

1 *Senate* BILL NO. 377
 2 INTRODUCED BY *Gov. Douglas Roberts Brown Leiber*
 3 *Fraser* *Ron Blaylock Conover Cetrone*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR *Romney*
 5 DETERMINATION AND TREATMENT OF THE SERIOUSLY MENTALLY ILL
 6 AND THOSE SUFFERING FROM MENTAL DISORDERS; AMENDING SECTIONS
 7 38-110, 38-212, 38-506, 38-507, AND 80-1601; REPEALING
 8 SECTIONS 38-107, 38-108, 38-109, 38-112, 38-113, 38-114,
 9 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205,
 10 38-206, 38-207, 38-208, 38-208.1, 38-208.2, 38-208.3,
 11 38-209, 38-211, 38-213, 38-401, 38-402, 38-403, 38-404,
 12 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
 13 38-408.1, 38-502, 38-503, 38-504, 38-505, AND 64-112, R.C.M.
 14 1947."

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

16 Section 1. Purpose of act. The purpose of this act
17 is:

18 (1) to secure for each person who may be seriously
 19 mentally ill or suffering from a mental disorder such care
 20 and treatment as will be suited to the needs of the person,
 21 and to insure that such care and treatment are skillfully
 22 and humanely administered with full respect for the person's
 23 dignity and personal integrity;

24 (2) to deprive a person of his liberty for purposes of

1 treatment or care only when less restrictive alternatives
2 are unavailable and only when his safety or the safety of
3 others is endangered, and to provide for due process of law
4 when this is done.

5 Section 2. Definitions. As used in this act:

6 (1) "Board" means the mental disabilities board of
7 visitors created by this act.

8 (2) "Court" means the district court of the state of
9 Montana.

10 (3) "Department" means the department of institutions.

11 (4) "Emergency situation" means a situation in which
12 any person is in imminent danger of death or serious bodily
13 harm from the activity of a person who appears to be
14 seriously mentally ill.

15 (5) "Mental disorder" means any organic, mental, or
16 emotional impairment which has substantial adverse effects
17 on an individual's cognitive or volitional functions.

18 (6) "Mental health facility" or "facility" means a
19 public hospital or a licensed private hospital or, a
20 community mental health center, or any mental health clinic
21 or treatment center approved by the department. No
22 correctional institution or facility, or jail, is a mental
23 health facility within the meaning of this act.

24 (7) "Next of kin" shall include, but need not be
25 limited to, the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 (8) "Patient" means a person committed by the court to
3 a seventy-two (72) hour evaluation or treatment or for a
4 longer period.

5 (9) "Peace officer" means any sheriff, deputy sheriff,
6 marshal, policeman or other peace officer.

7 (10) "Professional person" means:

8 (a) a medical doctor, or

9 (b) a person trained in the field of mental health and
10 certified by the regional mental health director if the
11 director is a licensed physician, or by the superintendent
12 of the Montana state hospital, if the superintendent is a
13 licensed physician, in the absence of such a regional
14 director.

15 (11) "Respondent" means a person alleged in a petition
16 filed pursuant to this act to be seriously mentally ill.

17 (12) "Responsible person" means any person willing and
18 able to assume responsibility for a seriously mentally ill
19 person, or person alleged to be seriously mentally ill,
20 including next of kin; the person's conservator or legal
21 guardian, if any; representatives of a charitable or
22 religious organization, or any other person appointed by the
23 court to perform the functions of a "responsible person" set
24 out in this act. Only one person shall at any one time be
25 the "responsible person" within the meaning of this act. In

1 appointing a responsible person, the court shall consider
2 the preference of the respondent. The court may, at any
3 time for good cause shown, change its designation of the
4 "responsible person".

5 (13) "Seriously mentally ill" means suffering from a
6 mental disorder which has resulted in self-inflicted injury
7 or injury to others, or the imminent threat thereof; or
8 which has deprived the person afflicted of the ability to
9 protect his life or health. No person may be involuntarily
10 committed to a mental health facility nor detained for
11 evaluation and treatment because he is an epileptic,
12 mentally deficient, mentally retarded, senile or suffering
13 from a mental disorder unless the condition causes the
14 person to be seriously mentally ill within the meaning of
15 this act.

16 Section 3. Voluntary commitment - cost of commitment.

17 (1) Nothing in this act shall be construed in any way as
18 limiting the right of any person to make voluntary
19 application for commitment at any time to any mental health
20 facility or professional person. An application for
21 admission to a mental health facility shall be in writing on
22 a form prescribed by the facility and approved by the
23 department of institutions. It shall not be valid unless it
24 is approved by a professional person and a copy is given to
25 the person voluntarily committing himself. The form shall

1 contain a statement of the rights of the person voluntarily
2 committing himself, as set out in this act, including the
3 right to release.

4 (2) Any person who wishes to voluntarily commit
5 himself to the Montana state hospital shall first obtain
6 certification from the regional mental health director of
7 his mental health region or a professional person designated
8 by the regional director that the person is suffering from a
9 mental disorder and that the facilities available to the
10 mental health region are unable to provide adequate
11 evaluation and treatment.

12 (3) An application for voluntary commitment shall give
13 the facility the right to detain the applicant for no more
14 than five (5) days past his written request for release.

15 (4) The cost of involuntarily committing a patient who
16 is voluntarily committed to a mental health facility at the
17 time the involuntary proceedings are commenced shall be
18 borne by the county of the patient's residence.

19 (5) The costs of transportation to a mental health
20 facility under this section shall be provided by the
21 patient, his parents, guardian, or the welfare department of
22 the county of the patient's residence.

23 (6) Any person voluntarily entering or remaining in
24 any mental health facility shall enjoy all the rights
25 secured to a person involuntarily committed to the facility.

1 (7) Notwithstanding any other provision of law, a
2 minor who is sixteen (16) years of age or older may consent
3 to receive mental health services to be rendered by a
4 facility or a person licensed to practice medicine or
5 psychology in this state.

6 Section 4. Rights and waiver of rights. (1) Whenever
7 a person is involuntarily detained, or is examined by a
8 professional person pursuant to section 5, or is notified
9 that he will be the subject of a hearing pursuant to section
10 5 or 6, the person shall be informed of his constitutional
11 rights and his rights under this act. A person may waive
12 his procedural rights, provided that the waiver is knowingly
13 and intentionally made. The right to counsel in a hearing
14 held pursuant to section 6 may not be waived. The right to
15 treatment provided for in this act may not be waived.

16 (2) In the case of a person who has been committed for
17 a seventy-two (72) hour inpatient evaluation and treatment
18 or for a longer period of time, a waiver of rights can be
19 knowingly and intentionally made only with the concurrence
20 of the patient's attorney or of the responsible person
21 appointed by the court.

22 (3) In the case of a minor, the waiver of rights can
23 be knowingly and intentionally made

24 (a) when the minor is under the age of twelve (12), by
25 the parents of the minor;

1 (b) when the minor is over the age of twelve (12), by
2 the youth and his parents;

3 (c) when the minor is over the age of twelve (12) and
4 the minor and his parents do not agree, the minor can make
5 an effective waiver of his rights only with advice of
6 counsel.

7 If there is a conflict of interest between a minor and
8 his parents or guardian, the court may appoint a guardian ad
9 litem for the minor.

10 (4) In addition to any other rights which may be
11 guaranteed by the constitution of the United States and of
12 this state, by the laws of this state or by this act, any
13 person who is involuntarily detained or against whom a
14 petition is filed pursuant to this act has the following
15 rights:

16 (a) the right to notice reasonably in advance of any
17 hearing or other court proceeding concerning him;

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

21 (c) the right in any hearing to cross-examine
22 witnesses;

23 (d) the right to be represented by counsel;

24 (e) the right to remain silent;

25 (f) the right in any hearing to be proceeded against

1 according to the rules of evidence applicable to civil
2 matters generally;

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

5 (h) the right to be examined by a professional person
6 of his choice when such professional person is reasonably
7 available;

8 (i) the right to be dressed in his own clothes at any
9 hearing held pursuant to this act;

10 (j) the right to refuse any but lifesaving medication
11 for up to twenty-four (24) hours prior to any hearing held
12 pursuant to this act.

13 Section 5. Petition alleging person as seriously
14 mentally ill - contents and procedure. (1) A county
15 attorney on his own initiative or upon the request of any
16 person may file a petition with the court alleging that
17 there is a person within the county who is seriously
18 mentally ill and requesting that an evaluation of the
19 person's condition be made.

20 (2) The petition shall contain:

21 (a) the name and address of the person requesting the
22 petition and his interest in the case;

23 (b) the name of the respondent, and, if known, the
24 address, age, sex, marital status, and occupation of the
25 respondent;

1 (c) the purported facts supporting the allegation of
2 mental illness;

3 (d) the name and address of every person known or
4 believed to be legally responsible for the care, support,
5 and maintenance of the person for whom evaluation is sought;

6 (e) the name and address of the person's next of kin,
7 to the extent known to the county attorney and the person
8 requesting the petition;

9 (f) the name and address of any person whom the county
10 attorney believes might be willing and able to be appointed
11 as responsible person;

12 (g) the name, address, and telephone number of the
13 attorney, if any, who has most recently represented the
14 person for whom evaluation is sought. If there is no
15 attorney, there shall be a statement as to whether, to the
16 best knowledge of the person requesting the petition, the
17 person for whom evaluation is sought is indigent and
18 therefore unable to afford the services of an attorney; and

19 (h) a statement of the rights of the respondent which
20 shall be in conspicuous print and identified by a suitable
21 heading.

22 (3) Upon presentation to the court by the county
23 attorney, the court shall immediately consider the petition
24 with or without a hearing to determine if there is probable
25 cause to believe that the respondent is seriously mentally

1 ill. If the court finds no such probable cause, the
2 petition shall be discharged. If the court finds probable
3 cause it shall submit the petition to a professional person
4 for evaluation. If probable cause is found, the court may
5 appoint a responsible person to protect the interests of the
6 respondent. The responsible person shall be notified as
7 soon as possible that a petition has been filed. Notice of
8 the petition and the finding of probable cause shall be hand
9 delivered or mailed to the respondent and to the attorney,
10 the person or persons legally responsible for care, support,
11 and maintenance of the respondent, next of kin identified in
12 the petition, and the person or persons identified by the
13 county attorney as possible responsible persons.

14 (4) (a) Upon receipt of the petition, the professional
15 person shall examine the respondent and make such inquiry as
16 he or she may deem appropriate. If the respondent does not
17 cooperate and if requested by the professional person, the
18 court may order the respondent to submit to examination by a
19 professional person at a time and place designated by the
20 court. The examination so ordered shall not exceed a period
21 of four (4) hours.

22 (b) When the professional person first contacts the
23 respondent, before he begins any examination, he shall give
24 a copy of the petition to the respondent, and shall explain
25 to the respondent the nature of the proceeding and his

1 rights as set forth in the petition.

2 (5) On the basis of his examination, the professional
3 person shall recommend in writing either that the petition
4 be dismissed or that a seventy-two (72) hour inpatient
5 evaluation and treatment be ordered. If dismissal is
6 recommended, the petition shall be summarily dismissed. The
7 petition shall be dismissed if the respondent accepts
8 voluntary treatment or commitment to a mental health
9 facility approved by the professional person conducting the
10 examination. Whenever a professional person recommends that
11 a seventy-two (72) hour evaluation and treatment be ordered,
12 the recommendation shall be accompanied by a report
13 explaining the reason for the recommendation and identifying
14 any tests or evaluation devices which the professional
15 person employed in evaluating the respondent. If the
16 professional person recommends that a seventy-two (72) hour
17 evaluation and treatment be ordered, notice of this
18 recommendation shall be mailed or delivered to the
19 respondent, the next of kin, when known, any person
20 responsible for the care, support, and maintenance of the
21 respondent, any other person identified in the petition, and
22 the responsible person, if any, appointed by the court.
23 Notice shall include the date, time, and place of the
24 respondent's next appearance before the court.

25 (6) In the event the examining professional person

1 recommends a seventy-two (72) hour inpatient evaluation and
2 treatment, the respondent shall be brought before the court
3 by the county attorney without undue delay, advised of the
4 recommendation, supplied with a copy of the petition and the
5 recommendation and advised of his rights to a hearing and to
6 counsel. If a responsible person has not yet been
7 appointed, the court shall appoint a responsible person at
8 this time. If the right to a hearing and to counsel are
9 waived, the court shall direct that the respondent be
10 detained at a mental health facility for evaluation and
11 treatment not to exceed seventy-two (72) hours. If a
12 hearing is requested by the respondent, his attorney, or the
13 responsible person appointed by the court, a time and place
14 shall be set for the hearing. The matter shall be given
15 precedence over all other court matters. If the respondent
16 is unwilling or unable to retain counsel, the court shall
17 appoint counsel and be responsible for notification.

18 (7) The hearing shall be held before the court without
19 a jury. The respondent may present such testimony and
20 relevant documentary evidence as he or the responsible
21 person or counsel desires. The county attorney shall
22 represent the state. The professional person who made the
23 recommendation shall be present in court and may be
24 cross-examined concerning his recommendation and his report.
25 After full hearing the court shall determine whether the

1 respondent is seriously mentally ill within the definition
 2 provided herein. If the court finds the respondent is not
 3 seriously mentally ill, he or she shall be discharged and
 4 the petition dismissed. If the court finds the respondent
 5 to be seriously mentally ill, it shall order the respondent
 6 detained at a mental health facility for examination and
 7 treatment not exceeding seventy-two (72) hours. However,
 8 the court may dismiss the petition if the respondent agrees
 9 to accept voluntary treatment or commitment to a mental
 10 health facility.

11 (8) Persons receiving evaluation and treatment
 12 pursuant to this section shall be given a reasonable choice
 13 of an available professional person qualified to provide
 14 such services.

15 Section 6. Petition for commitment — trial —
 16 determination of court. (1) If in the opinion of the
 17 professional person in charge of the patient the person
 18 detained under the provisions of section 5 of this act does
 19 not require further evaluation or treatment he shall be
 20 released within seventy-two (72) hours. If, in the opinion
 21 of the professional person, the patient requires further
 22 evaluation or treatment, he shall advise the court
 23 accordingly not less than three (3) days from the date of
 24 detention and shall within the same time file a petition
 25 requesting that the patient be committed to a facility for a

1 period not in excess of three (3) months. The petition
 2 shall be accompanied by a written report and evaluation of
 3 the patient's mental and physical condition. The report
 4 shall explain the reasons for the petition and shall
 5 identify any tests or evaluation devices which the
 6 professional person employed in evaluating the patient. The
 7 professional person may retain custody of the patient
 8 pending a hearing on the petition only if detention is
 9 necessary to prevent injury to himself or others.

10 (2) Upon receipt of a petition for commitment not to
 11 exceed three (3) months, the court shall immediately set the
 12 time and place for a hearing, which shall be held not more
 13 than three (3) days from the receipt of the petition. The
 14 court may extend the period to seven (7) days. The time for
 15 the hearing may be further extended at the request of
 16 counsel for the patient. The court shall give written
 17 notice to the professional person who requested the
 18 commitment, the patient, his counsel, his next of kin, when
 19 known, the responsible person appointed by the court, and
 20 the county attorney. At any time prior to the date set for
 21 hearing, the patient, or his attorney, may request a jury
 22 trial, whereupon the time set for hearing will be vacated
 23 and the matter set on the court's jury calendar at the
 24 earliest date possible, the matter taking precedence over
 25 all other matters on the jury calendar.

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1 (3) At any time prior to trial on the petition before
 2 court or jury, the patient may waive trial and give written
 3 consent to commitment to a facility for a period not to
 4 exceed three (3) months. Such consent must be joined in
 5 writing, by his attorney and by the responsible person
 6 appointed by the court.

7 (4) The patient shall be present and represented by
 8 counsel at all stages of the trial, and the sole question to
 9 be determined by the court or jury, as the case may be,
 10 shall be whether the patient is seriously mentally ill
 11 within the meaning set forth in this act. The professional
 12 person who filed the petition shall be present in court for
 13 the hearing and subject to cross-examination. The trial
 14 shall be governed by the Montana rules of civil procedure
 15 except that, if tried by a jury, at least three-fourths
 16 (3/4) of the jurors must concur on a finding that the
 17 patient is seriously mentally ill. The finding may be
 18 appealed to the Montana supreme court in the same manner as
 19 other civil matters. The standard of proof in any hearing
 20 held pursuant to this section shall be proof beyond a
 21 reasonable doubt.

22 (5) If, upon hearing, it is determined that the
 23 patient is not seriously mentally ill within the meaning of
 24 this act, he shall be discharged and the petition of the
 25 professional person dismissed. If it is determined that the

1 patient is seriously mentally ill within the meaning of this
 2 act the court shall:

3 (a) commit the patient to a facility for a period of
 4 not more than three (3) months;

5 (b) order the patient to be placed in the care and
 6 custody of his relative or guardian or some other
 7 appropriate place other than an institution;

8 (c) order outpatient therapy; or

9 (d) make some other appropriate order for treatment.
 10 No treatment ordered pursuant to this subsection shall
 11 affect the patient's custody for a period of more than three
 12 (3) months.

13 In determining which of the above alternatives to
 14 order, the court shall choose the least restrictive
 15 alternatives necessary to protect the patient and the public
 16 and to permit effective treatment. The court shall consider
 17 and shall describe in its order what alternatives for
 18 treatment of the patient are available, what alternatives
 19 were investigated and why the investigated alternatives were
 20 not deemed suitable.

21 At any time within the three (3) month period the
 22 patient may be discharged on the written order of the
 23 professional person in charge of the patient. In the event
 24 the patient is not discharged within the three (3) month
 25 period and if the term is not extended as provided herein,

1 the patient will be discharged by the facility at the end of
2 three (3) months without further order of the court. Notice
3 of such discharge will be filed with the court within five
4 (5) days of the discharge.

5 (6) Not less than two (2) calendar weeks prior to the
6 end of the three (3) month period of detention, the
7 professional person in charge of the patient may petition
8 the court for extension of the detention period. The
9 petition shall be accompanied by a written report and
10 evaluation of the patient's mental and physical condition.
11 The report shall describe any tests and evaluation devices
12 which have been employed in evaluating the patient, the
13 course of treatment which has been undertaken for the
14 patient and the future course of treatment anticipated by
15 the professional person. Upon the filing of the petition,
16 the court shall give written notice of the filing of the
17 petition to the patient, his next of kin, if reasonably
18 available, the responsible person appointed by the court,
19 and to the patient's counsel. If any person so notified
20 requests a hearing prior to the termination of the previous
21 detention authority the court shall immediately set a time
22 and place for such a hearing on a date not more than ten
23 (10) days from the receipt of the request and notify the
24 same people including the professional person in charge of
25 the patient. Procedure on the petition for extension shall

1 be the same in all respects, as the procedure on the
2 petition for the original three (3) month commitment save
3 and except the patient shall not be entitled to trial by
4 jury. The hearing shall be held in the district court
5 having jurisdiction over the facility in which the patient
6 is detained unless otherwise ordered by the court. If upon
7 the hearing the court finds the patient to be not seriously
8 mentally ill within the meaning of this act, the patient
9 shall be discharged and the petition dismissed. If the
10 court finds that the patient continues to suffer from such
11 serious mental illness, the court shall order commitment,
12 custody in relatives, outpatient therapy or other order as
13 set forth in subsection (5) of this section except that no
14 order shall affect his custody for more than six (6) months.
15 In its order, the court shall describe what alternatives for
16 treatment of the patient are available, what alternatives
17 were investigated, and why the investigated alternatives
18 were not deemed suitable. The court shall not order
19 continuation of an alternative which does not include a
20 comprehensive, individualized plan of treatment for the
21 patient. Any court order for the continuation of an
22 alternative shall include a specific finding that a
23 comprehensive, individualized plan of treatment exists.

24 (7) Further extensions may be obtained under the same
25 procedure described in subsection (6) of this section except

1 that the patient's custody shall not be affected for more
2 than one (1) year, without a renewal of the commitment under
3 the procedures set forth in subsection (6) of this section,
4 including a statement of the findings required by subsection
5 (6).

6 (8) At any time during the patient's commitment the
7 court may on its own initiative or upon application of the
8 professional person in charge of the patient, the patient,
9 his next of kin, his attorney, or the responsible person
10 appointed by the court, order the patient to be placed in
11 the care and custody of relatives or guardians, or to be
12 provided outpatient therapy or other appropriate placement
13 or treatment.

14 Section 7. Emergency situation — petition —
15 detention. (1) When an emergency situation exists, a peace
16 officer may take any person who appears to be seriously
17 mentally ill and, as a result of serious mental illness, to
18 be a danger to others or to himself into custody only for
19 sufficient time to contact a professional person for
20 emergency evaluation. If possible, a professional person
21 should be called prior to taking the person into custody.

22 (2) If the professional person agrees that the person
23 detained appears to be seriously mentally ill and that an
24 emergency situation genuinely exists, then the person may be
25 detained until the next regular business day. At that time,

1 the professional person shall either cause the county
2 attorney to file the petition provided for in section 5 of
3 this act or shall release the detained person. In either
4 case, the professional person shall file a report with the
5 court explaining his actions.

6 (3) When the petition is filed, after an emergency
7 detention, the court may order the respondent detained for
8 the amount of time necessary for a professional person to
9 conduct the examination and inquiry provided for in section
10 5 and to report his findings and recommendations to the
11 court. In no case shall such detention exceed twenty-four
12 (24) hours from the time of the filing of the petition.
13 Saturday, Sunday, and legal holidays shall not be included
14 in computing the twenty-four (24) hour period. The court may
15 also order the respondent detained during the seventy-two
16 (72) hour evaluation and treatment period, if ordered, and
17 through the period of the hearing on initial commitment, if
18 held. No period of detention shall be ordered by the court
19 pursuant to this section unless the court finds that such
20 detention is required in the interest of public safety. An
21 order of detention shall include a statement of the factual
22 basis for the order.

23 (4) Any person detained pursuant to this section shall
24 be detained in the least restrictive environment required to
25 protect the life and physical safety of the person detained

1 or of members of the public. Whenever possible, a person
 2 detained pursuant to this section shall be detained in a
 3 mental health facility. A person may be detained in a jail
 4 or other correctional facility only if no mental health
 5 facility is available or if the available mental health
 6 facilities are inadequate to protect the person detained and
 7 the public. As soon as a mental health facility becomes
 8 available or the situation has changed sufficiently that an
 9 available mental health facility is adequate for the
 10 protection of the person detained and of the public, then
 11 the detained person shall be transferred from the jail or
 12 correctional facility to the mental health facility. In no
 13 case shall a person be detained in a jail or other
 14 correctional facility pursuant to this section for a longer
 15 period of time than is required for the county attorney to
 16 file a petition and for a professional person to complete
 17 his initial examination and inquiry and report his findings
 18 to the court.

19 (5) The county attorney of any county may make
 20 arrangements with any federal, state, regional, or private
 21 mental facility or with a mental health facility in any
 22 county for the detention of persons held pursuant to this
 23 section.

24 Section 8. Outpatient care — conditional release.

25 (1) When in the opinion of the professional person in

1 charge of a mental health facility providing involuntary
 2 treatment, the committed person can be appropriately served
 3 by outpatient care prior to the expiration of the period of
 4 commitment, then such outpatient care may be required as a
 5 condition for early release for a period which, when added
 6 to the inpatient treatment period, shall not exceed the
 7 period of commitment. If the mental health facility
 8 designated to provide outpatient care is other than the
 9 facility providing involuntary treatment, the outpatient
 10 facility so designated must agree in writing to assume such
 11 responsibility.

12 (2) The mental health facility designated to provide
 13 outpatient care or the professional person in charge of the
 14 patient's case may modify the conditions for continued
 15 release when such modification is in the best interest of
 16 the patient.

17 (3) If the mental health facility designated to
 18 provide outpatient care determines that a conditionally
 19 released person is failing to adhere to the terms and
 20 conditions of his release, and because of that failure has
 21 become a substantial danger to himself or other persons,
 22 then, upon notification by the mental health facility
 23 designated to provide outpatient care, or on his own motion,
 24 the professional person in charge of the patient's case may
 25 order that the conditionally released person be apprehended

1 and taken into custody and temporarily detained in a mental
 2 health facility in or near the county in which he is
 3 receiving outpatient treatment until such time, not
 4 exceeding five (5) days, as a hearing can be scheduled to
 5 determine whether or not the person should be returned to
 6 the mental health facility from which he had been
 7 conditionally released. The professional person in charge
 8 of the patient's case may modify or rescind such order at
 9 any time prior to commencement of the court hearing. The
 10 court shall be notified before the close of the next
 11 judicial day of a person's detention under the provisions of
 12 this section, and the county attorney of the county where
 13 the patient is receiving outpatient treatment shall file a
 14 petition and order of apprehension and detention with the
 15 court and mail or deliver notice to the person detained, his
 16 attorney, if any, and his guardian or conservator, if any,
 17 his next of kin, if known, and the responsible person
 18 appointed by the court. Such person shall have the same
 19 rights with respect to notice, hearing, and counsel as for
 20 an involuntary commitment proceeding, except as specifically
 21 set forth in this section and except that there shall be no
 22 right to jury trial. The issues to be determined shall be
 23 whether the conditionally released person did or did not
 24 adhere to the terms and conditions of his release; and, if
 25 he failed to adhere to such terms and conditions, (a)

1 whether he is likely to injure himself or other persons if
 2 not returned for involuntary treatment on an inpatient
 3 basis, or (b) whether the conditions of release should be
 4 modified. Pursuant to the determination of the court upon
 5 such hearing, the conditionally released person shall either
 6 continue to be conditionally released on the same or
 7 modified conditions or shall be returned for involuntary
 8 treatment on an inpatient basis subject to release at the
 9 end of the period for which he was committed for involuntary
 10 treatment, or otherwise in accordance with the provisions of
 11 this act. Such hearing may be waived by the person and his
 12 counsel and the responsible person, but shall not be
 13 waivable unless all such persons agree to waive, and upon
 14 such waiver the person may be returned for involuntary
 15 treatment or continued on conditional release on the same or
 16 modified conditions.

17 (4) The proceedings set forth in subsection (3) of
 18 this section may be initiated by the professional person in
 19 charge of the patient's case on the same basis set forth
 20 therein without the professional person requiring or
 21 ordering the apprehension and detention of the conditionally
 22 released person, in which case the court hearing shall take
 23 place in not less than fifteen (15) days from the date of
 24 service of the petition upon the conditionally released
 25 person.

1 Upon expiration of the period of commitment, or when
2 the person is released from outpatient care, notice in
3 writing to the court which committed the person for
4 treatment shall be provided.

5 Section 9. Right to counsel and appeal — examination
6 of respondent — records. (1) The person alleged to be
7 seriously mentally ill shall be present at any hearing or
8 trial. If he has no attorney, the judge shall appoint an
9 attorney to represent him at either the hearing or the trial
10 or both. If the court determines that the respondent is
11 financially unable to employ an attorney, the court shall
12 appoint counsel who shall be compensated from the public
13 funds of the county where the respondent resides. The
14 county of residence shall also pay all precommitment
15 expenses including transportation to a mental health
16 facility incurred in connection with the arrest,
17 examination, and precommitment custody.

18 (2) The respondent, his attorney, or the responsible
19 person appointed by the court may secure a professional
20 person of his own choice to examine the respondent and to
21 testify at the hearing before the court or jury as to the
22 results of his examination.

23 (3) If the person wishing to secure the testimony of a
24 professional person is unable to do so because of financial
25 reasons, and if the respondent joins in the request for such

1 examination, the court shall appoint a professional person
2 other than the professional person requesting the commitment
3 to perform the examination. Whenever possible, the court
4 shall allow the respondent a reasonable choice of an
5 available professional person qualified to perform the
6 requested examination.

7 (4) Every respondent subject to an order for
8 short-term treatment or long-term care and treatment shall
9 be advised of his right to appeal such order by the court at
10 the conclusion of any hearing as a result of which such an
11 order may be entered.

12 (5) Records and papers in proceedings under this act
13 shall be maintained separately by the clerks of the several
14 courts. Upon the release of any respondent or patient, the
15 facility shall notify the clerk of the court within five (5)
16 days of the release, and the clerk shall immediately seal
17 the record in the case and omit the name of the respondent
18 or patient from the index or indices of cases in such court
19 until and unless the court orders him opened for good cause
20 shown.

21 Section 10. Transfer or commitment to facility —
22 procedure. No person who is in the custody of the
23 department of institutions for any purpose other than
24 treatment of severe mental illness shall be transferred or
25 committed to a mental health facility unless such transfer

1 or commitment is effected according to the procedures set
2 out in this act.

3 Section 11. Appeal procedure. Appellate review of any
4 order of short-term treatment or long-term care and
5 treatment may be had by appeal to the supreme court of
6 Montana in the manner as other civil cases. The patient
7 shall not be released pending appeal unless ordered by the
8 court. The appeal shall have priority above all other
9 matters before the supreme court.

10 Section 12. Effect of act on persons currently judged
11 mentally ill. Any person who, by reason of a judicial
12 decree entered by a court of this state prior to the
13 enactment of this act adjudicating such person mentally ill
14 shall, one (1) year following the effective date of this act
15 be deemed to have been released and restored to legal
16 capacity and competency unless, before that time, a petition
17 for an extended detention order is filed with the court.

18 Section 13. Civil and legal rights of person
19 committed. (1) Unless specifically stated in an order by
20 the court, a person involuntarily committed to a facility
21 for a period of evaluation or treatment shall not forfeit
22 any legal right or suffer any legal disability by reason of
23 the provisions of this act except insofar as it may be
24 necessary to detain the person for treatment, evaluation or
25 care.

1 (2) Whenever any person is committed to a mental
2 health facility for a period of three (3) months or longer,
3 the court ordering the commitment may make an order stating
4 specifically any legal rights which are denied the
5 respondent and any legal disabilities which are imposed on
6 him. As part of its order, the court may appoint a person
7 to act as conservator of the respondent's property. Any
8 conservatorship created pursuant to this section shall
9 terminate upon the conclusion of the involuntary commitment
10 if not sooner terminated by the court. A conservatorship or
11 guardianship extending beyond the period of involuntary
12 commitment may not be created except according to the
13 procedures set forth under Montana law for the appointment
14 of conservators and guardians generally.

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

1 substance of this subsection.

2 (4) Any person committed to a mental health facility
3 prior to the effective date of this act shall enjoy all the
4 rights and privileges of a person committed after the
5 effective date of this act.

6 (5) No person who has received evaluation or treatment
7 under any provisions of this act shall be discriminated
8 against because of such status. For purposes of this
9 section, "discrimination" means giving any unfavorable
10 weight to the fact of hospitalization or outpatient care and
11 treatment unrelated to a person's present capacity to meet
12 standards applicable to all persons. The fact that a person
13 has received evaluation and treatment, whether voluntarily
14 or involuntarily, at any mental health facility shall not be
15 admitted into evidence in any subsequent proceeding for
16 involuntary commitment or for the appointment of a guardian
17 or conservator.

18 Section 14. Transfer of person committed. (1) If a
19 person is committed under the provisions of this act and is
20 eligible for hospital care or treatment by an agency of the
21 United States, and if a certificate of notification from
22 such agency showing that facilities are available and that
23 the person is eligible for care or treatment therein is
24 received, the court may order the person to be placed in the
25 custody of the agency for hospitalization. The chief

1 officer of any hospital or institution operated by such an
2 agency and in which a person is so hospitalized shall, be
3 vested with the same powers as the superintendent of the
4 Montana state hospital with respect to detention, custody,
5 transfer, conditional release, or discharge of the person.
6 Jurisdiction shall be retained in the appropriate courts of
7 this state to inquire into the mental condition of persons
8 so hospitalized, and to determine the necessity for
9 continuance of their hospitalization.

10 (2) Consistent with other provisions of this act, a
11 person committed under this act for a period of three (3)
12 months or longer may be committed by the court to the
13 custody of friends or next of kin residing outside the state
14 or to a mental health facility located outside the state, if
15 the out-of-state facility agrees to receive the patient,
16 provided, however, that no such commitment shall be for a
17 longer period of time than is permitted within the state.
18 If the patient is indigent, the expense of supporting him in
19 an out-of-state facility and the expense of transportation
20 shall be born by the state of Montana.

21 (3) The transfer of persons committed under the
22 provisions of this act out of Montana or under the laws of
23 another jurisdiction into Montana shall be governed by the
24 provisions of the interstate compact on mental health.

25 Section 15. Fingerprinting prohibited. No person

1 admitted to or in a mental health facility shall be
2 fingerprinted unless required by other provisions of law.

3 Section 16. Photographs permitted — confidential.

4 (1) A person admitted to a mental health facility may be
5 photographed upon admission for identification and the
6 administrative purposes of the facility. Such photographs
7 shall be confidential and shall not be released by the
8 facility except pursuant to court order.

9 (2) No other nonmedical photographs shall be taken or
10 used without consent of the patient's legal guardian or the
11 responsible person appointed by the court.

12 Section 17. Rights of persons admitted to facility.
13 Patients admitted to a mental health facility, whether
14 voluntarily or involuntarily, shall have the following
15 rights:

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

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

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

1 restrictions are to be continued. Patients shall have an
2 unrestricted right to visitation with attorneys, with
3 spiritual counsellors, and with private physicians and other
4 professional persons.

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

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

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

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

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

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

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

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

1 inappropriate to the treatment regimen.

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

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

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

24 (a) Regular housekeeping and maintenance procedures
 25 which will ensure that the facility is maintained in a safe,

1 clean, and attractive condition shall be developed and
2 implemented.

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

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

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

21 Section 18. Patient labor — rules. The following
22 rules shall govern patient labor:

23 (1) No patient shall be required to perform labor
24 which involves the operation and maintenance of a facility
25 or for which the facility is under contract with an outside

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

7 (2) (a) Patients may be required to perform therapeutic
8 tasks which do not involve the operation and maintenance of
9 the facility, provided the specific task or any change in
10 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) Patients 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
22 plan and approved as a therapeutic activity by a
23 professional person responsible for supervising the
24 patient's treatment; and

25 (ii) Supervised by a staff member to oversee the

1 therapeutic aspects of the activity; and

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

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

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

17 (5) Patients shall be allowed to use a reasonable
18 amount of the compensation received pursuant to this section
19 for personal and incidental purchases and expenses.

20 Section 19. Medication for patients. Patients have a
21 right to be free from unnecessary or excessive medication.
22 No medication shall be administered unless at the written
23 order of a physician. The professional person in charge of
24 the facility and the attending physician shall be
25 responsible for all medication given or administered to a

1 patient. The use of medication shall not exceed standards
2 of use that are advocated by the United States Food and Drug
3 Administration. Notation of each individual's medication
4 shall be kept in his medical records. At least weekly an
5 attending physician shall review the drug regimen of each
6 patient under his care. All prescriptions shall be written
7 with a termination date, which shall not exceed thirty (30)
8 days. Medication shall not be used as punishment, for the
9 convenience of staff, as a substitute for program, or in
10 quantities that interfere with the patient's treatment
11 program.

12 Section 20. Physical restraint and isolation.
13 Patients have a right to be free from physical restraint and
14 isolation. Except for emergency situations, in which it is
15 likely that patients could harm themselves or others and in
16 which less restrictive means of restraint are not feasible,
17 patients may be physically restrained or placed in isolation
18 only on a professional person's written order which explains
19 the rationale for such action. The written order may be
20 entered only after the professional person has personally
21 seen the patient concerned and evaluated whatever episode or
22 situation is said to call for restraint or isolation.
23 Emergency use of restraints or isolation shall be for no
24 more than one (1) hour, by which time a professional person
25 shall have been consulted and shall have entered an

1 appropriate order in writing. Such written order shall be
 2 effective for no more than twenty-four (24) hours and must
 3 be renewed if restraint and isolation are to be continued.
 4 Whenever a patient is subject to restraint or isolation,
 5 adequate care shall be taken to monitor his physical and
 6 psychiatric condition and to provide for his physical needs
 7 and comfort.

8 Section 21. Research on patients — restrictions.
 9 Patients shall have a right not to be subjected to
 10 experimental research without the express and informed
 11 consent of the patient, if the patient is able to give such
 12 consent, and of his guardian, if any, and the responsible
 13 person appointed by the court, after opportunities for
 14 consultation with independent specialists and with legal
 15 counsel. If there is no responsible person or if the
 16 responsible person appointed by the court is no longer
 17 available, then a responsible person who is in no way
 18 connected with the facility, the department of institutions,
 19 or the research project shall be appointed prior to the
 20 involvement of the patient in any experimental research.
 21 The facility shall send notice of intent to involve the
 22 patient in experimental research to the patient, his next of
 23 kin, if known, his legal guardian, if any, the attorney who
 24 most recently represented him, and the responsible person
 25 appointed by the court at least ten (10) days prior to the

1 commencement of such experimental research.

2 Such proposed research shall first have been reviewed
 3 and approved by the mental disabilities board of visitors
 4 before such consent shall be sought. Prior to such approval
 5 the board shall determine that such research complies with
 6 the principles of the statement on the use of human subjects
 7 for research of the American Association on Mental
 8 Deficiency and with the principles for research involving
 9 human subjects required by the United States Department of
 10 Health, Education, and Welfare for projects supported by
 11 that agency.

12 Section 22. Treatment procedures — restrictions.
 13 Patients have a right not to be subjected to treatment
 14 procedures such as lobotomy, electro-convulsive treatment,
 15 aversive reinforcement conditioning, or other unusual or
 16 hazardous treatment procedures without their express and
 17 informed consent after consultation with counsel, the legal
 18 guardian, if any, the responsible person appointed by the
 19 court, and any other interested party of the patient's
 20 choice. At least one (1) of those consulted must consent to
 21 the treatment. If there is no responsible person or if the
 22 responsible person appointed by the court is no longer
 23 available, then a responsible person who is in no way
 24 connected with the facility or with the department of
 25 institutions shall be appointed before any such treatment

1 procedure can be employed. The facility shall send notice
 2 of intent to employ extraordinary treatment procedures to
 3 the patient, his next of kin, if known, the legal guardian,
 4 if any, the attorney who most recently represented him and
 5 the responsible person appointed by the court at least ten
 6 (10) days prior to the commencement of such extraordinary
 7 treatment program.

8 Section 23. Professional person — qualifications. In
 9 every mental health facility to which a person is admitted
 10 pursuant to this act:

11 (1) Each professional person employed by the facility
 12 shall meet all licensing and certification requirements
 13 promulgated by the state of Montana for persons engaged in
 14 private practice of the same profession elsewhere in
 15 Montana. Other staff members shall meet the same licensing
 16 and certification requirements as persons who engage in
 17 private practice of their speciality elsewhere in Montana.

18 (2) All nonprofessional staff members who have not had
 19 prior clinical experience in a mental institution shall have
 20 a substantial orientation training.

21 (3) Staff members on all levels shall have regularly
 22 scheduled in-service training.

23 (4) Each nonprofessional staff member shall be under
 24 the direct supervision of a professional person.

25 Section 24. Treatment plan for patient established.

1 (1) Each patient admitted to a mental health facility for a
 2 period of more than seventy-two (72) hours shall have a
 3 comprehensive physical and mental examination and review of
 4 behavioral status within forty-eight (48) hours after
 5 admission to the mental health facility.

6 (2) Each patient shall have an individualized
 7 treatment plan. This plan shall be developed by appropriate
 8 professional persons including a psychiatrist, and
 9 implemented as soon as possible, in any event, no later than
 10 five (5) days after the patient's admission. Each
 11 individualized treatment plan shall contain:

12 (a) a statement of the nature of the specific problems
 13 and specific needs of the patient;

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

16 (c) a description of intermediate and long-range
 17 treatment goals, with a projected timetable for their
 18 attainment;

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

22 (e) a specification of staff responsibility and a
 23 description of proposed staff involvement with the patient
 24 in order to attain these treatment goals;

25 (f) criteria for release to less restrictive treatment

1 conditions, and criteria for discharge;

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

4 (3) As part of his treatment plan, each patient shall
5 have an individualized after care plan. This plan shall be
6 developed by a professional person as soon as practicable
7 after the patient's admission to the facility.

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

17 (5) The treatment plan shall be continuously reviewed
18 by the professional person responsible for supervising the
19 implementation of the plan and shall be modified if
20 necessary. Moreover, at least every ninety (90) days, each
21 patient shall receive a mental examination from, and his
22 treatment plan shall be reviewed by, a professional person
23 other than the professional person responsible for
24 supervising the implementation of the plan.

25 Section 25. Examination following commitment. No

1 later than fifteen (15) days after a patient is committed to
2 a mental health facility, the professional person in charge
3 of the facility, or his appointed, professionally qualified
4 agent, shall examine the committed patient and shall
5 determine whether the patient continues to require
6 commitment to the facility and whether a treatment plan
7 complying with this act has been implemented. If the
8 patient no longer requires commitment to the facility in
9 accordance with the standards for commitment, or if a
10 treatment plan has not been implemented, he must be released
11 immediately unless he agrees to continue with treatment on a
12 voluntary basis.

13 Section 26. Care and treatment following release. The
14 department of institutions and its agents have an
15 affirmative duty to provide adequate transitional treatment
16 and care for all patients released after a period of
17 involuntary confinement. Transitional care and treatment
18 possibilities include, but are not limited to, psychiatric
19 day care, treatment in the home by a visiting therapist,
20 nursing home or extended care, outpatient treatment, and
21 treatment in the psychiatric ward of a general hospital.

22 Section 27. Treatment of children and young adults.
23 In addition to complying with all the other standards
24 herein, a mental health facility shall make special
25 provisions for the treatment of patients who are children

1 and young adults. These provisions shall include, but are
2 not limited to:

3 (a) Opportunities for publicly supported education
4 suitable to the educational needs of the patient. This
5 program of education must, in the opinion of the attending
6 professional person be compatible with the patient's mental
7 condition and his treatment program, and otherwise be in the
8 patient's best interest.

9 (b) A treatment plan which considers the
10 chronological, maturational, and developmental level of the
11 patient.

12 (c) Sufficient professional persons, teachers, and
13 staff members with specialized skills in the care and
14 treatment of children and young adults.

15 (d) Recreation and play opportunities in the open air
16 where possible and appropriate residential facilities,
17 separate, wherever possible, from older patients.

18 (e) Arrangements for contact between the facility and
19 the family of the patient.

20 Section 28. Records to be maintained. Complete
21 patient records shall be kept by the mental health facility
22 and shall be available to anyone properly authorized in
23 writing by the patient. These records shall include:

24 (1) identification data, including the patient's legal
25 status;

1 (2) a patient history, including, but not limited to:
2 (a) family data, educational background, and
3 employment record;

4 (b) prior medical history, both physical and mental,
5 including prior hospitalization;

6 (3) the chief complaints of the patient and the chief
7 complaints of others regarding the patient.

8 (4) an evaluation which notes the onset of illness,
9 the circumstances leading to admission, attitudes, behavior,
10 estimate of intellectual functioning, memory functioning,
11 orientation, and an inventory of the patient's assets in
12 descriptive, not interpretative, fashion;

13 (5) a summary of each physical examination which
14 describes the results of the examination;

15 (6) a copy of the individual treatment plan and any
16 modifications thereto;

17 (7) a detailed summary of the findings made by the
18 reviewing professional person after each periodic review of
19 the treatment plan which analyzes the successes and failures
20 of the treatment program and directs whatever modifications
21 are necessary;

22 (8) a copy of the individualized after care plan and
23 any modifications thereto, and a summary of the steps that
24 have been taken to implement that plan;

25 (9) a medication history and status, which includes

1 the signed orders of the prescribing physician. The staff
2 person administering the medication shall indicate by
3 signature that orders have been carried out;

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

6 (11) a detailed summary on at least a weekly basis by a
7 professional person involved in the patient's treatment of
8 the patient's progress along the treatment plan;

9 (12) a weekly summary of the extent and nature of the
10 patient's work activities and the effect of such activity
11 upon the patient's progress along the treatment plan;

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

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

16 (15) a detailed summary of any extraordinary incident
17 in the facility involving the patient to be entered by a
18 staff member noting that he has personal knowledge of the
19 incident or specifying his other source of information, and
20 initialed within twenty-four (24) hours by a professional
21 person;

22 (16) a summary by the professional person in charge of
23 the facility or his appointed agent of his findings after
24 the fifteen (15) day review provided for in section 25.

25 Section 29. Records to be confidential — exceptions.

1 All information obtained and records prepared in the course
2 of providing any services under this act to individuals
3 under any provision of this act shall be confidential and
4 privileged matter. Such information and records may be
5 disclosed only:

6 (1) in communications between qualified professional
7 persons in the provision of services or appropriate
8 referrals;

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

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

23 (4) for research, if the department of institutions
24 has promulgated rules for the conduct of research. Such
25 rules shall include, but not be limited to, the requirement

1 that all researchers must sign an oath of confidentiality;

2 (5) to the courts, as necessary to the administration
3 of justice;

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

9 (7) to members of the mental disabilities board of
10 visitors or their agents when necessary to perform their
11 functions as set out in section 30 of this act.

12 Section 30. Mental disabilities board of visitors —
13 creation and responsibilities. (1) The governor shall
14 appoint a mental disabilities board of visitors. The board
15 shall consist of five (5) persons at least three (3) of whom
16 shall not be professional persons and at least one (1) of
17 whom shall be a representative of an organization concerned
18 with the care and welfare of the mentally ill. No one may
19 be a member of the board who is an agent or employee of the
20 department of institutions or of any mental health facility
21 affected by this act. If a board of similar title and
22 structure is created in any act concerning the treatment of
23 the mentally retarded or developmentally disabled, then one
24 board shall be created to perform the functions set out in
25 both acts and the board so created shall include at least

1 one (1) representative of an organization concerned with the
2 care and welfare of the mentally ill and one (1)
3 representative of an organization concerned with the care
4 and welfare of the mentally retarded or developmentally
5 disabled.

6 (2) The mental disabilities board of visitors shall be
7 an independent board of inquiry and review to assure that
8 the treatment of all persons either voluntarily or
9 involuntarily admitted to a mental facility is humane and
10 decent and meets the requirements set forth in this act.

11 (3) The board shall review all plans for experimental
12 research involving persons admitted to any mental health
13 facility to assure that the research project is humane and
14 not unduly hazardous and that it complies with the
15 principles of the statement on the use of human subjects for
16 research of the American Association on Mental Deficiency
17 and with the principles for research involving human
18 subjects required by the United States Department of Health,
19 Education, and Welfare. No experimental research project
20 involving persons admitted to any mental health facility
21 affected by this act shall be commenced unless it is
22 approved by the mental disabilities board of visitors.

23 (4) The board shall, at least annually, inspect every
24 mental health facility which is providing treatment and
25 evaluation to any person pursuant to this act. The board

1 shall inspect the physical plant, including residential,
2 recreational, dining, and sanitary facilities. It shall
3 visit all wards and treatment areas. The board shall
4 inquire concerning all treatment programs being implemented
5 by the facility.

6 (5) The board shall annually inspect the treatment
7 file of each person admitted to a mental health facility
8 pursuant to this act to insure that a treatment plan exists
9 and is being implemented. The board shall inquire
10 concerning all use of restraints, isolation, or other
11 extraordinary measures.

12 (6) The board may assist any patient at a mental
13 health facility in resolving any grievance he may have
14 concerning his commitment or his course of treatment in the
15 facility.

16 (7) If the board believes that any facility is failing
17 to comply with the provisions of this act in regard to its
18 physical facilities or its treatment of any patient, it
19 shall report its findings at once to the next of kin or
20 guardian of any patient involved, the responsible person
21 appointed by the court for any patient involved, the
22 professional person in charge of the facility, the director
23 of the department of institutions, and the district court
24 which has jurisdiction over the facility.

25 (8) The mental disabilities board of visitors shall

1 report annually to the governor and shall report to each
2 session of the Montana legislature concerning the status of
3 the mental health facilities and treatment programs which it
4 has inspected.

5 (9) The mental disabilities board of visitors shall be
6 attached to the governor for administrative purposes. It
7 may employ staff for the purpose of carrying out its duties
8 as set out in this act.

9 Section 31. Standards for treatment to be known. Each
10 patient and his next of kin, guardian, conservator, or the
11 responsible person appointed by the court shall promptly
12 upon the patient's admission receive written notice, in
13 language he understands, of all the above standards for
14 adequate treatment. In addition a copy of all the above
15 standards shall be posted in each ward.

16 Section 32. Section 38-110, B.C.M. 1947, is amended to
17 read as follows:

18 *38-110. Maintenance of indigent persons on discharge.
19 Upon the discharge of a patient from ~~the state hospital, the~~
20 ~~department a mental health facility, the professional person~~
21 in charge of the facility shall notify the board of public
22 ~~welfare welfare department~~ of the county from which the
23 patient was committed. The ~~county board of public welfare~~
24 county welfare department shall at once ascertain whether
25 the discharged patient is in financial need. If the patient

1 is found to be in financial need, the ~~county board of public~~
 2 ~~welfare~~ county welfare department shall properly care for
 3 and maintain the discharged patient under the Public Welfare
 4 ~~act~~ laws of this state relating to public welfare until the
 5 patient is able to care for himself, or until another
 6 provision has been made for care of the patient."

7 Section 33. Section 38-212, R.C.M. 1947, is amended to
 8 read as follows:

9 "38-212. Cost of examination and commitment. The cost
 10 of the examination, committal, and taking ~~an insane person~~
 11 ~~to the asylum~~ a person who is seriously mentally ill to a
 12 mental health facility must be paid by the county in which
 13 he resides at the time he is adjudged ~~insane~~ to be seriously
 14 mentally ill. The sheriff must be allowed the actual
 15 expenses incurred in taking ~~an insane person~~ a person who is
 16 seriously mentally ill to the ~~asylum~~ facility, as provided
 17 by section 16-2723 of this code."

18 Section 34. Section 38-506, R.C.M. 1947, is amended to
 19 read as follows:

20 "38-506. Support of patient placed ~~on convalescent~~
 21 ~~leave, discharged by lapse of time~~ conditionally released.
 22 ~~(1) When the state hospital places a patient on convalescent~~
 23 ~~leave, a mental health facility conditionally releases a~~
 24 patient committed to its care, it is not liable for his
 25 support while ~~on convalescent leave~~ conditionally released.

1 Liability devolves upon the legal guardian, parent, or
 2 person under whose care the patient is placed on
 3 convalescent leave, or upon any other person legally liable
 4 for his support. The public welfare officials of the county
 5 where the patient resides or is found, are responsible for
 6 providing relief and care for ~~the~~ a conditionally released
 7 ~~patient on convalescent leave~~ 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, like
 10 any other person in need of relief and care, under the
 11 public welfare laws. ~~The person under whose care the patient~~
 12 ~~is placed on convalescent leave or any other person legally~~
 13 ~~liable for his support, shall, if the convalescent leave is~~
 14 ~~revoked, be liable for any expense incurred by the state or~~
 15 ~~county in procuring the return of the patient to the~~
 16 ~~hospital.~~

17 ~~(2) The superintendent of the state hospital shall~~
 18 ~~place on convalescent leave any patient under his control~~
 19 ~~when he believes it is in the best interests of the patient~~
 20 ~~and society to do so. If a patient placed on convalescent~~
 21 ~~leave is not returned to the institution within a period of~~
 22 ~~two (2) years, he is considered discharged therefrom and~~
 23 ~~entry shall be made accordingly in the records of the~~
 24 ~~institution. If a patient who has escaped from the~~
 25 ~~institution is not returned thereto within two (2) years, he~~

~~is considered discharged therefrom and an entry shall be made accordingly in the records of the institution. When a patient is discharged whether by convalescent leave continuing for a period of two (2) years or by having escaped and not having been returned within two (2) years, the superintendent of the state hospital shall immediately notify in writing the judge of the court by which the patient was committed. A person so discharged may not be recommitted to the state hospital except by court order and upon proceedings as required by law for commitment in the first instance. This section does not restore the civil rights of persons so discharged or restore sanity, or relieve the superintendent of the state hospital from the obligation of supervising patients on convalescent leave to the extent of available facilities and finances."~~

Section 35. Section 38-507, R.C.M. 1947, is amended to read as follows:

"38-507. Clothing for patient on ~~convalescent leave~~ conditional release or discharged patient. A patient ~~ex~~ inmate may not be discharged or placed on ~~convalescent leave~~ conditionally released from the state hospital a mental health facility without suitable clothing adapted to the season in which he is discharged."

Section 36. Section 80-1601, R.C.M. 1947, is amended to read as follows:

"80-1601. Institutions subject to per diem charge. The state department of institutions shall collect and process per diem payments for the care of residents in the following institutions and for the care of those persons in foster homes or other facilities for the mentally ill, or the mentally retarded, or developmentally disabled under provisions of the department:

- (1) Montana children's center
- (2) Warm Springs state hospital
- (3) Boulder river school and hospital
- (4) Galen state hospital
- (5) Montana veterans' home
- (6) Montana center for the aged.
- (7) Eastmont training center."

Section 37. Severability clause. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

Section 38. Sections 38-107, 38-108, 38-109, 38-112, 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2, 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,

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- 1 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
- 2 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R.C.M.
- 3 1947, are repealed.

-End-

Approved by Committee
on Judiciary

SENATE BILL NO. 377

INTRODUCED BY TOWE, DRAKE, ROBERTS, BROWN, SEIBEL, REGAN,
FASBENDER, BLAYLOCK, CONOVER, CETRONE, HONNEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
DETERMINATION AND TREATMENT OF THE SERIOUSLY MENTALLY ILL
AND THOSE SUFFERING FROM MENTAL DISORDERS; AMENDING SECTIONS
38-110, 38-212, 38-506, 38-507, AND ~~80-4604~~ 80-2501;
REPEALING SECTIONS 38-107, 38-108, 38-109, 38-112, 38-113,
38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204,
38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2,
38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
38-408.1, 38-502, 38-503, 38-504, 38-505, AND 64-112, R.C.M.
1947."

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

Section 1. Purpose of act. The purpose of this act
is:

(1) to secure for each person who may be seriously
mentally ill or suffering from a mental disorder such care
and treatment as will be suited to the needs of the person,
and to insure that such care and treatment are skillfully
and humanely administered with full respect for the person's
dignity and personal integrity;

(2) to deprive a person of his liberty for purposes of
treatment or care only when less restrictive alternatives
are unavailable and only when his safety or the safety of
others is endangered, and to provide for due process of law
when this is done.

Section 2. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of
visitors created by this act.

(2) "Court" means the district court of the state of
Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which
any person is in imminent danger of death or serious bodily
harm from the activity of a person who appears to be
seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or
emotional impairment which has substantial adverse effects
on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a
public hospital or a licensed private hospital or, a
community mental health center, or any mental health clinic
or treatment center approved by the department. No
correctional institution or facility, or jail, is a mental
health facility within the meaning of this act.

(7) "Next of kin" shall include, but need not be

SECOND READING

1 limited to, the spouse, parents, adult children, and adult
2 brothers and sisters of a person.

3 (8) "Patient" means a person committed by the court to
4 a seventy-two (72) hour evaluation or treatment or for a
5 longer period.

6 (9) "Peace officer" means any sheriff, deputy sheriff,
7 marshal, policeman or other peace officer.

8 (10) "Professional person" means:

9 (a) a medical doctor, or

10 (b) a person trained in the field of mental health and
11 certified by the ~~regional mental health director if the~~
12 ~~director is a licensed physician, or by the superintendent~~
13 ~~of the Montana state hospital, if the superintendent is a~~
14 ~~licensed physician, in the absence of such a regional~~
15 ~~director~~ DEPARTMENT OF INSTITUTIONS IN ACCORDANCE WITH
16 STANDARDS OF PROFESSIONAL LICENSING BOARDS, FEDERAL
17 REGULATIONS, AND THE JOINT COMMISSION ON ACCREDITATION OF
18 HOSPITALS.

19 (11) "Respondent" means a person alleged in a petition
20 filed pursuant to this act to be seriously mentally ill.

21 (12) "Responsible person" means any person willing and
22 able to assume responsibility for a seriously mentally ill
23 person, or person alleged to be seriously mentally ill,
24 including next of kin; the person's conservator or legal
25 guardian, if any; representatives of a charitable or

1 religious organization, or any other person appointed by the
2 court to perform the functions of a "responsible person" set
3 out in this act. Only one person shall at any one time be
4 the "responsible person" within the meaning of this act. In
5 appointing a responsible person, the court shall consider
6 the preference of the respondent. The court may, at any
7 time for good cause shown, change its designation of the
8 "responsible person".

9 (13) "Seriously mentally ill" means suffering from a
10 mental disorder which has resulted in self-inflicted injury
11 or injury to others, or the imminent threat thereof; or
12 which has deprived the person afflicted of the ability to
13 protect his life or health. No person may be involuntarily
14 committed to a mental health facility nor detained for
15 evaluation and treatment because he is an epileptic,
16 mentally deficient, mentally retarded, senile or suffering
17 from a mental disorder unless the condition causes the
18 person to be seriously mentally ill within the meaning of
19 this act.

20 Section 3. Voluntary ~~commitment~~ ADMISSION — cost of
21 ~~commitment~~ ADMISSION. (1) Nothing in this act shall be
22 construed in any way as limiting the right of any person to
23 make voluntary application for ~~commitment~~ ADMISSION at any
24 time to any mental health facility or professional person.
25 An application for admission to a mental health facility

1 shall be in writing on a form prescribed by the facility and
 2 approved by the department of institutions. It shall not be
 3 valid unless it is approved by a professional person and a
 4 copy is given to the person voluntarily ~~committing~~ ADMITTING
 5 himself. The form shall contain a statement of the rights
 6 of the person voluntarily ~~committing himself~~ APPLYING FOR
 7 ADMISSION, as set out in this act, including the right to
 8 release.

9 (2) Any ~~person~~ APPLICANT who wishes to voluntarily
 10 ~~commit himself~~ APPLY FOR ADMISSION to the Montana state
 11 hospital shall first obtain certification from the regional
 12 mental health director of his mental health region or IF NOT
 13 REASONABLY AVAILABLE, FROM a professional person ~~designated~~
 14 ~~by the regional director~~ that the person APPLICANT is
 15 suffering from a mental disorder and that the facilities
 16 available to the mental health region IN WHICH THE APPLICANT
 17 RESIDES are unable to provide adequate evaluation and
 18 treatment.

19 (3) An application for voluntary ~~commitment~~ ADMISSION
 20 shall give the facility the right to detain the applicant
 21 for no more than five (5) days past his written request for
 22 release.

23 (4) The cost of involuntarily committing a patient who
 24 is voluntarily ~~committed~~ ADMITTED to a mental health
 25 facility at the time the involuntary proceedings are

1 commenced shall be borne by the county of the patient's
 2 residence AT THE TIME OF ADMISSION.

3 (5) The costs of transportation to a mental health
 4 facility under this section shall be provided by the
 5 patient, his parents, guardian, or the welfare department of
 6 the county of the patient's residence.

7 (6) Any person voluntarily entering or remaining in
 8 any mental health facility shall enjoy all the rights
 9 secured to a person involuntarily committed to the facility.

10 (7) Notwithstanding any other provision of law, a
 11 minor who is sixteen (16) years of age or older may consent
 12 to receive mental health services to be rendered by a
 13 facility or a person licensed to practice medicine or
 14 psychology in this state.

15 (8) VOLUNTARY COMMITMENT OF A MINOR TO A MENTAL HEALTH
 16 FACILITY FOR AN IN-PATIENT COURSE OF TREATMENT SHALL BE FOR
 17 A PERIOD OF NO MORE THAN THIRTY (30) DAYS. IF THE
 18 PROFESSIONAL PERSON IN CHARGE OF A MINOR PATIENT DETERMINES
 19 THAT THE COMMITMENT SHOULD CONTINUE FOR A PERIOD OF MORE
 20 THAN THIRTY (30) DAYS, HE SHALL COMMENCE INVOLUNTARY
 21 COMMITMENT PROCEEDINGS IN ACCORDANCE WITH THIS ACT. COUNSEL
 22 SHALL BE APPOINTED FOR THE MINOR.

23 (9) IF, IN ANY VOLUNTARY COMMITMENT FOR ANY PERIOD OF
 24 TIME TO A MENTAL HEALTH FACILITY, A MINOR FAILS TO JOIN IN
 25 THE CONSENT OF HIS PARENTS OR GUARDIAN TO THE VOLUNTARY

1 COMMITMENT, THEN THE COMMITMENT SHALL BE TREATED AS AN
 2 INVOLUNTARY COMMITMENT. NOTICE OF THE SUBSTANCE OF THIS
 3 SUBSECTION AND OF THE RIGHT TO COUNSEL SHALL BE SET FORTH IN
 4 CONSPICUOUS TYPE IN A CONSPICUOUS LOCATION ON ANY FORM OR
 5 APPLICATION USED FOR THE VOLUNTARY COMMITMENT OF A MINOR TO
 6 A MENTAL HEALTH FACILITY. THE NOTICE SHALL BE EXPLAINED TO
 7 THE MINOR BY THE PROFESSIONAL PERSON APPROVING THE
 8 APPLICATION.

9 Section 4. Rights and waiver of rights. (1) Whenever
 10 a person is involuntarily detained, or is examined by a
 11 professional person pursuant to section 5, or is notified
 12 that he will be the subject of a hearing pursuant to section
 13 5 or 6, the person shall be informed of his constitutional
 14 rights and his rights under this act. A person may waive
 15 his procedural rights, provided that the waiver is knowingly
 16 and intentionally made. The right to counsel in a hearing
 17 held pursuant to section 6 may not be waived. The right to
 18 treatment provided for in this act may not be waived.

19 (2) In the case of a person who has been ~~committed~~
 20 DETAINED for a seventy-two (72) hour inpatient evaluation
 21 and treatment or for a longer period of time, a waiver of
 22 rights can be knowingly and intentionally made only with the
 23 concurrence of the patient's attorney or of the responsible
 24 person appointed by the court. THE RIGHT OF THE RESPONDENT
 25 TO BE PHYSICALLY PRESENT AT A HEARING MAY ALSO BE WAIVED BY

1 HIS ATTORNEY AND THE RESPONSIBLE PERSON WITH THE CONCURRENCE
 2 OF THE PROFESSIONAL PERSON AND THE JUDGE UPON A FINDING
 3 SUPPORTED BY FACTS THAT:

4 (A) THE PRESENCE OF THE RESPONDENT AT THE HEARING
 5 WOULD BE LIKELY TO SERIOUSLY ADVERSELY AFFECT HIS MENTAL
 6 CONDITION, AND

7 (B) AN ALTERNATIVE LOCATION FOR THE HEARING IN
 8 SURROUNDINGS FAMILIAR TO THE RESPONDENT WOULD NOT PREVENT
 9 SUCH ADVERSE AFFECTS ON HIS MENTAL CONDITION.

10 (3) In the case of a minor, the waiver of rights can
 11 be knowingly and intentionally made

12 (a) when the minor is under the age of twelve (12), by
 13 the parents of the minor;

14 (b) when the minor is over the age of twelve (12), by
 15 the youth and his parents;

16 (c) when the minor is over the age of twelve (12) and
 17 the minor and his parents do not agree, the minor can make
 18 an effective waiver of his rights only with advice of
 19 counsel.

20 If there is a AN APPARENT conflict of interest between
 21 a minor and his parents or guardian, the court may appoint a
 22 guardian ad litem for the minor.

23 (4) In addition to any other rights which may be
 24 guaranteed by the constitution of the United States and of
 25 this state, by the laws of this state or by this act, any

1 person who is involuntarily detained or against whom a
2 petition is filed pursuant to this act has the following
3 rights:

4 (a) the right to notice reasonably in advance of any
5 hearing or other court proceeding concerning him;

6 (b) the right in any hearing to be present, to offer
7 evidence, and to present witnesses in any proceeding
8 concerning him;

9 (c) the right in any hearing to cross-examine
10 witnesses;

11 (d) the right to be represented by counsel;

12 (e) the right to remain silent;

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

16 (g) the right to view and copy all petitions on file
17 with the court concerning him;

18 (h) the right to be examined by a professional person
19 of his choice when such professional person is reasonably
20 available;

21 (i) the right to be dressed in his own clothes at any
22 hearing held pursuant to this act;

23 (j) the right to refuse any but lifesaving medication
24 for up to twenty-four (24) hours prior to any hearing held
25 pursuant to this act.

1 Section 5. Petition alleging person as seriously
2 mentally ill - contents and procedure. (1) A county
3 attorney on his own initiative or upon the request of any
4 person may file a petition with the court alleging that
5 there is a person within the county who is seriously
6 mentally ill and requesting that an evaluation of the
7 person's condition be made.

8 (2) The petition shall contain:

9 (a) the name and address of the person requesting the
10 petition and his interest in the case;

11 (b) the name of the respondent, and, if known, the
12 address, age, sex, marital status, and occupation of the
13 respondent;

14 (c) the purported facts supporting the allegation of
15 mental illness;

16 (d) the name and address of every person known or
17 believed to be legally responsible for the care, support,
18 and maintenance of the person for whom evaluation is sought;

19 (e) the name and address of the person's next of kin,
20 to the extent known to the county attorney and the person
21 requesting the petition;

22 (f) the name and address of any person whom the county
23 attorney believes might be willing and able to be appointed
24 as responsible person;

25 (g) the name, address, and telephone number of the

1 attorney, if any, who has most recently represented the
 2 person for whom evaluation is sought. If there is no
 3 attorney, there shall be a statement as to whether, to the
 4 best knowledge of the person requesting the petition, the
 5 person for whom evaluation is sought is indigent and
 6 therefore unable to afford the services of an attorney; and

7 (b) a statement of the rights of the respondent which
 8 shall be in conspicuous print and identified by a suitable
 9 heading.

10 (3) Upon presentation to the court by the county
 11 attorney, the court shall immediately consider the petition
 12 with or without a hearing to determine if there is probable
 13 cause to believe that the respondent is seriously mentally
 14 ill. If the court finds no such probable cause, the
 15 petition shall be discharged. If the court finds probable
 16 cause it shall submit the petition to a professional person
 17 for evaluation. If probable cause is found, the court may
 18 appoint a responsible person to protect the interests of the
 19 respondent. The responsible person shall be notified as
 20 soon as possible that a petition has been filed. Notice of
 21 the petition and the finding of probable cause shall be hand
 22 delivered or mailed to the respondent and to the attorney,
 23 the person or persons legally responsible for care, support,
 24 and maintenance of the respondent, next of kin identified in
 25 the petition, and the person or persons identified by the

1 county attorney as possible responsible persons.

2 (4) (a) Upon receipt of the petition, the professional
 3 person shall examine the respondent and make such inquiry as
 4 he or she may deem appropriate. If the respondent does not
 5 cooperate and if requested by the professional person, the
 6 court may order the respondent to submit to examination by a
 7 professional person at a time and place designated by the
 8 court. The examination so ordered shall not exceed a period
 9 of four (4) hours.

10 (b) When the professional person first contacts the
 11 respondent, before he begins any examination, he shall give
 12 a copy of the petition to the respondent, and shall explain
 13 to the respondent the nature of the proceeding and his
 14 rights as set forth in the petition.

15 (5) On the basis of his examination, the professional
 16 person shall recommend in writing either that the petition
 17 be dismissed or that a seventy-two (72) hour inpatient
 18 evaluation and treatment be ordered. If dismissal is
 19 recommended, the petition shall be summarily dismissed. The
 20 petition shall be dismissed if the respondent accepts
 21 voluntary treatment or ~~commitment~~ ADMISSION to a mental
 22 health facility approved by the professional person
 23 conducting the examination. Whenever a professional person
 24 recommends that a seventy-two (72) hour evaluation and
 25 treatment be ordered, the recommendation shall be

1 accompanied by a report explaining the reason for the
 2 recommendation and identifying any tests or evaluation
 3 devices which the professional person employed in evaluating
 4 the respondent. If the professional person recommends that
 5 a seventy-two (72) hour evaluation and treatment be ordered,
 6 notice of this recommendation shall be mailed or delivered
 7 to the respondent, the next of kin, when known, any person
 8 responsible for the care, support, and maintenance of the
 9 respondent, any other person identified in the petition, and
 10 the responsible person, if any, appointed by the court.
 11 Notice shall include the date, time, and place of the
 12 respondent's next appearance before the court.

13 (6) In the event the examining professional person
 14 recommends a seventy-two (72) hour inpatient evaluation and
 15 treatment, the respondent shall be brought before the court
 16 by the county attorney without undue delay, advised of the
 17 recommendation, supplied with a copy of the petition and the
 18 recommendation and advised of his rights to a hearing and to
 19 counsel. If a responsible person has not yet been
 20 appointed, the court shall appoint a responsible person at
 21 this time. If the right to a hearing and to counsel are
 22 waived, the court shall direct that the respondent be
 23 detained at a mental health facility for evaluation and
 24 treatment not to exceed seventy-two (72) hours. If a
 25 hearing is requested by the respondent, his attorney, or the

1 responsible person appointed by the court, a time and place
 2 shall be set for the hearing. The matter shall be given
 3 precedence over all other court matters. If the respondent
 4 is unwilling or unable to retain counsel, the court shall
 5 appoint counsel and be responsible for notification.

6 (7) The hearing shall be held before the court without
 7 a jury. The respondent may present such testimony and
 8 relevant documentary evidence as he or the responsible
 9 person or counsel desires. The county attorney shall
 10 represent the state. The professional person who made the
 11 recommendation shall be present in court and may be
 12 cross-examined concerning his recommendation and his report.
 13 After full hearing the court shall determine whether the
 14 respondent is seriously mentally ill within the definition
 15 provided herein. If the court finds the respondent is not
 16 seriously mentally ill, he or she shall be discharged and
 17 the petition dismissed. If the court finds the respondent
 18 to be seriously mentally ill, it shall order the respondent
 19 detained at a mental health facility for examination and
 20 treatment not exceeding seventy-two (72) hours. However,
 21 the court may dismiss the petition if the respondent agrees
 22 to accept voluntary treatment or ~~commitment~~ ADMISSION to a
 23 mental health facility.

24 (8) Persons receiving evaluation and treatment
 25 pursuant to this section shall be given a reasonable choice

1 of an available professional person qualified to provide
2 such services.

3 Section 6. Petition for commitment — trial —
4 determination of court. (1) If in the opinion of the
5 professional person in charge of the patient the person
6 detained under the provisions of section 5 of this act does
7 not require further evaluation or treatment he shall be
8 released within seventy-two (72) hours. If, in the opinion
9 of the professional person, the patient requires further
10 evaluation or treatment, he shall advise the court
11 accordingly not less than three (3) days from the date of
12 detention and shall within the same time file a petition
13 requesting that the patient be committed to a facility for a
14 period not in excess of three (3) months. The petition
15 shall be accompanied by a written report and evaluation of
16 the patient's mental and physical condition. The report
17 shall explain the reasons for the petition and shall
18 identify any tests or evaluation devices which the
19 professional person employed in evaluating the patient. The
20 professional person may retain THE PATIENT IN custody of ~~the~~
21 ~~patient~~ BY COURT ORDER pending a hearing on the petition
22 only if detention is necessary to prevent injury to ~~himself~~
23 THE PATIENT or others.

24 (2) Upon receipt of a petition for commitment not to
25 exceed three (3) months, the court shall immediately set the

1 time and place for a hearing, which shall be held not more
2 than three (3) days from the receipt of the petition. The
3 court may extend the period to seven (7) days. The time for
4 the hearing may be further extended at the request of
5 counsel for the patient. The court shall give written
6 notice to the professional person who requested the
7 commitment, the patient, his counsel, his next of kin, when
8 known, the responsible person appointed by the court, and
9 the county attorney. At any time prior to the date set for
10 hearing, the patient, or his attorney, may request a jury
11 trial, whereupon the time set for hearing will be vacated
12 and the matter set on the court's jury calendar at the
13 earliest date possible, the matter taking precedence over
14 all other matters on the jury calendar.

15 (3) At any time prior to trial on the petition before
16 court or jury, the patient may waive trial and give written
17 consent to commitment to a facility for a period not to
18 exceed three (3) months. Such consent must be joined in
19 writing, by his attorney and by the responsible person
20 appointed by the court.

21 (4) The patient shall be present and represented by
22 counsel at all stages of the trial, and the sole question to
23 be determined by the court or jury, as the case may be,
24 shall be whether the patient is seriously mentally ill
25 within the meaning set forth in this act. The professional

1 person who filed the petition shall be present in court for
 2 the hearing and subject to cross-examination. The trial
 3 shall be governed by the Montana rules of civil procedure
 4 except that, if tried by a jury, at least three-fourths
 5 (3/4) of the jurors must concur on a finding that the
 6 patient is seriously mentally ill. The finding may be
 7 appealed to the Montana supreme court in the same manner as
 8 other civil matters. The standard of proof in any hearing
 9 held pursuant to this section shall be proof beyond a
 10 reasonable doubt. ANY COURT MAY ORDER A HEARING CLOSED TO
 11 THE PUBLIC FOR THE PROTECTION OF THE RESPONDENT.

12 (5) If, upon hearing, it is determined that the
 13 patient is not seriously mentally ill within the meaning of
 14 this act, he shall be discharged and the petition of the
 15 professional person dismissed. If it is determined that the
 16 patient is seriously mentally ill within the meaning of this
 17 act the court shall:

18 (a) commit the patient to a facility for a period of
 19 not more than three (3) months;

20 (b) order the patient to be placed in the care and
 21 custody of his relative or guardian or some other
 22 appropriate place other than an institution;

23 (c) order outpatient therapy; or

24 (d) make some other appropriate order for treatment.

25 No treatment ordered pursuant to this subsection shall

1 affect the patient's custody for a period of more than three
 2 (3) months.

3 In determining which of the above alternatives to
 4 order, the court shall choose the least restrictive
 5 alternatives necessary to protect the patient and the public
 6 and to permit effective treatment. The court shall consider
 7 and shall describe in its order what alternatives for
 8 treatment of the patient are available, what alternatives
 9 were investigated and why the investigated alternatives were
 10 not deemed suitable. THE COURT SHALL ENTER INTO THE RECORD
 11 A DETAILED STATEMENT OF THE FACTS UPON WHICH IT FOUND THE
 12 RESPONDENT TO BE SERIOUSLY MENTALLY ILL.

13 At any time within the three (3) month period the
 14 patient may be discharged on the written order of the
 15 professional person in charge of the patient. In the event
 16 the patient is not discharged within the three (3) month
 17 period and if the term is not extended as provided herein,
 18 the patient ~~will~~ SHALL be discharged by the facility at the
 19 end of three (3) months without further order of the court.
 20 Notice of such discharge will be filed with the court within
 21 five (5) days of the discharge.

22 (6) Not less than two (2) calendar weeks prior to the
 23 end of the three (3) month period of detention, the
 24 professional person in charge of the patient may petition
 25 the court for extension of the detention period. The

1 petition shall be accompanied by a written report and
 2 evaluation of the patient's mental and physical condition.
 3 The report shall describe any tests and evaluation devices
 4 which have been employed in evaluating the patient, the
 5 course of treatment which has been undertaken for the
 6 patient and the future course of treatment anticipated by
 7 the professional person. Upon the filing of the petition,
 8 the court shall give written notice of the filing of the
 9 petition to the patient, his next of kin, if reasonably
 10 available, the responsible person appointed by the court,
 11 and to the patient's counsel. If any person so notified
 12 requests a hearing prior to the termination of the previous
 13 detention authority the court shall immediately set a time
 14 and place for such a hearing on a date not more than ten
 15 (10) days from the receipt of the request and notify the
 16 same people including the professional person in charge of
 17 the patient. Procedure on the petition for extension shall
 18 be the same in all respects, as the procedure on the
 19 petition for the original three (3) month commitment ~~save~~
 20 ~~and~~ except the patient shall not be entitled to trial by
 21 jury. The hearing shall be held in the district court
 22 having jurisdiction over the facility in which the patient
 23 is detained unless otherwise ordered by the court. If upon
 24 the hearing the court finds the patient ~~to be~~ not seriously
 25 mentally ill within the meaning of this act, the patient

1 shall be discharged and the petition dismissed. If the
 2 court finds that the patient continues to suffer from ~~such~~
 3 serious mental illness, the court shall order commitment,
 4 custody in relatives, outpatient therapy or other order as
 5 set forth in subsection (5) of this section except that no
 6 order shall affect his custody for more than six (6) months.
 7 In its order, the court shall describe what alternatives for
 8 treatment of the patient are available, what alternatives
 9 were investigated, and why the investigated alternatives
 10 were not deemed suitable. The court shall not order
 11 continuation of an alternative which does not include a
 12 comprehensive, individualized plan of treatment for the
 13 patient. Any court order for the continuation of an
 14 alternative shall include a specific finding that a
 15 comprehensive, individualized plan of treatment exists.

16 (7) Further extensions may be obtained under the same
 17 procedure described in subsection (6) of this section except
 18 that the patient's custody shall not be affected for more
 19 than one (1) year, without a renewal of the commitment under
 20 the procedures set forth in subsection (6) of this section,
 21 including a statement of the findings required by subsection
 22 (6).

23 (8) At any time during the patient's commitment the
 24 court may on its own initiative or upon application of the
 25 professional person in charge of the patient, the patient,

1 his next of kin, his attorney, or the responsible person
2 appointed by the court, order the patient to be placed in
3 the care and custody of relatives or guardians, or to be
4 provided outpatient therapy or other appropriate placement
5 or treatment.

6 Section 7. Emergency situation — petition —
7 detention. (1) When an emergency situation exists, a peace
8 officer may take any person who appears to be seriously
9 mentally ill and, as a result of serious mental illness, to
10 be a danger to others or to himself into custody only for
11 sufficient time to contact a professional person for
12 emergency evaluation. If possible, a professional person
13 should be called prior to taking the person into custody.

14 (2) If the professional person agrees that the person
15 detained appears to be seriously mentally ill and that an
16 emergency situation genuinely exists, then the person may be
17 detained until the next regular business day. At that time,
18 the professional person shall either cause the county
19 attorney to file the petition provided for in section 5 of
20 this act or shall release the detained person. In either
21 case, the professional person shall file a report with the
22 court explaining his actions.

23 (3) When the petition is filed, after an emergency
24 detention, the court may order the respondent detained for
25 the amount of time necessary for a professional person to

1 conduct the examination and inquiry provided for in section
2 5 and to report his findings and recommendations to the
3 court. In no case shall such detention exceed twenty-four
4 (24) hours from the time of the filing of the petition.
5 Saturday, Sunday, and legal holidays shall not be included
6 in computing the twenty-four (24) hour period. The court may
7 also order the respondent detained during the seventy-two
8 (72) hour evaluation and treatment period, if ordered, and
9 through the period of the hearing on initial commitment, if
10 held. No period of detention shall be ordered by the court
11 pursuant to this section unless the court finds that such
12 detention is required in the interest of public safety OR
13 THE LIFE OR SAFETY OF THE RESPONDENT. An order of detention
14 shall include a statement of the factual basis for the
15 order.

16 (4) Any person detained pursuant to this section shall
17 be detained in the least restrictive environment required to
18 protect the life and physical safety of the person detained
19 or of members of the public. Whenever possible, a person
20 detained pursuant to this section shall be detained in a
21 mental health facility. A person may be detained in a jail
22 or other correctional facility only if no mental health
23 facility is available or if the available mental health
24 facilities are inadequate to protect the person detained and
25 the public. As soon as a mental health facility becomes

1 available or the situation has changed sufficiently that an
 2 available mental health facility is adequate for the
 3 protection of the person detained and of the public, then
 4 the detained person shall be transferred from the jail or
 5 correctional facility to the mental health facility. In no
 6 case shall a person be detained in a jail or other
 7 correctional facility pursuant to this section for a longer
 8 period of time than is required for the county attorney to
 9 file a petition and for a professional person to complete
 10 his initial examination and inquiry and report his findings
 11 to the court.

12 (5) The county attorney of any county may make
 13 arrangements with any federal, state, regional, or private
 14 mental facility or with a mental health facility in any
 15 county for the detention of persons held pursuant to this
 16 section.

17 Section 8. Outpatient care — conditional release.

18 (1) When in the opinion of the professional person in
 19 charge of a mental health facility providing involuntary
 20 treatment, the committed person can be appropriately served
 21 by outpatient care prior to the expiration of the period of
 22 commitment, then such outpatient care may be required as a
 23 condition for early release for a period which, when added
 24 to the inpatient treatment period, shall not exceed the
 25 period of commitment. If the mental health facility

1 designated to provide outpatient care is other than the
 2 facility providing involuntary treatment, the outpatient
 3 facility so designated must agree in writing to assume such
 4 responsibility.

5 (2) The mental health facility designated to provide
 6 outpatient care or the professional person in charge of the
 7 patient's case may modify the conditions for continued
 8 release when such modification is in the best interest of
 9 the patient.

10 (3) If the mental health facility designated to
 11 provide outpatient care determines that a conditionally
 12 released person is failing to adhere to the terms and
 13 conditions of his release, and because of that failure has
 14 become a substantial danger to himself or other persons,
 15 then, upon notification by the mental health facility
 16 designated to provide outpatient care, or on his own motion,
 17 the professional person in charge of the patient's case may
 18 order that the conditionally released person be apprehended
 19 and ~~taken into custody and temporarily detained in a mental~~
 20 ~~health facility in or near the county in which he is~~
 21 ~~receiving outpatient treatment until such time, not~~
 22 ~~exceeding five (5) days, as a hearing can be scheduled to~~
 23 ~~determine whether or not the person should be returned to~~
 24 ~~the mental health facility from which he had been RETURNED~~
 25 TO THE FACILITY FROM WHICH HE WAS conditionally released.

1 The professional person in charge of the patient's case may
 2 modify or rescind such order at any time, ~~prior to~~
 3 ~~commencement of the court hearing. The court shall be~~
 4 ~~notified before the close of the next judicial day of a~~
 5 ~~person's detention under the provisions of this section, and~~
 6 ~~the county attorney of the county where the patient is~~
 7 ~~receiving outpatient treatment shall file a petition and~~
 8 ~~order of apprehension and detention with the court and THE~~
 9 ~~PROFESSIONAL PERSON SHALL mail or deliver notice to the~~
 10 ~~person detained, his attorney, if any, and his guardian or~~
 11 ~~conservator, if any, his next of kin, if known, and the~~
 12 ~~responsible person appointed by the court. ~~Such person~~~~
 13 ~~shall have the same rights with respect to notice, hearing,~~
 14 ~~and counsel as for an involuntary commitment proceeding,~~
 15 ~~except as specifically set forth in this section and except~~
 16 ~~that there shall be no right to jury trial. The issues to~~
 17 ~~be determined shall be whether the conditionally released~~
 18 ~~person did or did not adhere to the terms and conditions of~~
 19 ~~his release; and, if he failed to adhere to such terms and~~
 20 ~~conditions, (a) whether he is likely to injure himself or~~
 21 ~~other persons if not returned for involuntary treatment on~~
 22 ~~an inpatient basis, or (b) whether the conditions of release~~
 23 ~~should be modified. Pursuant to the determination of the~~
 24 ~~court upon such hearing, the conditionally released person~~
 25 ~~shall either continue to be conditionally released on the~~

1 ~~same or modified conditions or shall be returned for~~
 2 ~~involuntary treatment on an inpatient basis subject to~~
 3 ~~release at the end of the period for which he was committed~~
 4 ~~for involuntary treatment, or otherwise in accordance with~~
 5 ~~the provisions of this act. Such hearing may be waived by~~
 6 ~~the person and his counsel and the responsible person, but~~
 7 ~~shall not be waivable unless all such persons agree to~~
 8 ~~waive, and upon such waiver the person may be returned for~~
 9 ~~involuntary treatment or continued on conditional release on~~
 10 ~~the same or modified conditions.~~

11 (4) The proceedings set forth in subsection (3) of
 12 this section may be initiated by the professional person in
 13 charge of the patient's case on the same basis set forth
 14 therein without the professional person requiring or
 15 ordering the apprehension and detention of the conditionally
 16 released person, ~~in which case the court hearing shall take~~
 17 ~~place in not less than fifteen (15) days from the date of~~
 18 ~~service of the petition upon the conditionally released~~
 19 ~~person.~~

20 Upon expiration of the period of commitment, or when
 21 the person PATIENT is released from outpatient care, notice
 22 in writing to the court which committed the person PATIENT
 23 for treatment shall be provided BY THE PROFESSIONAL PERSON
 24 IN CHARGE OF THE PATIENT.

25 Section 9. Right to counsel and appeal — examination

1 of respondent — records. (1) The person alleged to be
 2 seriously mentally ill shall HAVE THE RIGHT TO be present at
 3 any hearing or trial. If he has no attorney, the judge
 4 shall appoint an attorney to represent him at either the
 5 hearing or the trial or both. If the court determines that
 6 the respondent is financially unable to employ an attorney,
 7 the court shall appoint counsel who shall be compensated
 8 from the public funds of the county where the respondent
 9 resides. The county of residence shall also pay all
 10 precommitment expenses including transportation to a mental
 11 health facility incurred in connection with the ~~arrest~~
 12 DETENTION, examination, and precommitment custody OF THE
 13 RESPONDENT.

14 (2) The respondent, his attorney, or the responsible
 15 person appointed by the court may secure a professional
 16 person of his own choice to examine the respondent and to
 17 testify at the hearing before the court or jury as to the
 18 results of his examination.

19 (3) If the person wishing to secure the testimony of a
 20 professional person is unable to do so because of financial
 21 reasons, and if the respondent joins in the request for such
 22 examination, the court shall appoint a professional person
 23 other than the professional person requesting the commitment
 24 to perform the examination. Whenever possible, the court
 25 shall allow the respondent a reasonable choice of an

1 available professional person qualified to perform the
 2 requested examination WHO WILL BE COMPENSATED FROM THE
 3 PUBLIC FUNDS OF THE COUNTY WHERE THE RESPONDENT RESIDES.

4 (4) Every respondent subject to an order for
 5 short-term treatment or long-term care and treatment shall
 6 be advised of his right to appeal such order by the court at
 7 the conclusion of any hearing as a result of which such an
 8 order may be entered.

9 (5) Records and papers in proceedings under this act
 10 shall be maintained separately by the clerks of the several
 11 courts. Upon the release of any respondent or patient, the
 12 facility shall notify the clerk of the court within five (5)
 13 days of the release, and the clerk shall immediately seal
 14 the record in the case and omit the name of the respondent
 15 or patient from the index or indices of cases in such court
 16 ~~until and unless the court orders her~~ THE RECORD opened for
 17 good cause shown.

18 Section 10. Transfer or commitment to facility —
 19 procedure. No person who is in the custody of the
 20 department of institutions for any purpose other than
 21 treatment of severe mental illness shall be transferred or
 22 committed to a mental health facility unless such transfer
 23 or commitment is effected according to the procedures set
 24 out in this act.

25 Section 11. Appeal procedure. Appellate review of any

1 order of short-term EVALUATION AND treatment or long-term
 2 ~~care and treatment~~ COMMITMENT may be had by appeal to the
 3 supreme court of Montana in the manner as other civil cases.
 4 The patient shall not be released pending appeal unless
 5 ordered by the court. The appeal shall have priority above
 6 all other matters before the supreme court.

7 Section 12. Effect of act on persons currently judged
 8 mentally ill. Any person who, by reason of a judicial
 9 decree entered by a court of this state prior to the
 10 enactment of this act adjudicating such person mentally ill
 11 shall, one (1) year following the effective date of this act
 12 be deemed to have been released and restored to legal
 13 capacity and competency unless, before that time, a petition
 14 for an extended detention order is filed with the court.

15 Section 13. Civil and legal rights of person
 16 committed. (1) Unless specifically stated in an order by
 17 the court, a person involuntarily committed to a facility
 18 for a period of evaluation or treatment shall not forfeit
 19 any legal right or suffer any legal disability by reason of
 20 the provisions of this act except insofar as it may be
 21 necessary to detain the person for treatment, evaluation or
 22 care.

23 (2) Whenever any person is committed to a mental
 24 health facility for a period of three (3) months or longer,
 25 the court ordering the commitment may make an order stating

1 specifically any legal rights which are denied the
 2 respondent and any legal disabilities which are imposed on
 3 him. As part of its order, the court may appoint a person
 4 to act as conservator of the respondent's property. Any
 5 conservatorship created pursuant to this section shall
 6 terminate upon the conclusion of the involuntary commitment
 7 if not sooner terminated by the court. A conservatorship or
 8 guardianship extending beyond the period of involuntary
 9 commitment may not be created except according to the
 10 procedures set forth under Montana law for the appointment
 11 of conservators and guardians generally.

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

24 (4) Any person committed to a mental health facility
 25 prior to the effective date of this act shall enjoy all the

1 rights and privileges of a person committed after the
2 effective date of this act.

3 (5) No person who has received evaluation or treatment
4 under any provisions of this act shall be discriminated
5 against because of such status. For purposes of this
6 section, "discrimination" means giving any unfavorable
7 weight to the fact of hospitalization or outpatient care and
8 treatment unrelated to a person's present capacity to meet
9 standards applicable to all persons. The fact that a person
10 has received evaluation and treatment, whether voluntarily
11 or involuntarily, at any mental health facility shall not be
12 admitted into evidence in any subsequent proceeding for
13 involuntary commitment or for the appointment of a guardian
14 or conservator.

15 Section 14. Transfer of person committed. (1) If a
16 person is committed under the provisions of this act and is
17 eligible for hospital care or treatment by an agency of the
18 United States, and if a certificate of notification from
19 such agency showing that facilities are available and that
20 the person is eligible for care or treatment therein is
21 received, the court may order the person to be placed in the
22 custody of the agency for hospitalization. The chief
23 officer of any hospital or institution operated by such an
24 agency and in which a person is so hospitalized shall be
25 vested with the same powers as the superintendent of the

1 Montana state hospital with respect to detention, custody,
2 transfer, conditional release, or discharge of the person.
3 Jurisdiction shall be retained in the appropriate courts of
4 this state to inquire into the mental condition of persons
5 so hospitalized, and to determine the necessity for
6 continuance of their hospitalization.

7 (2) Consistent with other provisions of this act, a
8 person committed under this act for a period of three (3)
9 months or longer may be committed by the court to the
10 custody of friends or next of kin residing outside the state
11 or to a mental health facility located outside the state, if
12 the out-of-state facility agrees to receive the patient,
13 provided, however, that no such commitment shall be for a
14 longer period of time than is permitted within the state.
15 If the patient is indigent, the expense of supporting him in
16 an out-of-state facility and the expense of transportation
17 shall be borne by the state of Montana.

18 (3) The transfer of persons committed under the
19 provisions of this act out of Montana or under the laws of
20 another jurisdiction into Montana shall be governed by the
21 provisions of the interstate compact on mental health.

22 Section 15. Fingerprinting prohibited. No person
23 admitted to or in a mental health facility shall be
24 fingerprinted unless required by other provisions of law.

25 Section 16. Photographs permitted — confidential.

1 (1) A person admitted to a mental health facility may be
2 photographed upon admission for identification and the
3 administrative purposes of the facility. Such photographs
4 shall be confidential and shall not be released by the
5 facility except pursuant to court order.

6 (2) No other nonmedical photographs shall be taken or
7 used without consent of the patient's legal guardian or the
8 responsible person appointed by the court.

9 Section 17. Rights of persons admitted to facility.
10 Patients admitted to a mental health facility, whether
11 voluntarily or involuntarily, shall have the following
12 rights:

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

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

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

1 professional persons.

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

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

18 (6) Patients have a right to wear their own clothes
19 and to keep and use their own personal possessions including
20 toilet articles, except insofar as such clothes or personal
21 possessions may be determined by a professional person in
22 charge of the patient's treatment plan to be dangerous or
23 otherwise inappropriate to the treatment regimen. The
24 facility has an obligation to supply an adequate allowance
25 of clothing to any patients who do not have suitable

1 clothing of their own. Patients shall have the opportunity
2 to select from various types of neat, clean, and seasonable
3 clothing. Such clothing shall be considered the patient's
4 throughout his stay at the facility. The facility shall
5 make provision for the laundering of patient clothing.

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

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

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

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

24 (11) Patients have a right to receive prompt and
25 adequate medical treatment for any physical ailments. In

1 providing medical care, the mental health facility shall
2 take advantage of whatever community-based facilities are
3 appropriate and available and shall coordinate the patient's
4 treatment for mental illness with his medical treatment.

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

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

21 (a) Regular housekeeping and maintenance procedures
22 which will ensure that the facility is maintained in a safe,
23 clean, and attractive condition shall be developed and
24 implemented.

25 (b) There must be special provision made for geriatric

1 and other nonambulatory patients to assure their safety and
 2 comfort, including special fittings on toilets and
 3 wheelchairs. Appropriate provision shall be made to permit
 4 nonambulatory patients to communicate their needs to the
 5 facility staff.

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

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

18 Section 18. Patient labor — rules. The following
 19 rules shall govern patient labor:

20 (1) No patient shall be required to perform labor
 21 which involves the operation and maintenance of a facility
 22 or for which the facility is under contract with an outside
 23 organization. Privileges or release from the facility shall
 24 not be conditioned upon the performance of labor covered by
 25 this provision. Patients may voluntarily engage in such

1 labor if the labor is compensated in accordance with the
 2 minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.
 3 sec. 206 as amended.

4 (2) (a) Patients may be required to perform therapeutic
 5 tasks which do not involve the operation and maintenance of
 6 the facility, provided the specific task or any change in
 7 assignment is:

8 (i) An integrated part of the patient's treatment plan
 9 and approved as a therapeutic activity by a professional
 10 person responsible for supervising the patient's treatment;
 11 and

12 (ii) Supervised by a staff member to oversee the
 13 therapeutic aspects of the activity.

14 (b) Patients may voluntarily engage in therapeutic
 15 labor for which the facility would otherwise have to pay an
 16 employee, provided the specific labor or any change in labor
 17 assignment is:

18 (i) An integrated part of the patient's treatment
 19 plan and approved as a therapeutic activity by a
 20 professional person responsible for supervising the
 21 patient's treatment; and

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

24 (iii) Compensated in accordance with the minimum wage
 25 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as

1 amended.

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

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

14 (5) ~~Patients shall be allowed to use~~ DEDUCTIONS OR
15 PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A
16 PATIENT OF a reasonable amount of the compensation received
17 pursuant to this section for personal and incidental
18 purchases and expenses.

19 Section 19. Medication for patients. Patients have a
20 right to be free from unnecessary or excessive medication.
21 No medication shall be administered unless at the written
22 order of a physician. ~~The professional person in charge of~~
23 ~~the facility and the~~ THE attending physician shall be
24 responsible for all medication given or administered to a
25 patient. The use of medication shall not exceed standards

1 of use that are advocated by the United States food and drug
2 administration. Notation of each individual's medication
3 shall be kept in his medical records. At least weekly an
4 attending physician shall review the drug regimen of each
5 patient under his care. ~~ALL~~ EXCEPT IN THE CASE OF
6 OUT-PATIENTS, ALL prescriptions shall be written with a
7 termination date, which shall not exceed thirty (30) days.
8 Medication shall not be used as punishment, for the
9 convenience of staff, as a substitute for A TREATMENT
10 program, or in quantities that interfere with the patient's
11 treatment program.

12 Section 20. Physical restraint and isolation.
13 Patients have a right to be free from physical restraint and
14 isolation. Except for emergency situations, in which it is
15 likely that patients could harm themselves or others and in
16 which less restrictive means of restraint are not feasible,
17 patients may be physically restrained or placed in isolation
18 only on a professional person's written order which explains
19 the rationale for such action. The written order may be
20 entered only after the professional person has personally
21 seen the patient concerned and evaluated whatever episode or
22 situation is said to call for restraint or isolation.
23 Emergency use of restraints or isolation shall be for no
24 more than one (1) hour, by which time a professional person
25 shall have been consulted and shall have entered an

1 appropriate order in writing. Such written order shall be
 2 effective for no more than twenty-four (24) hours and must
 3 be renewed if restraint and isolation are to be continued.
 4 Whenever a patient is subject to restraint or isolation,
 5 adequate care shall be taken to monitor his physical and
 6 psychiatric condition and to provide for his physical needs
 7 and comfort.

8 Section 21. Research on patients — restrictions.
 9 Patients shall have a right not to be subjected to
 10 experimental research without the express and informed
 11 consent of the patient, if the patient is able to give such
 12 consent, and of his guardian, if any, and the responsible
 13 person appointed by the court, after opportunities for
 14 consultation with independent specialists and with legal
 15 counsel. If there is no responsible person or if the
 16 responsible person appointed by the court is no longer
 17 available, then a responsible person who is in no way
 18 connected with the facility, the department of institutions,
 19 or the research project shall be appointed prior to the
 20 involvement of the patient in any experimental research.
 21 The facility shall send notice of intent to involve the
 22 patient in experimental research to the patient, his next of
 23 kin, if known, his legal guardian, if any, the attorney who
 24 most recently represented him, and the responsible person
 25 appointed by the court at least ten (10) days prior to the

1 commencement of such experimental research.

2 Such proposed research shall first have been reviewed
 3 and approved by the mental disabilities board of visitors
 4 before such consent shall be sought. Prior to such approval
 5 the board shall determine that such research complies with
 6 the principles of the statement on the use of human subjects
 7 for research of the American association on mental
 8 deficiency and with the principles for research involving
 9 human subjects required by the United States department of
 10 health, education, and welfare for projects supported by
 11 that agency.

12 Section 22. Treatment procedures — restrictions.
 13 Patients have a right not to be subjected to treatment
 14 procedures such as lobotomy, ~~electro-convulsive treatment,~~
 15 aversive reinforcement conditioning, or other unusual or
 16 hazardous treatment procedures without their express and
 17 informed consent after consultation with counsel, the legal
 18 guardian, if any, the responsible person appointed by the
 19 court, and any other interested party of the patient's
 20 choice. At least one (1) of those consulted must consent to
 21 the treatment. If there is no responsible person or if the
 22 responsible person appointed by the court is no longer
 23 available, then a responsible person who is in no way
 24 connected with the facility or with the department of
 25 institutions shall be appointed before any such treatment

1 procedure can be employed. The facility shall send notice
 2 of intent to employ extraordinary treatment procedures to
 3 the patient, his next of kin, if known, the legal guardian,
 4 if any, the attorney who most recently represented him and
 5 the responsible person appointed by the court at least ten
 6 (10) days prior to the commencement of such extraordinary
 7 treatment program.

8 Section 23. Professional person -- qualifications. In
 9 every mental health facility to which a person is admitted
 10 pursuant to this act:

11 (1) Each professional person ~~AND OTHER STAFF MEMBER~~
 12 employed by the facility shall meet all ~~licensing and~~
 13 ~~certification requirements promulgated by the state of~~
 14 ~~Montana for persons engaged in private practice of the same~~
 15 ~~profession elsewhere in Montana~~ DEPARTMENT OF INSTITUTIONS.
 16 ~~Other staff members shall meet the same licensing and~~
 17 ~~certification requirements as persons who engage in private~~
 18 ~~practice of their speciality elsewhere in Montana.~~

19 (2) All nonprofessional staff members who have not had
 20 prior clinical experience in a mental institution shall have
 21 a substantial orientation training.

22 (3) Staff members on all levels shall have regularly
 23 scheduled in-service training.

24 (4) Each nonprofessional staff member shall be under
 25 the direct supervision of a professional person.

1 Section 24. Treatment plan for patient established.

2 (1) Each patient admitted AS AN INPATIENT to a mental
 3 health facility for a period of more than seventy-two (72)
 4 hours shall have a comprehensive physical and mental
 5 examination and review of behavioral status within
 6 forty-eight (48) hours after admission to the mental health
 7 facility.

8 (2) Each patient shall have an individualized
 9 treatment plan. This plan shall be developed by appropriate
 10 professional persons including a psychiatrist, IF REASONABLY
 11 AVAILABLE and implemented as soon as possible, in any event,
 12 no later than five (5) days after the patient's admission.
 13 Each individualized treatment plan shall contain:

14 (a) a statement of the nature of the specific problems
 15 and specific needs of the patient;

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

18 (c) a description of intermediate and long-range
 19 treatment goals, with a projected timetable for their
 20 attainment;

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

24 (e) a specification of staff responsibility and a
 25 description of proposed staff involvement with the patient

1 in order to attain these treatment goals;

2 (f) criteria for release to less restrictive treatment
3 conditions, and criteria for discharge;

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

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

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

19 (5) The treatment plan shall be continuously reviewed
20 by the professional person responsible for supervising the
21 implementation of the plan and shall be modified if
22 necessary. Moreover, at least every ninety (90) days, each
23 patient shall receive a mental examination from, and his
24 treatment plan shall be reviewed by, a professional person
25 other than the professional person responsible for

1 supervising the implementation of the plan.

2 Section 25. Examination following commitment. No
3 later than fifteen (15) days after a patient is committed to
4 a mental health facility, the professional person in charge
5 of the facility, or his appointed, professionally qualified
6 agent, shall examine the committed patient and shall
7 determine whether the patient continues to require
8 commitment to the facility and whether a treatment plan
9 complying with this act has been implemented. If the
10 patient no longer requires commitment to the facility in
11 accordance with the standards for commitment, or if a
12 treatment plan has not been implemented, he must be released
13 immediately unless he agrees to continue with treatment on a
14 voluntary basis.

15 Section 26. Care and treatment following release. The
16 department of institutions and its agents have an
17 affirmative duty to provide adequate transitional treatment
18 and care for all patients released after a period of
19 involuntary confinement. Transitional care and treatment
20 possibilities include, but are not limited to, psychiatric
21 day care, treatment in the home by a visiting therapist,
22 nursing home or extended care, A HALF-WAY HOUSE, outpatient
23 treatment, and treatment in the psychiatric ward of a
24 general hospital.

25 Section 27. Treatment of children and young adults.

1 In addition to complying with all the other standards
 2 herein, a mental health facility shall make special
 3 provisions for the treatment of patients who are children
 4 and young adults. These provisions shall include, but are
 5 not limited to:

6 (a) Opportunities for publicly supported education
 7 suitable to the educational needs of the patient. This
 8 program of education must, in the opinion of the attending
 9 professional person be compatible with the patient's mental
 10 condition and his treatment program, and otherwise be in the
 11 patient's best interest.

12 (b) A treatment plan which considers the
 13 chronological, maturational, and developmental level of the
 14 patient.

15 (c) Sufficient professional persons, teachers, and
 16 staff members with specialized skills in the care and
 17 treatment of children and young adults.

18 (d) Recreation and play opportunities in the open air
 19 where possible and appropriate residential facilities,
 20 separate, wherever possible, from older patients.

21 (e) Arrangements for contact between the facility and
 22 the family of the patient.

23 Section 28. Records to be maintained. Complete
 24 patient records shall be kept by the mental health facility
 25 and shall be available to ~~anyone properly~~ ANY PROFESSIONAL

1 PERSON OR ATTORNEY authorized in writing by the patient AND
 2 THE BOARD. These records shall include:

3 (1) identification data, including the patient's legal
 4 status;

5 (2) a patient history, including, but not limited to:
 6 (a) family data, educational background, and
 7 employment record;

8 (b) prior medical history, both physical and mental,
 9 including prior hospitalization;

10 (3) the chief complaints of the patient and the chief
 11 complaints of others regarding the patient.

12 (4) an evaluation which notes the onset of illness,
 13 the circumstances leading to admission, attitudes, behavior,
 14 estimate of intellectual functioning, memory functioning,
 15 orientation, and an inventory of the patient's assets in
 16 descriptive, not interpretative, fashion;

17 (5) a summary of each physical examination which
 18 describes the results of the examination;

19 (6) a copy of the individual treatment plan and any
 20 modifications thereto;

21 (7) a detailed summary of the findings made by the
 22 reviewing professional person after each periodic review of
 23 the treatment plan which analyzes the successes and failures
 24 of the treatment program and directs whatever modifications
 25 are necessary;

1 (8) a copy of the individualized after care plan and
2 any modifications thereto, and a summary of the steps that
3 have been taken to implement that plan;

4 (9) a medication history and status, which includes
5 the signed orders of the prescribing physician. The staff
6 person administering the medication shall indicate by
7 signature that orders have been carried out;

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

10 (11) a detailed summary on at least a weekly basis by a
11 professional person involved in the patient's treatment of
12 the patient's progress along the treatment plan;

13 (12) a weekly summary of the extent and nature of the
14 patient's work activities and the effect of such activity
15 upon the patient's progress along the treatment plan;

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

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

20 (15) a detailed summary of any extraordinary incident
21 in the facility involving the patient to be entered by a
22 staff member noting that he has personal knowledge of the
23 incident or specifying his other source of information, and
24 initialed within twenty-four (24) hours by a professional
25 person;

1 (16) a summary by the professional person in charge of
2 the facility or his appointed agent of his findings after
3 the fifteen (15) day review provided for in section 25.

4 Section 29. Records to be confidential — exceptions.
5 All information obtained and records prepared in the course
6 of providing any services under this act to individuals
7 under any provision of this act shall be confidential and
8 privileged matter. Such information and records may be
9 disclosed only:

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

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

24 (3) to the extent necessary to make claims on behalf
25 of a recipient of aid, insurance, or medical assistance to

1 which he may be entitled;

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

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

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

13 (7) to members of the mental disabilities board of
14 visitors or their agents when necessary to perform their
15 functions as set out in section 36 of this act.

16 Section 30. Mental disabilities board of visitors —
17 creation and responsibilities. (1) The governor shall
18 appoint a mental disabilities board of visitors. The board
19 shall consist of five (5) persons at least three (3) of whom
20 shall not be professional persons and at least one (1) of
21 whom shall be a representative of an organization concerned
22 with the care and welfare of the mentally ill. No one may
23 be a member of the board who is an agent or employee of the
24 department of institutions or of any mental health facility
25 affected by this act. If a board of similar title and

1 structure is created in any act concerning the treatment of
2 the mentally retarded or developmentally disabled, then one
3 board shall be created to perform the functions set out in
4 both acts and the board so created shall include at least
5 one (1) representative of an organization concerned with the
6 care and welfare of the mentally ill and one (1)
7 representative of an organization concerned with the care
8 and welfare of the mentally retarded or developmentally
9 disabled.

10 (2) The mental disabilities board of visitors shall be
11 an independent board of inquiry and review to assure that
12 the treatment of all persons either voluntarily or
13 involuntarily admitted to a mental facility is humane and
14 decent and meets the requirements set forth in this act.

15 (3) The board shall review all plans for experimental
16 research involving persons admitted to any mental health
17 facility to assure that the research project is humane and
18 not unduly hazardous and that it complies with the
19 principles of the statement on the use of human subjects for
20 research of the American association on mental deficiency
21 and with the principles for research involving human
22 subjects required by the United States department of health,
23 education, and welfare. No experimental research project
24 involving persons admitted to any mental health facility
25 affected by this act shall be commenced unless it is

1 approved by the mental disabilities board of visitors.

2 (4) The board shall, at least annually, inspect every
3 mental health facility which is providing treatment and
4 evaluation to any person pursuant to this act. The board
5 shall inspect the physical plant, including residential,
6 recreational, dining, and sanitary facilities. It shall
7 visit all wards and treatment areas. The board shall
8 inquire concerning all treatment programs being implemented
9 by the facility.

10 (5) The board shall annually ~~inspect the treatment~~
11 ~~file of each person admitted to a mental health facility~~
12 ~~pursuant to this act to~~ insure that a treatment plan exists
13 and is being implemented FOR EACH PATIENT ADMITTED OR
14 COMMITTED TO A MENTAL HEALTH FACILITY UNDER THIS ACT. The
15 board shall inquire concerning all use of restraints,
16 isolation, or other extraordinary measures.

17 (6) The board may assist any patient at a mental
18 health facility in resolving any grievance he may have
19 concerning his commitment or his course of treatment in the
20 facility.

21 (7) If the board believes that any facility is failing
22 to comply with the provisions of this act in regard to its
23 physical facilities or its treatment of any patient, it
24 shall report its findings at once to the next of kin or
25 guardian of any patient involved, the responsible person

1 appointed by the court for any patient involved, the
2 professional person in charge of the facility, the director
3 of the department of institutions, and the district court
4 which has jurisdiction over the facility.

5 (8) The mental disabilities board of visitors shall
6 report annually to the governor and shall report to each
7 session of the Montana legislature concerning the status of
8 the mental health facilities and treatment programs which it
9 has inspected.

10 (9) The mental disabilities board of visitors shall be
11 attached to the governor for administrative purposes. It
12 may employ staff for the purpose of carrying out its duties
13 as set out in this act.

14 Section 31. Standards for treatment to be known. Each
15 patient and his next of kin, guardian, conservator, or the
16 responsible person appointed by the court shall promptly
17 upon the patient's admission receive written notice, in
18 language he understands, of all the above standards for
19 adequate treatment. In addition a copy of all the above
20 standards shall be posted in each ward.

21 Section 32. Section 38-110, R.C.M. 1947, is amended to
22 read as follows:

23 *38-110. Maintenance of indigent persons on discharge.
24 ~~Upon~~ PRIOR TO the discharge of a patient from ~~the state~~
25 ~~hospital, the department~~ a mental health facility, the

1 professional person in charge of the facility shall notify
 2 ~~the board of public welfare~~ welfare department of the county
 3 from which the patient was committed. The ~~county board of~~
 4 ~~public welfare~~ county welfare department shall at once
 5 ascertain whether the discharged patient is in financial
 6 need. If the patient is found to be in financial need, the
 7 ~~county board of public welfare~~ county welfare department
 8 shall properly care for and maintain the discharged patient
 9 under the ~~Public Welfare Act~~ laws of this state relating to
 10 public welfare until the patient is able to care for
 11 himself, or until another provision has been made for care
 12 of the patient."

13 Section 33. Section 38-212, R.C.M. 1947, is amended to
 14 read as follows:

15 "38-212. Cost of examination and commitment. The cost
 16 of the examination, committal, and taking an ~~insane person~~
 17 ~~to the asylum~~ a person who is seriously mentally ill to a
 18 mental health facility must be paid by the county in which
 19 he resides at the time he is adjudged ~~insane~~ to be seriously
 20 mentally ill. The sheriff must be allowed the actual
 21 expenses incurred in taking an ~~insane person~~ a person who is
 22 seriously mentally ill to the ~~asylum~~ facility, as provided
 23 by section 16-2723 of this code."

24 Section 34. Section 38-506, R.C.M. 1947, is amended to
 25 read as follows:

1 "38-506. Support of patient ~~placed on convalescent~~
 2 ~~leave, discharged by lapse of time~~ conditionally released.
 3 ~~(1) When the state hospital places a patient on convalescent~~
 4 ~~leave, a mental health facility conditionally releases a~~
 5 ~~patient committed to its care, it is not liable for his~~
 6 ~~support while on convalescent leave~~ conditionally released.
 7 Liability devolves upon the legal guardian, parent, or
 8 person under whose care the patient is placed ~~on~~
 9 ~~convalescent leave~~ WHEN CONDITIONALLY RELEASED, or upon any
 10 other person legally liable for his support. The public
 11 welfare officials of the county where the patient resides or
 12 is found, are responsible for providing relief and care for
 13 ~~the~~ a conditionally released patient ~~on convalescent leave~~
 14 who is unable to maintain himself, or who is unable to
 15 secure support from the person under whose care he was
 16 placed on convalescent leave, like any other person in need
 17 of relief and care, under the public welfare laws. ~~The~~
 18 ~~person under whose care the patient is placed on~~
 19 ~~convalescent leave or any other person legally liable for~~
 20 ~~his support, shall, if the convalescent leave is revoked, be~~
 21 ~~liable for any expense incurred by the state or county in~~
 22 ~~procuring the return of the patient to the hospital.~~

23 ~~(2) The superintendent of the state hospital shall~~
 24 ~~place on convalescent leave any patient under his control~~
 25 ~~when he believes it is in the best interests of the patient~~

1 ~~and society to do so. If a patient placed on convalescent~~
 2 ~~leave is not returned to the institution within a period of~~
 3 ~~two (2) years, he is considered discharged therefrom and~~
 4 ~~entry shall be made accordingly in the records of the~~
 5 ~~institution. If a patient who has escaped from the~~
 6 ~~institution is not returned thereto within two (2) years, he~~
 7 ~~is considered discharged therefrom and an entry shall be~~
 8 ~~made accordingly in the records of the institution. When a~~
 9 ~~patient is discharged whether by convalescent leave~~
 10 ~~continuing for a period of two (2) years or by having~~
 11 ~~escaped and not having been returned within two (2) years,~~
 12 ~~the superintendent of the state hospital shall immediately~~
 13 ~~notify in writing the judge of the court by which the~~
 14 ~~patient was committed. A person so discharged may not be~~
 15 ~~recommitted to the state hospital except by court order and~~
 16 ~~upon proceedings as required by law for commitment in the~~
 17 ~~first instance. This section does not restore the civil~~
 18 ~~rights of persons so discharged or restore sanity, or~~
 19 ~~relieve the superintendent of the state hospital from the~~
 20 ~~obligation of supervising patients on convalescent leave to~~
 21 ~~the extent of available facilities and finances."~~

22 Section 35. Section 36-507, R.C.M. 1947, is amended to
 23 read as follows:

24 "38-507. Clothing for patient on convalescent leave
 25 conditional release or discharged patient. A patient or

1 inmate may not be discharged or placed on convalescent leave
 2 conditionally released from the state hospital a mental
 3 health facility without suitable clothing adapted to the
 4 season in which he is discharged."

5 Section 36. ~~Section 80-1601, R.C.M. 1947, is amended~~
 6 ~~to read as follows:~~

7 "~~80-1601. Institutions subject to per diem charge.~~
 8 ~~The state department of institutions shall collect and~~
 9 ~~process per diem payments for the care of residents in the~~
 10 ~~following institutions and for the care of those persons in~~
 11 ~~foster homes or other facilities for the mentally ill, or~~
 12 ~~the mentally retarded, or developmentally disabled under~~
 13 ~~provisions of the department:~~

- 14 ~~(1) Montana children's center~~
- 15 ~~(2) Warm Springs state hospital~~
- 16 ~~(3) Boulder river school and hospital~~
- 17 ~~(4) Galen state hospital~~
- 18 ~~(5) Montana veterans' home~~
- 19 ~~(6) Montana center for the aged.~~
- 20 ~~(7) Eastmont training center."~~

21 SECTION 80-2501, R.C.M. 1947, IS AMENDED TO READ AS
 22 FOLLOWS:

23 "80-2501. Location and function of center. The
 24 institution located at Lewistown is the "Montana Center for
 25 the Aged." The primary function of the center is the care

1 and treatment of ~~eccile~~ persons who have been admitted to
2 Wana Springs state hospital and subsequently transferred to
3 the center. ~~is used in this chapter "senility" means mental~~
4 ~~illness resulting from the aging process."~~

5 Section 37. Severability clause. If any provision of
6 this act or the application thereof to any person or
7 circumstances is held invalid, such invalidity shall not
8 affect other provisions or applications of the act which can
9 be given effect without the invalid provision or
10 application, and to this end the provisions of this act are
11 declared to be severable.

12 Section 38. Sections 38-107, 38-108, 38-109, 38-112,
13 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203,
14 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2,
15 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
16 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
17 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R.C.S.
18 1947, are repealed.

-End-

1 SENATE BILL NO. 377
 2 INTRODUCED BY TOWE, DRAKE, ROBERTS, BROWN, SEIBEL, REGAN,
 3 FASBENDER, BLAYLOCK, COMOVER, CETRONE, ROMNEY
 4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
 6 DETERMINATION AND TREATMENT OF THE SERIOUSLY MENTALLY ILL
 7 AND THOSE SUFFERING FROM MENTAL DISORDERS; AMENDING SECTIONS
 8 38-110, 38-212, 38-506, 38-507, AND ~~80-4603~~ 80-2501;
 9 REPEALING SECTIONS 38-107, 38-108, 38-109, 38-112, 38-113,
 10 38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204,
 11 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2,
 12 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
 13 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
 14 38-408.1, 38-502, 38-503, 38-504, 38-505, AND 64-112, R.C.M.
 15 1947."

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18 Section 1. Purpose of act. The purpose of this act
19 is:

20 (1) to secure for each person who may be seriously
 21 mentally ill or suffering from a mental disorder such care
 22 and treatment as will be suited to the needs of the person,
 23 and to insure that such care and treatment are skillfully
 24 and humanely administered with full respect for the person's
 25 dignity and personal integrity;

THIRD READING

1 (2) to deprive a person of his liberty for purposes of
 2 treatment or care only when less restrictive alternatives
 3 are unavailable and only when his safety or the safety of
 4 others is endangered, and to provide for due process of law
 5 when this is done.

6 Section 2. Definitions. As used in this act:

7 (1) "Board" means the mental disabilities board of
8 visitors created by this act.

9 (2) "Court" means the district court of the state of
10 Montana.

11 (3) "Department" means the department of institutions.

12 (4) "Emergency situation" means a situation in which
13 any person is in imminent danger of death or serious bodily
14 harm from the activity of a person who appears to be
15 seriously mentally ill.

16 (5) "Mental disorder" means any organic, mental, or
17 emotional impairment which has substantial adverse effects
18 on an individual's cognitive or volitional functions.

19 (6) "Mental health facility" or "facility" means a
20 public hospital or a licensed private hospital or, a
21 community mental health center, or any mental health clinic
22 or treatment center approved by the department. No
23 correctional institution or facility, or jail, is a mental
24 health facility within the meaning of this act.

25 (7) "Next of kin" shall include, but need not be

1 SENATE BILL NO. 377

2 INTRODUCED BY TOWE, DRAKE, ROBERTS, BROWN, SEIBEL, REGAN,
3 PASBENDER, BLAYLOCK, CONOVER, CETRONE, ROMNEY

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12 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
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23 and to insure that such care and treatment are skillfully
24 and humanely administered with full respect for the person's
25 dignity and personal integrity;

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2 treatment or care only when less restrictive alternatives
3 are unavailable and only when his safety or the safety of
4 others is endangered, and to provide for due process of law
5 when this is done.

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20 public hospital or a licensed private hospital or, a
21 community mental health center, or any mental health clinic
22 or treatment center approved by the department. No
23 correctional institution or facility, or jail, is a mental
24 health facility within the meaning of this act.

25 (7) "Next of kin" shall include, but need not be

1 limited to, the spouse, parents, adult children, and adult
2 brothers and sisters of a person.

3 (8) "Patient" means a person committed by the court to
4 a seventy-two (72) hour evaluation or treatment or for a
5 longer period.

6 (9) "Peace officer" means any sheriff, deputy sheriff,
7 marshal, policeman or other peace officer.

8 (10) "Professional person" means:

9 (a) a medical doctor, or

10 (b) a person trained in the field of mental health and
11 certified by the ~~regional mental health director if the~~
12 ~~director is a licensed physician, or by the superintendent~~
13 ~~of the Montana state hospital, if the superintendent is a~~
14 ~~licensed physician, in the absence of such a regional~~
15 ~~director~~ DEPARTMENT OF INSTITUTIONS IN ACCORDANCE WITH
16 STANDARDS OF PROFESSIONAL LICENSING BOARDS, FEDERAL
17 REGULATIONS, AND THE JOINT COMMISSION ON ACCREDITATION OF
18 HOSPITALS.

19 (11) "Respondent" means a person alleged in a petition
20 filed pursuant to this act to be seriously mentally ill.

21 (12) "Responsible person" means any person willing and
22 able to assume responsibility for a seriously mentally ill
23 person, or person alleged to be seriously mentally ill,
24 including next of kin; the person's conservator or legal
25 guardian, if any; representatives of a charitable or

1 religious organization, or any other person appointed by the
2 court to perform the functions of a "responsible person" set
3 out in this act. Only one person shall at any one time be
4 the "responsible person" within the meaning of this act. In
5 appointing a responsible person, the court shall consider
6 the preference of the respondent. The court may, at any
7 time for good cause shown, change its designation of the
8 "responsible person".

9 (13) "Seriously mentally ill" means suffering from a
10 mental disorder which has resulted in self-inflicted injury
11 or injury to others, or the imminent threat thereof; or
12 which has deprived the person afflicted of the ability to
13 protect his life or health. No person may be involuntarily
14 committed to a mental health facility nor detained for
15 evaluation and treatment because he is an epileptic,
16 mentally deficient, mentally retarded, senile or suffering
17 from a mental disorder unless the condition causes the
18 person to be seriously mentally ill within the meaning of
19 this act.

20 Section 3. Voluntary ~~commitment~~ ADMISSION — cost of
21 ~~commitment~~ ADMISSION. (?) Nothing in this act shall be
22 construed in any way as limiting the right of any person to
23 make voluntary application for ~~commitment~~ ADMISSION at any
24 time to any mental health facility or professional person.
25 An application for admission to a mental health facility

SENATE BILL NO. 377

INTRODUCED BY TOWE, DRAKE, ROBERTS, BROWN, SKIBEL, REGAN,
PASBENDER, BLAYLOCK, CONOVER, CETRONE, RONNEY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR
DETERMINATION AND TREATMENT OF THE SERIOUSLY MENTALLY ILL
AND THOSE SUFFERING FROM MENTAL DISORDERS; AMENDING SECTIONS
38-110, 38-212, 38-506, 38-507, AND ~~80-3604~~ 80-2501;
REPEALING SECTIONS 38-107, 38-108, 38-109, 38-112, 38-113,
38-114, 38-115, 38-116, 38-201, 38-202, 38-203, 38-204,
38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2,
38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
38-408.1, 38-502, 38-503, 38-504, 38-505, AND 64-112, R.C.M.
1947."

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

Section 1. Purpose of act. The purpose of this act
is:

(1) to secure for each person who may be seriously
mentally ill or suffering from a mental disorder such care
and treatment as will be suited to the needs of the person,
and to insure that such care and treatment are skillfully
and humanely administered with full respect for the person's
dignity and personal integrity;

(2) to deprive a person of his liberty for purposes of
treatment or care only when less restrictive alternatives
are unavailable and only when his safety or the safety of
others is endangered, and to provide for due process of law
when this is done.

Section 2. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of
visitors created by this act.

(2) "Court" means the district court of the state of
Montana.

(3) "Department" means the department of institutions.

(4) "Emergency situation" means a situation in which
any person is in imminent danger of death or serious bodily
harm from the activity of a person who appears to be
seriously mentally ill.

(5) "Mental disorder" means any organic, mental, or
emotional impairment which has substantial adverse effects
on an individual's cognitive or volitional functions.

(6) "Mental health facility" or "facility" means a
public hospital or a licensed private hospital or, a
community mental health center, or any mental health clinic
or treatment center approved by the department. No
correctional institution or facility, or jail, is a mental
health facility within the meaning of this act.

(7) "Next of kin" shall include, but need not be

1 COMMITMENT. THEN THE COMMITMENT SHALL BE TREATED AS AN
 2 INVOLUNTARY COMMITMENT. NOTICE OF THE SUBSTANCE OF THIS
 3 SUBSECTION AND OF THE RIGHT TO COUNSEL SHALL BE SET FORTH IN
 4 CONSPICUOUS TYPE IN A CONSPICUOUS LOCATION ON ANY FORM OR
 5 APPLICATION USED FOR THE VOLUNTARY COMMITMENT OF A MINOR TO
 6 A MENTAL HEALTH FACILITY. THE NOTICE SHALL BE EXPLAINED TO
 7 THE MINOR BY THE PROFESSIONAL PERSON APPROVING THE
 8 APPLICATION.

9 Section 4. Rights and waiver of rights. (1) Whenever
 10 a person is involuntarily detained, or is examined by a
 11 professional person pursuant to section 5, or is notified
 12 that he will be the subject of a hearing pursuant to section
 13 5 or 6, the person shall be informed of his constitutional
 14 rights and his rights under this act. A person may waive
 15 his procedural rights, provided that the waiver is knowingly
 16 and intentionally made. The right to counsel in a hearing
 17 held pursuant to section 6 may not be waived. The right to
 18 treatment provided for in this act may not be waived.

19 (2) In the case of a person who has been committed
 20 DETAINED for a seventy-two (72) hour inpatient evaluation
 21 and treatment or for a longer period of time, a waiver of
 22 rights can be knowingly and intentionally made only with the
 23 concurrence of the patient's attorney or of the responsible
 24 person appointed by the court. THE RIGHT OF THE RESPONDENT
 25 TO BE PHYSICALLY PRESENT AT A HEARING MAY ALSO BE WAIVED BY

1 HIS ATTORNEY AND THE RESPONSIBLE PERSON WITH THE CONCURRENCE
 2 OF THE PROFESSIONAL PERSON AND THE JUDGE UPON A FINDING
 3 SUPPORTED BY FACTS THAT:

4 (A) THE PRESENCE OF THE RESPONDENT AT THE HEARING
 5 WOULD BE LIKELY TO SERIOUSLY ADVERSELY AFFECT HIS MENTAL
 6 CONDITION, AND

7 (B) AN ALTERNATIVE LOCATION FOR THE HEARING IN
 8 SURROUNDINGS FAMILIAR TO THE RESPONDENT WOULD NOT PREVENT
 9 SUCH ADVERSE EFFECTS ON HIS MENTAL CONDITION.

10 (3) In the case of a minor, the waiver of rights can
 11 be knowingly and intentionally made:

12 (a) when the minor is under the age of twelve (12), by
 13 the parents of the minor;

14 (b) when the minor is over the age of twelve (12), by
 15 the youth and his parents;

16 (c) when the minor is over the age of twelve (12) and
 17 the minor and his parents do not agree, the minor can make
 18 an effective waiver of his rights only with advice of
 19 counsel.

20 If there is a AN APPARENT conflict of interest between
 21 a minor and his parents or guardian, the court may appoint a
 22 guardian ad litem for the minor.

23 (4) In addition to any other rights which may be
 24 guaranteed by the constitution of the United States and of
 25 this state, by the laws of this state or by this act, any

1 person who is involuntarily detained or against whom a
2 petition is filed pursuant to this act has the following
3 rights:

4 (a) the right to notice reasonably in advance of any
5 hearing or other court proceeding concerning him;

6 (b) the right in any hearing to be present, to offer
7 evidence, and to present witnesses in any proceeding
8 concerning him;

9 (c) the right in any hearing to cross-examine
10 witnesses;

11 (d) the right to be represented by counsel;

12 (e) the right to remain silent;

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

16 (g) the right to view and copy all petitions on file
17 with the court concerning him;

18 (h) the right to be examined by a professional person
19 of his choice when such professional person is reasonably
20 available;

21 (i) the right to be dressed in his own clothes at any
22 hearing held pursuant to this act;

23 (j) the right to refuse any but lifesaving medication
24 for up to twenty-four (24) hours prior to any hearing held
25 pursuant to this act.

1 Section 5. Petition alleging person as seriously
2 mentally ill - contents and procedure. (1) A county
3 attorney on his own initiative or upon the request of any
4 person may file a petition with the court alleging that
5 there is a person within the county who is seriously
6 mentally ill and requesting that an evaluation of the
7 person's condition be made.

8 (2) The petition shall contain:

9 (a) the name and address of the person requesting the
10 petition and his interest in the case;

11 (b) the name of the respondent, and, if known, the
12 address, age, sex, marital status, and occupation of the
13 respondent;

14 (c) the purported facts supporting the allegation of
15 mental illness;

16 (d) the name and address of every person known or
17 believed to be legally responsible for the care, support,
18 and maintenance of the person for whom evaluation is sought;

19 (e) the name and address of the person's next of kin,
20 to the extent known to the county attorney and the person
21 requesting the petition;

22 (f) the name and address of any person whom the county
23 attorney believes might be willing and able to be appointed
24 as responsible person;

25 (g) the name, address, and telephone number of the

1 attorney, if any, who has most recently represented the
 2 person for whom evaluation is sought. If there is no
 3 attorney, there shall be a statement as to whether, to the
 4 best knowledge of the person requesting the petition, the
 5 person for whom evaluation is sought is indigent and
 6 therefore unable to afford the services of an attorney; and

7 (h) a statement of the rights of the respondent which
 8 shall be in conspicuous print and identified by a suitable
 9 heading.

10 (3) Upon presentation to the court by the county
 11 attorney, the court shall immediately consider the petition
 12 with or without a hearing to determine if there is probable
 13 cause to believe that the respondent is seriously mentally
 14 ill. If the court finds no such probable cause, the
 15 petition shall be discharged. If the court finds probable
 16 cause it shall submit the petition to a professional person
 17 for evaluation. If probable cause is found, the court may
 18 appoint a responsible person to protect the interests of the
 19 respondent. The responsible person shall be notified as
 20 soon as possible that a petition has been filed. Notice of
 21 the petition and the finding of probable cause shall be hand
 22 delivered or mailed to the respondent and to the attorney,
 23 the person or persons legally responsible for care, support,
 24 and maintenance of the respondent, next of kin identified in
 25 the petition, and the person or persons identified by the

1 county attorney as possible responsible persons.

2 (4) (a) Upon receipt of the petition, the
 3 professional person shall examine the respondent and make
 4 such inquiry as he or she may deem appropriate. If the
 5 respondent does not cooperate and if requested by the
 6 professional person, the court may order the respondent to
 7 submit to examination by a professional person at a time and
 8 place designated by the court. The examination so ordered
 9 shall not exceed a period of four (4) hours.

10 (b) When the professional person first contacts the
 11 respondent, before he begins any examination, he shall give
 12 a copy of the petition to the respondent, and shall explain
 13 to the respondent the nature of the proceeding and his
 14 rights as set forth in the petition.

15 (5) On the basis of his examination, the professional
 16 person shall recommend in writing either that the petition
 17 be dismissed or that a seventy-two (72) hour inpatient
 18 evaluation and treatment be ordered. If dismissal is
 19 recommended, the petition shall be summarily dismissed. The
 20 petition shall be dismissed if the respondent accepts
 21 voluntary treatment or ~~commitment~~ ADMISSION to a mental
 22 health facility approved by the professional person
 23 conducting the examination. Whenever a professional person
 24 recommends that a seventy-two (72) hour evaluation and
 25 treatment be ordered, the recommendation shall be

1 accompanied by a report explaining the reason for the
 2 recommendation and identifying any tests or evaluation
 3 devices which the professional person employed in evaluating
 4 the respondent. If the professional person recommends that
 5 a seventy-two (72) hour evaluation and treatment be ordered,
 6 notice of this recommendation shall be mailed or delivered
 7 to the respondent, the next of kin, when known, any person
 8 responsible for the care, support, and maintenance of the
 9 respondent, any other person identified in the petition, and
 10 the responsible person, if any, appointed by the court.
 11 Notice shall include the date, time, and place of the
 12 respondent's next appearance before the court.

13 (6) In the event the examining professional person
 14 recommends a seventy-two (72) hour inpatient evaluation and
 15 treatment, the respondent shall be brought before the court
 16 by the county attorney without undue delay, advised of the
 17 recommendation, supplied with a copy of the petition and the
 18 recommendation and advised of his rights to a hearing and to
 19 counsel. If a responsible person has not yet been
 20 appointed, the court shall appoint a responsible person at
 21 this time. If the right to a hearing and to counsel are
 22 waived, the court shall direct that the respondent be
 23 detained at a mental health facility for evaluation and
 24 treatment not to exceed seventy-two (72) hours. If a
 25 hearing is requested by the respondent, his attorney, or the

1 responsible person appointed by the court, a time and place
 2 shall be set for the hearing. The matter shall be given
 3 precedence over all other court matters. If the respondent
 4 is unwilling or unable to retain counsel, the court shall
 5 appoint counsel and be responsible for notification.

6 (7) The hearing shall be held before the court without
 7 a jury. The respondent may present such testimony and
 8 relevant documentary evidence as he or the responsible
 9 person or counsel desires. The county attorney shall
 10 represent the state. The professional person who made the
 11 recommendation shall be present in court and may be
 12 cross-examined concerning his recommendation and his report.
 13 After full hearing the court shall determine whether the
 14 respondent is seriously mentally ill within the definition
 15 provided herein. If the court finds the respondent is not
 16 seriously mentally ill, he or she shall be discharged and
 17 the petition dismissed. If the court finds the respondent
 18 to be seriously mentally ill, it shall order the respondent
 19 detained at a mental health facility for examination and
 20 treatment not exceeding seventy-two (72) hours. However,
 21 the court may dismiss the petition if the respondent agrees
 22 to accept voluntary treatment or ~~commitment~~ ADMISSION to a
 23 mental health facility.

24 (8) Persons receiving evaluation and treatment
 25 pursuant to this section shall be given a reasonable choice

1 of an available professional person qualified to provide
2 such services.

3 Section 6. Petition for commitment — trial —
4 determination of court. (1) If in the opinion of the
5 professional person in charge of the patient the person
6 detained under the provisions of section 5 of this act does
7 not require further evaluation or treatment he shall be
8 released within seventy-two (72) hours. If, in the opinion
9 of the professional person, the patient requires further
10 evaluation or treatment, he shall advise the court
11 accordingly not less than three (3) days from the date of
12 detention and shall within the same time file a petition
13 requesting that the patient be committed to a facility for a
14 period not in excess of three (3) months. The petition
15 shall be accompanied by a written report and evaluation of
16 the patient's mental and physical condition. The report
17 shall explain the reasons for the petition and shall
18 identify any tests or evaluation devices which the
19 professional person employed in evaluating the patient. The
20 professional person may retain ~~THE PATIENT IN~~ custody of ~~the~~
21 ~~patient BY COURT ORDER~~ pending a hearing on the petition
22 only if detention is necessary to prevent injury to himself
23 THE PATIENT or others.

24 (2) Upon receipt of a petition for commitment not to
25 exceed three (3) months, the court shall immediately set the

1 time and place for a hearing, which shall be held not more
2 than three (3) days from the receipt of the petition. The
3 court may extend the period to seven (7) days. The time for
4 the hearing may be further extended at the request of
5 counsel for the patient. The court shall give written
6 notice to the professional person who requested the
7 commitment, the patient, his counsel, his next of kin, when
8 known, the responsible person appointed by the court, and
9 the county attorney. At any time prior to the date set for
10 hearing, the patient, or his attorney, may request a jury
11 trial, whereupon the time set for hearing will be vacated
12 and the matter set on the court's jury calendar at the
13 earliest date possible, the matter taking precedence over
14 all other matters on the jury calendar.

15 (3) At any time prior to trial on the petition before
16 court or jury, the patient may waive trial and give written
17 consent to commitment to a facility for a period not to
18 exceed three (3) months. Such consent must be joined in
19 writing, by his attorney and by the responsible person
20 appointed by the court.

21 (4) The patient shall be present and represented by
22 counsel at all stages of the trial, and the sole question to
23 be determined by the court or jury, as the case may be,
24 shall be whether the patient is seriously mentally ill
25 within the meaning set forth in this act. The professional

1 person who filed the petition shall be present in court for
 2 the hearing and subject to cross-examination. The trial
 3 shall be governed by the Montana rules of civil procedure
 4 except that, if tried by a jury, at least three-fourths
 5 (3/4) of the jurors must concur on a finding that the
 6 patient is seriously mentally ill. The finding may be
 7 appealed to the Montana supreme court in the same manner as
 8 other civil matters. The standard of proof in any hearing
 9 held pursuant to this section shall be proof beyond a
 10 reasonable doubt. ANY COURT MAY ORDER A HEARING CLOSED TO
 11 THE PUBLIC FOR THE PROTECTION OF THE RESPONDENT.

12 (5) If, upon hearing, it is determined that the
 13 patient is not seriously mentally ill within the meaning of
 14 this act, he shall be discharged and the petition of the
 15 professional person dismissed. If it is determined that the
 16 patient is seriously mentally ill within the meaning of this
 17 act the court shall:

18 (a) commit the patient to a facility for a period of
 19 not more than three (3) months;

20 (b) order the patient to be placed in the care and
 21 custody of his relative or guardian or some other
 22 appropriate place other than an institution;

23 (c) order outpatient therapy; or

24 (d) make some other appropriate order for treatment.

25 No treatment ordered pursuant to this subsection shall

1 affect the patient's custody for a period of more than three
 2 (3) months.

3 In determining which of the above alternatives to
 4 order, the court shall choose the least restrictive
 5 alternatives necessary to protect the patient and the public
 6 and to permit effective treatment. The court shall consider
 7 and shall describe in its order what alternatives for
 8 treatment of the patient are available, what alternatives
 9 were investigated and why the investigated alternatives were
 10 not deemed suitable. THE COURT SHALL ENTER INTO THE RECORD
 11 A DETAILED STATEMENT OF THE FACTS UPON WHICH IT FOUND THE
 12 RESPONDENT TO BE SERIOUSLY MENTALLY ILL.

13 At any time within the three (3) month period the
 14 patient may be discharged on the written order of the
 15 professional person in charge of the patient. In the event
 16 the patient is not discharged within the three (3) month
 17 period and if the term is not extended as provided herein,
 18 the patient ~~will~~ SHALL be discharged by the facility at the
 19 end of three (3) months without further order of the court.
 20 Notice of such discharge will be filed with the court within
 21 five (5) days of the discharge.

22 (6) Not less than two (2) calendar weeks prior to the
 23 end of the three (3) month period of detention, the
 24 professional person in charge of the patient may petition
 25 the court for extension of the detention period. The

1 petition shall be accompanied by a written report and
 2 evaluation of the patient's mental and physical condition.
 3 The report shall describe any tests and evaluation devices
 4 which have been employed in evaluating the patient, the
 5 course of treatment which has been undertaken for the
 6 patient and the future course of treatment anticipated by
 7 the professional person. Upon the filing of the petition,
 8 the court shall give written notice of the filing of the
 9 petition to the patient, his next of kin, if reasonably
 10 available, the responsible person appointed by the court,
 11 and to the patient's counsel. If any person so notified
 12 requests a hearing prior to the termination of the previous
 13 detention authority the court shall immediately set a time
 14 and place for such a hearing on a date not more than ten
 15 (10) days from the receipt of the request and notify the
 16 same people including the professional person in charge of
 17 the patient. Procedure on the petition for extension shall
 18 be the same in all respects, as the procedure on the
 19 petition for the original three (3) month commitment ~~case~~
 20 ~~and~~ except the patient shall not be entitled to trial by
 21 jury. The hearing shall be held in the district court
 22 having jurisdiction over the facility in which the patient
 23 is detained unless otherwise ordered by the court. If upon
 24 the hearing the court finds the patient ~~to be~~ not seriously
 25 mentally ill within the meaning of this act, the patient

1 shall be discharged and the petition dismissed. If the
 2 court finds that the patient continues to suffer from ~~such~~
 3 serious mental illness, the court shall order commitment,
 4 custody in relatives, outpatient therapy or other order as
 5 set forth in subsection (5) of this section except that no
 6 order shall affect his custody for more than six (6) months.
 7 In its order, the court shall describe what alternatives for
 8 treatment of the patient are available, what alternatives
 9 were investigated, and why the investigated alternatives
 10 were not deemed suitable. The court shall not order
 11 continuation of an alternative which does not include a
 12 comprehensive, individualized plan of treatment for the
 13 patient. Any court order for the continuation of an
 14 alternative shall include a specific finding that a
 15 comprehensive, individualized plan of treatment exists.

16 (7) Further extensions may be obtained under the same
 17 procedure described in subsection (6) of this section except
 18 that the patient's custody shall not be affected for more
 19 than one (1) year, without a renewal of the commitment under
 20 the procedures set forth in subsection (6) of this section,
 21 including a statement of the findings required by subsection
 22 (6).

23 (b) At any time during the patient's commitment the
 24 court may on its own initiative or upon application of the
 25 professional person in charge of the patient, the patient,

1 his next of kin, his attorney, or the responsible person
2 appointed by the court, order the patient to be placed in
3 the care and custody of relatives or guardians, or to be
4 provided outpatient therapy or other appropriate placement
5 or treatment.

6 Section 7. Emergency situation — petition —
7 detention. (1) When an emergency situation exists, a peace
8 officer may take any person who appears to be seriously
9 mentally ill and, as a result of serious mental illness, to
10 be a danger to others or to himself into custody only for
11 sufficient time to contact a professional person for
12 emergency evaluation. If possible, a professional person
13 should be called prior to taking the person into custody.

14 (2) If the professional person agrees that the person
15 detained appears to be seriously mentally ill and that an
16 emergency situation genuinely exists, then the person may be
17 detained until the next regular business day. At that time,
18 the professional person shall either cause the county
19 attorney to file the petition provided for in section 5 of
20 this act or shall release the detained person. In either
21 case, the professional person shall file a report with the
22 court explaining his actions.

23 (3) When the petition is filed, after an emergency
24 detention, the court may order the respondent detained for
25 the amount of time necessary for a professional person to

1 conduct the examination and inquiry provided for in section
2 5 and to report his findings and recommendations to the
3 court. In no case shall such detention exceed twenty-four
4 (24) hours from the time of the filing of the petition.
5 Saturday, Sunday, and legal holidays shall not be included
6 in computing the twenty-four (24) hour period. The court may
7 also order the respondent detained during the seventy-two
8 (72) hour evaluation and treatment period, if ordered, and
9 through the period of the hearing on initial commitment, if
10 held. No period of detention shall be ordered by the court
11 pursuant to this section unless the court finds that such
12 detention is required in the interest of public safety OR
13 THE LIFE OR SAFETY OF THE RESPONDENT. An order of detention
14 shall include a statement of the factual basis for the
15 order.

16 (4) Any person detained pursuant to this section shall
17 be detained in the least restrictive environment required to
18 protect the life and physical safety of the person detained
19 or of members of the public. Whenever possible, a person
20 detained pursuant to this section shall be detained in a
21 mental health facility. A person may be detained in a jail
22 or other correctional facility only if no mental health
23 facility is available or if the available mental health
24 facilities are inadequate to protect the person detained and
25 the public. As soon as a mental health facility becomes

1 available or the situation has changed sufficiently that an
 2 available mental health facility is adequate for the
 3 protection of the person detained and of the public, then
 4 the detained person shall be transferred from the jail or
 5 correctional facility to the mental health facility. In no
 6 case shall a person be detained in a jail or other
 7 correctional facility pursuant to this section for a longer
 8 period of time than is required for the county attorney to
 9 file a petition and for a professional person to complete
 10 his initial examination and inquiry and report his findings
 11 to the court.

12 (5) The county attorney of any county may make
 13 arrangements with any federal, state, regional, or private
 14 mental facility or with a mental health facility in any
 15 county for the detention of persons held pursuant to this
 16 section.

17 Section 8. Outpatient care — conditional release.

18 (1) When in the opinion of the professional person in
 19 charge of a mental health facility providing involuntary
 20 treatment, the committed person can be appropriately served
 21 by outpatient care prior to the expiration of the period of
 22 commitment, then such outpatient care may be required as a
 23 condition for early release for a period which, when added
 24 to the inpatient treatment period, shall not exceed the
 25 period of commitment. If the mental health facility

1 designated to provide outpatient care is other than the
 2 facility providing involuntary treatment, the outpatient
 3 facility so designated must agree in writing to assume such
 4 responsibility.

5 (2) The mental health facility designated to provide
 6 outpatient care or the professional person in charge of the
 7 patient's case may modify the conditions for continued
 8 release when such modification is in the best interest of
 9 the patient.

10 (3) If the mental health facility designated to
 11 provide outpatient care determines that a conditionally
 12 released person is failing to adhere to the terms and
 13 conditions of his release, and because of that failure has
 14 become a substantial danger to himself or other persons,
 15 then, upon notification by the mental health facility
 16 designated to provide outpatient care, or on his own motion,
 17 the professional person in charge of the patient's case may
 18 order that the conditionally released person be apprehended
 19 and taken into custody and temporarily detained in a mental
 20 health facility in or near the county in which he is
 21 receiving outpatient treatment until such time, not
 22 exceeding five (5) days, as a hearing can be scheduled to
 23 determine whether or not the person should be returned to
 24 the mental health facility from which he had been RETURNED
 25 TO THE FACILITY FROM WHICH HE WAS conditionally released.

1 The professional person in charge of the patient's case may
 2 modify or rescind such order at any time, prior to
 3 commencement of the court hearing. The court shall be
 4 notified before the close of the next judicial day of a
 5 person's detention under the provisions of this section, and
 6 the county attorney of the county where the patient is
 7 receiving outpatient treatment shall file a petition and
 8 order of apprehension and detention with the court and THE
 9 PROFESSIONAL PERSON SHALL mail or deliver notice to the
 10 person detained, his attorney, if any, and his guardian or
 11 conservator, if any, his next of kin, if known, and the
 12 responsible person appointed by the court. Such person
 13 shall have the same rights with respect to notice, hearing,
 14 and counsel as for an involuntary commitment proceeding,
 15 except as specifically set forth in this section and except
 16 that there shall be no right to jury trial. The issues to
 17 be determined shall be whether the conditionally released
 18 person did or did not adhere to the terms and conditions of
 19 his release, and, if he failed to adhere to such terms and
 20 conditions, (a) whether he is likely to injure himself or
 21 other persons if not returned for involuntary treatment on
 22 an inpatient basis, or (b) whether the conditions of release
 23 should be modified. Pursuant to the determination of the
 24 court upon such hearing, the conditionally released person
 25 shall either continue to be conditionally released on the

1 ~~same or modified conditions or shall be returned for~~
 2 ~~involuntary treatment on an inpatient basis subject to~~
 3 ~~release at the end of the period for which he was committed~~
 4 ~~for involuntary treatment, or otherwise in accordance with~~
 5 ~~the provisions of this act. Such hearing may be waived by~~
 6 ~~the person and his counsel and the responsible person, but~~
 7 ~~shall not be waivable unless all such persons agree to~~
 8 ~~waive, and upon such waiver the person may be returned for~~
 9 ~~involuntary treatment or continued on conditional release on~~
 10 ~~the same or modified conditions.~~

11 (4) The proceedings set forth in subsection (3) of
 12 this section may be initiated by the professional person in
 13 charge of the patient's case on the same basis set forth
 14 therein without the professional person requiring or
 15 ordering the apprehension and detention of the conditionally
 16 released person, in which case the court hearing shall take
 17 place in not less than fifteen (15) days from the date of
 18 service of the petition upon the conditionally released
 19 person.

20 Upon expiration of the period of commitment, or when
 21 the person PATIENT is released from outpatient care, notice
 22 in writing to the court which committed the person PATIENT
 23 for treatment shall be provided BY THE PROFESSIONAL PERSON
 24 IN CHARGE OF THE PATIENT.

25 Section 9. Right to counsel and appeal — examination

1 of respondent — records. (1) The person alleged to be
 2 seriously mentally ill shall HAVE THE RIGHT TO be present at
 3 any hearing or trial. If he has no attorney, the judge
 4 shall appoint an attorney to represent him at either the
 5 hearing or the trial or both. If the court determines that
 6 the respondent is financially unable to employ an attorney,
 7 the court shall appoint counsel who shall be compensated
 8 from the public funds of the county where the respondent
 9 resides. The county of residence shall also pay all
 10 precommitment expenses including transportation to a mental
 11 health facility incurred in connection with the ~~arrest~~
 12 DETENTION, examination, and precommitment custody OF THE
 13 RESPONDENT.

14 (2) The respondent, his attorney, or the responsible
 15 person appointed by the court may secure a professional
 16 person of his own choice to examine the respondent and to
 17 testify at the hearing before the court or jury as to the
 18 results of his examination.

19 (3) If the person wishing to secure the testimony of a
 20 professional person is unable to do so because of financial
 21 reasons, and if the respondent joins in the request for such
 22 examination, the court shall appoint a professional person
 23 other than the professional person requesting the commitment
 24 to perform the examination. Whenever possible, the court
 25 shall allow the respondent a reasonable choice of an

1 available professional person qualified to perform the
 2 requested examination WHO WILL BE COMPENSATED FROM THE
 3 PUBLIC FUNDS OF THE COUNTY WHERE THE RESPONDENT RESIDES.

4 (4) Every respondent subject to an order for
 5 short-term treatment or long-term care and treatment shall
 6 be advised of his right to appeal such order by the court at
 7 the conclusion of any hearing as a result of which such an
 8 order may be entered.

9 (5) Records and papers in proceedings under this act
 10 shall be maintained separately by the clerks of the several
 11 courts. Upon the release of any respondent or patient, the
 12 facility shall notify the clerk of the court within five (5)
 13 days of the release, and the clerk shall immediately seal
 14 the record in the case and omit the name of the respondent
 15 or patient from the index or indices of cases in such court
 16 ~~until and~~ unless the court orders ~~how~~ THE RECORD opened for
 17 good cause shown.

18 Section 10. Transfer or commitment to facility —
 19 procedure. No person who is in the custody of the
 20 department of institutions for any purpose other than
 21 treatment of severe mental illness shall be transferred or
 22 committed to a mental health facility unless such transfer
 23 or commitment is effected according to the procedures set
 24 out in this act.

25 Section 11. Appeal procedure. Appellate review of any

1 order of short-term EVALUATION AND treatment or long-term
 2 ~~care and treatment~~ COMMITMENT may be had by appeal to the
 3 supreme court of Montana in the manner as other civil cases.
 4 The patient shall not be released pending appeal unless
 5 ordered by the court. The appeal shall have priority above
 6 all other matters before the supreme court.

7 Section 12. Effect of act on persons currently judged
 8 mentally ill. Any person who, by reason of a judicial
 9 decree entered by a court of this state prior to the
 10 enactment of this act adjudicating such person mentally ill
 11 shall, one (1) year following the effective date of this act
 12 be deemed to have been released and restored to legal
 13 capacity and competency unless, before that time, a petition
 14 for an extended detention order is filed with the court.

15 Section 13. Civil and legal rights of person
 16 committed. (1) Unless specifically stated in an order by
 17 the court, a person involuntarily committed to a facility
 18 for a period of evaluation or treatment shall not forfeit
 19 any legal right or suffer any legal disability by reason of
 20 the provisions of this act except insofar as it may be
 21 necessary to detain the person for treatment, evaluation or
 22 care.

23 (2) Whenever any person is committed to a mental
 24 health facility for a period of three (3) months or longer,
 25 the court ordering the commitment may make an order stating

1 specifically any legal rights which are denied the
 2 respondent and any legal disabilities which are imposed on
 3 him. As part of its order, the court may appoint a person
 4 to act as conservator of the respondent's property. Any
 5 conservatorship created pursuant to this section shall
 6 terminate upon the conclusion of the involuntary commitment
 7 if not sooner terminated by the court. A conservatorship or
 8 guardianship extending beyond the period of involuntary
 9 commitment may not be created except according to the
 10 procedures set forth under Montana law for the appointment
 11 of conservators and guardians generally.

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

24 (4) Any person committed to a mental health facility
 25 prior to the effective date of this act shall enjoy all the

1 rights and privileges of a person committed after the
2 effective date of this act.

3 (5) No person who has received evaluation or treatment
4 under any provisions of this act shall be discriminated
5 against because of such status. For purposes of this
6 section, "discrimination" means giving any unfavorable
7 weight to the fact of hospitalization or outpatient care and
8 treatment unrelated to a person's present capacity to meet
9 standards applicable to all persons. The fact that a person
10 has received evaluation and treatment, whether voluntarily
11 or involuntarily, at any mental health facility shall not be
12 admitted into evidence in any subsequent proceeding for
13 involuntary commitment or for the appointment of a guardian
14 or conservator.

15 Section 14. Transfer of person committed. (1) If a
16 person is committed under the provisions of this act and is
17 eligible for hospital care or treatment by an agency of the
18 United States, and if a certificate of notification from
19 such agency showing that facilities are available and that
20 the person is eligible for care or treatment therein is
21 received, the court may order the person to be placed in the
22 custody of the agency for hospitalization. The chief
23 officer of any hospital or institution operated by such an
24 agency and in which a person is so hospitalized shall be
25 vested with the same powers as the superintendent of the

1 Montana state hospital with respect to detention, custody,
2 transfer, conditional release, or discharge of the person.
3 Jurisdiction shall be retained in the appropriate courts of
4 this state to inquire into the mental condition of persons
5 so hospitalized, and to determine the necessity for
6 continuance of their hospitalization.

7 (2) Consistent with other provisions of this act, a
8 person committed under this act for a period of three (3)
9 months or longer may be committed by the court to the
10 custody of friends or next of kin residing outside the state
11 or to a mental health facility located outside the state, if
12 the out-of-state facility agrees to receive the patient,
13 provided, however, that no such commitment shall be for a
14 longer period of time than is permitted within the state.
15 If the patient is indigent, the expense of supporting him in
16 an out-of-state facility and the expense of transportation
17 shall be borne by the state of Montana.

18 (3) The transfer of persons committed under the
19 provisions of this act out of Montana or under the laws of
20 another jurisdiction into Montana shall be governed by the
21 provisions of the interstate compact on mental health.

22 Section 15. Fingerprinting prohibited. No person
23 admitted to or in a mental health facility shall be
24 fingerprinted unless required by other provisions of law.

25 Section 16. Photographs permitted — confidential.

1 (1) A person admitted to a mental health facility may be
2 photographed upon admission for identification and the
3 administrative purposes of the facility. Such photographs
4 shall be confidential and shall not be released by the
5 facility except pursuant to court order.

6 (2) No other nonmedical photographs shall be taken or
7 used without consent of the patient's legal guardian or the
8 responsible person appointed by the court.

9 Section 17. Rights of persons admitted to facility.
10 Patients admitted to a mental health facility, whether
11 voluntarily or involuntarily, shall have the following
12 rights:

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

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

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

1 professional persons.

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

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

18 (6) Patients have a right to wear their own clothes
19 and to keep and use their own personal possessions including
20 toilet articles, except insofar as such clothes or personal
21 possessions may be determined by a professional person in
22 charge of the patient's treatment plan to be dangerous or
23 otherwise inappropriate to the treatment regimen. The
24 facility has an obligation to supply an adequate allowance
25 of clothing to any patients who do not have suitable

1 clothing of their own. Patients shall have the opportunity
2 to select from various types of neat, clean, and reasonable
3 clothing. Such clothing shall be considered the patient's
4 throughout his stay at the facility. The facility shall
5 make provision for the laundering of patient clothing.

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

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

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

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

24 (11) Patients have a right to receive prompt and
25 adequate medical treatment for any physical ailments. In

1 providing medical care, the mental health facility shall
2 take advantage of whatever community-based facilities are
3 appropriate and available and shall coordinate the patient's
4 treatment for mental illness with his medical treatment.

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

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

21 (a) Regular housekeeping and maintenance procedures
22 which will ensure that the facility is maintained in a safe,
23 clean, and attractive condition shall be developed and
24 implemented.

25 (b) There must be special provision made for geriatric

1 and other nonambulatory patients to assure their safety and
 2 comfort, including special fittings on toilets and
 3 wheelchairs. Appropriate provision shall be made to permit
 4 nonambulatory patients to communicate their needs to the
 5 facility staff.

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

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

18 Section 18. Patient labor — rules. The following
 19 rules shall govern patient labor:

20 (1) No patient shall be required to perform labor
 21 which involves the operation and maintenance of a facility
 22 or for which the facility is under contract with an outside
 23 organization. Privileges or release from the facility shall
 24 not be conditioned upon the performance of labor covered by
 25 this provision. Patients may voluntarily engage in such

1 labor if the labor is compensated in accordance with the
 2 minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.
 3 sec. 206 as amended.

4 (2) (a) Patients may be required to perform
 5 therapeutic tasks which do not involve the operation and
 6 maintenance of the facility, provided the specific task or
 7 any change in assignment is:

8 (i) An integrated part of the patient's treatment plan
 9 and approved as a therapeutic activity by a professional
 10 person responsible for supervising the patient's treatment;
 11 and

12 (ii) Supervised by a staff member to oversee the
 13 therapeutic aspects of the activity.

14 (b) Patients may voluntarily engage in therapeutic
 15 labor for which the facility would otherwise have to pay an
 16 employee, provided the specific labor or any change in labor
 17 assignment is:

18 (i) An integrated part of the patient's treatment
 19 plan and approved as a therapeutic activity by a
 20 professional person responsible for supervising the
 21 patient's treatment; and

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

24 (iii) Compensated in accordance with the minimum wage
 25 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206 as

1 amended.

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

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

14 (5) ~~Patients shall be allowed to use~~ DEDUCTIONS OR
15 PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A
16 PATIENT OF a reasonable amount of the compensation received
17 pursuant to this section for personal and incidental
18 purchases and expenses.

19 Section 19. Medication for patients. Patients have a
20 right to be free from unnecessary or excessive medication.
21 No medication shall be administered unless at the written
22 order of a physician. ~~The professional person in charge of~~
23 ~~the facility and the~~ THE attending physician shall be
24 responsible for all medication given or administered to a
25 patient. The use of medication shall not exceed standards

1 of use that are advocated by the United States food and drug
2 administration. Notation of each individual's medication
3 shall be kept in his medical records. At least weekly an
4 attending physician shall review the drug regimen of each
5 patient under his care. ~~All~~ EXCEPT IN THE CASE OF
6 OUTPATIENTS, ALL prescriptions shall be written with a
7 termination date, which shall not exceed thirty (30) days.
8 Medication shall not be used as punishment, for the
9 convenience of staff, as a substitute for A TREATMENT
10 program, or in quantities that interfere with the patient's
11 treatment program.

12 Section 20. Physical restraint and isolation.
13 Patients have a right to be free from physical restraint and
14 isolation. Except for emergency situations, in which it is
15 likely that patients could harm themselves or others and in
16 which less restrictive means of restraint are not feasible,
17 patients may be physically restrained or placed in isolation
18 only on a professional person's written order which explains
19 the rationale for such action. The written order may be
20 entered only after the professional person has personally
21 seen the patient concerned and evaluated whatever episode or
22 situation is said to call for restraint or isolation.
23 Emergency use of restraints or isolation shall be for no
24 more than one (1) hour, by which time a professional person
25 shall have been consulted and shall have entered an

1 appropriate order in writing. Such written order shall be
 2 effective for no more than twenty-four (24) hours and must
 3 be renewed if restraint and isolation are to be continued.
 4 Whenever a patient is subject to restraint or isolation,
 5 adequate care shall be taken to monitor his physical and
 6 psychiatric condition and to provide for his physical needs
 7 and comfort.

8 Section 21. Research on patients — restrictions.

9 Patients shall have a right not to be subjected to
 10 experimental research without the express and informed
 11 consent of the patient, if the patient is able to give such
 12 consent, and of his guardian, if any, and the responsible
 13 person appointed by the court, after opportunities for
 14 consultation with independent specialists and with legal
 15 counsel. If there is no responsible person or if the
 16 responsible person appointed by the court is no longer
 17 available, then a responsible person who is in no way
 18 connected with the facility, the department of institutions,
 19 or the research project shall be appointed prior to the
 20 involvement of the patient in any experimental research.
 21 The facility shall send notice of intent to involve the
 22 patient in experimental research to the patient, his next of
 23 kin, if known, his legal guardian, if any, the attorney who
 24 most recently represented him, and the responsible person
 25 appointed by the court at least ten (10) days prior to the

1 commencement of such experimental research.

2 Such proposed research shall first have been reviewed
 3 and approved by the mental disabilities board of visitors
 4 before such consent shall be sought. Prior to such approval
 5 the board shall determine that such research complies with
 6 the principles of the statement on the use of human subjects
 7 for research of the American association on mental
 8 deficiency and with the principles for research involving
 9 human subjects required by the United States department of
 10 health, education, and welfare for projects supported by
 11 that agency.

12 Section 22. Treatment procedures — restrictions.

13 Patients have a right not to be subjected to treatment
 14 procedures such as lobotomy, ~~electro-convulsive treatment,~~
 15 aversive reinforcement conditioning, or other unusual or
 16 hazardous treatment procedures without their express and
 17 informed consent after consultation with counsel, the legal
 18 guardian, if any, the responsible person appointed by the
 19 court, and any other interested party of the patient's
 20 choice. At least one (1) of those consulted must consent to
 21 the treatment. If there is no responsible person or if the
 22 responsible person appointed by the court is no longer
 23 available, then a responsible person who is in no way
 24 connected with the facility or with the department of
 25 institutions shall be appointed before any such treatment

1 procedure can be employed. The facility shall send notice
 2 of intent to employ extraordinary treatment procedures to
 3 the patient, his next of kin, if known, the legal guardian,
 4 if any, the attorney who most recently represented him and
 5 the responsible person appointed by the court at least ten
 6 (10) days prior to the commencement of such extraordinary
 7 treatment program.

8 Section 23. Professional person -- qualifications. In
 9 every mental health facility to which a person is admitted
 10 pursuant to this act:

11 (1) Each professional person AND OTHER STAFF MEMBER
 12 employed by the facility shall meet all ~~licensing and~~
 13 ~~certification requirements promulgated by the state of~~
 14 ~~Montana for persons engaged in private practice of the same~~
 15 ~~profession elsewhere in Montana~~ DEPARTMENT OF INSTITUTIONS.
 16 ~~Other staff members shall meet the same licensing and~~
 17 ~~certification requirements as persons who engage in private~~
 18 ~~practice of their speciality elsewhere in Montana.~~

19 (2) All nonprofessional staff members who have not had
 20 prior clinical experience in a mental institution shall have
 21 a substantial orientation training.

22 (3) Staff members on all levels shall have regularly
 23 scheduled in-service training.

24 (4) Each nonprofessional staff member shall be under
 25 the direct supervision of a professional person.

1 Section 24. Treatment plan for patient established.

2 (1) Each patient admitted AS AN INPATIENT to a mental
 3 health facility for a period of more than seventy-two (72)
 4 hours shall have a comprehensive physical and mental
 5 examination and review of behavioral status within
 6 forty-eight (48) hours after admission to the mental health
 7 facility.

8 (2) Each patient shall have an individualized
 9 treatment plan. This plan shall be developed by appropriate
 10 professional persons including a psychiatrist, IF REASONABLY
 11 AVAILABLE and implemented as soon as possible, in any event,
 12 no later than five (5) days after the patient's admission.
 13 Each individualized treatment plan shall contain:

14 (a) a statement of the nature of the specific problems
 15 and specific needs of the patient;

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

18 (c) a description of intermediate and long-range
 19 treatment goals, with a projected timetable for their
 20 attainment;

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

24 (e) a specification of staff responsibility and a
 25 description of proposed staff involvement with the patient

1 in order to attain these treatment goals;

2 (f) criteria for release to less restrictive treatment
3 conditions, and criteria for discharge;

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

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

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

19 (5) The treatment plan shall be continuously reviewed
20 by the professional person responsible for supervising the
21 implementation of the plan and shall be modified if
22 necessary. Moreover, at least every ninety (90) days, each
23 patient shall receive a mental examination from, and his
24 treatment plan shall be reviewed by, a professional person
25 other than the professional person responsible for

1 supervising the implementation of the plan.

2 Section 25. Examination following commitment. No
3 later than fifteen (15) days after a patient is committed to
4 a mental health facility, the professional person in charge
5 of the facility, or his appointed, professionally qualified
6 agent, shall examine the committed patient and shall
7 determine whether the patient continues to require
8 commitment to the facility and whether a treatment plan
9 complying with this act has been implemented. If the
10 patient no longer requires commitment to the facility in
11 accordance with the standards for commitment, or if a
12 treatment plan has not been implemented, he must be released
13 immediately unless he agrees to continue with treatment on a
14 voluntary basis.

15 Section 26. Care and treatment following release. The
16 department of institutions and its agents have an
17 affirmative duty to provide adequate transitional treatment
18 and care for all patients released after a period of
19 involuntary confinement. Transitional care and treatment
20 possibilities include, but are not limited to, psychiatric
21 day care, treatment in the home by a visiting therapist,
22 nursing home or extended care, A HALP-WAY HOUSE, outpatient
23 treatment, and treatment in the psychiatric ward of a
24 general hospital.

25 Section 27. Treatment of children and young adults.

1 In addition to complying with all the other standards
2 herein, a mental health facility shall make special
3 provisions for the treatment of patients who are children
4 and young adults. These provisions shall include, but are
5 not limited to:

6 (a) Opportunities for publicly supported education
7 suitable to the educational needs of the patient. This
8 program of education must, in the opinion of the attending
9 professional person be compatible with the patient's mental
10 condition and his treatment program, and otherwise be in the
11 patient's best interest.

12 (b) A treatment plan which considers the
13 chronological, maturational, and developmental level of the
14 patient.

15 (c) Sufficient professional persons, teachers, and
16 staff members with specialized skills in the care and
17 treatment of children and young adults.

18 (d) Recreation and play opportunities in the open air
19 where possible and appropriate residential facilities,
20 separate, wherever possible, from older patients.

21 (e) Arrangements for contact between the facility and
22 the family of the patient.

23 Section 28. Records to be maintained. Complete
24 patient records shall be kept by the mental health facility
25 and shall be available to ~~anyone properly~~ ANY PROFESSIONAL

1 PERSON OR ATTORNEY authorized in writing by the patient AND
2 THE BOARD. These records shall include:

3 (1) identification data, including the patient's legal
4 status;

5 (2) a patient history, including, but not limited to:

6 (a) family data, educational background, and
7 employment record;

8 (b) prior medical history, both physical and mental,
9 including prior hospitalization;

10 (3) the chief complaints of the patient and the chief
11 complaints of others regarding the patient;

12 (4) an evaluation which notes the onset of illness,
13 the circumstances leading to admission, attitudes, behavior,
14 estimate of intellectual functioning, memory functioning,
15 orientation, and an inventory of the patient's assets in
16 descriptive, not interpretative, fashion;

17 (5) a summary of each physical examination which
18 describes the results of the examination;

19 (6) a copy of the individual treatment plan and any
20 modifications thereto;

21 (7) a detailed summary of the findings made by the
22 reviewing professional person after each periodic review of
23 the treatment plan which analyzes the successes and failures
24 of the treatment program and directs whatever modifications
25 are necessary;

1 (8) a copy of the individualized after care plan and
2 any modifications thereto, and a summary of the steps that
3 have been taken to implement that plan;

4 (9) a medication history and status, which includes
5 the signed orders of the prescribing physician. The staff
6 person administering the medication shall indicate by
7 signature that orders have been carried out;

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

10 (11) a detailed summary on at least a weekly basis by a
11 professional person involved in the patient's treatment of
12 the patient's progress along the treatment plan;

13 (12) a weekly summary of the extent and nature of the
14 patient's work activities and the effect of such activity
15 upon the patient's progress along the treatment plan;

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

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

20 (15) a detailed summary of any extraordinary incident
21 in the facility involving the patient to be entered by a
22 staff member noting that he has personal knowledge of the
23 incident or specifying his other source of information, and
24 initialed within twenty-four (24) hours by a professional
25 person;

1 (16) a summary by the professional person in charge of
2 the facility or his appointed agent of his findings after
3 the fifteen (15) day review provided for in section 25.

4 Section 29. Records to be confidential — exceptions.
5 All information obtained and records prepared in the course
6 of providing any services under this act to individuals
7 under any provision of this act shall be confidential and
8 privileged matter. Such information and records may be
9 disclosed only:

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

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

24 (3) to the extent necessary to make claims on behalf
25 of a recipient of aid, insurance, or medical assistance to

1 which he may be entitled;

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

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

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

13 (7) to members of the mental disabilities board of
14 visitors or their agents when necessary to perform their
15 functions as set out in section 30 of this act.

16 Section 30. Mental disabilities board of visitors —
17 creation and responsibilities. (1) The governor shall
18 appoint a mental disabilities board of visitors. The board
19 shall consist of five (5) persons at least three (3) of whom
20 shall not be professional persons and at least one (1) of
21 whom shall be a representative of an organization concerned
22 with the care and welfare of the mentally ill. No one may
23 be a member of the board who is an agent or employee of the
24 department of institutions or of any mental health facility
25 affected by this act. If a board of similar title and

1 structure is created in any act concerning the treatment of
2 the mentally retarded or developmentally disabled, then one
3 board shall be created to perform the functions set out in
4 both acts and the board so created shall include at least
5 one (1) representative of an organization concerned with the
6 care and welfare of the mentally ill and one (1)
7 representative of an organization concerned with the care
8 and welfare of the mentally retarded or developmentally
9 disabled.

10 (2) The mental disabilities board of visitors shall be
11 an independent board of inquiry and review to assure that
12 the treatment of all persons either voluntarily or
13 involuntarily admitted to a mental facility is humane and
14 decent and meets the requirements set forth in this act.

15 (3) The board shall review all plans for experimental
16 research involving persons admitted to any mental health
17 facility to assure that the research project is humane and
18 not unduly hazardous and that it complies with the
19 principles of the statement on the use of human subjects for
20 research of the American association on mental deficiency
21 and with the principles for research involving human
22 subjects required by the United States department of health,
23 education, and welfare. No experimental research project
24 involving persons admitted to any mental health facility
25 affected by this act shall be commenced unless it is

1 approved by the mental disabilities board of visitors.

2 (4) The board shall, at least annually, inspect every
3 mental health facility which is providing treatment and
4 evaluation to any person pursuant to this act. The board
5 shall inspect the physical plant, including residential,
6 recreational, dining, and sanitary facilities. It shall
7 visit all wards and treatment areas. The board shall
8 inquire concerning all treatment programs being implemented
9 by the facility.

10 (5) The board shall annually ~~inspect the treatment~~
11 ~~file of each person admitted to a mental health facility~~
12 ~~pursuant to this act to~~ insure that a treatment plan exists
13 and is being implemented FOR EACH PATIENT ADMITTED OR
14 COMMITTED TO A MENTAL HEALTH FACILITY UNDER THIS ACT. The
15 board shall inquire concerning all use of restraints,
16 isolation, or other extraordinary measures.

17 (6) The board may assist any patient at a mental
18 health facility in resolving any grievance he may have
19 concerning his commitment or his course of treatment in the
20 facility.

21 (7) If the board believes that any facility is failing
22 to comply with the provisions of this act in regard to its
23 physical facilities or its treatment of any patient, it
24 shall report its findings at once to the next of kin or
25 guardian of any patient involved, the responsible person

1 appointed by the court for any patient involved, the
2 professional person in charge of the facility, the director
3 of the department of institutions, and the district court
4 which has jurisdiction over the facility.

5 (8) The mental disabilities board of visitors shall
6 report annually to the governor and shall report to each
7 session of the Montana legislature concerning the status of
8 the mental health facilities and treatment programs which it
9 has inspected.

10 (9) The mental disabilities board of visitors shall be
11 attached to the governor for administrative purposes. It
12 may employ staff for the purpose of carrying out its duties
13 as set out in this act.

14 Section 31. Standards for treatment to be known. Each
15 patient and his next of kin, guardian, conservator, or the
16 responsible person appointed by the court shall promptly
17 upon the patient's admission receive written notice, in
18 language he understands, of all the above standards for
19 adequate treatment. In addition a copy of all the above
20 standards shall be posted in each ward.

21 Section 32. Section 38-110, R.C.M. 1947, is amended to
22 read as follows:

23 "38-110. Maintenance of indigent persons on discharge.
24 ~~Upon~~ PRIOR TO the discharge of a patient from ~~the state~~
25 ~~hospital, the department a mental health facility, the~~

1 ~~Professional person in charge of the facility~~ shall notify
 2 ~~the board of public welfare~~ welfare department of the county
 3 from which the patient was committed. The ~~county board of~~
 4 ~~public welfare~~ county welfare department shall at once
 5 ascertain whether the discharged patient is in financial
 6 need. If the patient is found to be in financial need, the
 7 ~~county board of public welfare~~ county welfare department
 8 shall properly care for and maintain the discharged patient
 9 under the ~~Public Welfare Act~~ laws of this state relating to
 10 public welfare until the patient is able to care for
 11 himself, or until another provision has been made for care
 12 of the patient.*

13 Section 33. Section 38-212, R.C.M. 1947, is amended to
 14 read as follows:

15 "38-212. Cost of examination and commitment. The cost
 16 of the examination, committal, and taking ~~an insane person~~
 17 ~~to the asylum~~ a person who is seriously mentally ill to a
 18 mental health facility must be paid by the county in which
 19 he resides at the time he is adjudged ~~insane to be seriously~~
 20 mentally ill. The sheriff must be allowed the actual
 21 expenses incurred in taking ~~an insane person~~ a person who is
 22 seriously mentally ill to the ~~asylum~~ facility, as provided
 23 by section 16-2723 of this code."

24 Section 34. Section 38-506, R.C.M. 1947, is amended to
 25 read as follows:

1 *38-506. Support of patient ~~placed on convalescent~~
 2 ~~leave, discharged by lapse of time~~ conditionally released.
 3 ~~(1) When the state hospital places a patient on convalescent~~
 4 ~~leave, a mental health facility conditionally releases a~~
 5 patient committed to its care, it is not liable for his
 6 support while ~~on convalescent leave~~ conditionally released.
 7 Liability devolves upon the legal guardian, parent, or
 8 person under whose care the patient is placed ~~on~~
 9 ~~convalescent leave~~ WHEN CONDITIONALLY RELEASED, or upon any
 10 other person legally liable for his support. The public
 11 welfare officials of the county where the patient resides or
 12 is found, are responsible for providing relief and care for
 13 ~~the a conditionally released patient on convalescent leave~~
 14 who is unable to maintain himself, or who is unable to
 15 secure support from the person under whose care he was
 16 placed on convalescent leave, like any other person in need
 17 of relief and care, under the public welfare laws. The
 18 ~~person under whose care the patient is placed on~~
 19 ~~convalescent leave or any other person legally liable for~~
 20 ~~his support, shall, if the convalescent leave is revoked, be~~
 21 ~~liable for any expense incurred by the state or county in~~
 22 ~~procuring the return of the patient to the hospital.~~

23 ~~(2) The superintendent of the state hospital shall~~
 24 ~~place on convalescent leave any patient under his control~~
 25 ~~when he believes it is in the best interests of the patient~~

1 ~~and society to do so. If a patient placed on convalescent~~
 2 ~~leave is not returned to the institution within a period of~~
 3 ~~two (2) years, he is considered discharged therefrom and~~
 4 ~~entry shall be made accordingly in the records of the~~
 5 ~~institution. If a patient who has escaped from the~~
 6 ~~institution is not returned thereto within two (2) years, he~~
 7 ~~is considered discharged therefrom and an entry shall be~~
 8 ~~made accordingly in the records of the institution. When a~~
 9 ~~patient is discharged whether by convalescent leave~~
 10 ~~continuing for a period of two (2) years or by having~~
 11 ~~escaped and not having been returned within two (2) years,~~
 12 ~~the superintendent of the state hospital shall immediately~~
 13 ~~notify in writing the judge of the court by which the~~
 14 ~~patient was committed. A person so discharged may not be~~
 15 ~~recommitted to the state hospital except by court order and~~
 16 ~~upon proceedings as required by law for commitment in the~~
 17 ~~first instance. This section does not restore the civil~~
 18 ~~rights of persons so discharged or restore sanity, or~~
 19 ~~relieve the superintendent of the state hospital from the~~
 20 ~~obligation of supervising patients on convalescent leave to~~
 21 ~~the extent of available facilities and finances."~~

22 Section 35. Section 38-507, R.C.M. 1947, is amended to
 23 read as follows:

24 "38-507. Clothing for patient on ~~convalescent leave~~
 25 conditional release or discharged patient. A patient or

1 inmate may not be discharged or placed on ~~convalescent leave~~
 2 conditionally released from the ~~state hospital a mental~~
 3 health facility without suitable clothing adapted to the
 4 season in which he is discharged."

5 Section 36. Section 80-1601, R.C.M. 1947, is amended
 6 to read as follows:

7 "80-1601. Institutions subject to per diem charge.
 8 The state department of institutions shall collect and
 9 process per diem payments for the care of residents in the
 10 following institutions and for the care of those persons in
 11 foster homes or other facilities for the mentally ill, or
 12 the mentally retarded, or developmentally disabled under
 13 provisions of the department:

- 14 (1) Montana children's center
- 15 (2) Warm Springs state hospital
- 16 (3) Boulder river school and hospital
- 17 (4) Galen state hospital
- 18 (5) Montana veterans' home
- 19 (6) Montana center for the aged.
- 20 (7) Eastmont training center."

21 SECTION 80-2501, R.C.M. 1947, IS AMENDED TO READ AS
 22 FOLLOWS:

23 "80-2501. Location and function of center. The
 24 institution located at Levistown is the "Montana Center for
 25 the Aged". The primary function of the center is the care

1 and treatment of ~~senile~~ persons who have been admitted to
2 Warm Springs state hospital and subsequently transferred to
3 the center. ~~As used in this chapter "senility" means mental~~
4 ~~illness resulting from the aging process."~~

5 Section 37. Severability clause. If any provision of
6 this act or the application thereof to any person or
7 circumstances is held invalid, such invalidity shall not
8 affect other provisions or applications of the act which can
9 be given effect without the invalid provision or
10 application, and to this end the provisions of this act are
11 declared to be severable.

12 Section 38. Sections 38-107, 38-108, 38-109, 38-112,
13 38-113, 38-114, 38-115, 38-116, 38-201, 38-202, 38-203,
14 38-204, 38-205, 38-206, 38-207, 38-208, 38-208.1, 38-208.2,
15 38-208.3, 38-209, 38-211, 38-213, 38-401, 38-402, 38-403,
16 38-404, 38-405, 38-406, 38-406.1, 38-406.2, 38-407, 38-408,
17 38-408.1, 38-502, 38-503, 38-504, 38-505, and 64-112, R.C.S.
18 1947, are repealed.

-End-