

HOUSE BILL NO. 930

INTRODUCED BY WHALEN, BLAYLOCK, LYNCH, MCCARTHY, MENAHAN,
DAILY, HARRINGTON, G. BECK, JACOBSON, COCCHIARELLA,
KIMBERLEY, PAVLOVICH, BRADLEY

IN THE HOUSE

FEBRUARY 18, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON HUMAN SERVICES & AGING.

FEBRUARY 19, 1991 FIRST READING.

FEBRUARY 23, 1991 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

POSTED ON CONSENT CALENDAR.

FEBRUARY 25, 1991 CONSENT CALENDAR, QUESTIONS AND ANSWERS.

ENGROSSING REPORT.

FEBRUARY 26, 1991 THIRD READING, PASSED.
AYES, 99; NOES, 0.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 26, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE, & SAFETY.

FIRST READING.

APRIL 2, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

APRIL 4, 1991 SECOND READING, CONCURRED IN.

APRIL 5, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 1.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 10, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

APRIL 11, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

HOUSE BILL 930

Introduced by Whalen, et al.

2/18	Introduced
2/18	Referred to Human Services & Aging
2/19	First Reading
2/22	Hearing
2/23	Committee Report--Bill Passed
2/23	Placed on Consent Calendar
2/26	3rd Reading Passed
	Transmitted to Senate
2/26	First Reading
2/26	Referred to Public Health, Welfare & Safety
3/20	Hearing
4/02	Committee Report--Bill Concurred as Amended
4/04	2nd Reading Concurred
4/05	3rd Reading Concurred
	Returned to House with Amendments
4/10	2nd Reading Amendments Concurred
4/11	3rd Reading Amendments Concurred
4/18	Signed by Speaker
4/19	Signed by President
4/19	Transmitted to Governor
4/23	Signed by Governor
	Chapter Number 579

1 ~~HOUSE~~ BILL NO. 730
 2 INTRODUCED BY Whalen Blaylock B. McFarley
 3 David J. Harington J. Beck Blaylock
 4 Cocchiarella Simberley Carlund
 5 BILL FOR AN ACT ENTITLED: "AN ACT INCORPORATING INTO
 6 MONTANA LAW THE FEDERAL PROVISIONS REGARDING PROTECTION AND
 7 ADVOCACY FOR THE MENTALLY ILL; OUTLINING THE GOALS AND
 8 AUTHORITY OF AN ELIGIBLE PROTECTION AND ADVOCACY SYSTEM FOR
 9 THE MENTALLY ILL IN MONTANA; AND AMENDING SECTIONS
 10 53-21-141, 53-21-142, 53-21-144, 53-21-146, 53-21-147,
 11 53-21-162, 53-21-166, AND 53-21-181, MCA."

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

13 NEW SECTION. **Section 1. Protection and advocacy system**

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

- 21 (a) the protection and advocacy of the rights of
- 22 mentally ill individuals who are defined in 42 U.S.C. 10802
- 23 as individuals with a significant mental illness or
- 24 emotional impairment; and
- 25 (b) the investigation of incidents of abuse and

1 neglect, as defined in 42 U.S.C. 10802, of mentally ill
2 individuals.

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

- 5 (a) investigate incidents of abuse and neglect of
- 6 mentally ill individuals;
- 7 (b) pursue administrative, legal, and other appropriate
- 8 remedies to ensure the protection of mentally ill
- 9 individuals who are residents of the state and are receiving
- 10 care or treatment in the state;
- 11 (c) have access to all mentally ill individuals and all
- 12 facilities, wards, and living quarters as necessary to
- 13 fulfill the goals described in subsection (1); and
- 14 (d) pursuant to 42 U.S.C. 10801 through 10851 and Title
- 15 50, chapter 16, part 5, have access to records, including:
- 16 (i) reports prepared by the staff of a mental health
- 17 care and treatment facility;
- 18 (ii) reports prepared by an agency investigating
- 19 reports of abuse, neglect, and injury occurring at a
- 20 facility and that describe the incidents and the steps taken
- 21 to investigate the reports; and
- 22 (iii) discharge planning records.
- 23 (3) All information obtained under this section must be
- 24 kept confidential pursuant to 42 U.S.C. 10806.
- 25 (4) The protection and advocacy system described in



-2-
INTRODUCED BILL
HB 930

1 this section is independent of any public or private agency
2 that provides treatment or services to the mentally ill.

3 **Section 2.** Section 53-21-141, MCA, is amended to read:

4 *53-21-141. Civil and legal rights of person committed.

5 (1) Unless specifically stated in an order by the court, a
6 person involuntarily committed to a facility for a period of
7 evaluation or treatment does not forfeit any legal right or
8 suffer any legal disability by reason of the provisions of
9 this part except insofar as it may be necessary to detain
10 the person for treatment, evaluation, or care. All
11 communication between an alleged mentally ill person and a
12 professional person is privileged under normal privileged
13 communication rules unless it is clearly explained to the
14 person in advance that the purpose of an interview is for
15 evaluation and not treatment.

16 (2) Whenever a person is committed to a mental health
17 facility for a period of 3 months or longer, the court
18 ordering the commitment may make an order stating
19 specifically any legal rights which are denied the
20 respondent and any legal disabilities which are imposed on
21 him. As part of its order, the court may appoint a person to
22 act as conservator of the respondent's property. Any
23 conservatorship created pursuant to this section terminates
24 upon the conclusion of the involuntary commitment if not
25 sooner terminated by the court. A conservatorship or

1 guardianship extending beyond the period of involuntary
2 commitment may not be created except according to the
3 procedures set forth under Montana law for the appointment
4 of conservators and guardians generally. In the case of a
5 person admitted to a program or facility for the purpose of
6 receiving mental health services, an individual employed by
7 or receiving remuneration from the program or facility may
8 not act as the person's guardian or representative unless
9 the program or facility can demonstrate that no other person
10 is available or willing to act as the person's guardian or
11 representative.

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

24 (4) A person committed to a mental health facility
25 prior to July 1, 1975, enjoys all the rights and privileges

1 of a person committed after that date."

2 **Section 3.** Section 53-21-142, MCA, is amended to read:

3 "53-21-142. Rights of persons admitted to facility.

4 Patients admitted to a mental health facility, whether
5 voluntarily or involuntarily, shall have the following
6 rights:

7 (1) Patients have a right to privacy and dignity.

8 (2) Patients have a right to the least restrictive
9 conditions necessary to achieve the purposes of commitment.

10 Patients must be accorded the right to appropriate treatment
11 and related services in a setting and under conditions that:

12 (a) are the most supportive of the patient's personal
13 liberty; and

14 (b) restrict the patient's liberty only to the extent
15 necessary and consistent with the patient's treatment need,
16 applicable requirements of law, and judicial orders.

17 (3) Patients shall have the same rights to visitation
18 and reasonable access to private telephone communications,
19 including the right to converse with others privately, as
20 patients-at-any-public-hospitals except to the extent that
21 the professional person responsible for formulation of a
22 particular patient's treatment plan writes an order imposing
23 special restrictions. The written order must be renewed
24 after each periodic review of the treatment plan if any
25 restrictions are to be continued. Patients shall have an

1 unrestricted right to visitation with attorneys, with
2 spiritual counselors, and with private physicians and other
3 professional persons.

4 (4) Patients shall have an unrestricted right to send
5 sealed mail. Patients shall have an unrestricted right to
6 receive sealed mail from their attorneys, private physicians
7 and other professional persons, the mental disabilities
8 board of visitors, courts, and government officials.
9 Patients shall have a right to receive sealed mail from
10 others except to the extent that a professional person
11 responsible for formulation of a particular patient's
12 treatment plan writes an order imposing special restrictions
13 on receipt of sealed mail. The written order must be renewed
14 after each periodic review of the treatment plan if any
15 restrictions are to be continued.

16 (5) Patients have an unrestricted right to have access
17 to letter-writing materials, including postage, and have a
18 right to have staff members of the facility assist persons
19 who are unable to write, prepare, and mail correspondence.

20 (6) Patients have a right to wear their own clothes and
21 to keep and use their own personal possessions, including
22 toilet articles, except insofar as such clothes or personal
23 possessions may be determined by a professional person in
24 charge of the patient's treatment plan to be dangerous or
25 otherwise inappropriate to the treatment regimen. The

1 facility has an obligation to supply an adequate allowance
 2 of clothing to any patients who do not have suitable
 3 clothing of their own. Patients shall have the opportunity
 4 to select from various types of neat, clean, and reasonable
 5 clothing. Such clothing shall be considered the patient's
 6 throughout his stay at the facility. The facility shall make
 7 provision for the laundering of patient clothing.

8 (7) Patients have the right to keep and be allowed to
 9 spend a reasonable sum of their own money.

10 (8) Patients have the right to religious worship.
 11 Provisions for such worship shall be made available to all
 12 patients on a nondiscriminatory basis. No individual shall
 13 be required to engage in any religious activities.

14 (9) Patients have a right to regular physical exercise
 15 several times a week. Moreover, it shall be the duty of the
 16 facility to provide facilities and equipment for such
 17 exercise. Patients have a right to be outdoors at regular
 18 and frequent intervals in the absence of contrary medical
 19 considerations.

20 (10) Patients have the right to be provided, with
 21 adequate supervision, suitable opportunities for interaction
 22 with members of the opposite sex except to the extent that a
 23 professional person in charge of the patient's treatment
 24 plan writes an order stating that such interaction is
 25 inappropriate to the treatment regimen.

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

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

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

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

1 implemented;

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

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

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

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

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

25 (b) to assert grievances with respect to infringement

1 of the rights described in this section, including the right
2 to have a grievance considered in a fair and timely manner
3 according to an impartial grievance procedure that must be
4 provided for by the facility; and

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

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

13 (a) the patient;

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

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

20 (16) A person admitted to a facility shall have access
21 to any available individual or service that provides
22 advocacy for the protection of the person's rights and that
23 assist the person in understanding, exercising and
24 protecting his rights as described in this section.

25 (17) This section may not:

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

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

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

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

14 **Section 4.** Section 53-21-144, MCA, is amended to read:

15 **"53-21-144. Rights concerning photographs.** (1) A person
16 admitted to a mental health facility may be photographed
17 upon admission for identification and the administrative
18 purposes of the facility. Such photographs shall be
19 confidential and shall not be released by the facility
20 except pursuant to court order.

21 (2) No other nonmedical photographs shall be taken or
22 used without consent of the patient or, if applicable, the
23 patient's legal guardian or--the--friend--of---respondent
24 appointed-by-the-court."

25 **Section 5.** Section 53-21-146, MCA, is amended to read:

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

24 **Section 6.** Section 53-21-147, MCA, is amended to read:

25 **"53-21-147. Right not to be subjected to experimental**

1 research. (1) Patients shall have a right not to be
 2 subjected to experimental research without the express and
 3 informed consent of the patient, if the patient is able to
 4 give such consent, and of his guardian, if any, and the
 5 friend of respondent appointed by the court after
 6 opportunities for consultation with independent specialists
 7 and with legal counsel. If there is no friend of respondent
 8 or if the friend of respondent appointed by the court is no
 9 longer available, then a friend of respondent who is in no
 10 way connected with the facility, the department, or the
 11 research project shall be appointed prior to the involvement
 12 of the patient in any experimental research. At least 10
 13 days prior to the commencement of such experimental
 14 research, the facility shall send notice of intent to
 15 involve the patient in experimental research to the patient,
 16 his next of kin, if known, his legal guardian, if any, the
 17 attorney who most recently represented him, and the friend
 18 of respondent appointed by the court.

19 (2) Such proposed research shall first have been
 20 reviewed and approved by the mental disabilities board of
 21 visitors before such consent shall be sought. Prior to such
 22 approval, the board shall determine that such research
 23 complies with the principles of the statement on the use of
 24 human subjects for research of the American association on
 25 mental deficiency and with the principles for research

1 involving human subjects required by the United States
 2 department of health, education, and welfare for projects
 3 supported by that agency.

4 (3) A patient has the right to appropriate protection
 5 before participating in an experimental treatment, including
 6 the right to a reasonable explanation of the procedure to be
 7 followed, expected benefits, relative advantages, and the
 8 potential risks and discomforts of any experimental
 9 treatment. A patient has the right to revoke at any time
 10 consent to an experimental treatment."

11 **Section 7.** Section 53-21-162, MCA, is amended to read:

12 **"53-21-162. Establishment of patient treatment plan --**
 13 **patient's rights.** (1) Each patient admitted as an inpatient
 14 to a mental health facility shall have a comprehensive
 15 physical and mental examination and review of behavioral
 16 status within 48 hours after admission to the mental health
 17 facility.

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

23 (a) a statement of the nature of the specific problems
 24 and specific needs of the patient;

25 (b) a statement of the least restrictive treatment

1 conditions necessary to achieve the purposes of commitment;

2 (c) a description of intermediate and long-range
3 treatment goals, with a projected timetable for their
4 attainment;

5 (d) a statement and rationale for the plan of treatment
6 for achieving these intermediate and long-range goals;

7 (e) a specification of staff responsibility and a
8 description of proposed staff involvement with the patient
9 in order to attain these treatment goals;

10 (f) criteria for release to less restrictive treatment
11 conditions and criteria for discharge; and

12 (g) a notation of any therapeutic tasks and labor to be
13 performed by the patient.

14 (3) As part of his treatment plan, each patient shall
15 have an individualized after-care plan. This plan shall be
16 developed by a professional person as soon as practicable
17 after the patient's admission to the facility.

18 (4) In the interests of continuity of care, whenever
19 possible one professional person (who need not have been
20 involved with the development of the treatment plan) shall
21 be responsible for supervising the implementation of the
22 treatment plan, integrating the various aspects of the
23 treatment program, and recording the patient's progress.
24 This professional person shall also be responsible for
25 ensuring that the patient is released, where appropriate,

1 into a less restrictive form of treatment.

2 (5) The treatment plan shall be continuously reviewed
3 by the professional person responsible for supervising the
4 implementation of the plan and shall be modified if
5 necessary. Moreover, at least every 90 days each patient
6 shall receive a mental examination from and his treatment
7 plan shall be reviewed by a professional person other than
8 the professional person responsible for supervising the
9 implementation of the plan.

10 (6) A patient has the right:

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

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

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

21 (ii) the objectives of treatment;

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

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

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

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

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

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

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

15 **Section 8.** Section 53-21-166, MCA, is amended to read:

16 "53-21-166. Records to be confidential -- exceptions.
17 All information obtained and records prepared in the course
18 of providing any services under this part to individuals
19 under any provision of this part shall be confidential and
20 privileged matter and shall remain confidential and
21 privileged after the individual is discharged from the
22 facility. Except as provided in Title 50, chapter 16, part
23 5, information and records may be disclosed only:

24 (1) in communications between qualified professionals
25 in the provision of services or appropriate referrals;

1 (2) when the recipient of services designates persons
2 to whom information or records may be released, provided
3 that if a recipient of services is a ward and his guardian
4 or conservator designates in writing persons to whom records
5 or information may be disclosed, such designation shall be
6 valid in lieu of the designation by the recipient; except
7 that nothing in this section shall be construed to compel a
8 physician, psychologist, social worker, nurse, attorney, or
9 other professional person to reveal information which has
10 been given to him in confidence by members of a patient's
11 family;

12 (3) to the extent necessary to make claims on behalf of
13 a recipient of aid, insurance, or medical assistance to
14 which he may be entitled;

15 (4) for research if the department has promulgated
16 rules for the conduct of research; such rules shall include
17 but not be limited to the requirement that all researchers
18 must sign an oath of confidentiality;

19 (5) to the courts as necessary to the administration of
20 justice;

21 (6) to persons authorized by an order of court, after
22 notice and opportunity for hearing to the person to whom the
23 record or information pertains and the custodian of the
24 record or information pursuant to the rules of civil
25 procedure;

1 (7) to members of the mental disabilities board of
2 visitors or their agents when necessary to perform their
3 functions as set out in 53-21-104."

4 **Section 9.** Section 53-21-181, MCA, is amended to read:

5 "53-21-181. Discharge during or at end of initial
6 ~~commitment period -- patient's right to referral.~~ (1) At
7 any time within the 3-month period provided for in
8 53-21-127(2), the patient may be discharged on the written
9 order of the professional person in charge of him. In the
10 event the patient is not discharged within the 3-month
11 period and if the term is not extended as provided for in
12 53-21-128, he shall be discharged by the facility at the end
13 of 3 months without further order of the court. Notice of
14 the discharge shall be filed with the court and the county
15 attorney at least 5 days prior to the discharge.

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

19 **NEW SECTION. Section 10.** Codification instruction.
20 [Section 1] is intended to be codified as an integral part
21 of Title 53, chapter 21, and the provisions of Title 53,
22 chapter 21, apply to [section 1].

-End-

~~HOUSE~~ BILL NO. 930

INTRODUCED BY

Whalen Blaylock Spauld B. McFarley
Hamilton Beck
A BILL FOR AN ACT ENTITLED: "AN ACT INCORPORATING INTO MONTANA LAW THE FEDERAL PROVISIONS REGARDING PROTECTION AND

ADVOCACY FOR THE MENTALLY ILL; OUTLINING THE GOALS AND AUTHORITY OF AN ELIGIBLE PROTECTION AND ADVOCACY SYSTEM FOR THE MENTALLY ILL IN MONTANA; AND AMENDING SECTIONS 53-21-141, 53-21-142, 53-21-144, 53-21-146, 53-21-147, 53-21-162, 53-21-166, AND 53-21-181, MCA."

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

NEW SECTION. Section 1. 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 through 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



1 this section is independent of any public or private agency
2 that provides treatment or services to the mentally ill.

3 **Section 2.** Section 53-21-141, MCA, is amended to read:

4 "53-21-141. Civil and legal rights of person committed.

5 (1) Unless specifically stated in an order by the court, a
6 person involuntarily committed to a facility for a period of
7 evaluation or treatment does not forfeit any legal right or
8 suffer any legal disability by reason of the provisions of
9 this part except insofar as it may be necessary to detain
10 the person for treatment, evaluation, or care. All
11 communication between an alleged mentally ill person and a
12 professional person is privileged under normal privileged
13 communication rules unless it is clearly explained to the
14 person in advance that the purpose of an interview is for
15 evaluation and not treatment.

16 (2) Whenever a person is committed to a mental health
17 facility for a period of 3 months or longer, the court
18 ordering the commitment may make an order stating
19 specifically any legal rights which are denied the
20 respondent and any legal disabilities which are imposed on
21 him. As part of its order, the court may appoint a person to
22 act as conservator of the respondent's property. Any
23 conservatorship created pursuant to this section terminates
24 upon the conclusion of the involuntary commitment if not
25 sooner terminated by the court. A conservatorship or

1 guardianship extending beyond the period of involuntary
2 commitment may not be created except according to the
3 procedures set forth under Montana law for the appointment
4 of conservators and guardians generally. In the case of a
5 person admitted to a program or facility for the purpose of
6 receiving mental health services, an individual employed by
7 or receiving remuneration from the program or facility may
8 not act as the person's guardian or representative unless
9 the program or facility can demonstrate that no other person
10 is available or willing to act as the person's guardian or
11 representative.

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

24 (4) A person committed to a mental health facility
25 prior to July 1, 1975, enjoys all the rights and privileges

1 of a person committed after that date."

2 **Section 3.** Section 53-21-142, MCA, is amended to read:

3 **"53-21-142. Rights of persons admitted to facility.**

4 Patients admitted to a mental health facility, whether
5 voluntarily or involuntarily, shall have the following
6 rights:

7 (1) Patients have a right to privacy and dignity.

8 (2) Patients have a right to the least restrictive
9 conditions necessary to achieve the purposes of commitment.

10 Patients must be accorded the right to appropriate treatment
11 and related services in a setting and under conditions that:

12 (a) are the most supportive of the patient's personal
13 liberty; and

14 (b) restrict the patient's liberty only to the extent
15 necessary and consistent with the patient's treatment need,
16 applicable requirements of law, and judicial orders.

17 (3) Patients shall have the same rights to visitation
18 and reasonable access to private telephone communications,
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20 patients-at-any-public-hospitals except to the extent that
21 the professional person responsible for formulation of a
22 particular patient's treatment plan writes an order imposing
23 special restrictions. The written order must be renewed
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25 restrictions are to be continued. Patients shall have an

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2 spiritual counselors, and with private physicians and other
3 professional persons.

4 (4) Patients shall have an unrestricted right to send
5 sealed mail. Patients shall have an unrestricted right to
6 receive sealed mail from their attorneys, private physicians
7 and other professional persons, the mental disabilities
8 board of visitors, courts, and government officials.
9 Patients shall have a right to receive sealed mail from
10 others except to the extent that a professional person
11 responsible for formulation of a particular patient's
12 treatment plan writes an order imposing special restrictions
13 on receipt of sealed mail. The written order must be renewed
14 after each periodic review of the treatment plan if any
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16 (5) Patients have an unrestricted right to have access
17 to letter-writing materials, including postage, and have a
18 right to have staff members of the facility assist persons
19 who are unable to write, prepare, and mail correspondence.

20 (6) Patients have a right to wear their own clothes and
21 to keep and use their own personal possessions, including
22 toilet articles, except insofar as such clothes or personal
23 possessions may be determined by a professional person in
24 charge of the patient's treatment plan to be dangerous or
25 otherwise inappropriate to the treatment regimen. The

1 facility has an obligation to supply an adequate allowance
 2 of clothing to any patients who do not have suitable
 3 clothing of their own. Patients shall have the opportunity
 4 to select from various types of neat, clean, and reasonable
 5 clothing. Such clothing shall be considered the patient's
 6 throughout his stay at the facility. The facility shall make
 7 provision for the laundering of patient clothing.

8 (7) Patients have the right to keep and be allowed to
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10 (8) Patients have the right to religious worship.
 11 Provisions for such worship shall be made available to all
 12 patients on a nondiscriminatory basis. No individual shall
 13 be required to engage in any religious activities.

14 (9) Patients have a right to regular physical exercise
 15 several times a week. Moreover, it shall be the duty of the
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 17 exercise. Patients have a right to be outdoors at regular
 18 and frequent intervals in the absence of contrary medical
 19 considerations.

20 (10) Patients have the right to be provided, with
 21 adequate supervision, suitable opportunities for interaction
 22 with members of the opposite sex except to the extent that a
 23 professional person in charge of the patient's treatment
 24 plan writes an order stating that such interaction is
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1 (11) Patients have a right to receive prompt and
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 3 providing medical care, the mental health facility shall
 4 take advantage of whatever community-based facilities are
 5 appropriate and available and shall coordinate the patient's
 6 treatment for mental illness with his medical treatment.

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

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

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

1 implemented;

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

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

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

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

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

25 (b) to assert grievances with respect to infringement

1 of the rights described in this section, including the right
2 to have a grievance considered in a fair and timely manner
3 according to an impartial grievance procedure that must be
4 provided for by the facility; and

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

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

13 (a) the patient;

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

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

20 (16) A person admitted to a facility shall have access
21 to any available individual or service that provides
22 advocacy for the protection of the person's rights and that
23 assist the person in understanding, exercising and
24 protecting his rights as described in this section.

25 (17) This section may not:

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

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

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

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

14 **Section 4.** Section 53-21-144, MCA, is amended to read:

15 "53-21-144. Rights concerning photographs. (1) A person
16 admitted to a mental health facility may be photographed
17 upon admission for identification and the administrative
18 purposes of the facility. Such photographs shall be
19 confidential and shall not be released by the facility
20 except pursuant to court order.

21 (2) No other nonmedical photographs shall be taken or
22 used without consent of the patient or, if applicable, the
23 patient's legal guardian or--the--friend--of--respondent
24 appointed-by-the-court."

25 **Section 5.** Section 53-21-146, MCA, is amended to read:

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

24 **Section 6.** Section 53-21-147, MCA, is amended to read:

25 "53-21-147. Right not to be subjected to experimental

1 research. (1) Patients shall have a right not to be
 2 subjected to experimental research without the express and
 3 informed consent of the patient, if the patient is able to
 4 give such consent, and of his guardian, if any, and the
 5 friend of respondent appointed by the court after
 6 opportunities for consultation with independent specialists
 7 and with legal counsel. If there is no friend of respondent
 8 or if the friend of respondent appointed by the court is no
 9 longer available, then a friend of respondent who is in no
 10 way connected with the facility, the department, or the
 11 research project shall be appointed prior to the involvement
 12 of the patient in any experimental research. At least 10
 13 days prior to the commencement of such experimental
 14 research, the facility shall send notice of intent to
 15 involve the patient in experimental research to the patient,
 16 his next of kin, if known, his legal guardian, if any, the
 17 attorney who most recently represented him, and the friend
 18 of respondent appointed by the court.

19 (2) Such proposed research shall first have been
 20 reviewed and approved by the mental disabilities board of
 21 visitors before such consent shall be sought. Prior to such
 22 approval, the board shall determine that such research
 23 complies with the principles of the statement on the use of
 24 human subjects for research of the American association on
 25 mental deficiency and with the principles for research

1 involving human subjects required by the United States
 2 department of health, education, and welfare for projects
 3 supported by that agency.

4 (3) A patient has the right to appropriate protection
 5 before participating in an experimental treatment, including
 6 the right to a reasonable explanation of the procedure to be
 7 followed, expected benefits, relative advantages, and the
 8 potential risks and discomforts of any experimental
 9 treatment. A patient has the right to revoke at any time
 10 consent to an experimental treatment."

11 **Section 7.** Section 53-21-162, MCA, is amended to read:

12 **"53-21-162. Establishment of patient treatment plan --**
 13 **patient's rights.** (1) Each patient admitted as an inpatient
 14 to a mental health facility shall have a comprehensive
 15 physical and mental examination and review of behavioral
 16 status within 48 hours after admission to the mental health
 17 facility.

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

23 (a) a statement of the nature of the specific problems
 24 and specific needs of the patient;

25 (b) a statement of the least restrictive treatment

1 conditions necessary to achieve the purposes of commitment;
 2 (c) a description of intermediate and long-range
 3 treatment goals, with a projected timetable for their
 4 attainment;
 5 (d) a statement and rationale for the plan of treatment
 6 for achieving these intermediate and long-range goals;
 7 (e) a specification of staff responsibility and a
 8 description of proposed staff involvement with the patient
 9 in order to attain these treatment goals;
 10 (f) criteria for release to less restrictive treatment
 11 conditions and criteria for discharge; and
 12 (g) a notation of any therapeutic tasks and labor to be
 13 performed by the patient.

14 (3) As part of his treatment plan, each patient shall
 15 have an individualized after-care plan. This plan shall be
 16 developed by a professional person as soon as practicable
 17 after the patient's admission to the facility.

18 (4) In the interests of continuity of care, whenever
 19 possible one professional person (who need not have been
 20 involved with the development of the treatment plan) shall
 21 be responsible for supervising the implementation of the
 22 treatment plan, integrating the various aspects of the
 23 treatment program, and recording the patient's progress.
 24 This professional person shall also be responsible for
 25 ensuring that the patient is released, where appropriate,

1 into a less restrictive form of treatment.

2 (5) The treatment plan shall be continuously reviewed
 3 by the professional person responsible for supervising the
 4 implementation of the plan and shall be modified if
 5 necessary. Moreover, at least every 90 days each patient
 6 shall receive a mental examination from and his treatment
 7 plan shall be reviewed by a professional person other than
 8 the professional person responsible for supervising the
 9 implementation of the plan.

10 (6) A patient has the right:

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

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

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

21 (ii) the objectives of treatment;

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

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

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

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

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

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

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

15 **Section 8.** Section 53-21-166, MCA, is amended to read:

16 "53-21-166. Records to be confidential -- exceptions.
17 All information obtained and records prepared in the course
18 of providing any services under this part to individuals
19 under any provision of this part shall be confidential and
20 privileged matter and shall remain confidential and
21 privileged after the individual is discharged from the
22 facility. Except as provided in Title 50, chapter 16, part
23 5, information and records may be disclosed only:

24 (1) in communications between qualified professionals
25 in the provision of services or appropriate referrals;

1 (2) when the recipient of services designates persons
2 to whom information or records may be released, provided
3 that if a recipient of services is a ward and his guardian
4 or conservator designates in writing persons to whom records
5 or information may be disclosed, such designation shall be
6 valid in lieu of the designation by the recipient; except
7 that nothing in this section shall be construed to compel a
8 physician, psychologist, social worker, nurse, attorney, or
9 other professional person to reveal information which has
10 been given to him in confidence by members of a patient's
11 family;

12 (3) to the extent necessary to make claims on behalf of
13 a recipient of aid, insurance, or medical assistance to
14 which he may be entitled;

15 (4) for research if the department has promulgated
16 rules for the conduct of research; such rules shall include
17 but not be limited to the requirement that all researchers
18 must sign an oath of confidentiality;

19 (5) to the courts as necessary to the administration of
20 justice;

21 (6) to persons authorized by an order of court, after
22 notice and opportunity for hearing to the person to whom the
23 record or information pertains and the custodian of the
24 record or information pursuant to the rules of civil
25 procedure;

1 (7) to members of the mental disabilities board of
2 visitors or their agents when necessary to perform their
3 functions as set out in 53-21-104."

4 **Section 9.** Section 53-21-181, MCA, is amended to read:

5 "53-21-181. Discharge during or at end of initial
6 commitment period -- patient's right to referral. (1) At
7 any time within the 3-month period provided for in
8 53-21-127(2), the patient may be discharged on the written
9 order of the professional person in charge of him. In the
10 event the patient is not discharged within the 3-month
11 period and if the term is not extended as provided for in
12 53-21-128, he shall be discharged by the facility at the end
13 of 3 months without further order of the court. Notice of
14 the discharge shall be filed with the court and the county
15 attorney at least 5 days prior to the discharge.

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

19 **NEW SECTION. Section 10.** Codification instruction.
20 [Section 1] is intended to be codified as an integral part
21 of Title 53, chapter 21, and the provisions of Title 53,
22 chapter 21, apply to [section 1].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 2, 1991

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 930 (third reading copy -- blue), respectfully report that House Bill No. 930 be amended and as so amended be concurred in:

1. Page 17, line 15.

Following: line 14

Insert: "(7) In the case of a patient who lacks the capacity to exercise the right to consent to treatment described in subsection (6)(c), the right must be exercised on behalf of the patient by a guardian appointed pursuant to the provisions of Title 72, chapter 5.

(8) 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 (6)(c)."

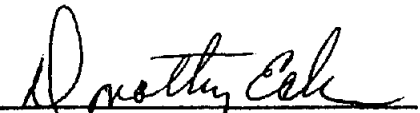
2. Page 19, line 19.

Following: line 18

Insert: "NEW SECTION. Section 10. Report to legislature. The department of institutions shall submit a report to the 53rd legislature concerning implementation of [section 7(6)(c) through (8)]."

Renumber: subsequent section

Signed: _____


Dorothy Eck, Chairman

LB 4/2/91
Amd. Coord.

SB 4/2
Sec. of Senate

SENATE
HB 930

1 HOUSE BILL NO. 930

2 INTRODUCED BY WHALEN, BLAYLOCK, LYNCH, MCCARTHY, MENAHAN,
 3 DAILY, HARRINGTON, G. BECK, JACOBSON, COCCHIARELLA,
 4 KIMBERLEY, PAVLOVICH, BRADLEY

5
 6 A BILL FOR AN ACT ENTITLED: "AN ACT INCORPORATING INTO
 7 MONTANA LAW THE FEDERAL PROVISIONS REGARDING PROTECTION AND
 8 ADVOCACY FOR THE MENTALLY ILL; OUTLINING THE GOALS AND
 9 AUTHORITY OF AN ELIGIBLE PROTECTION AND ADVOCACY SYSTEM FOR
 10 THE MENTALLY ILL IN MONTANA; AND AMENDING SECTIONS
 11 53-21-141, 53-21-142, 53-21-144, 53-21-146, 53-21-147,
 12 53-21-162, 53-21-166, AND 53-21-181, MCA."

13
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 NEW SECTION. **Section 1. Protection and advocacy system**

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

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

1 emotional impairment; and

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

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

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

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

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

16 (d) pursuant to 42 U.S.C. 10801 through 10851 and Title
 17 50, chapter 16, part 5, have access to records, including:

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

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

24 (iii) discharge planning records.

25 (3) All information obtained under this section must be

1 kept confidential pursuant to 42 U.S.C. 10806.

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

5 **Section 2.** Section 53-21-141, MCA, is amended to read:

6 ***53-21-141. Civil and legal rights of person committed.**

7 (1) Unless specifically stated in an order by the court, a
8 person involuntarily committed to a facility for a period of
9 evaluation or treatment does not forfeit any legal right or
10 suffer any legal disability by reason of the provisions of
11 this part except insofar as it may be necessary to detain
12 the person for treatment, evaluation, or care. All
13 communication between an alleged mentally ill person and a
14 professional person is privileged under normal privileged
15 communication rules unless it is clearly explained to the
16 person in advance that the purpose of an interview is for
17 evaluation and not treatment.

18 (2) Whenever a person is committed to a mental health
19 facility for a period of 3 months or longer, the court
20 ordering the commitment may make an order stating
21 specifically any legal rights which are denied the
22 respondent and any legal disabilities which are imposed on
23 him. As part of its order, the court may appoint a person to
24 act as conservator of the respondent's property. Any
25 conservatorship created pursuant to this section terminates

1 upon the conclusion of the involuntary commitment if not
2 sooner terminated by the court. A conservatorship or
3 guardianship extending beyond the period of involuntary
4 commitment may not be created except according to the
5 procedures set forth under Montana law for the appointment
6 of conservators and guardians generally. In the case of a
7 person admitted to a program or facility for the purpose of
8 receiving mental health services, an individual employed by
9 or receiving remuneration from the program or facility may
10 not act as the person's guardian or representative unless
11 the program or facility can demonstrate that no other person
12 is available or willing to act as the person's guardian or
13 representative.

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

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

4 **Section 3.** Section 53-21-142, MCA, is amended to read:

5 **"53-21-142. Rights of persons admitted to facility.**

6 Patients admitted to a mental health facility, whether
7 voluntarily or involuntarily, shall have the following
8 rights:

9 (1) Patients have a right to privacy and dignity.

10 (2) Patients have a right to the least restrictive
11 conditions necessary to achieve the purposes of commitment.

12 Patients must be accorded the right to appropriate treatment
13 and related services in a setting and under conditions that:

14 (a) are the most supportive of the patient's personal
15 liberty; and

16 (b) restrict the patient's liberty only to the extent
17 necessary and consistent with the patient's treatment need,
18 applicable requirements of law, and judicial orders.

19 (3) Patients shall have the same rights to visitation
20 and reasonable access to private telephone communications,
21 including the right to converse with others privately, as
22 patients-at-any-public-hospitals except to the extent that
23 the professional person responsible for formulation of a
24 particular patient's treatment plan writes an order imposing
25 special restrictions. The written order must be renewed

1 after each periodic review of the treatment plan if any
2 restrictions are to be continued. Patients shall have an
3 unrestricted right to visitation with attorneys, with
4 spiritual counselors, and with private physicians and other
5 professional persons.

6 (4) Patients shall have an unrestricted right to send
7 sealed mail. Patients shall have an unrestricted right to
8 receive sealed mail from their attorneys, private physicians
9 and other professional persons, the mental disabilities
10 board of visitors, courts, and government officials.
11 Patients shall have a right to receive sealed mail from
12 others except to the extent that a professional person
13 responsible for formulation of a particular patient's
14 treatment plan writes an order imposing special restrictions
15 on receipt of sealed mail. The written order must be renewed
16 after each periodic review of the treatment plan if any
17 restrictions are to be continued.

18 (5) Patients have an unrestricted right to have access
19 to letter-writing materials, including postage, and have a
20 right to have staff members of the facility assist persons
21 who are unable to write, prepare, and mail correspondence.

22 (6) Patients have a right to wear their own clothes and
23 to keep and use their own personal possessions, including
24 toilet articles, except insofar as such clothes or personal
25 possessions may be determined by a professional person in

1 charge of the patient's treatment plan to be dangerous or
 2 otherwise inappropriate to the treatment regimen. The
 3 facility has an obligation to supply an adequate allowance
 4 of clothing to any patients who do not have suitable
 5 clothing of their own. Patients shall have the opportunity
 6 to select from various types of neat, clean, and seasonable
 7 clothing. Such clothing shall be considered the patient's
 8 throughout his stay at the facility. The facility shall make
 9 provision for the laundering of patient clothing.

10 (7) Patients have the right to keep and be allowed to
 11 spend a reasonable sum of their own money.

12 (8) Patients have the right to religious worship.
 13 Provisions for such worship shall be made available to all
 14 patients on a nondiscriminatory basis. No individual shall
 15 be required to engage in any religious activities.

16 (9) Patients have a right to regular physical exercise
 17 several times a week. Moreover, it shall be the duty of the
 18 facility to provide facilities and equipment for such
 19 exercise. Patients have a right to be outdoors at regular
 20 and frequent intervals in the absence of contrary medical
 21 considerations.

22 (10) Patients have the right to be provided, with
 23 adequate supervision, suitable opportunities for interaction
 24 with members of the opposite sex except to the extent that a
 25 professional person in charge of the patient's treatment

1 plan writes an order stating that such interaction is
 2 inappropriate to the treatment regimen.

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

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

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

25 (a) regular housekeeping and maintenance procedures

1 which will ensure that the facility is maintained in a safe,
2 clean, and attractive condition shall be developed and
3 implemented;

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

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

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

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

23 (a) to be informed of the rights described in this
24 section at the time of his admission and periodically
25 thereafter, in language and terms appropriate to the

1 patient's condition and ability to understand;

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

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

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

15 (a) the patient;

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

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

22 (16) A person admitted to a facility shall have access
23 to any available individual or service that provides
24 advocacy for the protection of the person's rights and that
25 assist the person in understanding, exercising and

1 protecting his rights as described in this section.

2 (17) This section may not:

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

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

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

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

16 **Section 4.** Section 53-21-144, MCA, is amended to read:

17 **"53-21-144. Rights concerning photographs.** (1) A person
18 admitted to a mental health facility may be photographed
19 upon admission for identification and the administrative
20 purposes of the facility. Such photographs shall be
21 confidential and shall not be released by the facility
22 except pursuant to court order.

23 (2) No other nonmedical photographs shall be taken or
24 used without consent of the patient or, if applicable, the
25 patient's legal guardian ~~or--the--friend--of---respondent~~

1 ~~appointed-by-the-court."~~

2 **Section 5.** Section 53-21-146, MCA, is amended to read:

3 **"53-21-146. Right to be free from physical restraint**
4 **and isolation.** Patients have a right to be free from
5 physical restraint and isolation. Except for emergency
6 situations in which it is likely that patients could harm
7 themselves or others and in which less restrictive means of
8 restraint are not feasible, patients may be physically
9 restrained or placed in isolation only on a professional
10 person's written order which explains the rationale for such
11 action. The written order may be entered only after the
12 professional person has personally seen the patient
13 concerned and evaluated whatever episode or situation is
14 said to call for restraint or isolation. Emergency use of
15 restraints or isolation shall be for no more than 1 hour, by
16 which time a professional person shall have been consulted
17 and shall have entered an appropriate order in writing. Such
18 written order shall be effective for no more than 24 hours
19 and must be renewed if restraint and isolation are to be
20 continued. Whenever a patient is subject to restraint or
21 isolation, adequate care shall be taken to monitor his
22 physical and psychiatric condition and to provide for his
23 physical needs and comfort. Physical restraint may not be
24 used as punishment, for the convenience of the staff, or as
25 a substitute for a treatment program."

1 **Section 6.** Section 53-21-147, MCA, is amended to read:

2 "53-21-147. Right not to be subjected to experimental
3 research. (1) Patients shall have a right not to be
4 subjected to experimental research without the express and
5 informed consent of the patient, if the patient is able to
6 give such consent, and of his guardian, if any, and the
7 friend of respondent appointed by the court after
8 opportunities for consultation with independent specialists
9 and with legal counsel. If there is no friend of respondent
10 or if the friend of respondent appointed by the court is no
11 longer available, then a friend of respondent who is in no
12 way connected with the facility, the department, or the
13 research project shall be appointed prior to the involvement
14 of the patient in any experimental research. At least 10
15 days prior to the commencement of such experimental
16 research, the facility shall send notice of intent to
17 involve the patient in experimental research to the patient,
18 his next of kin, if known, his legal guardian, if any, the
19 attorney who most recently represented him, and the friend
20 of respondent appointed by the court.

21 (2) Such proposed research shall first have been
22 reviewed and approved by the mental disabilities board of
23 visitors before such consent shall be sought. Prior to such
24 approval, the board shall determine that such research
25 complies with the principles of the statement on the use of

1 human subjects for research of the American association on
2 mental deficiency and with the principles for research
3 involving human subjects required by the United States
4 department of health, education, and welfare for projects
5 supported by that agency.

6 (3) A patient has the right to appropriate protection
7 before participating in an experimental treatment, including
8 the right to a reasonable explanation of the procedure to be
9 followed, expected benefits, relative advantages, and the
10 potential risks and discomforts of any experimental
11 treatment. A patient has the right to revoke at any time
12 consent to an experimental treatment."

13 **Section 7.** Section 53-21-162, MCA, is amended to read:

14 "53-21-162. Establishment of patient treatment plan --
15 patient's rights. (1) Each patient admitted as an inpatient
16 to a mental health facility shall have a comprehensive
17 physical and mental examination and review of behavioral
18 status within 48 hours after admission to the mental health
19 facility.

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

25 (a) a statement of the nature of the specific problems

1 and specific needs of the patient;

2 (b) a statement of the least restrictive treatment
3 conditions necessary to achieve the purposes of commitment;

4 (c) a description of intermediate and long-range
5 treatment goals, with a projected timetable for their
6 attainment;

7 (d) a statement and rationale for the plan of treatment
8 for achieving these intermediate and long-range goals;

9 (e) a specification of staff responsibility and a
10 description of proposed staff involvement with the patient
11 in order to attain these treatment goals;

12 (f) criteria for release to less restrictive treatment
13 conditions and criteria for discharge; and

14 (g) a notation of any therapeutic tasks and labor to be
15 performed by the patient.

16 (3) As part of his treatment plan, each patient shall
17 have an individualized after-care plan. This plan shall be
18 developed by a professional person as soon as practicable
19 after the patient's admission to the facility.

20 (4) In the interests of continuity of care, whenever
21 possible one professional person (who need not have been
22 involved with the development of the treatment plan) shall
23 be responsible for supervising the implementation of the
24 treatment plan, integrating the various aspects of the
25 treatment program, and recording the patient's progress.

1 This professional person shall also be responsible for
2 ensuring that the patient is released, where appropriate,
3 into a less restrictive form of treatment.

4 (5) The treatment plan shall be continuously reviewed
5 by the professional person responsible for supervising the
6 implementation of the plan and shall be modified if
7 necessary. Moreover, at least every 90 days each patient
8 shall receive a mental examination from and his treatment
9 plan shall be reviewed by a professional person other than
10 the professional person responsible for supervising the
11 implementation of the plan.

12 (6) A patient has the right:

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

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

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

23 (ii) the objectives of treatment;

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

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

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

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

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

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

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

17 (7) IN THE CASE OF A PATIENT WHO LACKS THE CAPACITY TO
 18 EXERCISE THE RIGHT TO CONSENT TO TREATMENT DESCRIBED IN
 19 SUBSECTION (6)(C), THE RIGHT MUST BE EXERCISED ON BEHALF OF
 20 THE PATIENT BY A GUARDIAN APPOINTED PURSUANT TO THE
 21 PROVISIONS OF TITLE 72, CHAPTER 5.

22 (8) THE DEPARTMENT SHALL DEVELOP PROCEDURES FOR
 23 INITIATING LIMITED GUARDIANSHIP PROCEEDINGS IN THE CASE OF A
 24 PATIENT WHO APPEARS TO LACK THE CAPACITY TO EXERCISE THE
 25 RIGHT TO CONSENT DESCRIBED IN SUBSECTION (6)(C)."

1 **Section 8.** Section 53-21-166, MCA, is amended to read:

2 **"53-21-166. Records to be confidential -- exceptions.**

3 All information obtained and records prepared in the course
 4 of providing any services under this part to individuals
 5 under any provision of this part shall be confidential and
 6 privileged matter and shall remain confidential and
 7 privileged after the individual is discharged from the
 8 facility. Except as provided in Title 50, chapter 16, part
 9 5, information and records may be disclosed only:

10 (1) in communications between qualified professionals
 11 in the provision of services or appropriate referrals;

12 (2) when the recipient of services designates persons
 13 to whom information or records may be released, provided
 14 that if a recipient of services is a ward and his guardian
 15 or conservator designates in writing persons to whom records
 16 or information may be disclosed, such designation shall be
 17 valid in lieu of the designation by the recipient; except
 18 that nothing in this section shall be construed to compel a
 19 physician, psychologist, social worker, nurse, attorney, or
 20 other professional person to reveal information which has
 21 been given to him in confidence by members of a patient's
 22 family;

23 (3) to the extent necessary to make claims on behalf of
 24 a recipient of aid, insurance, or medical assistance to
 25 which he may be entitled;

1 (4) for research if the department has promulgated
2 rules for the conduct of research; such rules shall include
3 but not be limited to the requirement that all researchers
4 must sign an oath of confidentiality;

5 (5) to the courts as necessary to the administration of
6 justice;

7 (6) to persons authorized by an order of court, after
8 notice and opportunity for hearing to the person to whom the
9 record or information pertains and the custodian of the
10 record or information pursuant to the rules of civil
11 procedure;

12 (7) to members of the mental disabilities board of
13 visitors or their agents when necessary to perform their
14 functions as set out in 53-21-104."

15 **Section 9.** Section 53-21-181, MCA, is amended to read:

16 **"53-21-181.** Discharge during or at end of initial
17 commitment period -- patient's right to referral. (1) At
18 any time within the 3-month period provided for in
19 53-21-127(2), the patient may be discharged on the written
20 order of the professional person in charge of him. In the
21 event the patient is not discharged within the 3-month
22 period and if the term is not extended as provided for in
23 53-21-128, he shall be discharged by the facility at the end
24 of 3 months without further order of the court. Notice of
25 the discharge shall be filed with the court and the county

1 attorney at least 5 days prior to the discharge.

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

5 NEW SECTION. SECTION 10. REPORT TO LEGISLATURE. THE
6 DEPARTMENT OF INSTITUTIONS SHALL SUBMIT A REPORT TO THE 53RD
7 LEGISLATURE CONCERNING IMPLEMENTATION OF [SECTION 7(6)(C)
8 THROUGH (8)].

9 NEW SECTION. Section 11. Codification instruction.
10 [Section 1] is intended to be codified as an integral part
11 of Title 53, chapter 21, and the provisions of Title 53,
12 chapter 21, apply to [section 1].

-End-