ballot box at a polling place;
17 (b) received at the election administrator's office; or
18 (c) returned to a place of deposit.

19 ~~(57)~~(59)"Voter interface device" means a voting system that:

- 20 (a) is accessible to electors with disabilities;
21 (b) communicates voting instructions and ballot information to a voter;
22 (c) allows the voter to select and vote for candidates and issues and to verify and change
23 selections; and

24 (d) produces a paper ballot that displays electors' choices so the elector can confirm the ballot's
25 accuracy and that may be manually counted.

26 ~~(58)~~(60)"Voting system" or "system" means any machine, device, technology, or equipment used to
27 automatically record, tabulate, or process the vote of an elector cast on a paper ballot."
28

1 **Section 2.** Section 46-14-312, MCA, is amended to read:

2 **"46-14-312. Sentence to be imposed.** (1) If the court finds that the defendant at the time of the
3 commission of the offense of which the defendant was convicted did not suffer from a mental disease or
4 disorder as described in 46-14-311, the court shall sentence the defendant as provided in Title 46, chapter 18.

5 (2) If the court finds that the defendant at the time of the commission of the offense suffered from a
6 mental disease or disorder or developmental disability as described in 46-14-311, any mandatory minimum
7 sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be
8 committed to the custody of the director of the department of public health and human services to be placed,
9 after consideration of the recommendations of the professionals providing treatment to the defendant and
10 recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility,
11 mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental
12 disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to
13 exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after
14 considering the recommendations of the professionals providing treatment to the defendant and
15 recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant
16 to another correctional, mental health, residential, or developmental disabilities facility that will better serve the
17 defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the
18 same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are
19 provided for.

20 (3) The court shall make a finding as to whether the defendant is of unsound mind as defined in
21 53-21-102.

22 ~~(3)~~(4) Either the director or a defendant whose sentence has been imposed under subsection (2) may
23 petition the sentencing court for review of the sentence if the professional person certifies that:

24 (a) the defendant no longer suffers from a mental disease or disorder;

25 (b) the defendant's mental disease or disorder no longer renders the defendant unable to
26 appreciate the criminality of the defendant's conduct or to conform the defendant's conduct to the requirements
27 of law;

28 (c) the defendant suffers from a mental disease or disorder or developmental disability but is not a

1 danger to the defendant or others; or

2 (d) the defendant suffers from a mental disease or disorder that makes the defendant a danger to
3 the defendant or others, but:

4 (i) there is no treatment available for the mental disease or disorder;

5 (ii) the defendant refuses to cooperate with treatment; or

6 (iii) the defendant will no longer benefit from active inpatient treatment for the mental disease or
7 disorder.

8 ~~(4)~~(5) The sentencing court may make any order not inconsistent with its original sentencing
9 authority, except that the length of confinement or supervision must be equal to that of the original sentence.

10 The professional person shall review the defendant's status each year.

11 (6) On release from the custody of the director of the department of public health and human
12 services, the defendant may no longer be considered to be of unsound mind."

13

14 **Section 3.** Section 53-21-102, MCA, is amended to read:

15 **"53-21-102. Definitions.** As used in this chapter, the following definitions apply:

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

20 (2) "Behavioral health inpatient facility" means a facility or a distinct part of a facility of 16 beds or
21 less licensed by the department that is capable of providing secure, inpatient psychiatric services, including
22 services to persons with mental illness and co-occurring chemical dependency.

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

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

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

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

1 2201.

2 (7) "Emergency situation" means:

3 (a) a situation in which any person is in imminent danger of death or bodily harm from the activity
4 of a person who appears to be suffering from a mental disorder and appears to require commitment; or

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

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

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

13 (b) The term does not include:

14 (i) addiction to drugs or alcohol;

15 (ii) drug or alcohol intoxication;

16 (iii) intellectual disability; or

17 (iv) epilepsy.

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

19 (10) "Mental health facility" or "facility" means the state hospital, the Montana mental health nursing
20 care center, or a hospital, a behavioral health inpatient facility, a mental health center, a residential treatment
21 facility, or a residential treatment center licensed or certified by the department that provides treatment to
22 children or adults with a mental disorder. ~~A correctional institution or facility or jail is not a mental health facility~~
23 ~~within the meaning of this part.~~

24 (11) "Mental health professional" means:

25 (a) a certified professional person;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

20 (16) "Professional person" means:

21 (a) a medical doctor;

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

24 (c) a licensed psychologist;

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

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

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

1 professional person.

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

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

5 (20) "Unsound mind" means a person is incapable of normally managing affairs in a reasonable
6 manner. The condition exists when the intellectual powers of a person are fundamentally lacking or when a
7 person is incapable of understanding and acting with discretion in the ordinary affairs of life. The term includes
8 a range of mental disorders as defined in this section."

9

10 **Section 4.** Section 53-21-127, MCA, is amended to read:

11 ~~"53-21-127. (Temporary) Posttrial disposition. (1) If, upon trial, it is determined that the respondent~~
12 ~~is not suffering from a mental disorder or does not require commitment within the meaning of this part, the~~
13 ~~respondent must be discharged and the petition dismissed.~~

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

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

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

23 (b) ~~— commit the respondent to a community facility, which may include a category D assisted living~~
24 ~~facility, or a community program or to any appropriate course of treatment, which may include housing or~~
25 ~~residential requirements or conditions as provided in 53-21-149, for a period of:~~

26 (i) ~~— not more than 3 months; or~~

27 (ii) ~~— not more than 6 months in order to provide the respondent with a less restrictive commitment in~~
28 ~~the community rather than a more restrictive placement in the state hospital if a respondent has been~~

1 previously involuntarily committed for inpatient treatment in a mental health facility and the court determines
2 that the admission of evidence of the previous involuntary commitment is relevant to the criterion of
3 predictability, as provided in 53-21-126(1)(d), and outweighs the prejudicial effect of its admission, as provided
4 in 53-21-190; or

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

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

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

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

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

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

1 fully informed of the matter within 5 working days after the beginning of the involuntary administration. The
2 director shall report to the governor on an annual basis.

3 (7) — Satisfaction of any one of the criteria listed in 53-21-126(1) justifies commitment pursuant to
4 this chapter. However, if the court relies solely upon the criterion provided in 53-21-126(1)(d), the court may
5 require commitment only to a community facility, which may include a category D assisted living facility, or a
6 program or an appropriate course of treatment, as provided in subsection (3)(b), and may not require
7 commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental health nursing
8 care center.

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

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

13 (b) — the alternatives for treatment that were considered;

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

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

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

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

21 (g) — if the order commits the respondent to the Montana mental health nursing care center, a finding
22 that the respondent meets the admission criteria of the center and that the superintendent of the center has
23 issued a written authorization specifying a date and time for admission;

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

26 (i) — the respondent meets the admission criteria;

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

28 (iii) — a category D assisted living facility is the least restrictive environment because the respondent

1 is unlikely to benefit from involuntary commitment to facilities with more intensive treatment; and

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

4 **53-21-127. (Effective July 1, 2025) Posttrial disposition.** (1) A respondent must be discharged and
5 the petition dismissed if, upon trial, it is determined that the respondent:

6 (a) is not suffering from a mental disorder;

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

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

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

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

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

20 (b) commit the respondent to a community facility, which may include a category D assisted living
21 facility, or a community program or to any appropriate course of treatment, which may include housing or
22 residential requirements or conditions as provided in 53-21-149, for a period of:

23 (i) not more than 3 months; or

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

1 in 53-21-190; or

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

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

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

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

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

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

28 (7) Except as provided in 53-21-126(7), satisfaction of any one of the criteria listed in 53-21-126(1)

1 justifies commitment pursuant to this chapter. However, if the court relies solely on the criterion provided in 53-
2 21-126(1)(d), the court may require commitment only to a community facility, which may include a category D
3 assisted living facility, or a program or an appropriate course of treatment, as provided in subsection (3)(b), and
4 may not require commitment at the state hospital, a behavioral health inpatient facility, or the Montana mental
5 health nursing care center.

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

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

10 (b) the alternatives for treatment that were considered;

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

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

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

16 (f) whether the respondent is of unsound mind as defined in 53-21-102;

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

19 ~~(g)~~(h) if the order commits the respondent to the Montana mental health nursing care center, a finding
20 that the respondent meets the admission criteria of the center and that the superintendent of the center has
21 issued a written authorization specifying a date and time for admission;

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

24 (i) the respondent meets the admission criteria;

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

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

28 ~~(i)~~(j) if the order includes involuntary medication, the reason involuntary medication was chosen

1 from among other alternatives."

2

3 **Section 5.** Section 53-21-181, MCA, is amended to read:

4 **"53-21-181. Discharge during or at end of initial commitment period -- patient's right to referral.**

5 (1) (a) At any time within the period of commitment provided for in 53-21-127, the patient may be discharged on
6 the written order of the professional person in charge of the patient without further order of the court.

7 (b) If the patient is not discharged within the period of commitment and if the term is not extended
8 as provided for in 53-21-128, a patient whose commitment was to a facility other than a category D assisted
9 living facility must be discharged by the facility at the end of the period of commitment without further order of
10 the court.

11 (c) A patient who was committed to a category D assisted living facility may be discharged from
12 supervision by the court but may remain as a resident if the category D assisted living facility and the patient
13 agree.

14 (2) Notice of the discharge must be filed with the court and the county attorney at least 5 days prior
15 to the discharge. Failure to comply with the notice requirement may not delay the discharge of the patient.

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

18 (4) Upon being discharged, a patient may no longer be considered to be of unsound mind as
19 defined in 53-21-102."

20

21 **Section 6.** Section 53-21-197, MCA, is amended to read:

22 **"53-21-197. Hearing on rehospitalization petition -- revocation of conditional release.** (1) The
23 court may order that the patient's conditional release status be revoked and that the patient be returned to the
24 mental health facility from which the patient was conditionally released or be sent to another appropriate
25 inpatient mental health facility if, after a hearing, the court finds by clear and convincing evidence that:

26 (a) the conditionally released patient has been determined by the district court to be suffering from
27 a mental disorder and requiring commitment and is presently under a valid order of commitment pursuant to 53-
28 21-127 or 53-21-128; and

