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*Senate* BILL NO. *246*  
INTRODUCED BY *Four, Don, Mandy, Ben, John*

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTION 38-1302, R.C.M. 1947, TO REDEFINE THE TERMS "MENTAL HEALTH FACILITY" AND "SERIOUSLY MENTALLY ILL"; AMENDING SECTION 38-1305, R.C.M. 1947, TO PROVIDE FOR DETENTION OF A SERIOUSLY MENTALLY ILL PERSON; AND AMENDING SECTION 38-1306, R.C.M. 1947, TO PROVIDE THAT THE PERSON IN CHARGE OF THE SERIOUSLY MENTALLY ILL PERSON AT THE PLACE OF DETENTION MAY PETITION THE COURT FOR EXTENSION OF AN ADJUDICATED DETENTION PERIOD."

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

Section 1. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. 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

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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 which is equipped and staffed to provide treatment for mentally ill persons. No correctional institution, or facility, or jail, is a mental health facility within the meaning of this act except for the purpose of detaining a seriously mentally ill person who is dangerous to himself or others, either during the 72-hour detention period defined in 38-1305 or under the emergency provisions defined in 38-1307.

(7) "Next of kin" shall include, but need not be limited to, the spouse, parents, adult children, and adult brothers and sisters of a person.

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

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

(10) "Professional person" means:

- (a) a medical doctor, or

1 (b) a person trained in the field of mental health and  
 2 certified by the department of institutions in accordance  
 3 with standards of professional licensing boards, federal  
 4 regulations, and the joint commission on accreditation of  
 5 hospitals.

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

8 (12) "Responsible person" means any person willing and  
 9 able to assume responsibility for a seriously mentally ill  
 10 person, or person alleged to be seriously mentally ill,  
 11 including next of kin; the person's conservator or legal  
 12 guardian, if any; representatives of a charitable or  
 13 religious organization, or any other person appointed by the  
 14 court to perform the functions of a "responsible person" set  
 15 out in this act. Only one person shall at any one time be  
 16 the "responsible person" within the meaning of this act. In  
 17 appointing a responsible person, the court shall consider  
 18 the preference of the respondent. The court may, at any  
 19 time for good cause shown, change its designation of the  
 20 "responsible person".

21 (13) "Seriously mentally ill" means suffering from a  
 22 mental disorder which has resulted in self-inflicted injury  
 23 or injury to others, or the imminent threat thereof, or  
 24 which has deprived the person afflicted of the ability to  
 25 protect his life or health or a condition in which a person,

1 as a result of any mental illness, is unable to take care of  
 2 his basic personal needs or lacks sufficient understanding  
 3 or capacity to make or communicate responsible decisions  
 4 concerning his person. No person may be involuntarily  
 5 committed to a mental health facility ~~nor~~ or detained for  
 6 evaluation and treatment because he is an epileptic,  
 7 mentally deficient, mentally retarded, senile, or suffering  
 8 from a mental disorder unless the condition causes the  
 9 person to be seriously mentally ill within the meaning of  
 10 this act."

11 Section 2. Section 38-1305, R.C.M. 1947, is amended to  
 12 read as follows:

13 "38-1305. 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  
15 professional person shall examine the respondent and make  
16 such inquiry as he or she may deem appropriate. If the  
17 respondent does not cooperate and if requested by the  
18 professional person, the court may order the respondent to  
19 submit to examination by a professional person at a time and  
20 place designated by the court. The examination so ordered  
21 shall not exceed a period 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 admission to a mental health facility  
9 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. If the court  
 8 finds that the respondent is seriously mentally ill and is  
 9 dangerous to himself or others, it shall order the  
 10 respondent detained in a correctional institution or jail  
 11 pending the commitment hearing provided in 38-1306. However,  
 12 the court may dismiss the petition if the respondent agrees  
 13 to accept voluntary treatment or admission to a mental  
 14 health facility.

15 (8) Persons receiving evaluation and treatment  
 16 pursuant to this section shall be given a reasonable choice  
 17 of an available professional person qualified to provide  
 18 such services."

19 Section 3. Section 38-1306, R.C.M. 1947, is amended to  
 20 read as follows:

21 "38-1306. Petition for commitment -- trial --  
 22 determination of court. (1) If in the opinion of the  
 23 professional person in charge of the patient the person  
 24 detained under the provisions of section 38-1305 does not  
 25 require further evaluation or treatment he shall be released

1 within seventy-two (72) hours. If, in the opinion of the  
 2 professional person, the patient requires further evaluation  
 3 or treatment, he shall advise the court accordingly not less  
 4 than three (3) days from the date of detention and shall  
 5 within the same time file a petition requesting that the  
 6 patient be committed to a facility for a period not in  
 7 excess of three (3) months. The petition shall be  
 8 accompanied by a written report and evaluation of the  
 9 patient's mental and physical condition. The report shall  
 10 explain the reasons for the petition and shall identify any  
 11 tests or evaluation devices which the professional person  
 12 employed in evaluating the patient. The professional person  
 13 may retain the patient in custody by court order pending a  
 14 hearing on the petition only if detention is necessary to  
 15 prevent injury to the patient or others.

16 (2) Upon receipt of a petition for commitment not to  
 17 exceed three (3) months, the court shall immediately set the  
 18 time and place for a hearing, which shall be held not more  
 19 than three (3) days from the receipt of the petition. The  
 20 court may extend the period to seven (7) days. The time for  
 21 the hearing may be further extended at the request of  
 22 counsel for the patient. The court shall give written  
 23 notice to the professional person who requested the  
 24 commitment, the patient, his counsel, his next of kin, when  
 25 known, the responsible person appointed by the court, and

1 the county attorney. At any time prior to the date set for  
 2 hearing, the patient, or his attorney, may request a jury  
 3 trial, whereupon the time set for hearing will be vacated  
 4 and the matter set on the court's jury calendar at the  
 5 earliest date possible, the matter taking precedence over  
 6 all other matters on the jury calendar.

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

13 (4) The patient shall be present and represented by  
 14 counsel at all stages of the trial, and the sole question to  
 15 be determined by the court or jury, as the case may be,  
 16 shall be whether the patient is seriously mentally ill  
 17 within the meaning set forth in this act. The professional  
 18 person who filed the petition shall be present in court for  
 19 the hearing and subject to cross-examination. The trial  
 20 shall be governed by the Montana rules of civil procedure  
 21 except that, if tried by a jury, at least three-fourths  
 22 (3/4) of the jurors must concur on a finding that the  
 23 patient is seriously mentally ill. The finding may be  
 24 appealed to the Montana supreme court in the same manner as  
 25 other civil matters. The standard of proof in any hearing

1 held pursuant to this section shall be proof beyond a  
 2 reasonable doubt. Any court may order a hearing closed to  
 3 the public for the protection of the respondent.

4 (5) If, upon hearing, it is determined that the  
 5 patient is not seriously mentally ill within the meaning of  
 6 this act, he shall be discharged and the petition of the  
 7 professional person dismissed. If it is determined that the  
 8 patient is seriously mentally ill within the meaning of this  
 9 act the court shall:

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

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

15 (c) order outpatient therapy; or

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

17 No treatment ordered pursuant to this subsection shall  
 18 affect the patient's custody for a period of more than  
 19 three (3) months.

20 In determining which of the above alternatives to  
 21 order, the court shall choose the least restrictive  
 22 alternatives necessary to protect the patient and the public  
 23 and to permit effective treatment. The court shall consider  
 24 and shall describe in its order what alternatives for  
 25 treatment of the patient are available, what alternatives

1 were investigated and why the investigated alternatives were  
 2 not deemed suitable. The court shall enter into the record a  
 3 detailed statement of the facts upon which it found the  
 4 respondent to be seriously mentally ill.

5 At any time within the three (3) month period the  
 6 patient may be discharged on the written order of the  
 7 professional person in charge of the patient. In the event  
 8 the patient is not discharged within the three (3) month  
 9 period and if the term is not extended as provided herein,  
 10 the patient shall be discharged by the facility at the end  
 11 of three (3) months without further order of the court.  
 12 Notice of such discharge will be filed with the court within  
 13 five (5) days of the discharge.

14 (6) Not less than two (2) calendar weeks prior to the  
 15 end of the three (3) month period of detention, the  
 16 professional person in charge of the patient at the place of  
 17 detention may petition the court for extension of the  
 18 detention period. The petition shall be accompanied by a  
 19 written report and evaluation of the patient's mental and  
 20 physical condition. The report shall describe any tests and  
 21 evaluation devices which have been employed in evaluating  
 22 the patient, the course of treatment which has been  
 23 undertaken for the patient and the future course of  
 24 treatment anticipated by the professional person. Upon the  
 25 filing of the petition, the court shall give written notice

1 of the filing of the petition to the patient, his next of  
 2 kin, if reasonably available, the responsible person  
 3 appointed by the court, and to the patient's counsel. If  
 4 any person so notified requests a hearing prior to the  
 5 termination of the previous detention authority the court  
 6 shall immediately set a time and place for such a hearing on  
 7 a date not more than ten (10) days from the receipt of the  
 8 request and notify the same people including the  
 9 professional person in charge of the patient. Procedure on  
 10 the petition for extension shall be the same in all  
 11 respects, as the procedure on the petition for the original  
 12 three (3) month commitment except the patient shall not be  
 13 entitled to trial by jury. The hearing shall be held in the  
 14 district court having jurisdiction over the facility in  
 15 which the patient is detained unless otherwise ordered by  
 16 the court. If upon the hearing the court finds the patient  
 17 not seriously mentally ill within the meaning of this act,  
 18 the patient shall be discharged and the petition dismissed.  
 19 If the court finds that the patient continues to suffer from  
 20 serious mental illness, the court shall order commitment,  
 21 custody in relatives, outpatient therapy or other order as  
 22 set forth in subsection (5) of this section except that no  
 23 order shall affect his custody for more than six (6) months.  
 24 In its order, the court shall describe what alternatives for  
 25 treatment of the patient are available, what alternatives

1 were investigated, and why the investigated alternatives  
2 were not deemed suitable. The court shall not order  
3 continuation of an alternative which does not include a  
4 comprehensive, individualized plan of treatment for the  
5 patient. Any court order for the continuation of an  
6 alternative shall include a specific finding that a  
7 comprehensive, individualized plan of treatment exists.

8 (7) Further extensions may be obtained under the same  
9 procedure described in subsection (5) of this section except  
10 that the patient's custody shall not be affected for more  
11 than one (1) year, without a renewal of the commitment under  
12 the procedures set forth in subsection (6) of this section,  
13 including a statement of the findings required by subsection  
14 (5).

15 (8) At any time during the patient's commitment the  
16 court may on its own initiative or upon application of the  
17 professional person in charge of the patient, the patient,  
18 his next of kin, his attorney, or the responsible person  
19 appointed by the court, order the patient to be placed in  
20 the care and custody of relatives or guardians, or to be  
21 provided outpatient therapy or other appropriate placement  
22 or treatment."

-End-

STATE OF MONTANA

REQUEST NO. 535-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 10, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 246 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act amending Section 38-1302, R.C.M. 1947, to redefine the terms "Mental Health Facility" and "Seriously Mentally Ill"; amending Section 38-1305, R.C.M. 1947, to provide for detention of a seriously mentally ill person, and amending Section 38-1306, R.C.M. 1947, to provide that the person in charge of the seriously mentally ill person at the place of detention may petition the court for extension of an adjudicated detention period.

FISCAL IMPACT:

Minimal.

*Richard L. Drury for*

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-22-77