_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE STATE ADMINISTRATION AND VETERANS' AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: “AN ACT GENERALLY REVISING VOTING LAWS RELATED TO INDIVIDUALS WHO ARE OF UNSOUND MIND; PROVIDING THAT COURTS MAKE FINDINGS ON WHETHER A PERSON IS OF UNSOUND MIND IN CERTAIN CRIMINAL, INVOLUNTARY COMMITMENT, AND GUARDIANSHIP PROCEEDINGS; AMENDING SECTIONS 46-14-312, 53-21-122, 53-21-127, 53-21-128, 53-21-197, 72-5-316, AND 72-5-319, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.”

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

NEW SECTION. **Section 1. Person of unsound mind.** (1) A person is of unsound mind if an appropriate court issues an order, as provided in 46-14-312, 53-21-127, 53-21-128, 53-21-197, or 72-5-316, stating that the court finds by clear and convincing evidence that the person:

(a) lacks the mental capacity to vote because the person does not understand the nature and effect of the act of voting; or

(b) is unable to communicate, with or without accommodations, a specific desire to participate in the voting process.

(2) The court shall provide a certified copy of the order to the election administrator of the county in which the person is a resident and to the secretary of state within 30 days of issuance.

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

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

(2) If the court finds that the defendant at the time of the commission of the offense suffered from a mental disease or disorder or developmental disability as described in 46-14-311, any mandatory minimum

sentence prescribed by law for the offense need not apply. The court shall sentence the defendant to be committed to the custody of the director of the department of public health and human services to be placed, after consideration of the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, in an appropriate correctional facility, mental health facility, as defined in 53-21-102, residential facility, as defined in 53-20-102, or developmental disabilities facility, as defined in 53-20-202, for custody, care, and treatment for a definite period of time not to exceed the maximum term of imprisonment that could be imposed under subsection (1). The director may, after considering the recommendations of the professionals providing treatment to the defendant and recommendations of the professionals who have evaluated the defendant, subsequently transfer the defendant to another correctional, mental health, residential, or developmental disabilities facility that will better serve the defendant's custody, care, and treatment needs. The authority of the court with regard to sentencing is the same as authorized in Title 46, chapter 18, if the treatment of the individual and the protection of the public are provided for.

(3) The court shall make a finding on whether a defendant whose sentence has been imposed under subsection (2) is of unsound mind as provided in [section 1]. If the court finds the defendant to be of unsound mind, the defendant is restored to capacity on release from the custody of the director of the department of public health and human services.

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

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

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

(c) the defendant suffers from a mental disease or disorder or developmental disability but is not a danger to the defendant or others; or

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

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

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

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

~~(4)~~ (5) The sentencing court may make any order not inconsistent with its original sentencing authority, except that the length of confinement or supervision must be equal to that of the original sentence. The professional person shall review the defendant's status each year."

Section 3. Section 53-21-122, MCA, is amended to read:

"**53-21-122. 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) (a) 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 2-15-1029, 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 must also be advised that a finding will be made on whether the respondent is of unsound mind as provided in [section 1]. The respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as provided in 53-21-199. 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 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.

(b) If the court finds that an appropriate person is willing and able to perform the functions of a friend of respondent as set out in this part and the respondent personally or through counsel consents, the court shall appoint the person as the friend of respondent. The friend of respondent may be the next of kin, the

person's conservator or legal guardian, if any, a representative of a charitable or religious organization, or any other person appointed by the court. Only one person may at any one time be the friend of respondent within the meaning of this part. The court may at any time, for good cause, change its designation of the friend of respondent. The court shall change the designation of the friend of respondent at the request of the respondent or if it determines that a conflict of interest exists between the respondent and 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 2-15-1029, 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 respondent must also be advised that the professional person appointed to conduct the examination under 53-21-123 will include in the professional person's report a recommendation about whether the respondent should be diverted from involuntary commitment to short-term inpatient treatment provided for in 53-21-1205 and 53-21-1206 or to a category D assisted living facility as provided in 53-21-199. 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."

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

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

(a) is not suffering from a mental disorder;

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

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

(2) If it is determined that the respondent is suffering from a mental disorder and requires

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

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

(i) 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;

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

(A) not more than 3 months; or

(B) 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 is committed to a category D assisted living facility as provided in 53-21-199 or 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

(iii) 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:

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

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

(b) The court may not commit the respondent to a private mental health facility or hospital without the express consent of the facility or hospital.

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

(8) In ordering commitment pursuant to this section, the court shall attest that the court has not relied solely on the criteria provided in 53-21-126(1)(d) and 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;

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

(i) the respondent meets the admission criteria;

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

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

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

(j) whether the respondent is of unsound mind as provided in [section 1].

(9) Any mental health evaluation report of a professional person who evaluated the respondent or patient in connection with the commitment must be filed under seal at the time of the filing of the court's order but must be made available to the mental health facility to which the respondent or patient is committed."

Section 5. Section 53-21-128, MCA, is amended to read:

"**53-21-128. Petition for extension of commitment period.** (1) (a) Not less than 2 calendar weeks prior to the end of the 3-month period of commitment to the state hospital, 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. The court shall also make a finding on whether the patient is of unsound mind as provided in [section 1].

(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)."

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

"**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.

(5) An order revoking the patient's conditional release status must include a finding by the court on whether the patient is of unsound mind as provided in [section 1]."

Section 7. Section 72-5-316, MCA, is amended to read:

"**72-5-316. Findings -- order of appointment.** (1) If the court is satisfied that the person for whom a guardianship is sought is incapacitated, that the identified needs of the person cannot be met by a less restrictive alternative, and that judicial intervention in the person's personal freedom of action and decision is necessary to meet essential requirements for the person's physical health or safety, it may appoint a full guardian having the powers described in 72-5-321 or a limited guardian having the powers described in the order. If the court is satisfied that the allegedly incapacitated person could handle the essential requirements for physical health or safety if the person's financial resources were managed by another, it shall order that the petition be treated as a petition for a protective order under Title 72, chapter 5, part 4, and proceed accordingly. Alternatively, the court may dismiss the proceeding or enter any other appropriate order that is not inconsistent with the specific provisions of this part. In issuing its order, the court shall make specific findings of fact.

(2) The court may not invest a guardian with powers or duties beyond those sought in the petition and may, upon petition for a full guardianship, create a limited guardianship or conservatorship when the court determines that a limited guardianship or conservatorship is all that is required for the care and protection of the incapacitated person. The order must specify whether a full or limited guardianship is being created. In the case of a limited guardianship, the order must specify the particular powers and duties vested in the limited guardian and the period for which the limited guardianship is created.

(3) An incapacitated person may not be limited in the exercise of any civil or political rights except those that are clearly inconsistent with the exercise of the powers granted to the guardian unless the court's

order specifically provides for the limitations. The order must state that all rights not specifically limited are retained by the incapacitated person. The court shall make specific findings of fact in its order on whether the incapacitated person is of unsound mind as provided in [section 1]."

Section 8. Section 72-5-319, MCA, is amended to read:

"**72-5-319. Contents of petition for appointment of guardian.** (1) The petition for appointment of a guardian must contain:

(a) the name, residence, and mailing address of the petitioner, the petitioner's relationship to the alleged incapacitated person, and the petitioner's interest in the matter;

(b) the name, residence, and mailing address of the alleged incapacitated person;

(c) the nature and degree of the alleged incapacity;

(d) if the petition in any way affects the management of the property of the alleged incapacitated person, the approximate value and description of the property, including any compensation, pension, insurance, or allowance to which the person may be entitled;

(e) whether there is, in any state, a full guardian or limited guardian for the person or estate of the incapacitated person or a conservator of the person's property;

(f) the name, residence, and mailing address of the person whom the petitioner seeks to have appointed guardian;

(g) the names, residences, and nature of relationship, so far as is known or can reasonably be ascertained, of the persons most closely related by blood or marriage to the alleged incapacitated person;

(h) the name and residence of the person or institution having the care and custody of the alleged incapacitated person;

(i) the reasons why the appointment of a guardian is sought, including:

(i) any less restrictive alternatives for meeting the alleged incapacitated person's needs that have been implemented or, if no less restrictive alternatives have been implemented, the reason why; and

(ii) the reason why a less restrictive alternative is insufficient to meet the alleged incapacitated person's needs;

(j) whether a limited guardianship or full guardianship is requested;

(k) the facts supporting the allegations of incapacity and the need for a guardian;

(l) the specific areas of protection and assistance requested and the limitation of rights requested to be included in the order of appointment;

(m) the facts supporting whether the alleged incapacitated person is of unsound mind as provided in [section 1];

~~(m)~~ (n) in the case of a petition for limited guardianship, the particular powers and areas of authority that the petition seeks to have vested in the limited guardian as provided in 72-5-320 and the term for which the limited guardianship is requested; and

~~(n)~~ (o) in the case of a petition for full guardianship, the length of time the guardianship is expected to last.

(2) The petition may also include a request for temporary guardianship as provided in 72-5-317 if the petitioner believes that the requisites of that section are met and that the appointment of a temporary guardian, pending the completion of guardianship proceedings, is necessary to protect the welfare of the alleged incapacitated person. The facts requiring appointment of a temporary guardian must be stated with specificity."

NEW SECTION. **Section 9. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 13, chapter 1, part 1, and the provisions of Title 13, chapter 1, part 1, apply to [section 1].

NEW SECTION. **Section 10. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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