

SENATE BILL 410

Introduced by Doherty

2/16	Fiscal Note Requested
2/16	Introduced
2/16	Referred to Judiciary
2/16	First Reading
2/22	Hearing
2/23	Fiscal Note Requested
2/23	Tabled in Committee

1 *Senate* BILL NO. 410
2 INTRODUCED BY *D. Healy*
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE
5 LAWS RELATING TO THE TREATMENT OF CHEMICALLY DEPENDENT AND
6 INTOXICATED PERSONS; AMENDING SECTIONS 7-32-2144, 53-24-103,
7 53-24-107, AND 53-24-207, MCA; AND REPEALING SECTIONS
8 53-24-301, 53-24-302, 53-24-303, 53-24-304, 53-24-305, AND
9 53-24-306, MCA."

10
11 STATEMENT OF INTENT

12 A statement of intent is required for this bill because
13 [section 6] grants rulemaking authority to the department of
14 institutions relating to certification of professional
15 persons, [section 9] grants rulemaking authority to the
16 department of institutions relating to voluntary admissions,
17 and [section 40] grants rulemaking authority to the
18 department of health and environmental sciences relating to
19 physician review of drug regimens of patients in public and
20 private facilities.

21 It is the intent of the legislature that the department
22 of institutions adopt rules imposing requirements for
23 certification of professional persons in the field of the
24 treatment of alcoholism and drug dependence. The department
25 is required to adopt such rules, and it is intended that

1 they address the provisions of [section 6].

2 The legislature contemplates that the department of
3 institutions' rules relating to required confirmation that
4 adequate treatment and evaluation are unavailable in the
5 community as provided in [section 9] will define the
6 confirmation process in such a way as to provide adequate
7 screening of voluntary admissions to the state hospital
8 without creating an undue delay in meeting the needs of the
9 patients.

10 It is the intent of the legislature that the rules
11 adopted by the department of health and environmental
12 sciences under [section 40] govern attending physician
13 review of the drug regimen of each patient.

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

16 **Section 1.** Section 53-24-103, MCA, is amended to read:

17 "53-24-103. Definitions. For purposes of this chapter,
18 the following definitions apply:

- 19 (1) "Alcoholic" means a person who has a chronic
20 illness or disorder of behavior characterized by repeated
21 drinking of alcoholic beverages to the extent that it
22 endangers the health, interpersonal relationships, or
23 economic function of the individual or public health,
24 welfare, or safety.

- 25 (2) "Approved private treatment facility" means a



INTRODUCED BILL
SB 410

1 private agency (whose function is the treatment,
2 rehabilitation, and prevention of chemical dependency) and
3 meeting the standards prescribed in 53-24-208(1) and
4 approved under 53-24-208.

5 (3) "Approved public treatment facility" means:

6 (a) a treatment agency operating under the direction
7 and control of the department as a state agency and approved
8 under 53-24-208; or

9 (b) a treatment agency operating under the direction
10 and control of a local government and approved under
11 53-24-208.

12 (4) "Board" means the mental disabilities board of
13 visitors created by 2-15-211.

14 (4)(5) "Chemical dependency" means ~~the use of any~~
15 ~~chemical substance, legal or illegal, which creates~~
16 ~~behavioral or health problems, or both, resulting in~~
17 operational impairment any organic, mental, or emotional
18 impairment that is chemically induced through the habitual
19 and excessive use of alcohol or drugs, legal or illegal, and
20 that has substantial adverse effects on an individual's
21 cognitive or volitional functions. This term includes
22 alcoholism, drug dependency, or both, that endanger the
23 health, interpersonal relationships, or economic functions
24 of an individual or the public health, welfare, or safety.

25 (6) "Chemically dependent" means suffering from a

1 chemical dependency that has not resulted in self-inflicted
2 injury or injury to others or the imminent threat of injury
3 but that:

4 (a) has resulted in behavior that creates serious
5 difficulty in protecting the person's life or health even
6 with the available assistance of family, friends, or others;

7 (b) is treatable, with a reasonable prospect of success
8 and consistent with the least restrictive course of
9 treatment as provided in [section 25(3)], at or through the
10 facility to which the person is to be committed;

11 (c) has deprived the person of the capacity to make an
12 informed decision concerning treatment;

13 (d) has resulted in the person's refusing or being
14 unable to consent to voluntary admission for treatment; and

15 (e) poses a significant risk of the person's becoming
16 seriously chemically dependent, within the meaning of this
17 section, or will, if untreated, predictably result in
18 further serious deterioration in the mental condition of the
19 person. Predictability may be established by the patient's
20 medical history.

21 (7) "Court" means any district court of the state of
22 Montana.

23 (5)(8) "Department" means the department of
24 institutions provided for in 2-15-2301.

25 (9) "Emergency situation" means a situation in which

1 any person is in imminent danger of death or serious bodily
 2 harm from the activity of a person who appears to be
 3 seriously chemically dependent.

4 (6)(10) "Family member" or "next of kin" is the spouse,
 5 mother, father, child, or member of the household of a
 6 chemically dependent person or seriously chemically
 7 dependent person whose life has been affected by the actions
 8 of the chemically dependent person or seriously chemically
 9 dependent person and who may require treatment.

10 (11) "Friend of respondent" means any person willing and
 11 able to assist a chemically dependent person, a person
 12 alleged to be chemically dependent, a seriously chemically
 13 dependent person, or a person alleged to be seriously
 14 chemically dependent in dealing with legal proceedings,
 15 including consultation with legal counsel and others. The
 16 friend of respondent may be the next of kin, the person's
 17 conservator or legal guardian, if any, a representative of a
 18 charitable or religious organization, or any other person
 19 appointed by the court to perform the functions of a friend
 20 of respondent set out in this chapter. Only one person may
 21 at any one time be the friend of respondent within the
 22 meaning of this chapter. In appointing a friend of
 23 respondent, the court shall consider the preference of the
 24 respondent. The court may at any time, for good cause shown,
 25 change its designation of the friend of respondent.

1 (7)(12) "Incapacitated by alcohol or another chemical"
 2 means that a person, as a result of the use of alcohol or
 3 another chemical, is unconscious or has his judgment
 4 otherwise so impaired that he is incapable of realizing and
 5 making a rational decision with respect to his need for
 6 treatment.

7 ~~(8) "Incompetent person" means a person who has been~~
 8 ~~adjudged incompetent by the district court.~~

9 (9)(13) "Intoxicated person" means a person whose mental
 10 or physical functioning is substantially impaired as a
 11 result of the use of alcohol.

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

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

17 (10)(16) "Prevention" has meaning on four levels; these
 18 are:

19 (a) education to provide information to the school
 20 children and general public relating to chemical dependency
 21 treatment and rehabilitative services and to reduce the
 22 consequences of life experiences acquired by contact with a
 23 chemically dependent person;

24 (b) early detection and recovery from the illness
 25 before lasting emotional or physical damage, or both, have

1 occurred;

2 (c) if lasting emotional or physical damage, or both,
3 have occurred, to arrest the illness before full disability
4 has been reached;

5 (d) the provision of facility requirements to meet
6 division program standards and improve public accessibility
7 for services.

8 (17) "Professional person" means:

9 (a) a medical doctor; or

10 (b) a person who has been certified, as provided for in
11 [section 6], by the department.

12 (18) "Reasonable medical certainty" means reasonable
13 certainty as judged by the standards of a professional
14 person.

15 (19) "Respondent" means a person alleged in a petition
16 filed pursuant to this chapter to be chemically dependent or
17 seriously chemically dependent.

18 (20) "Seriously chemically dependent" means suffering
19 from a chemical dependency that has resulted in
20 self-inflicted injury or injury to others or the imminent
21 threat of injury or that has deprived the person afflicted
22 of the ability to protect his life or health. For this
23 purpose, injury means physical injury. A person may not be
24 involuntarily committed to an approved public or private
25 facility or detained for evaluation and treatment because he

1 is an epileptic or is mentally deficient, mentally retarded,
2 senile, or suffering from a mental disorder unless the
3 condition causes him to be seriously chemically dependent
4 within the meaning of this chapter.

5 (21) "State hospital" means the Montana state hospital
6 at Galen.

7 ~~†††~~(22) "Treatment" means the broad range of emergency,
8 outpatient, intermediate, and inpatient services and care,
9 including diagnostic evaluation, medical, psychiatric,
10 psychological, and social service care, vocational
11 rehabilitation, and career counseling, which may be extended
12 to chemically dependent persons, intoxicated persons, and
13 family members."

14 NEW SECTION. Section 2. Purpose. The purpose of this
15 part is to:

16 (1) secure for each person who may be chemically
17 dependent or seriously chemically dependent care and
18 treatment suited to the needs of the person and to ensure
19 that the care and treatment are skillfully and humanely
20 administered with full respect for the person's dignity and
21 personal integrity;

22 (2) accomplish this goal whenever possible in a
23 community-based setting;

24 (3) accomplish this goal in an institutionalized
25 setting only when less restrictive alternatives are

1 unavailable or inadequate and only when a person is so
 2 chemically dependent as to require institutionalized care;
 3 and

4 (4) ensure that due process of law is accorded any
 5 person coming under the provisions of this part.

6 NEW SECTION. Section 3. Court records to be kept
 7 separate. Records and papers in proceedings under this part
 8 must be maintained separately by the clerk of the court.
 9 Five days prior to the release of a respondent or patient
 10 committed to an approved public or private facility, the
 11 facility shall notify the clerk of the court, and the clerk
 12 shall immediately seal the record in the case and omit the
 13 name of the respondent or patient from the index or indexes
 14 of cases in the court unless the court orders the record
 15 opened for good cause shown.

16 NEW SECTION. Section 4. Powers and duties of mental
 17 disabilities board of visitors. (1) The board is an
 18 independent board of inquiry and review whose purpose is to
 19 ensure that the treatment of all persons either voluntarily
 20 or involuntarily admitted to an approved public or private
 21 facility is humane and decent and meets the requirements set
 22 forth in this part.

23 (2) The board shall review all plans for experimental
 24 research involving persons admitted to an approved public or
 25 private facility to ensure that the research project is

1 humane and not unduly hazardous and that it complies with
 2 the principles of professionally accepted national standards
 3 on the use of human subjects for research and with the
 4 principles for research involving human subjects required by
 5 the United States department of health and human services.
 6 An experimental research project involving persons admitted
 7 to an approved public or private facility affected by this
 8 part may not be commenced unless it is approved by the
 9 board.

10 (3) The board shall at least annually inspect every
 11 approved public or private facility that is providing
 12 treatment and evaluation to any person pursuant to this
 13 part. The board shall inspect the physical plant, including
 14 residential, recreational, dining, and sanitary facilities.
 15 It shall visit all wards and treatment areas. The board
 16 shall inquire concerning all treatment programs being
 17 implemented by the facility.

18 (4) The board shall annually ensure that a treatment
 19 plan exists and is being implemented for each patient
 20 admitted or committed to an approved public or private
 21 facility under this part. The board shall inquire concerning
 22 all use of restraints, isolation, or other extraordinary
 23 measures.

24 (5) The board may assist any patient at an approved
 25 public or private facility in resolving any grievance he may

1 have concerning his commitment or his course of treatment in
2 the facility.

3 (6) The board shall employ and be responsible for
4 full-time legal counsel at the state hospital, whose
5 responsibility is to act on behalf of all patients at the
6 institution. The board shall ensure that there are
7 sufficient legal staff and facilities to ensure availability
8 to all patients and shall require that the appointed counsel
9 periodically interview every patient and examine his files
10 and records. The board may employ additional legal counsel
11 for representation of patients in a similar manner at any
12 other approved public or private facility having inpatient
13 capability.

14 (7) If the board believes that a facility is failing to
15 comply with the provisions of this part in regard to its
16 physical facilities or its treatment of any patient, it
17 shall report its findings at once to the professional person
18 in charge of the facility and the director of the
19 department, and if appropriate, after waiting a reasonable
20 time for a response from the professional person, the board
21 may notify the next of kin or guardian of any patient
22 involved, the friend of respondent appointed by the court
23 for any patient involved, and the court that has
24 jurisdiction over the facility.

25 (8) The board shall report annually to the governor and

1 shall report to each session of the legislature concerning
2 the status of approved public or private facilities and
3 treatment programs that it has inspected.

4 NEW SECTION. **Section 5.** Certification of professional
5 persons required. A person may not act in a professional
6 capacity as provided for in this part unless he is a
7 professional person as defined in 53-24-103.

8 NEW SECTION. **Section 6.** Certification of professional
9 persons -- rules. (1) The department shall certify
10 professional persons as defined in 53-24-103 for the purpose
11 of this part.

12 (2) The department, with reference to recognized
13 national standards in the field of chemical dependency and
14 mental illness, shall adopt standards and rules governing
15 the certification of professional persons.

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

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

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

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

24 (d) an examination instrument to be used to determine
25 an individual's proficiency and understanding of chemical

1 dependency laws, diagnosis, and treatment procedures;

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

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

7 **NEW SECTION. Section 7. Treatment and services for**
8 **intoxicated persons and persons incapacitated by alcohol or**
9 **another chemical.** (1) An intoxicated person may come
10 voluntarily to an approved public treatment facility for
11 emergency treatment. A person who appears to be intoxicated
12 in a public place and to be in need of help, if he consents
13 to the proffered help, may be assisted to his home, an
14 approved public treatment facility, an approved private
15 treatment facility, or other health facility by a peace
16 officer.

17 (2) A person who appears to be incapacitated by alcohol
18 or another chemical must be taken into protective custody by
19 a peace officer and immediately brought to an approved
20 public treatment facility for emergency treatment. If an
21 approved public treatment facility is not readily available,
22 he must be taken to an emergency medical service customarily
23 used for incapacitated persons. The peace officer, in
24 detaining the person and in taking him to an approved public
25 treatment facility or emergency medical service, is taking

1 him into protective custody and shall make every reasonable
2 effort to protect his health and safety. In taking the
3 person into protective custody, the detaining officer may
4 take reasonable steps to protect himself. An entry or other
5 record may not be made to indicate that the person taken
6 into custody under this section has been arrested or charged
7 with a crime.

8 (3) A person who comes voluntarily or is brought to an
9 approved public treatment facility must be examined by a
10 licensed physician as soon as possible. He may then be
11 admitted as a patient or referred to another health
12 facility. The referring approved public treatment facility
13 shall arrange for his transportation.

14 (4) A person who by medical examination is found to be
15 incapacitated by alcohol or another chemical at the time of
16 his admission or to have become incapacitated at any time
17 after his admission may not be detained at the facility once
18 he is no longer incapacitated by alcohol or another chemical
19 or, if he remains incapacitated by alcohol or another
20 chemical, for more than 48 hours after admission as a
21 patient unless he is committed under [section 8]. A person
22 may consent to remain in the facility as long as the
23 physician in charge believes it appropriate.

24 (5) A person who is not admitted to an approved public
25 treatment facility and is not referred to another health

1 facility may be taken to his home. If he does not have a
2 home, the approved public treatment facility shall assist
3 him in obtaining shelter.

4 (6) If a patient is admitted to an approved public
5 treatment facility, his family or next of kin may be
6 notified if the patient consents to notification.

7 NEW SECTION. Section 8. Emergency commitment of
8 intoxicated persons and persons incapacitated by alcohol or
9 another chemical. (1) An intoxicated person who has
10 threatened, attempted, or inflicted physical harm on another
11 and who is likely to inflict physical harm on another unless
12 committed or a person who is incapacitated by alcohol or
13 another chemical may be committed to an approved public
14 treatment facility for emergency treatment. A refusal to
15 undergo treatment does not constitute evidence of lack of
16 judgment as to the need for treatment.

17 (2) A physician, guardian, or next of kin of the person
18 to be committed or any other responsible person may make a
19 written application for commitment under this section
20 directed to the administrator of the approved public
21 treatment facility. The application must state facts to
22 support the need for emergency treatment and be accompanied
23 by a physician's certificate stating that he has examined
24 the person sought to be committed within 2 days before the
25 certificate's date as well as the facts supporting the need

1 for emergency treatment. A physician employed by the
2 admitting facility or the department is not eligible to be
3 the certifying physician.

4 (3) Upon approval of the application by the
5 administrator of the approved public treatment facility, the
6 person must be brought to the facility by a peace officer, a
7 health officer, the applicant for commitment, the patient's
8 next of kin, the patient's guardian, or any other interested
9 person. The person must be detained at the facility to which
10 he was admitted or must be transferred to another
11 appropriate public or private treatment facility until he is
12 discharged under subsection (5).

13 (4) The administrator of an approved public treatment
14 facility shall refuse an application if in his opinion the
15 application and certificate fail to sustain the grounds for
16 commitment.

17 (5) When on the advice of the medical staff the
18 administrator determines that the grounds for commitment no
19 longer exist, he shall discharge a person committed under
20 this section. A person committed under this section may not
21 be detained in a treatment facility for more than 5 days. If
22 a petition for involuntary commitment under [section 20] has
23 been filed within the 5 days and the administrator in charge
24 of an approved public treatment facility finds that grounds
25 for emergency commitment still exist, he may detain the

1 person until the petition has been heard and determined, but
2 no longer than 10 days after filing the petition.

3 (6) A copy of the written application for commitment
4 and of the physician's certificate and a written explanation
5 of the person's right to counsel must be given to the person
6 by the department within 24 hours after commitment. The
7 department shall provide a reasonable opportunity for the
8 person to consult counsel.

9 NEW SECTION. **Section 9. Voluntary admission -- rules.**

10 (1) This part may not be construed in any way as limiting
11 the right of a person to make voluntary application at any
12 time to an approved public or private facility or
13 professional person for admission to the facility. An
14 application for admission to an approved public or private
15 facility must be in writing on a form prescribed by the
16 facility and approved by the department. It is not valid
17 unless it is approved by a professional person and a copy is
18 given to the person voluntarily admitting himself. A
19 statement of the rights of the person voluntarily applying
20 for admission, as set out in this part, including the right
21 to release, must be furnished to the patient within 12
22 hours.

23 (2) An applicant who wishes to voluntarily apply for
24 admission to the state hospital shall first obtain
25 certification from a professional person that the applicant

1 is suffering from a chemical dependency. The professional
2 person shall obtain confirmation from an approved public or
3 private facility that the facilities available in the region
4 in which the applicant resides are unable to provide
5 adequate evaluation and treatment. The department shall
6 adopt rules to establish a procedure whereby a professional
7 person shall obtain the confirmation from an approved public
8 or private facility as required in this section.

9 (3) An application for voluntary admission must give
10 the facility the right to detain the applicant for no more
11 than 5 days, excluding weekends and holidays, past his
12 written request for release. An approved public or private
13 facility may adopt rules providing for detention of the
14 applicant for less than 5 days. The facility shall notify
15 all applicants of the rules and post the rules as provided
16 in [section 50].

17 (4) A person voluntarily entering or remaining in an
18 approved public or private facility shall enjoy all the
19 rights secured to a person involuntarily committed to the
20 facility.

21 NEW SECTION. **Section 10. Voluntary admission of**
22 **minors.** (1) Notwithstanding any other provision of law, a
23 minor who is 16 years of age or older may consent to receive
24 chemical dependency services to be rendered by:

25 (a) a facility that is not a state institution; or

1 (b) a person licensed to practice medicine, psychology,
2 or chemical dependency treatment in this state.

3 (2) Except as provided by this section, the provisions
4 of [section 9] apply to the voluntary admission of a minor
5 to an approved public or private facility but not to the
6 state hospital.

7 (3) Except as provided by this subsection, voluntary
8 admission of a minor to an approved public or private
9 facility for an inpatient course of treatment must be for
10 the same period of time as that for an adult. A minor
11 voluntarily admitted has the right to be released within 5
12 days of his request as provided in [section 9(3)]. The minor
13 may make the request. Unless there has been a periodic
14 review and a voluntary readmission consented to by the minor
15 and his counsel, voluntary admission terminates at the
16 expiration of 40 days. Counsel must be appointed for the
17 minor at the minor's request or at any time he is faced with
18 potential legal proceedings.

19 (4) If, in any application for voluntary admission for
20 any period of time to an approved public or private
21 facility, a minor fails to join in the consent of his
22 parents or guardian to the voluntary admission, then the
23 application for admission must be treated as a petition for
24 involuntary commitment. Notice of the substance of this
25 subsection and of the right to counsel must be set forth in

1 conspicuous type in a conspicuous location on any form or
2 application used for the voluntary admission of a minor to
3 an approved public or private facility. The notice must be
4 explained to the minor.

5 NEW SECTION. **Section 11. Costs of committing a patient**
6 **already voluntarily admitted -- transportation costs for**
7 **voluntary admission.** (1) The cost of involuntarily
8 committing a patient who is voluntarily admitted to an
9 approved public or private facility at the time the
10 involuntary proceedings are commenced must be borne by the
11 county of the patient's residence at the time of admission.

12 (2) The costs of transportation to an approved public
13 or private facility under [sections 9 and 10] must be
14 provided by the welfare department of the county of the
15 patient's residence. However, if protective proceedings
16 under Title 72, chapter 5, have been or are initiated with
17 respect to the person, the welfare department may seek
18 reimbursement. If no one else is available to transport him,
19 the sheriff shall transport the person.

20 NEW SECTION. **Section 12. Notice of rights to be given.**
21 (1) Whenever a person is involuntarily detained or is
22 examined pursuant to [sections 19 through 24], the person
23 shall at the time of detention or examination be informed of
24 his constitutional rights and his rights under this part.
25 Within 3 days of detention or examination, he must also be

1 informed in writing by the county attorney of those rights.

2 (2) Every respondent subject to an order for short-term
3 treatment or long-term care and treatment must be advised in
4 writing of his right to appeal the order by the court at the
5 conclusion of any hearing that may result in an order for
6 treatment.

7 NEW SECTION. Section 13. Procedural rights. In
8 addition to any other rights that may be guaranteed by the
9 constitutions of the United States and of this state, by the
10 laws of this state, or by this part, a person who is
11 involuntarily detained or against whom a petition is filed
12 pursuant to this part has the following rights:

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

15 (2) the right to know, in advance of a hearing, the
16 names and addresses of witnesses who will testify in support
17 of the petition;

18 (3) the right in a hearing to be present, to offer
19 evidence, and to present witnesses in a proceeding
20 concerning him;

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

22 (5) the right to be represented by counsel;

23 (6) the right to remain silent;

24 (7) the right in a hearing to be proceeded against
25 according to the rules of evidence applicable to civil

1 matters generally;

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

4 (9) the right to be examined by a professional person
5 of his choice when the professional person is willing and
6 reasonably available;

7 (10) the right to be dressed in his own clothes at any
8 hearing held pursuant to this part; and

9 (11) the right to refuse any but lifesaving medication
10 for up to 24 hours prior to a hearing held pursuant to this
11 part.

12 NEW SECTION. Section 14. Right to be present at
13 hearing or trial -- appointment of counsel. The person
14 alleged to be chemically dependent or seriously chemically
15 dependent has the right to be present at a hearing or trial.
16 If he does not have counsel, the judge shall appoint counsel
17 to represent him at the hearing, the trial, or both. The
18 attorney must be compensated from the public funds of the
19 county where the respondent resides.

20 NEW SECTION. Section 15. Right to representation by
21 own counsel. The respondent or the friend of respondent
22 appointed by the court may secure counsel of his own choice
23 and at his own expense to represent the respondent.

24 NEW SECTION. Section 16. Right to examination by
25 professional person of own choice. (1) The respondent, his

1 counsel, or the friend of respondent appointed by the court
2 may secure a professional person of his own choice to
3 examine the respondent and to testify at the hearing before
4 the court or jury as to the results of the examination.

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

15 NEW SECTION. Section 17. Waiver of rights. (1) A
16 person may waive his rights, or if the person is not capable
17 of making an intentional and knowing decision, these rights
18 may be waived by his counsel and the friend of respondent
19 acting together if a record is made of the reasons for the
20 waiver. The right to counsel may not be waived. The right to
21 treatment provided for in this part may not be waived.

22 (2) The right of the respondent to be physically
23 present at a hearing may also be waived by his counsel and
24 the friend of respondent with the concurrence of the
25 professional person and the judge upon a finding supported

1 by facts that:

2 (a) the presence of the respondent at the hearing would
3 be likely to seriously adversely affect his mental
4 condition; and

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

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

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

16 NEW SECTION. Section 18. Detention to be in least
17 restrictive environment -- preference for approved public or
18 private facility -- court relief -- prehearing detention of
19 chemically dependent person prohibited. (1) A person
20 detained pursuant to this part must be detained in the least
21 restrictive environment required to protect the life and
22 physical safety of the person detained or members of the
23 public. Prevention of significant injury to property may be
24 considered.

25 (2) Whenever possible, a person detained pursuant to

1 this part must be detained in an approved public or private
 2 facility and in the county of residence. If the person
 3 detained demands a jury trial and trial cannot be held
 4 within 7 days, the individual may be sent to the state
 5 hospital until the time of trial if arrangements can be made
 6 to return him for trial. The trial must be held within 30
 7 days. The county of residence shall pay the cost of travel
 8 and professional services associated with the trial. A
 9 person may not be detained in any hospital or other medical
 10 facility that is not an approved public or private facility
 11 unless the hospital or facility has agreed in writing to
 12 admit the person.

13 (3) A person may be detained in a jail or other
 14 correctional facility only if an approved public or private
 15 facility is not available or if the available approved
 16 public or private facilities are inadequate to protect the
 17 person detained and the public. As soon as an approved
 18 public or private facility becomes available or the
 19 situation has changed sufficiently that an available
 20 approved public or private facility is adequate for the
 21 protection of the person detained and the public, the
 22 detained person must be transferred from the jail or
 23 correctional facility to the approved public or private
 24 facility.

25 (4) A person detained prior to involuntary commitment

1 may apply to the court for immediate relief with respect to
 2 the need for detention or the adequacy of the facility being
 3 utilized to detain him.

4 (5) A detention may not be ordered under this part for
 5 a person concerning whom a petition has been filed under
 6 [section 19(1)(b)].

7 (6) A person may not be involuntarily committed to an
 8 approved public or private facility or detained for
 9 evaluation and treatment because he is an epileptic,
 10 mentally deficient, mentally retarded, senile, or suffering
 11 from a mental disorder unless the condition causes him to be
 12 seriously chemically dependent within the meaning of this
 13 part.

14 NEW SECTION. Section 19. Petition for commitment --
 15 contents -- notice. (1) The county attorney, upon the
 16 written request of any person having direct knowledge of the
 17 facts, may file a petition with the court:

18 (a) alleging that there is a person within the county
 19 who is seriously chemically dependent and requesting that
 20 the person be committed to an approved public or private
 21 facility for a period of not more than 40 days; or

22 (b) alleging that there is a person within the county
 23 who is chemically dependent and requesting that the person
 24 be committed to an approved public or private facility for a
 25 period of not more than 40 days.

- 1 (2) The petition must contain:
- 2 (a) the name and address of the person requesting the
- 3 petition and his interest in the case;
- 4 (b) the name of the respondent and, if known, the
- 5 address, age, sex, marital status, and occupation of the
- 6 respondent;
- 7 (c) the purported facts supporting the allegation of
- 8 chemical dependency;
- 9 (d) the name and address of every person known or
- 10 believed to be legally responsible for the care, support,
- 11 and maintenance of the person for whom evaluation is sought;
- 12 (e) the name and address of the person's next of kin to
- 13 the extent known to the county attorney and the person
- 14 requesting the petition;
- 15 (f) the name and address of any person whom the county
- 16 attorney believes might be willing and able to be appointed
- 17 as a friend of respondent;
- 18 (g) the name, address, and telephone number of the
- 19 counsel, if any, who has most recently represented the
- 20 person for whom evaluation is sought; if there is no
- 21 counsel, there must be a statement as to whether to the best
- 22 knowledge of the person requesting the petition the person
- 23 for whom evaluation is sought is indigent and therefore
- 24 unable to afford the services of counsel; and
- 25 (h) a statement of the rights of the respondent, which

2 must be in conspicuous print and identified by a suitable

3 heading.

3 (3) Notice of the petition must be hand-delivered to

4 the respondent and to his counsel on or before the initial

5 appearance of the respondent before the judge or justice of

6 the peace. Notice of the petition and the order setting the

7 date and time of the hearing and the names of the

8 respondent's counsel, professional person, and friend of

9 respondent must be hand-delivered or mailed to the person or

10 persons legally responsible for care, support, and

11 maintenance of the respondent; the next of kin identified in

12 the petition; and any other person identified by the county

13 attorney as a possible friend of respondent other than the

14 one named as the friend of respondent. The notice may

15 provide, other than as to the respondent and his counsel,

16 that further notice will not be given unless a written

17 request is filed with the clerk of court.

18 NEW SECTION. **Section 20. Petition for commitment --**

19 **filing of -- initial hearing on.** (1) The petition must be

20 filed with the clerk of court who shall immediately notify

21 the judge.

22 (2) (a) If a judge is available, he shall consider the

23 petition, and if he does not find probable cause, it must be

24 dismissed.

25 (b) (1) If the judge finds probable cause, counsel must

1 be immediately appointed for the respondent, and the
 2 respondent must be brought immediately before the court with
 3 his counsel. The respondent must be advised of his
 4 constitutional rights, his rights under this part, and the
 5 substantive effect of the petition. The respondent may at
 6 this appearance object to the finding of probable cause for
 7 filing the petition.

8 (ii) The judge shall:

9 (A) appoint a professional person;

10 (B) appoint a friend of respondent; and

11 (C) set a date and time for the hearing on the
 12 petition, which may not exceed 5 days from the date the
 13 petition was filed, including weekends and holidays, unless
 14 the fifth day falls upon a weekend or holiday and unless
 15 additional time is requested on behalf of the respondent.

16 (iii) The desires of the respondent must be taken into
 17 consideration in the appointment of the friend of respondent
 18 and in the confirmation of the appointment of counsel.

19 (3) If a judge is not available in the county, the
 20 clerk shall notify a resident judge by telephone and read
 21 the petition to him. If the judge does not find probable
 22 cause, the petition must be dismissed. If the judge finds
 23 probable cause, he shall cause the clerk to issue an order
 24 appointing counsel and a professional person and setting a
 25 date and time for the hearing on the petition, which may not

1 exceed 5 days from the date the petition was filed,
 2 including weekends and holidays, unless the fifth day falls
 3 upon a weekend or holiday and unless additional time is
 4 requested on behalf of the respondent. The order must also
 5 direct that the respondent be brought immediately before a
 6 justice of the peace with his counsel to be advised of his
 7 constitutional rights, his rights under this part, and the
 8 contents of the clerk's order, as well as to furnish him
 9 with a copy of his rights. The justice of the peace shall
 10 ascertain the desires of the respondent with respect to the
 11 appointment of his counsel, and this must be immediately
 12 communicated to the resident judge. The resident judge may
 13 appoint other counsel, may confer with the respondent's
 14 counsel and the county attorney in order to appoint a friend
 15 of respondent, and may do all things necessary through the
 16 clerk of court by telephone as if the resident judge were
 17 personally present.

18 **NEW SECTION. Section 21. Examination of respondent**
 19 **following initial hearing -- recommendation of professional**
 20 **person. (1) Following the initial hearing, whether before a**
 21 **judge or justice of the peace, the respondent must be**
 22 **examined by the professional person without unreasonable**
 23 **delay. The examination may not exceed a period of 4 hours.**
 24 **The professional person shall immediately notify the county**
 25 **attorney of his findings in person or by phone and shall**

1 make a written report of his examination to the court, with
2 copies to the respondent's counsel and the county attorney.

3 (2) The following action must be taken based on the
4 professional person's findings:

5 (a) If he recommends dismissal, he shall additionally
6 notify counsel and, if the respondent has been detained, he
7 must be released and the petition dismissed. However, the
8 county attorney may, upon good cause shown, request the
9 court to order an additional, but no more than one,
10 examination by a different professional person for a period
11 of no more than 4 hours.

12 (b) If he finds that commitment proceedings should
13 continue, the hearing must be held as scheduled.

14 (3) The court may not order further evaluation pending
15 the hearing unless sound medical reasons require additional
16 time for a complete evaluation. The reasons must be set
17 forth in the order, along with the amount of additional time
18 needed.

19 NEW SECTION. **Section 22.** Detention of respondent
20 pending hearing or trial. (1) The court may not order
21 detention of the respondent pending the hearing unless
22 requested by the county attorney and upon the existence of
23 probable cause for detention. Counsel must be orally
24 notified immediately. Counsel for the respondent may then
25 request a detention hearing, which must be held immediately.

1 (2) In the event of detention, the respondent must be
2 detained in the least restrictive setting necessary to
3 ensure his presence and ensure his safety and the safety of
4 others as provided in [section 18]. A respondent may be
5 detained in a jail or other correctional facility only if no
6 appropriate approved public or private facility is
7 immediately available for placement. When the respondent is
8 detained in a jail or other correctional facility, the jail
9 or other facility shall immediately notify the regional
10 central office of the nearest approved public or private
11 facility, as defined in 53-24-103, that a person detained in
12 the jail or correctional facility is in need of an
13 appropriate placement. Upon notification, the approved
14 public or private facility shall identify an appropriate
15 placement for the respondent in accordance with the
16 requirements of [section 18]. Until a placement is
17 identified, the approved public or private facility shall
18 report on the status of the placement to the jail or
19 correctional facility within every 12-hour period, including
20 weekends and holidays. When an appropriate placement has
21 been identified, the court must be promptly notified and the
22 respondent must be transferred to that facility as soon as
23 reasonably practical.

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

1 choice. Unless objection is made by counsel for the
2 respondent, the respondent shall continue to be evaluated
3 and treated by the professional person pending the hearing.

4 NEW SECTION. **Section 23.** Request for jury trial. At
5 any time prior to the date set for hearing, the respondent,
6 through his counsel, may request a jury trial, whereupon the
7 time set for hearing must be vacated and the matter set on
8 the court's jury calendar at the earliest date possible, the
9 matter taking precedence over all other matters. If there is
10 not a jury in attendance, a jury must be selected in the
11 manner provided in 3-15-506 and a date must be set for trial
12 by jury not later than 7 days, exclusive of Saturdays,
13 Sundays, and holidays.

14 NEW SECTION. **Section 24.** Trial or hearing on petition.

15 (1) The respondent must be present unless his presence has
16 been waived as provided in [section 17(2)], and he must be
17 represented by counsel at all stages of the trial. The trial
18 must be limited to the determination of whether or not the
19 respondent is chemically dependent or seriously chemically
20 dependent.

21 (2) The standard of proof in any hearing held pursuant
22 to this section is proof beyond a reasonable doubt with
23 respect to any physical facts or evidence and clear and
24 convincing evidence as to all other matters, except that
25 chemical dependency must be shown to a reasonable medical

1 certainty. Imminent threat of self-inflicted injury or
2 injury to others must be shown by overt acts, sufficiently
3 recent in time as to be material and relevant as to the
4 respondent's present condition.

5 (3) The professional person appointed by the court must
6 be present for the trial and subject to cross-examination.
7 The trial must be governed by the Montana Rules of Civil
8 Procedure except that, if tried by a jury, at least
9 two-thirds of the jurors shall concur on a finding that the
10 respondent is seriously chemically dependent. The written
11 report of the professional person that indicates the
12 professional person's diagnosis may be attached to the
13 petition, but any matter otherwise inadmissible, such as
14 hearsay, is not admissible merely because it is contained in
15 the report. The court may order the trial closed to the
16 public for the protection of the respondent.

17 (4) The professional person may testify as to the
18 ultimate issue of whether the respondent is chemically
19 dependent or seriously chemically dependent. Testimony from
20 a professional person or others must be received on each
21 element of the definition of chemically dependent or
22 seriously chemically dependent as those terms are defined in
23 53-24-103.

24 (5) The court, upon the showing of good cause and when
25 it is in the best interests of the respondent, may order a

1 change of venue.

2 NEW SECTION. Section 25. Posttrial disposition. (1)

3 If, upon trial, it is determined that the respondent is not
4 chemically dependent or seriously chemically dependent
5 within the meaning of this part, he must be discharged and
6 the petition dismissed.

7 (2) (a) If it is determined in a proceeding pursuant to
8 [section 19(1)(a)] that the respondent is seriously
9 chemically dependent, the court shall hold a posttrial
10 disposition hearing. The disposition hearing must be held
11 within 5 days (including weekends and holidays unless the
12 fifth day falls on a Saturday, Sunday, or holiday), during
13 which time the court may order further evaluation and
14 treatment of the respondent. At the conclusion of the
15 disposition hearing, the court shall:

16 (i) commit the respondent to a facility for a period of
17 not more than 40 days;

18 (ii) order the respondent to be placed in the care and
19 custody of his next of kin or guardian or some other
20 appropriate place other than an institution;

21 (iii) order outpatient therapy; or

22 (iv) make some other appropriate order for treatment.

23 (b) Treatment ordered pursuant to this subsection (2)
24 may not require the respondent's custody for a period of
25 more than 40 days.

1 (c) In determining which of the alternatives to order,
2 the court shall choose the least restrictive alternative
3 necessary to protect the respondent and the public and to
4 permit effective treatment. The court shall consider and
5 shall describe in its order what alternatives for treatment
6 of the respondent are available, what alternatives were
7 investigated, and why other investigated alternatives were
8 not considered suitable. The court shall enter into the
9 record a detailed statement of the facts upon which it found
10 the respondent to be seriously chemically dependent.

11 (3) If it is determined in a proceeding pursuant to
12 [section 19(1)(b)] that the respondent is chemically
13 dependent, the court shall order that he receive treatment
14 for a period of not more than 40 days. The court shall
15 choose the least restrictive course of treatment reasonably
16 available to the respondent. If the order includes a
17 requirement of inpatient treatment or involuntary
18 medication, the court shall make a separate finding, setting
19 forth the reason. The court may not order inpatient
20 treatment in the state hospital under this subsection. The
21 respondent may not be required to pay for court-ordered
22 treatment unless he is financially able.

23 (4) Before ordering any treatment for a respondent
24 found to be chemically dependent under subsection (3), the
25 court shall make findings of fact that treatment appropriate

1 to the needs of the respondent is available. The court shall
 2 also indicate on the order the name of the facility that is
 3 to be responsible for the management and supervision of the
 4 respondent's treatment. A person may not use physical force
 5 to administer medication. A court may use any legal means to
 6 enforce an order to take medication, including immediate
 7 detention not to exceed 72 hours, until the chemically
 8 dependent person can be returned to the court.

9 NEW SECTION. **Section 26.** Petition for extension of
 10 commitment period. (1) To extend the 40-day period of
 11 detention provided for in [section 25(2)], the procedure set
 12 forth in this subsection must be followed:

13 (a) Not less than 7 days prior to the end of the 40-day
 14 period, the professional person in charge of the patient at
 15 the place of detention may petition the district court in
 16 the county where the patient is detained for extension of
 17 the detention period unless otherwise ordered by the
 18 original committing court. The petition must be accompanied
 19 by a written report and evaluation of the patient's mental
 20 and physical condition. The report must describe any tests
 21 and evaluation devices employed in evaluating the patient,
 22 the course of treatment undertaken for the patient, and the
 23 future course of treatment anticipated by the professional
 24 person.

25 (b) Upon the filing of the petition, the court shall

1 give written notice of the filing of the petition to the
 2 patient, his next of kin, if reasonably available, the
 3 friend of respondent appointed by the court, and the
 4 patient's counsel. If a notified person requests a hearing
 5 prior to the termination of the previous detention
 6 authority, the court shall immediately set a time and place
 7 for a hearing on a date not more than 10 days from the
 8 receipt of the request and notify the same people, including
 9 the professional person in charge of the patient. If a
 10 hearing is not requested, the court shall enter an order of
 11 commitment for a period not to exceed 90 days.

12 (c) Procedure on the petition for extension when a
 13 hearing has been requested must be the same in all respects
 14 as the procedure on the petition for the original 40-day
 15 commitment except the patient is not entitled to trial by
 16 jury. The hearing must be held in the district court having
 17 jurisdiction over the facility in which the patient is
 18 detained unless otherwise ordered by the court. Court costs
 19 and witness fees, if any, must be paid by the county that
 20 paid the same costs in the initial commitment proceedings.

21 (d) If upon the hearing the court finds the patient not
 22 seriously chemical dependent, he must be discharged and the
 23 petition dismissed. If the court finds that the patient
 24 continues to suffer from serious chemical dependency, the
 25 court shall order commitment, custody in the care of

1 relatives, outpatient therapy, or another order as set forth
 2 in [section 25(2)] except that an order may not require the
 3 patient's custody for more than 90 days. In its order, the
 4 court shall describe what alternatives for treatment of the
 5 patient are available, what alternatives were investigated,
 6 and why other investigated alternatives were not considered
 7 suitable. The court may not order continuation of an
 8 alternative that does not include a comprehensive,
 9 individualized plan of treatment for the patient. A court
 10 order for the continuation of an alternative must include a
 11 specific finding that a comprehensive, individualized plan
 12 of treatment exists.

13 (2) To extend the period of treatment provided for in
 14 [section 25(3)], the procedure set forth in this subsection
 15 must be followed:

16 (a) Not less than 7 days prior to the end of the 40-day
 17 period of treatment ordered under [section 25(3)], the
 18 professional person in charge of the respondent's care may
 19 petition the court for extension of the treatment period.
 20 The petition must be accompanied by a written report and
 21 evaluation of the respondent's mental and physical
 22 condition. The report must describe any tests and evaluation
 23 devices employed in evaluating the respondent, the course of
 24 treatment undertaken for the respondent, and the future
 25 course of treatment anticipated by the professional person.

1 (b) Upon the filing of the petition, the court shall
 2 give written notice of the filing of the petition to the
 3 respondent, his next of kin, if reasonably available, the
 4 friend of respondent appointed by the court, if any, and the
 5 respondent's counsel. If a notified person requests a
 6 hearing prior to the termination of the previous detention
 7 authority, the court shall immediately set a time and place
 8 for a hearing on a date not more than 5 days from the
 9 receipt of the request and notify the same people, including
 10 the professional person in charge of the respondent. If a
 11 hearing is not requested, the court shall enter an order of
 12 treatment for a period not to exceed 40 days.

13 (c) Procedure on the petition for extension when a
 14 hearing has been requested must be the same in all respects
 15 as the procedure on the petition under [section 19(1)(b)]
 16 for the original treatment except that the respondent is not
 17 entitled to trial by jury. The hearing must be held in the
 18 district court for the county in which the treatment is
 19 being supervised unless otherwise ordered by the court.
 20 Court costs and witness fees, if any, must be paid by the
 21 county that paid the same costs in the initial proceedings.

22 (d) If upon the hearing the court finds the respondent
 23 is not chemically dependent, the petition must be dismissed.
 24 If the court finds that the respondent continues to be
 25 chemically dependent, the court shall order treatment for

1 the respondent for a period not to exceed 40 days. In its
 2 order, the court shall describe what alternatives for
 3 treatment of the respondent are available, what alternatives
 4 were investigated, and why other investigated alternatives
 5 were not considered suitable. The court may not order
 6 continuation of an alternative that does not include a
 7 comprehensive, individualized plan of treatment for the
 8 respondent. A court order for the continuation of an
 9 alternative must include a specific finding that a
 10 comprehensive, individualized plan of treatment exists.

11 (3) Further extensions of the period of detention
 12 provided for in [section 25(2)] may be obtained under the
 13 same procedure described in subsection (1) except that the
 14 patient's custody may not be required for more than 6 months
 15 without a renewal of the commitment under the procedures set
 16 forth in subsection (1), including a statement of the
 17 findings required by subsection (1).

18 (4) The period of treatment provided for in [section
 19 25(3)] may be extended only once under this section.

20 **NEW SECTION. Section 27. Emergency situation --**
 21 **petition -- detention.** (1) When an emergency situation
 22 exists, a peace officer may take any person who appears to
 23 be seriously chemically dependent and who as a result of
 24 serious chemical dependency appears to be a danger to others
 25 or to himself into custody only for sufficient time to

1 contact a professional person for emergency evaluation. If
 2 possible, a professional person must be called prior to
 3 taking the person into custody.

4 (2) If the professional person agrees that the person
 5 detained appears to be seriously chemically dependent and
 6 that an emergency situation exists, the person may be
 7 detained and treated until the next regular business day. At
 8 that time, the professional person shall release the
 9 detained person or file his findings with the county
 10 attorney who, if he determines probable cause to exist,
 11 shall file the petition provided for in [sections 19 and 20]
 12 in the county of the respondent's residence. In either case,
 13 the professional person shall file a report with the court
 14 explaining his actions.

15 (3) The county attorney of any county may make
 16 arrangements with any federal, state, regional, or private
 17 chemical dependency facility or with an approved public or
 18 private facility in any county for the detention of persons
 19 held pursuant to this section. Whenever an arrangement has
 20 been made with a facility that does not, at the time of the
 21 emergency, have a bed available to detain the person at that
 22 facility, the person may be transported to the state
 23 hospital for detention and treatment as provided in this
 24 part. This determination must be made on an individual
 25 basis, and the professional person at the local facility

1 shall certify to the county attorney that the facility does
2 not have adequate room at that time.

3 (4) However, before any person is transferred to the
4 state hospital under this section, the state hospital must
5 be notified and shall state that a bed is available for the
6 person.

7 NEW SECTION. Section 28. Transfer or commitment to
8 approved public or private facility from other institutions.
9 A person who is in the custody of the department for any
10 purpose other than treatment of serious chemical dependency
11 may not be transferred or committed to an approved public or
12 private facility for more than 10 days unless the transfer
13 or commitment is made according to the procedures set out in
14 this part. However, proceedings for involuntary commitment
15 may be commenced in the county of the approved public or
16 private facility where the person is, in the county of the
17 institution from which the person was transferred to the
18 approved public or private facility, or in the county of the
19 person's residence. Notice of a transfer must be given
20 immediately to any assigned counsel at the approved public
21 or private facility and guardians, friends of respondent, or
22 conservators or to the parents of minors as the case may be.

23 NEW SECTION. Section 29. Appeal procedure. Appellate
24 review of any order of short-term evaluation and treatment
25 or long-term commitment may be had by appeal to the supreme

1 court of Montana in the manner as other civil cases, except
2 that the appeal may be taken at any time within 90 days of
3 the actual service of the written notice of the right to
4 appeal required by [section 12] or within 90 days after
5 discharge, whichever is later. The patient may not be
6 released pending appeal unless ordered by the court. The
7 appeal has priority above all other matters before the
8 supreme court.

9 NEW SECTION. Section 30. Cost of examination and
10 commitment. (1) The cost of the examination and commitment
11 and for transporting a person who is seriously chemically
12 dependent to an approved public or private facility must be
13 paid by the county in which he resides at the time he is
14 adjudged to be seriously chemically dependent. The sheriff
15 must be allowed the actual expenses incurred in taking a
16 person who is seriously chemically dependent to the
17 facility, as provided by 7-32-2144.

18 (2) The county of residence shall also pay all
19 precommitment expenses, including transportation to an
20 approved public or private facility, incurred in connection
21 with the detention, examination, and precommitment custody
22 of the respondent. The fact that a person is examined,
23 hospitalized, or receives medical, psychological, or other
24 chemical dependency treatment pursuant to this part does not
25 relieve a third party from a contractual obligation to pay

1 for the cost of the examination, hospitalization, or
2 treatment.

3 (3) If a respondent adjudicated chemically dependent or
4 seriously chemically dependent is not found to be indigent,
5 the court may order the respondent to assist in completing
6 contractual obligations with third parties and to assist in
7 payment of the costs of the examination, commitment, and
8 transportation to an approved public or private facility and
9 other precommitment expenses.

10 NEW SECTION. Section 31. Transfer to nonstate
11 facilities. (1) If a person is committed under the
12 provisions of this part and is eligible for hospital care or
13 treatment by an agency of the United States and if a
14 certificate of notification from the agency showing that
15 facilities are available and that the person is eligible for
16 care or treatment in the facilities is received, the court
17 may order the person to be placed in the custody of the
18 agency for hospitalization. The chief officer of any
19 hospital or institution operated by the agency and in which
20 a person is hospitalized has the same powers as the
21 superintendent of the state hospital with respect to
22 detention, custody, transfer, conditional release, or
23 discharge of the person. Jurisdiction must be retained in
24 the appropriate courts of this state to inquire into the
25 mental condition of the hospitalized person and to determine

1 the necessity for continuance of his hospitalization.

2 (2) Consistent with other provisions of this part, a
3 person committed under this part for a period of 40 days or
4 longer may be committed by the court to the custody of
5 friends or next of kin residing outside the state or to an
6 approved public or private facility located outside the
7 state if the out-of-state facility agrees to receive the
8 patient. Commitment may not be for a longer period of time
9 than is permitted within this state. If the patient is
10 indigent, the expense of supporting him in an out-of-state
11 facility and the expense of transportation must be borne by
12 the state of Montana.

13 NEW SECTION. Section 32. Receipt of seriously
14 chemically dependent nonresident person pending return to
15 home state. A person who is seriously chemically dependent
16 and not a resident of this state may be received into the
17 state hospital for a period not to exceed 30 days pending
18 return to the state of his residence.

19 NEW SECTION. Section 33. Establishment of treatment
20 plan for chemically dependent person. (1) A person ordered
21 to receive treatment under [section 25(3)] must have an
22 individualized treatment plan.

23 (2) The treatment plan must be developed by appropriate
24 professional persons and must be implemented no later than 5
25 days after the treatment order has been made.

1 (3) The treatment plan must contain:

2 (a) a statement of the nature of the specific problems
3 and specific needs of the patient;

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

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

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

11 (e) criteria for release to less restrictive treatment
12 conditions and criteria for discharge.

13 (4) The treatment plan may include the prescription by
14 a physician of reasonable and appropriate medication that is
15 consistent with accepted medical standards.

16 **NEW SECTION. Section 34. Compliance with treatment**
17 **plan.** If the respondent fails to comply or clearly refuses
18 to comply with all or part of the treatment plan, the
19 professional person appointed under [section 20] shall make
20 all reasonable efforts to solicit the respondent's
21 compliance. The efforts must be documented and reported to
22 the court with a recommendation to the court as to whether
23 the respondent should:

24 (1) have his case dismissed; or

25 (2) be given a supplemental hearing.

1 **NEW SECTION. Section 35. Supplemental hearing.** (1) If
2 the respondent requests a hearing to prove he has complied
3 with the treatment plan as provided in [section 34], the
4 hearing must be scheduled within 5 days. The respondent, his
5 counsel, the friend of respondent, and the designated
6 professional person must be notified of the hearing at least
7 48 hours in advance.

8 (2) At the hearing, the court shall determine whether
9 the respondent has failed to comply with the treatment plan
10 established pursuant to [section 33].

11 (3) (a) If the court determines that the respondent has
12 failed or refused to comply with the treatment plan, it may
13 order the respondent to comply with the treatment plan for
14 the remainder of the 40-day period.

15 (b) If the respondent is no longer chemically
16 dependent, the court shall discharge the respondent from the
17 order and dismiss the case.

18 **NEW SECTION. Section 36. Civil and legal rights of**
19 **person committed.** (1) Unless specifically stated in an order
20 by the court, a person involuntarily committed to a facility
21 for a period of evaluation or treatment does not forfeit any
22 legal right or suffer any legal disability by reason of the
23 provisions of this part except insofar as it may be
24 necessary to detain the person for treatment, evaluation, or
25 care. All communication between an alleged chemically

1 dependent person and a professional person is privileged
 2 under normal privileged communication rules unless it is
 3 clearly explained to the person in advance that the purpose
 4 of an interview is for evaluation and not treatment.

5 (2) Whenever a person is committed to an approved
 6 public or private facility for a period of 40 days or
 7 longer, the court ordering the commitment may make an order
 8 stating specifically any legal rights that are denied the
 9 respondent and any legal disabilities that are imposed on
 10 him. As part of its order, the court may appoint a person to
 11 act as conservator of the respondent's property. Any
 12 conservatorship created pursuant to this section terminates
 13 upon the conclusion of the involuntary commitment if it is
 14 not terminated sooner by the court. A conservatorship or
 15 guardianship extending beyond the period of involuntary
 16 commitment may not be created except according to the
 17 procedures set forth under Montana law for the appointment
 18 of conservators and guardians generally.

19 (3) A person who has been committed to an approved
 20 public or private facility pursuant to this part is
 21 automatically restored upon the termination of the
 22 commitment to all of his civil and legal rights that may
 23 have been lost when he was committed. This subsection does
 24 not affect a guardianship or conservatorship created
 25 independently of the commitment proceedings according to the

1 provisions of Montana law relating to the appointment of
 2 conservators and guardians generally. A person who leaves an
 3 approved public or private facility following a period of
 4 evaluation and treatment must be given a written statement
 5 setting forth the substance of this subsection.

6 NEW SECTION. **Section 37. Rights of persons admitted to**
 7 facility. A patient admitted to an approved public or
 8 private facility, whether voluntarily or involuntarily, has
 9 the following rights:

10 (1) A patient has a right to privacy and dignity.

11 (2) A patient has a right to the least restrictive
 12 conditions necessary to achieve the purposes of commitment.

13 (3) A patient has the same rights to visitation and
 14 reasonable access to private telephone communications as
 15 patients at a public hospital except to the extent that the
 16 professional person responsible for formulation of the
 17 patient's treatment plan writes an order imposing special
 18 restrictions. The written order must be renewed after each
 19 periodic review of the treatment plan if any restrictions
 20 are to be continued. A patient has an unrestricted right to
 21 visitation with his counsel, with spiritual counselors, and
 22 with private physicians and other professional persons.

23 (4) A patient has an unrestricted right to send sealed
 24 mail. A patient has an unrestricted right to receive sealed
 25 mail from his counsel, private physicians and other

1 professional persons, the board, courts, and government
2 officials. A patient has a right to receive sealed mail from
3 others except to the extent that a professional person
4 responsible for formulation of the patient's treatment plan
5 writes an order imposing special restrictions on receipt of
6 sealed mail. The written order must be renewed after each
7 periodic review of the treatment plan if any restrictions
8 are to be continued.

9 (5) A patient has an unrestricted right to have access
10 to letter-writing materials, including postage, and has a
11 right to have staff members of the facility assist him if he
12 is unable to write, prepare, and mail correspondence.

13 (6) A patient has a right to wear his own clothes and
14 to keep and use his own personal possessions, including
15 toilet articles, except insofar as the clothes or personal
16 possessions may be determined by a professional person in
17 charge of the patient's treatment plan to be dangerous or
18 otherwise inappropriate to the treatment regimen. The
19 facility has an obligation to supply an adequate allowance
20 of clothing to any patient who does not have suitable
21 clothing of his own. A patient must be given the opportunity
22 to select from various types of neat, clean, and seasonable
23 clothing. The clothing must be considered the patient's
24 throughout his stay at the facility. The facility shall make
25 provision for the laundering of a patient's clothing.

1 (7) A patient has the right to keep and be allowed to
2 spend a reasonable sum of his own money.

3 (8) A patient has the right to religious worship.
4 Provisions for worship must be made available to all
5 patients on a nondiscriminatory basis. An individual may not
6 be required to engage in any religious activities.

7 (9) A patient has a right to regular physical exercise
8 several times a week. It is the duty of the facility to
9 provide facilities and equipment for exercise. A patient has
10 a right to be outdoors at regular and frequent intervals in
11 the absence of contrary medical considerations.

12 (10) A patient has the right to be provided, with
13 adequate supervision, suitable opportunities for interaction
14 with members of the opposite sex except to the extent that a
15 professional person in charge of the patient's treatment
16 plan writes an order stating that interaction is
17 inappropriate to the treatment regimen.

18 (11) A patient has a right to receive prompt and
19 adequate medical treatment for any physical ailments. In
20 providing medical care, the approved public or private
21 facility shall take advantage of whatever community-based
22 facilities are appropriate and available and shall
23 coordinate the patient's treatment for chemical dependency
24 with his medical treatment.

25 (12) A patient has a right to a diet that will provide

1 at a minimum the recommended daily dietary allowances as
 2 developed by the national academy of sciences. Provisions
 3 must be made for special therapeutic diets and for
 4 substitutes at the request of the patient or the friend of
 5 respondent in accordance with the religious requirements of
 6 a patient's faith. Denial of a nutritionally adequate diet
 7 may not be used as punishment.

8 (13) A patient has a right to a humane psychological and
 9 physical environment within the approved public or private
 10 facilities. These facilities must be designed to afford
 11 patients with comfort and safety, promote dignity, and
 12 ensure privacy. The facilities must be designed to make a
 13 positive contribution to the efficient attainment of the
 14 treatment goals set for the patient. In order to ensure the
 15 accomplishment of this goal:

16 (a) regular housekeeping and maintenance procedures
 17 that will ensure that the facility is maintained in a safe,
 18 clean, and attractive condition must be developed and
 19 implemented;

20 (b) there must be special provision made for geriatric
 21 and other nonambulatory patients to ensure their safety and
 22 comfort, including special fittings on toilets and
 23 wheelchairs. Appropriate provision must be made to permit
 24 nonambulatory patients to communicate their needs to the
 25 facility staff.

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

6 (d) every facility must meet all fire and safety
 7 standards established by the state and local government. In
 8 addition, a hospital must meet provisions of the life safety
 9 code of the national fire protection association applicable
 10 to hospitals. A hospital must meet all standards established
 11 by the state for general hospitals that are relevant to the
 12 facility.

13 NEW SECTION. **Section 38.** Right not to be
 14 fingerprinted. A person admitted to or in an approved public
 15 or private facility may not be fingerprinted unless required
 16 by other provisions of law.

17 NEW SECTION. **Section 39.** Rights concerning
 18 photographs. (1) Upon admission to an approved public or
 19 private facility, a person may be photographed for
 20 identification purposes and for the administrative purposes
 21 of the facility. The photographs must be confidential and
 22 may not be released by the facility except pursuant to court
 23 order.

24 (2) Other nonmedical photographs may not be taken or
 25 used without consent of the patient's legal guardian or the

1 friend of respondent appointed by the court.

2 NEW SECTION. Section 40. Right to be free from
3 unnecessary or excessive medication -- rules. Patients have
4 a right to be free from unnecessary or excessive medication.
5 Medication may not be administered unless at the written
6 order of a physician. The attending physician is responsible
7 for all medication given or administered to a patient. The
8 use of medication may not exceed standards of use that are
9 advocated by the United States food and drug administration.
10 Notation of each individual's medication must be kept in his
11 medical records. The department of health and environmental
12 sciences shall adopt rules governing attending physician
13 review of the drug regimen of each patient under his care in
14 an approved public or private facility, except that the drug
15 regimen of inpatients in hospitals must be reviewed no less
16 than weekly. Except in the case of outpatients, all
17 prescriptions must be written with a termination date, which
18 may not exceed 30 days. Medication may not be used as
19 punishment, for the convenience of staff, as a substitute
20 for a treatment program, or in quantities that interfere
21 with the patient's treatment program.

22 NEW SECTION. Section 41. Right to be free from
23 physical restraint and isolation. A patient has a right to
24 be free from physical restraint and isolation. Except for
25 emergency situations in which it is likely that a patient

1 could harm himself or others and in which less restrictive
2 means of restraint are not feasible, a patient may be
3 physically restrained or placed in isolation only on a
4 professional person's written order that explains the
5 rationale for the action. The written order may be entered
6 only after the professional person has personally seen the
7 patient concerned and evaluated whatever episode or
8 situation is said to call for restraint or isolation.
9 Emergency use of restraints or isolation must be for no more
10 than 1 hour, by which time a professional person must have
11 been consulted and entered an appropriate order in writing.
12 The written order is effective for no more than 24 hours and
13 must be renewed if restraint and isolation are to be
14 continued. Whenever a patient is subject to restraint or
15 isolation, adequate care must be taken to monitor his
16 physical and psychiatric condition and to provide for his
17 physical needs and comfort.

18 NEW SECTION. Section 42. Right not to be subjected to
19 experimental research. (1) A patient has a right not to be
20 subjected to experimental research without the express and
21 informed consent of the patient, if the patient is able to
22 give the consent; his guardian, if any; and the friend of
23 respondent appointed by the court, after opportunities for
24 consultation with independent specialists and with legal
25 counsel. If there is no friend of respondent or if the

1 friend of respondent appointed by the court is no longer
 2 available, then a friend of respondent who is in no way
 3 connected with the facility, the department, or the research
 4 project must be appointed prior to the involvement of the
 5 patient in any experimental research. At least 10 days prior
 6 to the commencement of experimental research, the facility
 7 shall send notice of intent to involve the patient in
 8 experimental research to the patient; his next of kin, if
 9 known; his legal guardian, if any; the counsel who most
 10 recently represented him; and the friend of respondent
 11 appointed by the court.

12 (2) The proposed research must have been reviewed and
 13 approved by the board before consent is sought. Prior to
 14 approval, the board shall determine that the research
 15 complies with the principles of professionally accepted
 16 national standards on the use of human subjects for research
 17 and with the principles for research involving human
 18 subjects required by the United States department of health
 19 and human services for projects supported by that agency.

20 NEW SECTION. Section 43. Right not to be subjected to
 21 hazardous treatment. A patient has a right not to be
 22 subjected to treatment procedures, such as neuropsychiatric
 23 surgery, aversive reinforcement conditioning, or other
 24 unusual or hazardous treatment procedures, without his
 25 express and informed consent after consultation with

1 counsel, his legal guardian, if any, the friend of
 2 respondent appointed by the court, and any other interested
 3 party of the patient's choice. Consent to the treatment must
 4 be given by at least one of those consulted, along with the
 5 patient's counsel. If there is no friend of respondent or if
 6 the friend of respondent appointed by the court is no longer
 7 available, then a friend of respondent who is in no way
 8 connected with the facility or with the department must be
 9 appointed before the treatment procedure may be employed. At
 10 least 10 days prior to the commencement of the extraordinary
 11 treatment program, the facility shall send notice of intent
 12 to employ extraordinary treatment procedures to the patient;
 13 his next of kin, if known; the legal guardian, if any; the
 14 counsel who most recently represented him; and the friend of
 15 respondent appointed by the court.

16 NEW SECTION. Section 44. Qualifications of
 17 professional persons and staff members. In every approved
 18 public or private facility to which a person is admitted
 19 pursuant to this part:

20 (1) each professional person and other staff member
 21 employed by the facility must meet all certification
 22 requirements promulgated by the department;

23 (2) all nonprofessional staff members who have not had
 24 prior clinical experience in a chemical dependency or mental
 25 institution must be given substantial orientation training;

1 (3) staff members on all levels must be provided with
2 regularly scheduled in-service training;

3 (4) each nonprofessional staff member must be under the
4 direct supervision of a professional person.

5 NEW SECTION. **Section 45.** Establishment of patient
6 treatment plan. (1) Each patient admitted as an inpatient to
7 an approved public or private facility must be given a
8 comprehensive physical and mental examination and a review
9 of his behavioral status within 48 hours after admission to
10 the approved public or private facility.

11 (2) Each patient must have an individualized treatment
12 plan. This plan must be developed by appropriate
13 professional persons, who may include a psychiatrist, and
14 must be implemented no later than 10 days after the
15 patient's admission. Each individualized treatment plan must
16 contain:

17 (a) a statement of the nature of the specific problems
18 and specific needs of the patient;

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

21 (c) a description of intermediate and long-range
22 treatment goals, with a projected timetable for their
23 attainment;

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

1 (e) a specification of staff responsibility and a
2 description of proposed staff involvement with the patient
3 in order to attain these treatment goals;

4 (f) criteria for release to less restrictive treatment
5 conditions and criteria for discharge; and

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

8 (3) As part of his treatment plan, each patient must
9 have an individualized aftercare plan. This plan must be
10 developed by a professional person as soon as practicable
11 after the patient's admission to the facility.

12 (4) In the interests of continuity of care, whenever
13 possible one professional person, who need not have been
14 involved with the development of the treatment plan, is
15 responsible for supervising the implementation of the
16 treatment plan, integrating the various aspects of the
17 treatment program, and recording the patient's progress.
18 This professional person is also responsible for ensuring
19 that the patient is released, when appropriate, into a less
20 restrictive form of treatment.

21 (5) The treatment plan must be continuously reviewed by
22 the professional person responsible for supervising the
23 implementation of the plan and must be modified if
24 necessary. At least every 40 days each patient must be given
25 a mental status examination by and his treatment plan must

1 be reviewed by a professional person other than the
2 professional person responsible for supervising the
3 implementation of the plan.

4 NEW SECTION. Section 46. Examination following
5 commitment. No later than 15 days after a patient is
6 committed to an approved public or private facility, the
7 professional person in charge of the facility or his
8 appointed, professionally qualified agent shall reexamine
9 the committed patient and shall determine whether the
10 patient continues to require commitment to the facility and
11 whether a treatment plan complying with this part has been
12 implemented. If the patient no longer requires commitment to
13 the facility in accordance with the standards for
14 commitment, he must be released immediately unless he agrees
15 to continue with treatment on a voluntary basis. If for
16 sound professional reasons a treatment plan has not been
17 implemented, this fact must be reported immediately to the
18 professional person in charge of the facility, the director
19 of the department, the board, and the patient's counsel.

20 NEW SECTION. Section 47. Records to be maintained.
21 Complete patient records must be kept by the approved public
22 or private facility for the length of time required by rules
23 established by the department of health and environmental
24 sciences. All records kept by the approved public or private
25 facility must be available to any person authorized by the

1 patient in writing to receive these records and upon
2 approval of the authorization by the board. The records must
3 also be made available to any counsel charged with
4 representing the patient or any professional person charged
5 with evaluating or treating the patient. These records must
6 include:

- 7 (1) identification data, including the patient's legal
8 status;
- 9 (2) the patient's history, including but not limited
10 to:
- 11 (a) family data, educational background, and employment
12 record;
- 13 (b) prior medical history, both physical and mental,
14 including prior hospitalization;
- 15 (3) the chief complaints of the patient and the chief
16 complaints of others regarding the patient;
- 17 (4) an evaluation that notes the onset of dependency;
18 the circumstances leading to admission; the patient's
19 attitudes and behavior; an estimate of the patient's
20 intellectual functioning, memory functioning, and
21 orientation; and an inventory of the patient's assets in
22 descriptive rather than interpretative fashion;
- 23 (5) a summary of each physical examination that
24 describes the results of the examination;
- 25 (6) a copy of the individual treatment plan and any

1 modifications;

2 (7) a detailed summary of the findings made by the
3 reviewing professional person after each periodic review of
4 the treatment plan that analyzes the successes and failures
5 of the treatment program and directs whatever modifications
6 are necessary;

7 (8) a copy of the individualized aftercare plan and any
8 modifications and a summary of the steps that have been
9 taken to implement that plan;

10 (9) a medication history and status that includes the
11 signed orders of the prescribing physician. The staff person
12 administering the medication shall indicate by signature
13 that orders have been carried out.

14 (10) a detailed summary of each significant contact by a
15 professional person with the patient;

16 (11) a detailed summary, on at least a weekly basis, by
17 a professional person involved in the patient's treatment,
18 of the patient's progress within the treatment plan;

19 (12) a weekly summary of the extent and nature of the
20 patient's work activities and the effect of the activity
21 upon the patient's progress within the treatment plan;

22 (13) a signed order by a professional person for any
23 restrictions on visitations and communications;

24 (14) a signed order by a professional person for any
25 physical restraints and isolation;

1 (15) a detailed summary of any extraordinary incident in
2 the facility involving the patient, to be entered by a staff
3 member noting that he has personal knowledge of the incident
4 or specifying his other source of information and initialed
5 within 24 hours of the incident by a professional person;
6 and

7 (16) a summary by the professional person in charge of
8 the facility or his appointed agent of his findings after
9 the review provided for in [section 46].

10 NEW SECTION. **Section 48.** Records to be confidential --
11 exceptions. All information obtained and records prepared in
12 the course of providing services under this part to
13 individuals under any provision of this part are
14 confidential and privileged matter. Except as provided in
15 Title 50, chapter 16, part 5, information and records may be
16 disclosed only:

17 (1) in communications between professional persons in
18 the provision of services or appropriate referrals;

19 (2) when the recipient of services designates persons
20 to whom information or records may be released, provided
21 that if a recipient of services is a ward and his guardian
22 or conservator designates in writing persons to whom records
23 or information may be disclosed, the designation is valid in
24 lieu of the designation by the recipient; except that this
25 section may not be construed to compel a physician,

1 psychologist, social worker, nurse, attorney, or other
2 professional person to reveal information that has been
3 given to him in confidence by members of a patient's family;

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

7 (4) for research if the department has promulgated
8 rules for the conduct of research. The rules must include
9 but not be limited to the requirement that all researchers
10 sign an oath of confidentiality.

11 (5) to the courts as necessary for the administration
12 of justice;

13 (6) to persons authorized by a court order, after
14 notice and opportunity for hearing to the person to whom the
15 record or information pertains and the custodian of the
16 record or information pursuant to the rules of civil
17 procedure;

18 (7) to members of the board or their agents when
19 necessary to perform their functions as provided in [section
20 4].

21 NEW SECTION. **Section 49.** Patient labor. The following
22 rules govern patient labor:

23 (1) A patient may not be required to perform labor that
24 involves the operation and maintenance of a facility or for
25 which the facility is under contract with an outside

1 organization. Privileges or release from the facility may
2 not be conditioned upon the performance of labor covered by
3 this provision. Patients may voluntarily engage in labor if
4 the labor is compensated in accordance with the minimum wage
5 laws of the Fair Labor Standards Act, 29 U.S.C. 206, as
6 amended.

7 (2) (a) A patient may be required to perform
8 therapeutic tasks that do not involve the operation and
9 maintenance of the facility, provided the specific task or
10 any change in assignment is:

11 (i) an integrated part of the patient's treatment plan
12 and approved as a therapeutic activity by a professional
13 person responsible for supervising the patient's treatment;
14 and

15 (ii) supervised by a staff member to oversee the
16 therapeutic aspects of the activity.

17 (b) A patient may voluntarily engage in therapeutic
18 labor for which the facility would otherwise have to pay an
19 employee, provided the specific labor or any change in labor
20 assignment is:

21 (i) an integrated part of the patient's treatment plan
22 and approved as a therapeutic activity by a professional
23 person responsible for supervising the patient's treatment;

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

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

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

12 (4) A patient may be required to perform tasks of a
13 personal housekeeping nature, such as making his own bed.

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

18 NEW SECTION. Section 50. Statement of rights to be
19 furnished and posted. Upon his admission to an approved
20 public or private facility, each patient must promptly be
21 given a written statement in language he understands of all
22 of his rights under this part, including the right to
23 treatment, the right to the development of a treatment plan,
24 the right to and the availability of legal counsel, and the
25 rules for patient labor. In addition, a copy of the

1 statement must be posted in each ward.

2 NEW SECTION. Section 51. Discharge during or at end of
3 initial commitment period. At any time within the 40-day
4 period provided for in [section 25(2)], the patient may be
5 discharged from an approved public or private facility on
6 the written order of the professional person in charge of
7 him. In the event the patient is not discharged within the
8 40-day period and if the term is not extended as provided
9 for in [section 26], he must be discharged by the facility
10 at the end of 40 days without further order of the court.
11 Notice of the discharge must be filed with the court and the
12 county attorney at least 5 days prior to the discharge.

13 NEW SECTION. Section 52. Court-ordered release to
14 alternative placement or treatment. At any time during the
15 patient's commitment, the court may, on its own initiative
16 or upon application of the professional person in charge of
17 the patient, the patient, his next of kin, his counsel, or
18 the friend of respondent appointed by the court, order the
19 patient to be placed in the care and custody of relatives or
20 guardians or to be provided outpatient therapy or other
21 appropriate placement or treatment.

22 NEW SECTION. Section 53. Release conditioned on
23 receipt of outpatient care. (1) When, in the opinion of the
24 professional person in charge of an approved public or
25 private facility providing involuntary treatment, the

1 committed person can be appropriately served by outpatient
 2 care prior to the expiration of the period of commitment,
 3 outpatient care may be required as a condition for early
 4 release for a period that, when added to the inpatient
 5 treatment period, except as provided in [section 64], does
 6 not exceed the period of commitment. If the approved public
 7 or private facility designated to provide outpatient care is
 8 other than the facility providing involuntary treatment, the
 9 designated outpatient facility shall agree in writing to
 10 assume responsibility.

11 (2) The approved public or private facility designated
 12 to provide outpatient care or the professional person in
 13 charge of the patient's case may modify the conditions for
 14 continued release when the modification is in the best
 15 interest of the patient. This includes the authorization to
 16 transfer the patient to another approved public or private
 17 facility designated to provide outpatient care, provided the
 18 transfer is in the best interest of the patient and the
 19 designated outpatient facility agrees in writing to assume
 20 responsibility. Notice of an intended transfer must be given
 21 to the professional person in charge of the approved public
 22 or private facility that provided the involuntary treatment.

23 (3) Notice in writing to the court that committed the
 24 patient for treatment and the county attorney who initiated
 25 the action must be provided by the professional person in

1 charge of the patient at least 5 days prior to his release
 2 from commitment or outpatient care.

3 (4) [Sections 61 through 64] and this section do not
 4 apply to a temporary release, certified as such by the
 5 professional person in charge of the approved public or
 6 private facility, from the facility for the purposes of a
 7 home visit not exceeding 7 days.

8 NEW SECTION. **Section 54. Patients for whom release and**
 9 **discharge provisions inapplicable.** The release and discharge
 10 provisions of this part may not apply to any patient held
 11 upon an order of a court or a judge in a proceeding arising
 12 out of a criminal act.

13 NEW SECTION. **Section 55. Care and treatment following**
 14 **release.** The department and its agents have an affirmative
 15 duty to provide adequate transitional treatment and care for
 16 all patients released after a period of involuntary
 17 confinement. Transitional care and treatment possibilities
 18 include but are not limited to chemical dependency aftercare
 19 treatment, residence in a halfway house, outpatient
 20 treatment, and treatment in a chemical dependency ward of a
 21 general hospital.

22 NEW SECTION. **Section 56. Support of patient**
 23 **conditionally released.** When an approved public or private
 24 facility conditionally releases a patient committed to its
 25 care, it is not liable for his support while he is

1 conditionally released. Liability devolves upon the legal
 2 guardian, parent, or person under whose care the patient is
 3 placed when conditionally released or upon any other person
 4 legally liable for his support. The public welfare officials
 5 of the county where the patient resides or is found are
 6 responsible for providing relief and care for a
 7 conditionally released patient who is unable to maintain
 8 himself or who is unable to secure support from the person
 9 under whose care he was placed on convalescent leave, as for
 10 any other person in need of relief and care, under the
 11 public assistance laws.

12 NEW SECTION. Section 57. Clothing for patients
 13 discharged or conditionally released. A patient may not be
 14 discharged or conditionally released from an approved public
 15 or private facility without suitable clothing adapted to the
 16 season in which he is discharged.

17 NEW SECTION. Section 58. Maintenance of indigent
 18 patients on discharge. Prior to the discharge of a committed
 19 patient from an approved public or private facility, the
 20 professional person in charge of the facility shall notify
 21 the welfare department of the county from which the patient
 22 was committed. The county welfare department shall at once
 23 ascertain whether the discharged patient is in financial
 24 need. If the patient is found to be in financial need, the
 25 county welfare department shall properly care for and

1 maintain the discharged patient under the laws of this state
 2 relating to public assistance until the patient is able to
 3 care for himself or until provision has been made for care
 4 of the patient.

5 NEW SECTION. Section 59. Fact of evaluation or
 6 treatment not to be used for discrimination. A person who
 7 has received evaluation or treatment under any of the
 8 provisions of this part may not be discriminated against
 9 because of that status. For purposes of this section,
 10 "discrimination" means giving any unfavorable weight to the
 11 fact of hospitalization or outpatient care and treatment
 12 unrelated to a person's present capacity to meet standards
 13 applicable to all persons.

14 NEW SECTION. Section 60. Fact of evaluation or
 15 treatment not to be used in subsequent court proceeding --
 16 exception. The fact that a person has received evaluation
 17 and treatment, whether voluntarily or involuntarily, at an
 18 approved public or private facility may not be admitted into
 19 evidence in a subsequent proceeding for involuntary
 20 commitment or for the appointment of a guardian or
 21 conservator unless it is necessary to a determination of the
 22 present condition of the respondent or the prognosis for
 23 treatment in the present case and the judge determines that
 24 the need for the evidence outweighs the prejudicial effect
 25 of its admission.

1 NEW SECTION. Section 61. Rehospitalization of patient
 2 conditionally released from inpatient treatment facility --
 3 petition. (1) A proceeding for the rehospitalization of a
 4 patient conditionally released from an approved inpatient
 5 public or private facility pursuant to [section 52 or 53] is
 6 commenced by the filing of a written petition in any
 7 district court by the county attorney, the professional
 8 person in charge of the patient's case, or the patient's
 9 next of kin. Upon the filing of a petition under this
 10 subsection, the clerk of court shall notify each district
 11 court that committed the patient for the period of his
 12 present hospitalization under [section 25 or 26] and request
 13 that the file of the earlier proceeding or proceedings be
 14 forwarded to the clerk. The file or files must be promptly
 15 forwarded.

16 (2) The patient has the rights set forth in [section
 17 13] in a proceeding under this section.

18 (3) The petition must state:

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

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

24 (c) that the patient has been determined by the
 25 district court to be seriously chemically dependent and is

1 presently under a valid order of commitment pursuant to
 2 [section 25 or 26];

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

9 (e) a statement of the rights of the patient, including
 10 those set forth in [section 13], which must be in
 11 conspicuous print and identified by a suitable heading.

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

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

23 NEW SECTION. Section 62. Detention of conditionally
 24 released patient pending hearing. The court may not order
 25 detention of a conditionally released patient pending a

1 hearing, except as permitted under [section 22].

2 NEW SECTION. Section 63. Hearing on rehospitalization
3 petition -- revocation of conditional release. (1) The court
4 may order that the patient's conditional release status be
5 revoked and that the patient be returned to the approved
6 public or private facility from which he was conditionally
7 released or that the patient be sent to another appropriate
8 approved inpatient public or private facility if, after a
9 hearing, the court finds by clear and convincing evidence
10 that:

11 (a) the conditionally released patient has been
12 determined by the district court to be seriously chemically
13 dependent and is presently under a valid order of commitment
14 pursuant to [section 25 or 26]; and

15 (b) the conditionally released patient has violated a
16 condition of the release, that the violation has caused a
17 deterioration of the patient's mental condition, and that as
18 a result of this deterioration the patient can no longer be
19 appropriately served by outpatient care.

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

24 (3) If the court revokes the patient's conditional
25 release status pursuant to subsection (1), a treatment plan

1 must be updated or a new plan prepared for the patient as
2 required by and within the time set forth in [section 45].

3 (4) Except as provided in [section 64], an order
4 revoking the patient's conditional release status may not
5 order hospitalization or impose other conditions of release
6 that extend beyond the expiration date of the order
7 committing the patient under [section 25 or 26].

8 NEW SECTION. Section 64. Extension of conditions of
9 release -- hearing. (1) Conditions of release may be
10 extended by the district court beyond the expiration date of
11 the order committing the patient under [section 25 or 26],
12 but in no case for longer than 6 months beyond that date,
13 upon a showing by clear and convincing evidence that:

14 (a) continuation of the conditions of release is
15 necessary to prevent the deterioration of the patient's
16 mental condition; and

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

21 (2) Not less than 7 days prior to the end of the period
22 of detention ordered under [section 25 or 26] or the period
23 of extension ordered under subsection (5) of this section,
24 the professional person responsible for the patient's case
25 may petition the court for extension of the conditions of

1 release. The petition must be accompanied by a written
 2 report and evaluation of the patient's mental and physical
 3 condition. The report must describe any tests and evaluation
 4 devices that have been employed in evaluating the patient,
 5 the course of treatment that has been undertaken for the
 6 patient, and the future course of treatment anticipated by
 7 the professional person.

8 (3) Upon the filing of the petition, the court shall
 9 give written notice of the filing of the petition to the
 10 patient; his next of kin, if reasonably available; the
 11 friend of respondent appointed by the court, if any; and the
 12 patient's counsel. If a notified person requests a hearing
 13 prior to the end of the period of detention ordered under
 14 [section 25 or 26], the court shall immediately set a time
 15 and place for a hearing on a date not more than 10 days from
 16 the receipt of the request and notify the same people,
 17 including the professional person in charge of the patient.
 18 If a hearing is not requested, the court shall enter an
 19 order extending the conditions of release for a period not
 20 to exceed 6 months.

21 (4) Procedure on the petition for extension is the same
 22 in all respects as the procedure for hearing on a
 23 rehospitalization petition pursuant to [section 63] except
 24 that in an extension proceeding, the finding required is
 25 that set forth in subsection (1) of this section. The

1 hearing must be held in the district court for the county in
 2 which the patient is residing. Court costs and witness fees,
 3 if any, must be paid by the county that paid the same costs
 4 in the initial commitment proceeding.

5 (5) If upon the hearing the court finds that the
 6 showing required by subsection (1) has not been made, the
 7 conditions of release may not be extended. If the court
 8 finds that the required showing has been made, the court may
 9 extend the conditions of release as recommended by the
 10 professional person. In its order, the court shall describe
 11 what alternatives for treatment of the patient are
 12 available, what alternatives were investigated, and why
 13 other investigated alternatives were not considered
 14 suitable. The court may not order continuation of an
 15 alternative that does not include a comprehensive,
 16 individualized plan of treatment for the patient as required
 17 by [section 45]. A court order for the continuation of an
 18 alternative must include a specific finding that a
 19 comprehensive, individualized plan of treatment exists.

20 (6) Further extensions may be obtained under the same
 21 procedure described in this section except that the
 22 patient's custody may not be extended for more than 6 months
 23 without a renewal under the procedures set forth in this
 24 section, including a hearing and a statement of the findings
 25 required by subsection (5). Extensions under this subsection

1 may not extend the 6-month extension limitation provided in
2 subsection (1).

3 **Section 65.** Section 53-24-107, MCA, is amended to read:

4 "53-24-107. Public intoxication not a criminal offense.

5 (1) A person who appears to be intoxicated or incapacitated
6 by alcohol in public commits no criminal offense solely by
7 reason of being in such condition but may be detained by a
8 peace officer for the person's own protection. A peace
9 officer who detains a person who appears to be intoxicated
10 or incapacitated by alcohol in public shall proceed in the
11 manner as provided by ~~53-24-303~~ [section 7].

12 (2) If none of the alternatives in ~~53-24-303~~ [section
13 7] are reasonably available, a peace officer may detain a
14 person who appears to be intoxicated or incapacitated by
15 alcohol in jail until the person is no longer creating a
16 risk to himself or others.

17 (3) A peace officer, acting within the scope of his
18 authority under this chapter, shall not be personally liable
19 for his actions."

20 **Section 66.** Section 53-24-207, MCA, is amended to read:

21 "53-24-207. Comprehensive program for treatment. (1)

22 The department shall establish a comprehensive and
23 coordinated program for the treatment of chemically
24 dependent persons, intoxicated persons, and family members.

25 (2) The program shall include:

1 (a) emergency treatment provided by a facility
2 affiliated with or part of the medical service of a general
3 hospital;

4 (b) inpatient treatment;

5 (c) intermediate treatment;

6 (d) outpatient treatment; and

7 (e) follow-up services.

8 (3) The department shall provide for adequate and
9 appropriate treatment for alcoholics and intoxicated persons
10 admitted under ~~53-24-303 through 53-24-304~~ part 3 of this
11 chapter.

12 (4) All appropriate public and private resources shall
13 be coordinated with and utilized in the program if possible.

14 (5) The department shall prepare, publish, and
15 distribute annually a list of all approved public and
16 private treatment facilities."

17 **Section 67.** Section 7-32-2144, MCA, is amended to read:

18 "7-32-2144. Mileage and expenses of sheriff for
19 delivery of prisoners and mentally ill persons. (1) A
20 sheriff delivering prisoners at the state prison or a
21 juvenile correctional facility, or mentally ill persons at
22 the Montana state hospital or other mental health facility,
23 or seriously chemically dependent persons to an approved
24 public or private facility receives actual expenses
25 necessarily incurred in their transportation. The expenses

1 include the expenses of the sheriff in going to and
 2 returning from the institution. The sheriff shall take
 3 vouchers for every item of expense. The amount of these
 4 expenses, as shown by the vouchers when presented by the
 5 sheriff, shall be audited and allowed by the attorney
 6 general or by the board of county commissioners, as the case
 7 may be, and paid out of the same money and in the same
 8 manner as are other expense claims against the state or
 9 counties. In determining the actual expense if travel is by
 10 a privately owned vehicle, the mileage rate shall be allowed
 11 as provided in subsection (2). No other or further
 12 compensation may be received by sheriffs for such expenses.

13 (2) Unless otherwise provided, while in the discharge
 14 of his duties, both civil and criminal, the sheriff receives
 15 a mileage allowance as provided in 2-18-503. The sheriff
 16 shall also be reimbursed for actual and necessarily incurred
 17 expenses for transporting, lodging, and feeding persons
 18 ordered by the court as provided in 2-18-501 through
 19 2-18-503. The county is not liable for and the board of
 20 county commissioners may not pay for any claim of the
 21 sheriff or other officer for any other expenses incurred in
 22 travel or for subsistence in cases where mileage is allowed
 23 under this section, the fees for mileage named in this
 24 section being in full for all such traveling expenses in
 25 both civil and criminal work."

1 NEW SECTION. **Section 68.** Repealer. Sections 53-24-301,
 2 53-24-302, 53-24-303, 53-24-304, 53-24-305, and 53-24-306,
 3 MCA, are repealed.

4 NEW SECTION. **Section 69.** Codification instruction.
 5 [Sections 2 through 64] are intended to be codified as an
 6 integral part of Title 53, chapter 24, part 3, and the
 7 provisions of Title 53, chapter 24, part 3, apply to
 8 [sections 2 through 64].

-End-