

*Senate* BILL NO. *413*  
*Dwe*

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL PERSONS AND TO AMEND SECTIONS 38-1301 THROUGH 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND 38-1331, R.C.M. 1947."

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

Section 1. Section 38-1301, R.C.M. 1947, is amended to read as follows:

"38-1301. Purpose of ~~act~~ chapter. The purpose of this ~~act~~ chapter 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 to accomplish this goal whenever possible~~

in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter."

Section 2. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. Definitions. As used in this ~~act~~ chapter, the following definitions apply:

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

(2) "Court" means ~~the~~ any 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

1 community mental health center, or any mental health clinic  
2 or treatment center approved by the department. No  
3 correctional institution or facility, or jail, is a mental  
4 health facility within the meaning of this ~~act~~ chapter.

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

8 (8) "Patient" means ~~a person committed by the court to~~  
9 ~~a seventy-two (72) hour evaluation or treatment or for a~~  
10 ~~longer period~~ a person committed by the court for treatment  
11 for any period of time.

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

14 (10) "Professional person" means:

15 (a) a medical doctor, or

16 (b) a person trained in the field of mental health and  
17 certified by the department of institutions in accordance  
18 with standards of professional licensing boards, federal  
19 regulations, and the joint commission on accreditation of  
20 hospitals.

21 (11) "Reasonable medical certainty" means reasonable  
22 certainty as judged by the standards of a professional  
23 person.

24 ~~(11)~~ (12) "Respondent" means a person alleged in a  
25 petition filed pursuant to this ~~act~~ chapter to be seriously

1 mentally ill.

2 ~~(12)~~ (13) "Responsible person" means any person willing  
3 and able to assume responsibility for a seriously mentally  
4 ill person, or person alleged to be seriously mentally ill,  
5 including next of kin, the person's conservator or legal  
6 guardian, if any, representatives of a charitable or  
7 religious organization, or any other person appointed by the  
8 court to perform the functions of a "responsible person" set  
9 out in this ~~act~~ chapter. Only one person shall may at any  
10 one time be the "responsible person" within the meaning of  
11 this ~~act~~ chapter. In appointing a responsible person, the  
12 court shall consider the preference of the respondent. The  
13 court may, at any time for good cause shown, change its  
14 designation of the "responsible person".

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

1 Section 3. Section 38-1303, R.C.M. 1947, is amended to  
2 read as follows:

3 "38-1303. Voluntary admission — cost of admission.

4 (1) Nothing in this ~~act shall~~ chapter may be construed in  
5 any way as limiting the right of any person to make  
6 voluntary application for admission at any time to any  
7 mental health facility or professional person. An  
8 application for admission to a mental health facility shall  
9 be in writing on a form prescribed by the facility and  
10 approved by the department ~~of institutions~~. It ~~shall is~~ not  
11 ~~be~~ valid unless it is approved by a professional person and  
12 a copy is given to the person voluntarily admitting himself.  
13 The form shall contain a statement of the rights of the  
14 person voluntarily applying for admission, as set out in  
15 this ~~act~~ chapter, including the right to release.

16 (2) Any applicant who wishes to voluntarily apply for  
17 admission to the Montana state hospital shall first obtain  
18 certification ~~from the regional mental health director of~~  
19 ~~his mental health region or if not reasonably available,~~  
20 from a professional person that the applicant is suffering  
21 from a mental disorder and that the facilities available to  
22 the mental health region in which the applicant resides are  
23 unable to provide adequate evaluation and treatment.

24 (3) An application for voluntary admission shall give  
25 the facility the right to detain the applicant for 10 days

1 after his initial admission and for no more than five ~~(5)~~  
2 days past his written request for release thereafter.

3 (4) The cost of involuntarily committing a patient who  
4 is voluntarily admitted to a mental health facility at the  
5 time the involuntary proceedings are commenced shall be  
6 borne by the county of the patient's residence at the time  
7 of admission.

8 (5) The costs of transportation to a mental health  
9 facility under this section shall be provided by ~~the~~  
10 ~~patient, his parents, guardian, or~~ the welfare department of  
11 the county of the patient's residence. However, if  
12 protective proceedings under Title 91A, chapter 5, have been  
13 or are initiated with respect to the person, the welfare  
14 department may seek reimbursement. If no one else is  
15 available to transport him, the sheriff shall transport the  
16 person.

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

20 (7) Notwithstanding any other provision of law, a  
21 minor who is ~~sixteen~~ ~~(16)~~ years of age or older may consent  
22 to receive mental health services to be rendered by a  
23 facility or a person licensed to practice medicine or  
24 psychology in this state.

25 (8) Voluntary except as provided by this subsection,

1 voluntary commitment of a minor to a mental health facility  
 2 for an in-patient course of treatment shall be for a period  
 3 of no more than thirty (30) days the same period of time as  
 4 that for an adult. Unless there has been a periodic review  
 5 and a voluntary recommitment consented to by the minor  
 6 patient and his counsel, voluntary commitment terminates at  
 7 the expiration of 1 year. If the professional person in  
 8 charge of a minor patient determines that the commitment  
 9 should continue for a period of more than thirty (30) days,  
 10 he shall commence involuntary commitment proceedings in  
 11 accordance with this act. Counsel shall be appointed for  
 12 the minor.

13 (9) If, in any voluntary commitment for any period of  
 14 time to a mental health facility, a minor fails to join in  
 15 the consent of his parents or guardian to the voluntary  
 16 commitment, then the commitment shall be treated as an  
 17 involuntary commitment. Notice of the substance of this  
 18 subsection and of the right to counsel shall be set forth in  
 19 conspicuous type in a conspicuous location on any form or  
 20 application used for the voluntary commitment of a minor to  
 21 a mental health facility. The notice shall be explained to  
 22 the minor by the professional person approving the  
 23 application."

24 Section 4. Section 38-1304, R.C.M. 1947, is amended to  
 25 read as follows:

1 "38-1304. Rights and waiver of rights. (1) Whenever a  
 2 person is involuntarily detained, or is examined by a  
 3 professional person pursuant to sections 38-1305, or is  
 4 notified that he will be the subject of a hearing pursuant  
 5 to section 38-1305 or 38-1306, the person shall be informed  
 6 of his constitutional rights and his rights under this act  
 7 chapter. A person may waive his procedural rights, provided  
 8 that the waiver is knowingly and intentionally made or his  
 9 rights may be waived by his counsel and responsible person  
 10 acting together if a record is made of the reasons for the  
 11 waiver. The right to counsel in a hearing held pursuant to  
 12 section 38-1306 may not be waived. The right to treatment  
 13 provided for in this act chapter may not be waived.

14 (2) ~~In the case of a person who has been detained for~~  
 15 ~~a seventy-two (72) hour inpatient evaluation and treatment~~  
 16 ~~or for a longer period of time, a waiver of rights can be~~  
 17 ~~knowingly and intentionally made only with the concurrence~~  
 18 ~~of the patient's attorney or of the responsible person~~  
 19 ~~appointed by the court.~~ The right of the respondent to be  
 20 physically present at a hearing may also be waived by his  
 21 attorney and the responsible person with the concurrence of  
 22 the professional person and the judge upon a finding  
 23 supported by facts that:

24 (a) the presence of the respondent at the hearing  
 25 would be likely to seriously adversely affect his mental

1 condition; and

2 (b) an alternative location for the hearing in  
3 surroundings familiar to the respondent would not prevent  
4 such adverse affects on his mental condition.

5 (3) (a) In the case of a minor, provided that a record  
6 is made of the reasons for the waiver, of his rights can be  
7 ~~knowingly and intentionally made~~

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

10 ~~(b) when the minor is over the age of twelve (12), by~~  
11 ~~the youth and his parents;~~

12 ~~(c) when the minor is over the age of twelve (12) and~~  
13 ~~the minor and his parents do not agree, the minor can make~~  
14 ~~an effective waiver of his rights only with advice of~~  
15 ~~counsel may be waived by the mutual consent of his counsel~~  
16 ~~and parents or guardian or guardian ad litem if there are no~~  
17 ~~parents or guardian.~~

18 (b) If there is an apparent conflict of interest  
19 between a minor and his parents or guardian, the court ~~may~~  
20 shall appoint a guardian ad litem for ~~the minor~~ him.

21 (4) In addition to any other rights which may be  
22 guaranteed by the constitution of the United States and of  
23 this state, by the laws of this state or by this ~~act~~  
24 chapter, any person who is involuntarily detained or against  
25 whom a petition is filed pursuant to this ~~act~~ chapter has

1 the following rights:

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

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

7 (c) the right in any hearing to cross-examine  
8 witnesses;

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

10 (e) the right to remain silent;

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

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

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

19 (i) the right to be dressed in his own clothes at any  
20 hearing held pursuant to this ~~act~~ chapter; and

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

24 (5) A person detained pursuant to this chapter shall  
25 be detained in the least restrictive environment required to

1 protect the life and physical safety of the person detained  
 2 or members of the public. Whenever possible, a person  
 3 detained pursuant to this chapter shall be detained in a  
 4 mental health facility and in the county of residence. A  
 5 person may be detained in a jail or other correctional  
 6 facility only if no mental health facility is available or  
 7 if the available mental health facilities are inadequate to  
 8 protect the person detained and the public. As soon as a  
 9 mental health facility becomes available or the situation  
 10 has changed sufficiently that an available mental health  
 11 facility is adequate for the protection of the person  
 12 detained and the public, then the detained person shall be  
 13 transferred from the jail or correctional facility to the  
 14 mental health facility. A person detained prior to  
 15 involuntary commitment may apply to the court for immediate  
 16 relief with respect to the need for detention or the  
 17 adequacy of the facility being utilized to detain."

18 Section 5. Section 38-1305, R.C.M. 1947, is amended to  
 19 read as follows:

20 "38-1305. Petition alleging person as seriously  
 21 mentally ill -- contents and procedure. (1) \* The county  
 22 attorney, on his own initiative or upon the written request  
 23 of any person, may file a petition with the court alleging  
 24 that there is a person within the county who is seriously  
 25 mentally ill and requesting that ~~an evaluation of the~~

1 ~~person's condition be made~~ the person be committed to a  
 2 mental health facility for a period of no more than 3  
 3 months.

4 (2) The petition shall contain:

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

7 (b) the name of the respondent, and, if known, the  
 8 address, age, sex, marital status, and occupation of the  
 9 respondent;

10 (c) the purported facts supporting the allegation of  
 11 mental illness;

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

15 (e) the name and address of the person's next of kin,  
 16 to the extent known to the county attorney and the person  
 17 requesting the petition;

18 (f) the name and address of any person whom the county  
 19 attorney believes might be willing and able to be appointed  
 20 as responsible person;

21 (g) the name, address, and telephone number of the  
 22 attorney, if any, who has most recently represented the  
 23 person for whom evaluation is sought. If there is no  
 24 attorney, there shall be a statement as to whether, to the  
 25 best knowledge of the person requesting the petition, the

1 person for whom evaluation is sought is indigent and  
2 therefore unable to afford the services of an attorney; and

3 (h) a statement of the rights of the respondent which  
4 shall be in conspicuous print and identified by a suitable  
5 heading.

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

23 (a) The petition shall be filed with the clerk of  
24 court who shall immediately notify the judge.

25 (b) If a judge is available, he shall consider the

1 petition and if he finds no probable cause it shall be  
2 dismissed. If the judge finds probable cause, counsel shall  
3 be immediately appointed for the respondent and the  
4 respondent shall be brought forthwith before the court with  
5 his counsel. The respondent shall be advised of his  
6 constitutional rights, his rights under this chapter, and  
7 the substantive effect of the petition. The judge shall  
8 appoint a professional person and a responsible person and  
9 set a date and time for the hearing on the petition, which  
10 may not exceed 5 days, including weekends and holidays  
11 unless the fifth day falls upon a weekend or holiday and  
12 unless additional time is requested on behalf of the  
13 respondent. The desires of the respondent shall be taken  
14 into consideration in the appointment of the responsible  
15 person and in the confirmation of the appointment of the  
16 attorney.

17 (c) If a judge is not available in the county, the  
18 clerk shall notify a resident judge by telephone and read  
19 the petition to him. If the judge finds no probable cause,  
20 the petition shall be dismissed. If the judge finds probable  
21 cause, he shall cause the clerk to issue an order appointing  
22 counsel, a professional person, and setting a date and time  
23 for the hearing on the petition, which may not exceed 5  
24 days, including weekends and holidays unless the fifth day  
25 falls upon a weekend or holiday and unless additional time

1 is requested on behalf of the respondent. The order shall  
 2 also direct that the respondent be brought forthwith before  
 3 a justice of the peace with his counsel to be advised of his  
 4 constitutional rights, his rights under this chapter, and  
 5 the contents of the clerk's order as well as to furnish him  
 6 with a copy. The justice of the peace shall ascertain the  
 7 desires of the respondent with respect to the appointment of  
 8 his counsel, and this shall be immediately communicated to  
 9 the resident judge. The resident judge may appoint other  
 10 counsel, may confer with respondent's counsel and the county  
 11 attorney in order to appoint a responsible person, and may  
 12 do all things necessary through the clerk of court by  
 13 telephone as if the resident judge were personally present.

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. Following the initial~~  
 2 ~~hearing, whether before a judge or justice of the peace, the~~  
 3 ~~respondent shall be examined by the professional person~~  
 4 ~~without unreasonable delay. The examination may not exceed a~~  
 5 ~~period of 4 hours. The professional person shall immediately~~  
 6 ~~notify the court of his findings in person or by phone and~~  
 7 ~~shall make a written report of his examination to the court,~~  
 8 ~~with copies to the respondent's attorney and the county~~  
 9 ~~attorney. If the professional person recommends dismissal,~~  
 10 ~~he shall additionally notify counsel and the respondent~~  
 11 ~~shall be released and the petition dismissed. However, the~~  
 12 ~~county attorney may, upon good cause shown, request the~~  
 13 ~~court to order an additional, but no more than one,~~  
 14 ~~examination by a different professional person for a period~~  
 15 ~~of no more than 4 hours.~~

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



1 ~~the recommendation shall be accompanied by a report~~  
 2 ~~explaining the reasons for the recommendation and identifying~~  
 3 ~~any tests or evaluation devices which the professional~~  
 4 ~~person employed in evaluating the respondent. If the~~  
 5 ~~professional person recommends that a seventy two (72) hour~~  
 6 ~~evaluation and treatment be ordered, notice of this~~  
 7 ~~recommendation shall be mailed or delivered to the~~  
 8 ~~respondent, the next of kin, when known, any person~~  
 9 ~~responsible for the care, support, and maintenance of the~~  
 10 ~~respondent, any other person identified in the petition, and~~  
 11 ~~the responsible person, if any, appointed by the court.~~  
 12 ~~Notice shall include the date, time, and place of the~~  
 13 ~~respondent's next appearance before the court. The judge~~  
 14 ~~can, upon probable cause for detention, order detention of~~  
 15 ~~the respondent pending the hearing, in which case counsel~~  
 16 ~~shall be orally notified immediately. Counsel for the~~  
 17 ~~respondent may then request a detention hearing, which shall~~  
 18 ~~be held forthwith. In the event of detention, the respondent~~  
 19 ~~shall be detained in the least restrictive setting necessary~~  
 20 ~~to assure his presence and assure his safety and the safety~~  
 21 ~~of others. He shall have the right to be examined~~  
 22 ~~additionally by a professional person of his choice. Unless~~  
 23 ~~objection is made by counsel for the respondent, he shall~~  
 24 ~~continue to be evaluated and treated by the professional~~  
 25 ~~person pending the hearing.~~

1 ~~(6) In the event the examining professional person~~  
 2 ~~recommends a seventy two (72) hour inpatient evaluation and~~  
 3 ~~treatment, the respondent shall be brought before the court~~  
 4 ~~by the county attorney without undue delay, advised of the~~  
 5 ~~recommendation, supplied with a copy of the petition and the~~  
 6 ~~recommendation and advised of his rights to a hearing and to~~  
 7 ~~counsel. If a responsible person has not yet been~~  
 8 ~~appointed, the court shall appoint a responsible person at~~  
 9 ~~this time. If the right to a hearing and to counsel are~~  
 10 ~~waived, the court shall direct that the respondent be~~  
 11 ~~detained at a mental health facility for evaluation and~~  
 12 ~~treatment not to exceed seventy two (72) hours. If a~~  
 13 ~~hearing is requested by the respondent, his attorney, or the~~  
 14 ~~responsible person appointed by the court, a time and place~~  
 15 ~~shall be set for the hearing. The matter shall be given~~  
 16 ~~precedence over all other court matters. If the respondent~~  
 17 ~~is unwilling or unable to retain counsel, the court shall~~  
 18 ~~appoint counsel and be responsible for notification. Notice~~  
 19 ~~of the petition shall be hand delivered to the respondent~~  
 20 ~~and to his counsel on or before the initial appearance of~~  
 21 ~~the respondent before the judge or justice of the peace.~~  
 22 ~~Notice of the petition and the order setting the date and~~  
 23 ~~time of the hearing and the names of the respondent's~~  
 24 ~~counsel, professional person, and responsible person shall~~  
 25 ~~be hand delivered or mailed to the person or persons legally~~

1 responsible for care, support, and maintenance of the  
 2 respondent, the next of kin identified in the petition, and  
 3 any other person identified by the county attorney as a  
 4 possible responsible person other than the one named as the  
 5 responsible person. The notice may provide, other than as to  
 6 the respondent and his counsel, that no further notice will  
 7 be given unless written request is filed with the clerk of  
 8 court. At any time prior to the date set for hearing, the  
 9 respondent, through his counsel, may request a jury trial,  
 10 whereupon the time set for hearing shall be vacated and the  
 11 matter set on the court's jury calendar at the earliest date  
 12 possible, the matter taking precedence over all other  
 13 matters. If there is not a jury in attendance, a jury shall  
 14 be selected in the manner provided in 93-1512 and a date set  
 15 for trial by jury not later than 7 days, exclusive of  
 16 Saturdays, Sundays, and holidays.

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

1 ~~provided herein. If the court finds the respondent is not~~  
 2 ~~seriously mentally ill, he or she shall be discharged and~~  
 3 ~~the petition dismissed. If the court finds the respondent~~  
 4 ~~to be seriously mentally ill, it shall order the respondent~~  
 5 ~~detained at a mental health facility for examination and~~  
 6 ~~treatment not exceeding seventy-two (72) hours. However,~~  
 7 ~~the court may dismiss the petition if the respondent agrees~~  
 8 ~~to accept voluntary treatment or admission to a mental~~  
 9 ~~health facility. The respondent shall be present unless his~~  
 10 ~~presence has been waived as provided in 38-1304(2), and he~~  
 11 ~~shall be represented by counsel at all stages of the trial.~~  
 12 ~~The trial shall be limited to the determination of whether~~  
 13 ~~or not the respondent is seriously mentally ill within the~~  
 14 ~~meaning set forth in this chapter. The standard of proof in~~  
 15 ~~any hearing held pursuant to this section is proof beyond a~~  
 16 ~~reasonable doubt with respect to any physical facts or~~  
 17 ~~evidence and clear and convincing evidence as to all other~~  
 18 ~~matters. Mental disorder shall be evidenced to a reasonable~~  
 19 ~~medical certainty; imminent threat of self-inflicted injury~~  
 20 ~~or injury to others shall be evidenced by overt acts,~~  
 21 ~~sufficiently recent in time as to be material and relevant~~  
 22 ~~as to the respondent's present condition. The professional~~  
 23 ~~person appointed by the court shall be present for the trial~~  
 24 ~~and subject to cross-examination. The trial shall be~~  
 25 ~~governed by the Montana rules of civil procedure except~~

1 that, if tried by a jury, at least two-thirds of the jurors  
 2 must concur on a finding that the patient is seriously  
 3 mentally ill. The court may order the trial closed to the  
 4 public for the protection of the respondent. If, upon trial,  
 5 it is determined that the patient is not seriously mentally  
 6 ill within the meaning of this chapter, he shall be  
 7 discharged and the petition dismissed.

8 ~~(8) Persons receiving evaluation and treatment~~  
 9 ~~pursuant to this section shall be given a reasonable choice~~  
 10 ~~of an available professional person qualified to provide~~  
 11 ~~such services. The court, upon the showing of good cause and~~  
 12 ~~when it is in the best interests of the respondent, may~~  
 13 ~~order a change of venue."~~

14 Section 6. Section 38-1306, R.C.B. 1947, is amended to  
 15 read as follows:

16 "~~38-1306. Petition for commitment trial~~  
 17 ~~determination of court. Posttrial disposition -- petition~~  
 18 ~~for extension. (1) If in the opinion of the professional~~  
 19 ~~person in charge of the patient the person detained under~~  
 20 ~~the provisions of section 38-1305 does not require further~~  
 21 ~~evaluation or treatment he shall be released within~~  
 22 ~~seventy two (72) hours. If, in the opinion of the~~  
 23 ~~professional person, the patient requires further evaluation~~  
 24 ~~or treatment, he shall advise the court accordingly not less~~  
 25 ~~than three (3) days from the date of detention and shall~~

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

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

1 ~~earliest date possible, the matter taking precedence over~~  
 2 ~~all other matters on the jury calendar.~~

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

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

25 ~~(5) (1) (a) If, upon hearing, it is determined that~~

1 ~~the patient is not seriously mentally ill within the meaning~~  
 2 ~~of this act, he shall be discharged and the petition of the~~  
 3 ~~professional person dismissed. If it is determined that the~~  
 4 ~~patient respondent is seriously mentally ill within the~~  
 5 ~~meaning of this act chapter the court shall hold a posttrial~~  
 6 ~~disposition hearing. The disposition hearing shall be held~~  
 7 ~~within 5 days (including Saturdays, Sundays, and holidays~~  
 8 ~~unless the fifth day falls on a Saturday, Sunday, or~~  
 9 ~~holiday), during which time the court may order further~~  
 10 ~~evaluation and treatment of the respondent. At the~~  
 11 ~~conclusion of the disposition hearing, the court shall:~~

12 ~~(a) (i) commit the patient respondent to a facility for~~  
 13 ~~a period of not more than three (3) months;~~

14 ~~(b) (ii) order the patient respondent to be placed in~~  
 15 ~~the care and custody of his relative or guardian or some~~  
 16 ~~other appropriate place other than an institution;~~

17 ~~(c) (iii) order outpatient therapy; or~~

18 ~~(d) (iv) make some other appropriate order for~~  
 19 ~~treatment.~~

20 ~~(b) No treatment ordered pursuant to this subsection~~  
 21 ~~shall may affect the patient's respondent's custody for a~~  
 22 ~~period of more than three (3) months.~~

23 ~~(c) In determining which of the above alternatives to~~  
 24 ~~order, the court shall choose the least restrictive~~  
 25 ~~alternatives necessary to protect the patient respondent and~~

1 the public and to permit effective treatment. The court  
 2 shall consider and shall describe in its order what  
 3 alternatives for treatment of the patient respondent are  
 4 available, what alternatives were investigated, and why the  
 5 investigated alternatives were not deemed suitable. The  
 6 court shall enter into the record a detailed statement of  
 7 the facts upon which it found the respondent to be seriously  
 8 mentally ill.

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

19 ~~(6)-(3)~~ (3) Not less than ~~two-(2)-~~ calendar weeks prior to  
 20 the end of the ~~three-(3)-month~~ 3-month period of detention,  
 21 the professional person in charge of the patient may  
 22 petition the court for extension of the detention period.  
 23 The petition shall be accompanied by a written report and  
 24 evaluation of the patient's mental and physical condition.  
 25 The report shall describe any tests and evaluation devices

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

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

14 ~~(7)~~(4) Further extensions may be obtained under the  
 15 same procedure described in subsection ~~(6)~~(3) of this  
 16 section except that the patient's custody shall may not be  
 17 affected for more than ~~one~~(1) year, without a renewal of  
 18 the commitment under the procedures set forth in subsection  
 19 ~~(6)~~(3) of this section, including a statement of the  
 20 findings required by subsection ~~(6)~~(3).

21 ~~(8)~~(5) At any time during the patient's commitment the  
 22 court may on its own initiative or upon application of the  
 23 professional person in charge of the patient, the patient,  
 24 his next of kin, his attorney, or the responsible person  
 25 appointed by the court, order the patient to be placed in

1 the care and custody of relatives or guardians, or to be  
 2 provided outpatient therapy or other appropriate placement  
 3 or treatment."

4 Section 7. Section 38-1307, E.C.E. 1947, is amended to  
 5 read as follows:

6 "38-1307. 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~~  
 20 ~~38-1305 or shall~~ release the detained person or file his  
 21 findings with the county attorney who, if he determines  
 22 probable cause to exist, shall file the petition provided  
 23 for in 38-1305 in the county of the respondent's residence.  
 24 In either case, the professional person shall file a report  
 25 with the court explaining his actions.

1 ~~(3) When the petition is filed, after an emergency~~  
 2 ~~detention, the court may order the respondent detained for~~  
 3 ~~the amount of time necessary for a professional person to~~  
 4 ~~conduct the examination and inquiry provided for in section~~  
 5 ~~38-1305 and to report his findings and recommendations to~~  
 6 ~~the court. In no case shall such detention exceed~~  
 7 ~~twenty-four (24) hours from the time of the filing of the~~  
 8 ~~petition. Saturday, Sunday, and legal holidays shall not~~  
 9 ~~be included in computing the twenty-four (24) hour period.~~  
 10 ~~The court may also order the respondent detained during the~~  
 11 ~~seventy-two (72) hour evaluation and treatment period, if~~  
 12 ~~ordered, and through the period of the hearing on initial~~  
 13 ~~commitment, if held. No period of detention shall be~~  
 14 ~~ordered by the court pursuant to this section unless the~~  
 15 ~~court finds that such detention is required in the interest~~  
 16 ~~of public safety or the life or safety of the respondent.~~  
 17 ~~An order of detention shall include a statement of the~~  
 18 ~~factual basis for the order.~~

19 ~~(4) Any person detained pursuant to this section shall~~  
 20 ~~be detained in the least restrictive environment required to~~  
 21 ~~protect the life and physical safety of the person detained~~  
 22 ~~or of members of the public. Whenever possible, a person~~  
 23 ~~detained pursuant to this section shall be detained in a~~  
 24 ~~mental health facility. A person may be detained in a jail~~  
 25 ~~or other correctional facility only if no mental health~~

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

15 ~~(5)(3) The county attorney of any county may make~~  
 16 ~~arrangements with any federal, state, regional, or private~~  
 17 ~~mental facility or with a mental health facility in any~~  
 18 ~~county for the detention of persons held pursuant to this~~  
 19 ~~section."~~

20 Section 8. Section 38-1308, R.C.M. 1947, is amended to  
 21 read as follows:

22 "38-1308. Outpatient care -- conditional release. (1)  
 23 When, in the opinion of the professional person in charge of  
 24 a mental health facility providing involuntary treatment,  
 25 the committed person can be appropriately served by

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

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

22 (3) If the mental health facility designated to  
 23 provide outpatient care determines that a conditionally  
 24 released person is failing to adhere to the terms and  
 25 conditions of his release, and because of that failure has

1 become a substantial danger to himself or other persons,  
 2 then, upon notification by the mental health facility  
 3 designated to provide outpatient care, or on his own action,  
 4 the professional person in charge of the patient's case may  
 5 order that the conditionally released person be apprehended  
 6 and returned to the facility from which he was conditionally  
 7 released. The professional person in charge of the patient's  
 8 case may modify or rescind ~~such~~ the order at any time. 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. The sheriff of  
 13 the county where the mental health facility is located and  
 14 from which the patient is being transferred has the duty of  
 15 transporting a patient under the provisions of this section.

16 (4) The proceedings set forth in subsection (3) of  
 17 this section may be initiated by the professional person in  
 18 charge of the patient's case on the same basis set forth  
 19 therein without the professional person requiring or  
 20 ordering the apprehension and detention of the conditionally  
 21 released person.

22 ~~Upon expiration of the period of commitment, or when~~  
 23 ~~the patient is released from outpatient care, notice in~~  
 24 ~~writing to the court which committed the patient for~~  
 25 ~~treatment shall be provided by the professional person in~~



1 ~~charge of the patient.~~

2 (5) Notice in writing to the court which committed the  
3 patient for treatment shall be provided by the professional  
4 person in charge of him at least 5 days prior to his release  
5 from commitment or outpatient care."

6 Section 9. Section 38-1309, R.C.M. 1947, is amended to  
7 read as follows:

8 "38-1309. Right to counsel and appeal — examination  
9 of respondent — records. (1) The person alleged to be  
10 seriously mentally ill ~~shall have~~ has the right to be  
11 present at any hearing or trial. If he has no attorney, the  
12 judge shall appoint ~~an attorney~~ one to represent him at  
13 either the hearing or the trial, or both, who shall be  
14 compensated from the public funds of the county where the  
15 respondent resides. If the court determines that the  
16 ~~respondent is financially unable to employ an attorney, the~~  
17 ~~court shall appoint counsel who shall be compensated from~~  
18 ~~the public funds of the county where the respondent resides.~~  
19 The county of residence shall also pay all precommitment  
20 expenses including transportation to a mental health  
21 facility incurred in connection with the detention,  
22 examination, and precommitment custody of the respondent.  
23 The fact that a person is examined, hospitalized, or  
24 receives medical, psychological, or other mental health  
25 treatment pursuant to this chapter does not relieve a third

1 party from a contractual obligation to pay for the cost of  
2 the examination, hospitalization, or treatment.

3 (2) The respondent or the responsible person appointed  
4 by the court may secure an attorney of his own choice and at  
5 his own expense to represent the respondent. The respondent,  
6 his attorney, or the responsible person appointed by the  
7 court may secure a professional person of his own choice to  
8 examine the respondent and to testify at the hearing before  
9 the court or jury as to the results of his examination.

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

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

25 (5) Records and papers in proceedings under this act

1 ~~chapter~~ shall be maintained separately by the clerks of the  
 2 several courts. ~~Upon the release of any respondent or~~  
 3 ~~patient~~ Five days prior to the release of a respondent or  
 4 patient, the facility shall notify the clerk of the court  
 5 ~~within five (5) days of the release~~, and the clerk shall  
 6 immediately seal the record in the case and omit the name of  
 7 the respondent or patient from the index or indices of cases  
 8 in ~~each~~ the court unless the court orders the record opened  
 9 for good cause shown."

10 Section 10. Section 38-1310, R.C.M. 1947, is amended  
 11 to read as follows:

12 "38-1310. Transfer or commitment to facility --  
 13 procedure. No person who is in the custody of the department  
 14 of institutions for any purpose other than treatment of  
 15 severe mental illness ~~shall~~ may be transferred or committed  
 16 to a mental health facility for more than 10 days unless  
 17 ~~such~~ the transfer or commitment is effected according to the  
 18 procedures set out in this ~~act~~ chapter. However, proceedings  
 19 for involuntary commitment may be commenced in the county of  
 20 the mental health facility where the person is, in the  
 21 county of the institution from which the person was  
 22 transferred to the mental health facility, or in the county  
 23 of the person's residence. Notice of a transfer shall be  
 24 given immediately to any assigned counsel at the mental  
 25 health facility and to the parents of minors, guardians,

1 responsible persons, or conservators, as the case may be."

2 Section 11. Section 38-1313, R.C.M. 1947, is amended  
 3 to read as follows:

4 "38-1313. Civil and legal rights of person committed.  
 5 (1) Unless specifically stated in an order by the court, a  
 6 person involuntarily committed to a facility for a period of  
 7 evaluation or treatment ~~shall~~ does not forfeit any legal  
 8 right or suffer any legal disability by reason of the  
 9 provisions of this act except insofar as it may be necessary  
 10 to detain the person for treatment, evaluation, or care.

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

25 (3) ~~Any~~ A person who has been committed to a mental

1 health facility pursuant to this ~~act shall be~~ chapter is  
 2 automatically restored upon the termination of the  
 3 commitment to all of his civil and legal rights which may  
 4 have been lost when he was committed. This subsection ~~shall~~  
 5 does not affect, however, any a guardianship or  
 6 conservatorship created independently of the commitment  
 7 proceedings, according to the provisions of Montana law  
 8 relating to the appointment of conservators and guardians  
 9 generally. ~~Any A~~ person who leaves a mental health facility  
 10 following a period of evaluation and treatment shall be  
 11 given a written statement setting forth the substance of  
 12 this subsection.

13 (4) ~~Any A~~ person committed to a mental health facility  
 14 prior to ~~the effective date of this act shall enjoy~~ July 1,  
 15 1975, enjoys all the rights and privileges of a person  
 16 committed after ~~the effective that~~ date of ~~this act~~.

17 (5) No person who has received evaluation or treatment  
 18 under any of the provisions of this ~~act shall~~ chapter may be  
 19 discriminated against because of ~~such that~~ status. For  
 20 purposes of this section, "discrimination" means giving any  
 21 unfavorable weight to the fact of hospitalization or  
 22 outpatient care and treatment unrelated to a person's  
 23 present capacity to meet standards applicable to all  
 24 persons. The fact that a person has received evaluation and  
 25 treatment, whether voluntarily or involuntarily, at ~~any a~~

1 mental health facility ~~shall~~ may not be admitted into  
 2 evidence in ~~any a~~ subsequent proceeding for involuntary  
 3 commitment or for the appointment of a guardian or  
 4 conservator unless it has probative value in the formulation  
 5 of an opinion by a professional person as to the  
 6 determination of serious mental illness or a prescribed  
 7 course of treatment and the court determines that the  
 8 probative value outweighs the prejudice."

9 Section 12. Section 38-1322, R.C.M. 1947, is amended  
 10 to read as follows:

11 "38-1322. Treatment procedures — restrictions.  
 12 Patients have a right not to be subjected to treatment  
 13 procedures such as lobotomy, aversive reinforcement  
 14 conditioning, or other unusual or hazardous treatment  
 15 procedures without their express and informed consent after  
 16 consultation with counsel, the legal guardian, if any, the  
 17 responsible person appointed by the court, and any other  
 18 interested party of the patient's choice. At least one ~~(1)~~  
 19 of those consulted must consent to the treatment along with  
 20 the patient's counsel. If there is no responsible person or  
 21 if the responsible person appointed by the court is no  
 22 longer available, then a responsible person who is in no way  
 23 connected with the facility or with the department of  
 24 institutions shall be appointed before any such treatment  
 25 procedure can be employed. The facility shall send notice

1 of intent to employ extraordinary treatment procedures to  
 2 the patient, his next of kin, if known, the legal guardian,  
 3 if any, the attorney who most recently represented him, and  
 4 the responsible person appointed by the court at least ~~ten~~  
 5 ~~(10)~~ days prior to the commencement of ~~each~~ the  
 6 extraordinary treatment program."

7 Section 13. Section 38-1324, R.C.M. 1947, is amended  
 8 to read as follows:

9 "38-1324. Treatment plan for patient established. (1)  
 10 Each patient admitted as an inpatient to a mental health  
 11 facility for a period of more than ~~seventy-two (72)~~ hours  
 12 shall have a comprehensive physical and mental examination  
 13 and review of behavioral status within ~~forty-eight (48)~~  
 14 hours after admission to the mental health facility.

15 (2) Each patient shall have an individualized  
 16 treatment plan. This plan shall be developed by appropriate  
 17 professional persons including a psychiatrist, ~~if reasonably~~  
 18 ~~available~~ and shall be implemented ~~as soon as possible, in~~  
 19 ~~any event,~~ no later than ~~five (5)~~ 10 days after the  
 20 patient's admission. Each individualized treatment plan  
 21 shall contain:

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

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

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

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

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

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

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

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

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

1 into a less restrictive form of treatment.

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

10 Section 14. Section 38-1325, R.C.M. 1947, is amended  
 11 to read as follows:

12 "38-1325. Examination following commitment. No later  
 13 than ~~fifteen~~ (15) 30 days after a patient is committed to a  
 14 mental health facility, the professional person in charge of  
 15 the facility, or his appointed, professionally qualified  
 16 agent, shall ~~examine~~ reevaluate the committed patient and  
 17 shall determine whether ~~the patient~~ he continues to require  
 18 commitment to the facility and whether a treatment plan  
 19 complying with this ~~act~~ chapter has been implemented. If  
 20 the patient no longer requires commitment to the facility in  
 21 accordance with the standards for commitment, ~~or if a~~  
 22 ~~treatment plan has not been implemented,~~ he must be released  
 23 immediately unless he agrees to continue with treatment on a  
 24 voluntary basis. If for sound professional reasons a  
 25 treatment plan has not been implemented, this fact shall be

1 reported immediately to the professional person in charge of  
 2 the facility, the director of the department of  
 3 institutions, the mental disabilities board of visitors, and  
 4 the patient's counsel."

5 Section 15. Section 38-1328, R.C.M. 1947, is amended  
 6 to read as follows:

7 "38-1328. Records to be maintained. Complete patient  
 8 records shall be kept by the mental health facility and  
 9 shall be available to any professional person ~~or attorney~~  
 10 authorized in writing by the patient and the board. The  
 11 records shall also be made available to any attorney charged  
 12 with representing the patient or any professional person  
 13 charged with evaluating or treating the patient. These  
 14 records shall include:

- 15 (1) identification data, including the patient's legal  
 16 status;
- 17 (2) a patient history, including, but not limited to:  
 18 (a) family data, educational background, and  
 19 employment record;
- 20 (b) prior medical history, both physical and mental,  
 21 including prior hospitalization;
- 22 (3) the chief complaints of the patient and the chief  
 23 complaints of others regarding the patient;
- 24 (4) an evaluation which notes the onset of illness,  
 25 the circumstances leading to admission, attitudes, behavior,

1 estimate of intellectual functioning, memory functioning,  
 2 orientation, and an inventory of the patient's assets in  
 3 descriptive, ~~not~~ rather than interpretative, fashion;

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

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

8 (7) a detailed summary of the findings made by the  
 9 reviewing professional person after each periodic review of  
 10 the treatment plan which analyzes the successes and failures  
 11 of the treatment program and directs whatever modifications  
 12 are necessary;

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

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

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

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

25 (12) a weekly summary of the extent and nature of the

1 patient's work activities and the effect of such activity  
 2 upon the patient's progress along the treatment plan;

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

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

7 (15) a detailed summary of any extraordinary incident  
 8 in the facility involving the patient to be entered by a  
 9 staff member noting that he has personal knowledge of the  
 10 incident or specifying his other source of information, and  
 11 initialed within ~~twenty-four~~ (24) hours by a professional  
 12 person; and

13 (16) a summary by the professional person in charge of  
 14 the facility or his appointed agent of his findings after  
 15 the ~~fifteen~~ (15) ~~day~~ 30-day review provided for in ~~section~~  
 16 38-1325."

17 Section 16. Section 38-1330, R.C.M. 1947, is amended  
 18 to read as follows:

19 "38-1330. Mental disabilities board of visitors —  
 20 creation and responsibilities. (1) The governor shall  
 21 appoint a mental disabilities board of visitors. The board  
 22 shall consist of five ~~(5)~~ persons representing but not  
 23 limited to consumers, the medical sciences, and the  
 24 behavioral sciences, at least three ~~(3)~~ of whom ~~shall~~ may  
 25 not be professional persons and at least one ~~(1)~~ of whom

1 shall be a representative of an organization concerned with  
 2 the care and welfare of the mentally ill. No one may be a  
 3 member of the board who is an agent or employee of the  
 4 department of institutions or ~~of any a~~ mental health  
 5 facility affected by this ~~act~~ chapter. If a board of  
 6 similar title and structure is created in any act concerning  
 7 the treatment of the mentally retarded or developmentally  
 8 disabled, then only one board shall be created to perform  
 9 the functions ~~set out in~~ of both ~~acts~~ and the board so  
 10 created shall include at least one ~~+~~ representative of an  
 11 organization concerned with the care and welfare of the  
 12 mentally ill and one ~~+~~ representative of an organization  
 13 concerned with the care and welfare of the mentally retarded  
 14 or developmentally disabled.

15 (2) The mental disabilities board of visitors shall be  
 16 an independent board of inquiry and review to assure that  
 17 the treatment of all persons either voluntarily or  
 18 involuntarily admitted to a mental facility is humane and  
 19 decent and meets the requirements set forth in this ~~act~~  
 20 chapter.

21 (3) The board shall review all plans for experimental  
 22 research involving persons admitted to ~~any a~~ mental health  
 23 facility to assure that the research project is humane and  
 24 not unduly hazardous and that it complies with the  
 25 principles of the statement on the use of human subjects for

1 research of the American association on mental deficiency  
 2 and with the principles for research involving human  
 3 subjects required by the United States department of health,  
 4 education, and welfare. No experimental research project  
 5 involving persons admitted to ~~any a~~ mental health facility  
 6 affected by this ~~act shall~~ chapter may be commenced unless  
 7 it is approved by the mental disabilities board of visitors.

8 (4) The board shall, at least annually, inspect every  
 9 mental health facility which is providing treatment and  
 10 evaluation to any person pursuant to this ~~act~~ chapter. The  
 11 board shall inspect the physical plant, including  
 12 residential, recreational, dining, and sanitary facilities.  
 13 It shall visit all wards and treatment areas. The board  
 14 shall inquire concerning all treatment programs being  
 15 implemented by the facility.

16 (5) The board shall annually insure that a treatment  
 17 plan exists and is being implemented for each patient  
 18 admitted or committed to a mental health facility under this  
 19 ~~act~~ chapter. The board shall inquire concerning all use of  
 20 restraints, isolation, or other extraordinary measures.

21 (6) The board may assist any patient at a mental  
 22 health facility in resolving any grievance he may have  
 23 concerning his commitment or his course of treatment in the  
 24 facility.

25 (7) The board shall employ and be responsible for

1 full-time legal counsel at the Warm Springs state hospital,  
 2 whose responsibility shall be to act on behalf of all  
 3 patients at the institution. The board shall insure that  
 4 there is sufficient legal staff and facilities to insure  
 5 availability to all patients and shall require that the  
 6 appointed counsel periodically interview every patient and  
 7 examine his files and records. The board may employ  
 8 additional legal counsel for representation of patients in a  
 9 similar manner at any other mental health facility having  
 10 inpatient capability. The expense of the legal counsel  
 11 employed by the board shall be paid by the department of  
 12 institutions at a rate commensurate with the compensation  
 13 paid to the legal counsel employed by other state agencies.

14 ~~(7)~~ (8) If the board believes that any facility is  
 15 failing to comply with the provisions of this act chapter in  
 16 regard to its physical facilities or its treatment of any  
 17 patient, it shall report its findings at once to the next of  
 18 kin or guardian of any patient involved, the responsible  
 19 person appointed by the court for any patient involved, the  
 20 professional person in charge of the facility, the director  
 21 of the department of institutions, and the district court  
 22 which has jurisdiction over the facility.

23 ~~(8)~~ (9) The mental disabilities board of visitors shall  
 24 report annually to the governor and shall report to each  
 25 session of the Montana legislature concerning the status of

1 the mental health facilities and treatment programs which it  
 2 has inspected.

3 ~~(9)~~ (10) The mental disabilities board of visitors shall  
 4 be attached to the governor for administrative purposes. It  
 5 may employ staff for the purpose of carrying out its duties  
 6 as set out in this act chapter."

7 Section 17. Section 38-1331, R.C.M. 1947, is amended  
 8 to read as follows:

9 "38-1331. ~~Standards for treatment to be known,~~  
 10 ~~Statement of rights to be furnished and posted.~~ Each patient  
 11 ~~and his next of kin, guardian, conservator, or the~~  
 12 ~~responsible person appointed by the court~~ shall promptly  
 13 upon the patient's his admission receive, in language he  
 14 understands, a written notice, statement in language he  
 15 understands, of all the above standards for adequate  
 16 treatment of all of his rights under this chapter, including  
 17 the right to treatment, the right to the development of a  
 18 treatment plan, and the right to and the availability of  
 19 legal counsel, and the rules for patient labor. In addition  
 20 a copy of all the above standards the foregoing statement  
 21 shall be posted in each ward."

-End-



## STATE OF MONTANA

REQUEST NO. 413-77

## FISCAL NOTE

Form BD-15

In compliance with a written request received February 9, 19 77, there is hereby submitted a Fiscal Note for Senate Bill 413 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 to generally revise and clarify the laws relating to the commitment of mentally ill persons.

## ASSUMPTIONS:

1. Amendments relating to the revision and clarification of the commitment laws can be accomplished without additional funds.
2. One Lawyer III would be employed by the Board of Visitors.
3. No additional legal counsel would be employed at the Regional Mental Health Centers. If this assumption is invalid, the costs would increase accordingly.

## FISCAL IMPACT:

	<u>FY 78</u>	<u>FY 79</u>
Personal services	\$21,571	\$21,944
Operating expenses	<u>2,200</u>	<u>2,200</u>
Additional cost of proposed legislation	<u>\$23,771</u>	<u>\$24,144</u>

These are figures for the cost of one Lawyer.

*Richard L. Drayton*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-14-77

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 413

2 INTRODUCED BY TOWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5 CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL  
6 PERSONS AND TO AMEND SECTIONS 38-1301 THROUGH 38-1310,  
7 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND  
8 38-1331, R.C.M. 1947; REPEALING SECTION 80-1908, B.C.M.  
9 1947."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 38-1301, R.C.M. 1947, is amended to  
13 read as follows:

14 "38-1301. Purpose of ~~act~~ chapter. The purpose of this  
15 ~~act~~ chapter is:

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

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

1 ~~when this is done to accomplish this goal whenever possible~~  
2 ~~in a community-based setting;~~

3 (3) ~~to accomplish this goal in an institutionalized~~  
4 ~~setting only when less restrictive alternatives are~~  
5 ~~unavailable or inadequate and only when a person is so~~  
6 ~~mentally ill as to require institutionalized care; and~~

7 (4) ~~to assure that due process of law is accorded any~~  
8 ~~person coming under the provisions of this chapter."~~

9 Section 2. Section 38-1302, R.C.M. 1947, is amended to  
10 read as follows:

11 "38-1302. Definitions. As used in this ~~act~~ chapter,  
12 the following definitions apply:

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

15 (2) "Court" means ~~the~~ any district court of the state  
16 of Montana.

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

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

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

25 (6) "Mental health facility" or "facility" means a

SECOND READING

1 public hospital or a licensed private hospital WHICH IS  
 2 EQUIPPED AND STAFFED TO PROVIDE TREATMENT FOR PERSONS WITH  
 3 MENTAL DISORDERS or, a community mental health center, or  
 4 any mental health clinic or treatment center approved by the  
 5 department. No correctional institution or facility, or  
 6 jail, is a mental health facility within the meaning of this  
 7 ~~act~~ chapter.

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

11 (8) "Patient" means ~~a person committed by the court to~~  
 12 ~~a seventy-two (72) hour evaluation or treatment or for a~~  
 13 ~~longer period~~ a person committed by the court for treatment  
 14 for any period of time.

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

17 (10) "Professional person" means:

18 (a) a medical doctor, or

19 (b) a person trained in the field of mental health and  
 20 certified by the department of institutions in accordance  
 21 with standards of professional licensing boards, federal  
 22 regulations, and the joint commission on accreditation of  
 23 hospitals.

24 (11) "Reasonable medical certainty" means reasonable  
 25 certainty as judged by the standards of a professional

1 person.

2 ~~(11)~~ (12) "Respondent" means a person alleged in a  
 3 petition filed pursuant to this ~~act~~ chapter to be seriously  
 4 mentally ill.

5 ~~(12)~~ (13) "Responsible person" means any person willing  
 6 and able to assume responsibility for a seriously mentally  
 7 ill person, or person alleged to be seriously mentally ill,  
 8 including next of kin, the person's conservator or legal  
 9 guardian, if any, representatives of a charitable or  
 10 religious organization, or any other person appointed by the  
 11 court to perform the functions of a "responsible person" set  
 12 out in this ~~act~~ chapter. Only one person shall may at any  
 13 one time be the "responsible person" within the meaning of  
 14 this ~~act~~ chapter. In appointing a responsible person, the  
 15 court shall consider the preference of the respondent. The  
 16 court may, at any time for good cause shown, change its  
 17 designation of the "responsible person".

18 ~~(13)~~ (14) "Seriously mentally ill" means suffering from  
 19 a mental disorder which has resulted in self-inflicted  
 20 injury or injury to others, or the imminent threat thereof,  
 21 or which has deprived the person afflicted of the ability to  
 22 protect his life or health. No person may be involuntarily  
 23 committed to a mental health facility ~~or~~ OR detained for  
 24 evaluation and treatment because he is an epileptic,  
 25 mentally deficient, mentally retarded, senile, or suffering

1 from a mental disorder unless the condition causes ~~the~~  
 2 ~~person him~~ to be seriously mentally ill within the meaning  
 3 of this ~~act~~ chapter."

4 Section 3. Section 38-1303, R.C.M. 1947, is amended to  
 5 read as follows:

6 "38-1303. Voluntary admission — cost of admission.

7 (1) Nothing in this ~~act~~ chapter ~~may~~ be construed in  
 8 any way as limiting the right of any person to make  
 9 voluntary application for admission at any time to any  
 10 mental health facility or professional person. An  
 11 application for admission to a mental health facility shall  
 12 be in writing on a form prescribed by the facility and  
 13 approved by the department ~~of institutions~~. It ~~shall~~ is not  
 14 ~~be~~ valid unless it is approved by a professional person and  
 15 a copy is given to the person voluntarily admitting himself.  
 16 The form shall contain a statement of the rights of the  
 17 person voluntarily applying for admission, as set out in  
 18 this ~~act~~ chapter, including the right to release.

19 (2) Any applicant who wishes to voluntarily apply for  
 20 admission to the Montana state hospital shall first obtain  
 21 certification ~~from the regional mental health director of~~  
 22 ~~his mental health region or if not reasonably available,~~  
 23 from a professional person that the applicant is suffering  
 24 from a mental disorder and that the facilities available to  
 25 the mental health region in which the applicant resides are

1 unable to provide adequate evaluation and treatment.

2 (3) An application for voluntary admission shall give  
 3 the facility the right to detain the applicant for 10 days  
 4 after his initial admission and for no more than ~~five~~ (5)  
 5 days past his written request for release thereafter.

6 (4) The cost of involuntarily committing a patient who  
 7 is voluntarily admitted to a mental health facility at the  
 8 time the involuntary proceedings are commenced shall be  
 9 borne by the county of the patient's residence at the time  
 10 of admission.

11 (5) The costs of transportation to a mental health  
 12 facility under this section shall be provided by ~~the~~  
 13 ~~patient, his parents, guardian, or the welfare department of~~  
 14 the county of the patient's residence. However, if  
 15 protective proceedings under Title 91A, chapter 5, have been  
 16 or are initiated with respect to the person, the welfare  
 17 department may seek reimbursement. If no one else is  
 18 available to transport him, the sheriff shall transport the  
 19 person.

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

23 (7) Notwithstanding any other provision of law, a  
 24 minor who is ~~sixteen~~ (16) years of age or older may consent  
 25 to receive mental health services to be rendered by a

1 facility or a person licensed to practice medicine or  
2 psychology in this state.

3 ~~(8) Voluntary Except as provided by this subsection,~~  
4 voluntary commitment of a minor to a mental health facility  
5 for an in-patient course of treatment shall be for ~~a period~~  
6 ~~of no more than thirty (30) days the same period of time as~~  
7 that for an adult. Unless there has been a periodic review  
8 and a voluntary recommitment consented to by the minor  
9 patient and his counsel, voluntary commitment terminates at  
10 the expiration of 1 year. If the professional person in  
11 charge of a minor patient determines that the commitment  
12 should continue for a period of more than thirty (30) days,  
13 ~~he shall commence involuntary commitment proceedings in~~  
14 ~~accordance with this act.~~ Counsel shall be appointed for  
15 the minor.

16 (9) If, in any voluntary commitment for any period of  
17 time to a mental health facility, a minor fails to join in  
18 the consent of his parents or guardian to the voluntary  
19 commitment, then the commitment shall be treated as an  
20 involuntary commitment. Notice of the substance of this  
21 subsection and of the right to counsel shall be set forth in  
22 conspicuous type in a conspicuous location on any form or  
23 application used for the voluntary commitment of a minor to  
24 a mental health facility. The notice shall be explained to  
25 the minor by the professional person approving the

1 application."

2 Section 4. Section 38-1304, R.C.M. 1947, is amended to  
3 read as follows:

4 "38-1304. Rights and waiver of rights. (1) Whenever a  
5 person is involuntarily detained, or is examined ~~by a~~  
6 ~~professional person~~ pursuant to section 38-1305, ~~or is~~  
7 ~~notified that he will be the subject of a hearing pursuant~~  
8 ~~to section 38-1305 or 38-1306,~~ the person shall be informed  
9 of his constitutional rights and his rights under this ~~act~~  
10 chapter. A person may waive his procedural rights, provided  
11 that the waiver is knowingly and intentionally made or his  
12 rights may be waived by his counsel and responsible person  
13 acting together if a record is made of the reasons for the  
14 waiver. The right to counsel ~~in a hearing held pursuant to~~  
15 ~~section 38-1306~~ may not be waived. The right to treatment  
16 provided for in this ~~act~~ chapter may not be waived.

17 (2) ~~In the case of a person who has been detained for~~  
18 ~~a seventy two (72) hour inpatient evaluation and treatment~~  
19 ~~or for a longer period of time, a waiver of rights can be~~  
20 ~~knowingly and intentionally made only with the concurrence~~  
21 ~~of the patient's attorney or of the responsible person~~  
22 ~~appointed by the court.~~ The right of the respondent to be  
23 physically present at a hearing may also be waived by his  
24 attorney and the responsible person with the concurrence of  
25 the professional person and the judge upon a finding

1 supported by facts that:

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

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

8 (3) ~~(a) In the case of a minor, provided that a record~~  
9 ~~is made of the reasons for the waiver, of his rights can be~~  
10 ~~knowingly and intentionally made~~

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

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

15 ~~(c) when the minor is over the age of twelve (12) and~~  
16 ~~the minor and his parents do not agree, the minor can make~~  
17 ~~an effective waiver of his rights only with advice of~~  
18 ~~counsel may be waived by the mutual consent of his counsel~~  
19 ~~and parents or guardian or guardian ad litem if there are no~~  
20 ~~parents or guardian.~~

21 (b) If there is an apparent conflict of interest  
22 between a minor and his parents or guardian, the court ~~may~~  
23 shall appoint a guardian ad litem for ~~the minor him~~.

24 (4) In addition to any other rights which may be  
25 guaranteed by the constitution of the United States and of

1 this state, by the laws of this state or by this ~~act~~  
2 chapter, any person who is involuntarily detained or against  
3 whom a petition is filed pursuant to this ~~act~~ chapter has  
4 the following rights:

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

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

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

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

13 (e) the right to remain silent;

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

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

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

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

24 (j) the right to refuse any but lifesaving medication  
25 for up to ~~twenty-four (24)~~ hours prior to any hearing held

1 pursuant to this act ~~chapter~~.

2 (5) A person detained pursuant to this chapter shall  
 3 be detained in the least restrictive environment required to  
 4 protect the life and physical safety of the person detained  
 5 or members of the public. Whenever possible, a person  
 6 detained pursuant to this chapter shall be detained in a  
 7 mental health facility and in the county of residence. NO  
 8 PERSON MAY BE DETAINED IN ANY HOSPITAL OR OTHER MEDICAL  
 9 FACILITY WHICH IS NOT A MENTAL HEALTH FACILITY UNLESS SUCH  
 10 HOSPITAL OR FACILITY HAS AGREED IN WRITING TO ADMIT THE  
 11 PERSON. A person may be detained in a jail or other  
 12 correctional facility only if no mental health facility is  
 13 available or if the available mental health facilities are  
 14 inadequate to protect the person detained and the public. As  
 15 soon as a mental health facility becomes available or the  
 16 situation has changed sufficiently that an available mental  
 17 health facility is adequate for the protection of the person  
 18 detained and the public, then the detained person shall be  
 19 transferred from the jail or correctional facility to the  
 20 mental health facility. A person detained prior to  
 21 involuntary commitment may apply to the court for immediate  
 22 relief with respect to the need for detention or the  
 23 adequacy of the facility being utilized to detain."

24 Section 5. Section 38-1305, F.C.M. 1947, is amended to  
 25 read as follows:

1 "38-1305. Petition alleging person as seriously  
 2 mentally ill — contents and procedure. (1) ~~A~~ The county  
 3 attorney, ~~on his own initiative or~~ upon the written request  
 4 of any person, may file a petition with the court alleging  
 5 that 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~~ the person be committed to a  
 8 mental health facility for a period of no more than 3  
 9 months.

10 (2) The petition shall contain:

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

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

16 (c) the purported facts supporting the allegation of  
 17 mental illness;

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

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

24 (f) the name and address of any person whom the county  
 25 attorney believes might be willing and able to be appointed

1 as responsible person;

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

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

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

1 ~~and maintenance of the respondent, next of kin identified in~~  
2 ~~the petition, and the person or persons identified by the~~  
3 ~~county attorney as possible responsible persons.~~

4 (a) The petition shall be filed with the clerk of  
5 court who shall immediately notify the judge.

6 (b) If a judge is available, he shall consider the  
7 petition and if he finds no probable cause it shall be  
8 dismissed. If the judge finds probable cause, counsel shall  
9 be immediately appointed for the respondent and the  
10 respondent shall be brought forthwith before the court with  
11 his counsel. The respondent shall be advised of his  
12 constitutional rights, his rights under this chapter, and  
13 the substantive effect of the petition. The judge shall  
14 appoint a professional person and a responsible person and  
15 set a date and time for the hearing on the petition, which  
16 may not exceed 5 days, including weekends and holidays  
17 unless the fifth day falls upon a weekend or holiday and  
18 unless additional time is requested on behalf of the  
19 respondent. The desires of the respondent shall be taken  
20 into consideration in the appointment of the responsible  
21 person and in the confirmation of the appointment of the  
22 attorney.

23 (c) If a judge is not available in the county, the  
24 clerk shall notify a resident judge by telephone and read  
25 the petition to him. If the judge finds no probable cause,



1 the petition shall be dismissed. If the judge finds probable  
 2 cause, he shall cause the clerk to issue an order appointing  
 3 counsel AND a professional person, and setting a date and  
 4 time for the hearing on the petition, which may not exceed 5  
 5 days, including weekends and holidays unless the fifth day  
 6 falls upon a weekend or holiday and unless additional time  
 7 is requested on behalf of the respondent. The order shall  
 8 also direct that the respondent be brought forthwith before  
 9 a justice of the peace with his counsel to be advised of his  
 10 constitutional rights, his rights under this chapter, and  
 11 the contents of the clerk's order as well as to furnish him  
 12 with a copy. The justice of the peace shall ascertain the  
 13 desires of the respondent with respect to the appointment of  
 14 his counsel, and this shall be immediately communicated to  
 15 the resident judge. The resident judge may appoint other  
 16 counsel, may confer with respondent's counsel and the county  
 17 attorney in order to appoint a responsible person, and may  
 18 do all things necessary through the clerk of court by  
 19 telephone as if the resident judge were personally present.

20 ~~(4) (a) Upon receipt of the petition, the~~  
 21 ~~professional person shall examine the respondent and make~~  
 22 ~~such inquiry as he or she may deem appropriate. If the~~  
 23 ~~respondent does not cooperate and if requested by the~~  
 24 ~~professional person, the court may order the respondent to~~  
 25 ~~submit to examination by a professional person at a time and~~

1 ~~place designated by the court. The examination so ordered~~  
 2 ~~shall not exceed a period of four (4) hours.~~

3 ~~(b) When the professional person first contacts the~~  
 4 ~~respondent, before he begins any examination, he shall give~~  
 5 ~~a copy of the petition to the respondent, and shall explain~~  
 6 ~~to the respondent the nature of the proceeding and his~~  
 7 ~~rights as set forth in the petition. Following the initial~~  
 8 ~~hearing, whether before a judge or justice of the peace, the~~  
 9 ~~respondent shall be examined by the professional person~~  
 10 ~~without unreasonable delay. The examination may not exceed a~~  
 11 ~~period of 4 hours. The professional person shall immediately~~  
 12 ~~notify the court COUNTY ATTORNEY of his findings in person~~  
 13 ~~or by phone and shall make a written report of his~~  
 14 ~~examination to the court, with copies to the respondent's~~  
 15 ~~attorney and the county attorney. If the professional person~~  
 16 ~~recommends dismissal, he shall additionally notify counsel~~  
 17 ~~and the respondent shall be released and the petition~~  
 18 ~~dismissed. However, the county attorney may, upon good cause~~  
 19 ~~shown, request the court to order an additional, but no more~~  
 20 ~~than one, examination by a different professional person for~~  
 21 ~~a period of no more than 4 hours. IF THE PROFESSIONAL PERSON~~  
 22 ~~FINDS THAT COMMITMENT PROCEEDINGS SHOULD CONTINUE, THE COURT~~  
 23 ~~MAY ORDER FURTHER EVALUATION PRIOR TO THE HEARING BUT THE~~  
 24 ~~RESPONDENT MAY NOT BE DETAINED EXCEPT AS PROVIDED IN THIS~~  
 25 ~~SECTION.~~

~~(5) On the basis of his examination, the professional person shall recommend in writing either that the petition be dismissed or that a seventy-two (72) hour inpatient evaluation and treatment be ordered. If dismissal is recommended, the petition shall be summarily dismissed. The petition shall be dismissed if the respondent accepts voluntary treatment or admission to a mental health facility approved by the professional person conducting the examination. Whenever a professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, the recommendation shall be accompanied by a report explaining the reason for the recommendation and identifying any tests or evaluation devices which the professional person employed in evaluating the respondent. If the professional person recommends that a seventy-two (72) hour evaluation and treatment be ordered, notice of this recommendation shall be mailed or delivered to the respondent, the next of kin, when known, any person responsible for the care, support, and maintenance of the respondent, any other person identified in the petition, and the responsible person, if any, appointed by the court. Notice shall include the date, time, and place of the respondent's next appearance before the court. The judge can, UPON REQUEST OF THE COUNTY ATTORNEY AND upon probable cause for detention, order detention of the respondent~~

~~pending the hearing, in which case counsel shall be orally notified immediately. Counsel for the respondent may then request a detention hearing, which shall be held forthwith. In the event of detention, the respondent shall be detained in the least restrictive setting necessary to assure his presence and assure his safety and the safety of others AS PROVIDED IN 38-1304(5). He shall have the right to be examined additionally by a professional person of his choice. Unless objection is made by counsel for the respondent, he shall continue to be evaluated and treated by the professional person pending the hearing.~~

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

1 ~~shall be set for the hearing. The matter shall be given~~  
 2 ~~precedence over all other court matters. If the respondent~~  
 3 ~~is unwilling or unable to retain counsel, the court shall~~  
 4 ~~appoint counsel and be responsible for notification. Notice~~  
 5 ~~of the petition shall be hand delivered to the respondent~~  
 6 ~~and to his counsel on or before the initial appearance of~~  
 7 ~~the respondent before the judge or justice of the peace.~~  
 8 Notice of the petition and the order setting the date and  
 9 time of the hearing and the names of the respondent's  
 10 counsel, professional person, and responsible person shall  
 11 be hand delivered or mailed to the person or persons legally  
 12 responsible for care, support, and maintenance of the  
 13 respondent, the next of kin identified in the petition, and  
 14 any other person identified by the county attorney as a  
 15 possible responsible person other than the one named as the  
 16 responsible person. The notice may provide, other than as to  
 17 the respondent and his counsel, that no further notice will  
 18 be given unless written request is filed with the clerk of  
 19 court. At any time prior to the date set for hearing, the  
 20 respondent, through his counsel, may request a jury trial,  
 21 whereupon the time set for hearing shall be vacated and the  
 22 matter set on the court's jury calendar at the earliest date  
 23 possible, the matter taking precedence over all other  
 24 matters. If there is not a jury in attendance, a jury shall  
 25 be selected in the manner provided in 93-1512 and a date set

1 for trial by jury not later than 7 days, exclusive of  
 2 Saturdays, Sundays, and holidays.

3 (7) ~~The hearing shall be held before the court without~~  
 4 ~~a jury. The respondent may present such testimony and~~  
 5 ~~relevant documentary evidence as he or the responsible~~  
 6 ~~person or counsel desires. The county attorney shall~~  
 7 ~~represent the state. The professional person who made the~~  
 8 ~~recommendation shall be present in court and may be~~  
 9 ~~cross-examined concerning his recommendation and his report.~~  
 10 ~~After full hearing the court shall determine whether the~~  
 11 ~~respondent is seriously mentally ill within the definition~~  
 12 ~~provided herein. If the court finds the respondent is not~~  
 13 ~~seriously mentally ill, he or she shall be discharged and~~  
 14 ~~the petition dismissed. If the court finds the respondent~~  
 15 ~~to be seriously mentally ill, it shall order the respondent~~  
 16 ~~detained at a mental health facility for examination and~~  
 17 ~~treatment not exceeding seventy two (72) hours. However,~~  
 18 ~~the court may dismiss the petition if the respondent agrees~~  
 19 ~~to accept voluntary treatment or admission to a mental~~  
 20 ~~health facility. The respondent shall be present unless his~~  
 21 ~~presence has been waived as provided in 38-1309(2), and he~~  
 22 ~~shall be represented by counsel at all stages of the trial.~~  
 23 The trial shall be limited to the determination of whether  
 24 or not the respondent is seriously mentally ill within the  
 25 meaning set forth in this chapter. The standard of prccf in

1 any hearing held pursuant to this section is proof beyond a  
 2 reasonable doubt with respect to any physical facts or  
 3 evidence and clear and convincing evidence as to all other  
 4 matters. ~~Mental disorder~~, EXCEPT THAT MENTAL DISORDERS shall  
 5 be evidenced to a reasonable medical certainty; imminent  
 6 threat of self-inflicted injury or injury to others shall be  
 7 evidenced by overt acts, sufficiently recent in time as to  
 8 be material and relevant as to the respondent's present  
 9 condition. The professional person appointed by the court  
 10 shall be present for the trial and subject to  
 11 cross-examination. The trial shall be governed by the  
 12 Montana rules of civil procedure except that, if tried by a  
 13 jury, at least two-thirds of the jurors must concur on a  
 14 finding that the patient is seriously mentally ill. The  
 15 court may order the trial closed to the public for the  
 16 protection of the respondent. If, upon trial, it is  
 17 determined that the patient is not seriously mentally ill  
 18 within the meaning of this chapter, he shall be discharged  
 19 and the petition dismissed.

20 (8) ~~Persons receiving evaluation and treatment~~  
 21 pursuant to this section shall be given a reasonable choice  
 22 of an available professional person qualified to provide  
 23 such services. The court, upon the showing of good cause and  
 24 when it is in the best interests of the respondent, may  
 25 order a change of venue."

1 Section 6. Section 38-1306, R.C.M. 1947, is amended to  
 2 read as follows:

3 ~~"38-1306. Petition for commitment trial~~  
 4 ~~determination of court. Posttrial disposition -- petition~~  
 5 ~~for extension. (1) If in the opinion of the professional~~  
 6 ~~person in charge of the patient the person detained under~~  
 7 ~~the provisions of section 38-1305 does not require further~~  
 8 ~~evaluation or treatment he shall be released within~~  
 9 ~~seventy-two (72) hours. If, in the opinion of the~~  
 10 ~~professional person, the patient requires further evaluation~~  
 11 ~~or treatment, he shall advise the court accordingly not less~~  
 12 ~~than three (3) days from the date of detention and shall~~  
 13 ~~within the same time file a petition requesting that the~~  
 14 ~~patient be committed to a facility for a period not in~~  
 15 ~~excess of three (3) months. The petition shall be~~  
 16 ~~accompanied by a written report and evaluation of the~~  
 17 ~~patient's mental and physical condition. The report shall~~  
 18 ~~explain the reasons for the petition and shall identify any~~  
 19 ~~tests or evaluation devices which the professional person~~  
 20 ~~employed in evaluating the patient. The professional person~~  
 21 ~~may retain the patient in custody by court order pending a~~  
 22 ~~hearing on the petition only if detention is necessary to~~  
 23 ~~prevent injury to 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)(1) (a) 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 respondent is seriously mentally ill within the~~  
 17 ~~meaning of this act chapter the court shall hold a posttrial~~  
 18 ~~disposition hearing. The disposition hearing shall be held~~  
 19 ~~within 5 days (including Saturdays, Sundays, and holidays~~  
 20 ~~unless the fifth day falls on a Saturday, Sunday, or~~  
 21 ~~holiday), during which time the court may order further~~  
 22 ~~evaluation and treatment of the respondent. At the~~  
 23 ~~conclusion of the disposition hearing, the court shall:~~

24 ~~(a)(i) commit the patient respondent to a facility for~~  
 25 ~~a period of not more than three (3) months;~~

1 ~~(b)~~ (iii) order the ~~patient~~ respondent to be placed in  
2 the care and custody of his relative or guardian or some  
3 other appropriate place other than an institution;

4 ~~(c)~~ (iii) order outpatient therapy; or

5 ~~(d)~~ (iv) make some other appropriate order for  
6 treatment.

7 (b) No treatment ordered pursuant to this subsection  
8 shall may affect the ~~patient's~~ respondent's custody for a  
9 period of more than ~~three~~ (3) months.

10 (c) In determining which of the above alternatives to  
11 order, the court shall choose the least restrictive  
12 alternatives necessary to protect the ~~patient~~ respondent and  
13 the public and to permit effective treatment. The court  
14 shall consider and shall describe in its order what  
15 alternatives for treatment of the ~~patient~~ respondent are  
16 available, what alternatives were investigated, and why the  
17 investigated alternatives were not deemed suitable. The  
18 court shall enter into the record a detailed statement of  
19 the facts upon which it found the respondent to be seriously  
20 mentally ill.

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

1 provided herein, ~~the patient~~ he shall be discharged by the  
2 facility at the end of ~~three~~ (3) months without further  
3 order of the court. Notice of ~~such~~ the discharge ~~will~~ shall  
4 be filed with the court AND THE COUNTY ATTORNEY AT LEAST  
5 ~~within five~~ (5) days ~~of~~ PRIOR TO the discharge.

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

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

1 treatment exists.

2 ~~(7)~~ (4) Further extensions may be obtained under the  
 3 same procedure described in subsection ~~(6)~~ (3) of this  
 4 section except that the patient's custody ~~shall~~ may not be  
 5 affected for more than ~~one~~ ~~(1)~~ year, without a renewal of  
 6 the commitment under the procedures set forth in subsection  
 7 ~~(6)~~ (3) of this section, including a statement of the  
 8 findings required by subsection ~~(6)~~ (3).

9 ~~(8)~~ (5) At any time during the patient's commitment the  
 10 court may on its own initiative or upon application of the  
 11 professional person in charge of the patient, the patient,  
 12 his next of kin, his attorney, or the responsible person  
 13 appointed by the court, order the patient to be placed in  
 14 the care and custody of relatives or guardians, or to be  
 15 provided outpatient therapy or other appropriate placement  
 16 or treatment."

17 Section 7. Section 38-1307, R.C.M. 1947, is amended to  
 18 read as follows:

19 "38-1307. Emergency situation -- petition --  
 20 detention. (1) When an emergency situation exists, a peace  
 21 officer may take any person who appears to be seriously  
 22 mentally ill and, as a result of serious mental illness, to  
 23 be a danger to others or to himself into custody only for  
 24 sufficient time to contact a professional person for  
 25 emergency evaluation. If possible, a professional person

1 should be called prior to taking the person into custody.

2 (2) If the professional person agrees that the person  
 3 retained appears to be seriously mentally ill and that an  
 4 emergency situation genuinely exists, then the person may be  
 5 detained AND TREATED until the next regular business day.  
 6 At that time, the professional person shall ~~either cause the~~  
 7 ~~county attorney to file the petition provided for in section~~  
 8 ~~38-1305 or shall release the detained person or file his~~  
 9 ~~findings with the county attorney who, if he determines~~  
 10 ~~probable cause to exist, shall file the petition provided~~  
 11 ~~for in 38-1305 in the county of the respondent's residence.~~  
 12 In either case, the professional person shall file a report  
 13 with the court explaining his actions.

14 ~~(3) When the petition is filed, after an emergency~~  
 15 ~~detention, the court may order the respondent detained for~~  
 16 ~~the amount of time necessary for a professional person to~~  
 17 ~~conduct the examination and inquiry provided for in section~~  
 18 ~~38-1305 and to report his findings and recommendations to~~  
 19 ~~the court. In no case shall such detention exceed~~  
 20 ~~twenty-four (24) hours from the time of the filing of the~~  
 21 ~~petition. Saturday, Sunday, and legal holidays shall not~~  
 22 ~~be included in computing the twenty-four (24) hour period.~~  
 23 ~~The court may also order the respondent detained during the~~  
 24 ~~seventy-two (72) hour evaluation and treatment period, if~~  
 25 ~~ordered, and through the period of the hearing on initial~~

1 ~~commitment, if held. No period of detention shall be~~  
 2 ~~ordered by the court pursuant to this section unless the~~  
 3 ~~court finds that such detention is required in the interest~~  
 4 ~~of public safety or the life or safety of the respondent.~~  
 5 ~~An order of detention shall include a statement of the~~  
 6 ~~factual basis for the order.~~

7 ~~(4) Any person detained pursuant to this section shall~~  
 8 ~~be detained in the least restrictive environment required to~~  
 9 ~~protect the life and physical safety of the person detained~~  
 10 ~~or of members of the public. Whenever possible, a person~~  
 11 ~~detained pursuant to this section shall be detained in a~~  
 12 ~~mental health facility. A person may be detained in a jail~~  
 13 ~~or other correctional facility only if no mental health~~  
 14 ~~facility is available or if the available mental health~~  
 15 ~~facilities are inadequate to protect the person detained and~~  
 16 ~~the public. As soon as a mental health facility becomes~~  
 17 ~~available or the situation has changed sufficiently that an~~  
 18 ~~available mental health facility is adequate for the~~  
 19 ~~protection of the person detained and of the public, then~~  
 20 ~~the detained person shall be transferred from the jail or~~  
 21 ~~correctional facility to the mental health facility. In no~~  
 22 ~~case shall a person be detained in a jail or other~~  
 23 ~~correctional facility pursuant to this section for a longer~~  
 24 ~~period of time than is required for the county attorney to~~  
 25 ~~file a petition and for a professional person to complete~~



1 ~~his initial examination and inquiry and report his findings~~  
2 ~~to the court.~~

3 ~~(5)(3)~~ The county attorney of any county may make  
4 arrangements with any federal, state, regional, or private  
5 mental facility or with a mental health facility in any  
6 county for the detention of persons held pursuant to this  
7 section."

8 Section 8. Section 38-1308, R.C.M. 1947, is amended to  
9 read as follows:

10 "38-1308. Outpatient care -- conditional release. (1)  
11 When, in the opinion of the professional person in charge of  
12 a mental health facility providing involuntary treatment,  
13 the committed person can be appropriately served by  
14 outpatient care prior to the expiration of the period of  
15 commitment, then ~~such~~ outpatient care may be required as a  
16 condition for early release for a period which, when added  
17 to the inpatient treatment period, ~~shall~~ may not exceed the  
18 period of commitment. If the mental health facility  
19 designated to provide outpatient care is other than the  
20 facility providing involuntary treatment, the outpatient  
21 facility so designated must agree in writing to assume such  
22 responsibility.

23 (2) The mental health facility designated to provide  
24 outpatient care or the professional person in charge of the  
25 patient's case may modify the conditions for continued

1 release when ~~such~~ the modification is in the best interest  
2 of the patient. This includes the authorization to transfer  
3 the patient to another mental health facility designated to  
4 provide outpatient care provided the transfer is in the best  
5 interest of the patient and the outpatient facility so  
6 designated agrees in writing to assume responsibility.  
7 Notice of an intended transfer shall be given to the  
8 professional person in charge of the mental health facility  
9 that provided the involuntary treatment.

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 returned to the facility from which he was conditionally  
20 released. The professional person in charge of the patient's  
21 case may modify or rescind ~~such~~ the order at any time. The  
22 professional person shall mail or deliver notice to the  
23 person detained, his attorney, if any, ~~and~~ his guardian or  
24 conservator, if any, his next of kin, if known, and the  
25 responsible person appointed by the court. The sheriff of

1 the county where the mental health facility is located and  
 2 from which the patient is being transferred has the duty of  
 3 transporting a patient under the provisions of this section.

4 (4) The proceedings set forth in subsection (3) of  
 5 this section may be initiated by the professional person in  
 6 charge of the patient's case on the same basis set forth  
 7 therein without the professional person requiring or  
 8 ordering the apprehension and detention of the conditionally  
 9 released person.

10 ~~Upon expiration of the period of commitment, or when~~  
 11 ~~the patient is released from outpatient care, notice in~~  
 12 ~~writing to the court which committed the patient for~~  
 13 ~~treatment shall be provided by the professional person in~~  
 14 ~~charge of the patient.~~

15 (5) Notice in writing to the court which committed the  
 16 patient for treatment AND THE COUNTY ATTORNEY WHO INITIATED  
 17 THE ACTION shall be provided by the professional person in  
 18 charge of him at least 5 days prior to his release from  
 19 commitment or outpatient care."

20 Section 9. Section 38-1309, R.C.M. 1947, is amended to  
 21 read as follows:

22 "38-1309. Right to counsel and appeal -- examination  
 23 of respondent -- records. (1) The person alleged to be  
 24 seriously mentally ill ~~shall have~~ has the right to be  
 25 present at any hearing or trial. If he has no attorney, the

1 judge shall appoint ~~an attorney one~~ to represent him at  
 2 either the hearing or the trial, or both, who shall be  
 3 compensated from the public funds of the county where the  
 4 respondent resides. If the court determines that the  
 5 respondent is financially unable to employ an attorney, the  
 6 court shall appoint counsel who shall be compensated from  
 7 the public funds of the county where the respondent resides.  
 8 The county of residence shall also pay all precommitment  
 9 expenses including transportation to a mental health  
 10 facility incurred in connection with the detention,  
 11 examination, and precommitment custody of the respondent.  
 12 The fact that a person is examined, hospitalized, or  
 13 receives medical, psychological, or other mental health  
 14 treatment pursuant to this chapter does not relieve a third  
 15 party from a contractual obligation to pay for the cost of  
 16 the examination, hospitalization, or treatment.

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

24 (3) If the person wishing to secure the testimony of a  
 25 professional person is unable to do so because of financial

1 reasons, and if the respondent joins in the request for ~~such~~  
 2 the examination, the court shall appoint a professional  
 3 person other than the professional person requesting the  
 4 commitment to perform the examination. Whenever possible,  
 5 the court shall allow the respondent a reasonable choice of  
 6 an available professional person qualified to perform the  
 7 requested examination who will be compensated from the  
 8 public funds of the county where the respondent resides.

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

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

24 Section 10. Section 38-1310, R.C.M. 1947, is amended  
 25 to read as follows:

1 "38-1310. Transfer or commitment to facility --  
 2 procedure. No person who is in the custody of the department  
 3 of institutions for any purpose other than treatment of  
 4 severe mental illness shall may be transferred or committed  
 5 to a mental health facility for more than 10 days unless  
 6 ~~such~~ the transfer or commitment is effected according to the  
 7 procedures set out in this ~~act~~ chapter. However, proceedings  
 8 for involuntary commitment may be commenced in the county of  
 9 the mental health facility where the person is, in the  
 10 county of the institution from which the person was  
 11 transferred to the mental health facility, or in the county  
 12 of the person's residence. Notice of a transfer shall be  
 13 given immediately to any assigned counsel at the mental  
 14 health facility and to the parents of minors, guardians,  
 15 responsible persons, or conservators, as the case may be."

16 Section 11. Section 38-1313, R.C.M. 1947, is amended  
 17 to read as follows:

18 "38-1313. Civil and legal rights of person committed.

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

25 (2) Whenever ~~any~~ a person is committed to a mental

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

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

1 this subsection.

2 (4) ~~any~~ A person committed to a mental health facility  
 3 prior to ~~the effective date of this act~~ shall enjoy July 1,  
 4 1975, enjoys all the rights and privileges of a person  
 5 committed after ~~the effective~~ that date ~~of this act~~.

6 (5) No person who has received evaluation or treatment  
 7 under any of the provisions of this ~~act~~ shall chapter may be  
 8 discriminated against because of ~~such~~ that status. For  
 9 purposes of this section, "discrimination" means giving any  
 10 unfavorable weight to the fact of hospitalization or  
 11 outpatient care and treatment unrelated to a person's  
 12 present capacity to meet standards applicable to all  
 13 persons. The fact that a person has received evaluation and  
 14 treatment, whether voluntarily or involuntarily, at ~~any~~ a  
 15 mental health facility shall may not be admitted into  
 16 evidence in ~~any~~ a subsequent proceeding for involuntary  
 17 commitment or for the appointment of a guardian or  
 18 conservator unless it has probative value in the formulation  
 19 of an opinion by a professional person as to the  
 20 determination of serious mental illness or a prescribed  
 21 course of treatment and the court determines that the  
 22 probative value outweighs the prejudice. IT IS NECESSARY TO  
 23 A DETERMINATION OF THE PRESENT CONDITION OF THE RESPONDENT  
 24 OF THE PROGNOSIS FOR TREATMENT IN THE PRESENT CASE AND THE  
 25 JUDGE DETERMINES THAT THE NEED FOR THE EVIDENCE OUTWEIGHS

1 THE PREJUDICIAL EFFECT OF ITS ADMISSION."

2 Section 12. Section 38-1322, R.C.M. 1947, is amended  
3 to read as follows:

4 "38-1322. Treatment procedures -- restrictions.  
5 Patients have a right not to be subjected to treatment  
6 procedures such as lobotomy, aversive reinforcement  
7 conditioning, or other unusual or hazardous treatment  
8 procedures without their express and informed consent after  
9 consultation with counsel, the legal guardian, if any, the  
10 responsible person appointed by the court, and any other  
11 interested party of the patient's choice. At least one ~~(4)~~  
12 of those consulted must consent to the treatment along with  
13 the patient's counsel. If there is no responsible person or  
14 if the responsible person appointed by the court is no  
15 longer available, then a responsible person who is in no way  
16 connected with the facility or with the department of  
17 institutions shall be appointed before any such treatment  
18 procedure can be employed. The facility shall send notice  
19 of intent to employ extraordinary treatment procedures to  
20 the patient, his next of kin, if known, the legal guardian,  
21 if any, the attorney who most recently represented him, and  
22 the responsible person appointed by the court at least ~~ten~~  
23 ~~(10)~~ days prior to the commencement of ~~such~~ the  
24 extraordinary treatment program."

25 Section 13. Section 38-1324, R.C.M. 1947, is amended

1 to read as follows:

2 "38-1324. Treatment plan for patient established. (1)  
3 Each patient admitted as an inpatient to a mental health  
4 facility ~~for a period of more than seventy-two (72) hours~~  
5 shall have a comprehensive physical and mental examination  
6 and review of behavioral status within ~~forty-eight (48)~~  
7 hours after admission to the mental health 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 shall be implemented ~~as soon as possible, in~~  
12 ~~any event,~~ no later than ~~five (5)~~ 10 days after the  
13 patient's admission. Each individualized treatment plan  
14 shall contain:

- 15 (a) a statement of the nature of the specific problems  
16 and specific needs of the patient;
- 17 (b) a statement of the least restrictive treatment  
18 conditions necessary to achieve the purposes of commitment;
- 19 (c) a description of intermediate and long-range  
20 treatment goals, with a projected timetable for their  
21 attainment;
- 22 (d) a statement and rationale for the plan of  
23 treatment for achieving these intermediate and long-range  
24 goals;
- 25 (e) a specification of staff responsibility and a

1 description of proposed staff involvement with the patient  
2 in order to attain these treatment goals;

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

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

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

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

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

1 other than the professional person responsible for  
2 supervising the implementation of the plan."

3 Section 14. Section 38-1325, R.C.M. 1947, is amended  
4 to read as follows:

5 "38-1325. Examination following commitment. No later  
6 than ~~fifteen~~ (15) 30 days after a patient is committed to a  
7 mental health facility, the professional person in charge of  
8 the facility, or his appointed, professionally qualified  
9 agent, shall ~~examine~~ reexamine the committed patient and  
10 shall determine whether ~~the patient~~ he continues to require  
11 commitment to the facility and whether a treatment plan  
12 complying with this ~~act~~ chapter has been implemented. If  
13 the patient no longer requires commitment to the facility in  
14 accordance with the standards for commitment, ~~or if a~~  
15 ~~treatment plan has not been implemented,~~ he must be released  
16 immediately unless he agrees to continue with treatment on a  
17 voluntary basis. If for sound professional reasons a  
18 treatment plan has not been implemented, this fact shall be  
19 reported immediately to the professional person in charge of  
20 the facility, the director of the department of  
21 institutions, the mental disabilities board of visitors, and  
22 the patient's counsel."

23 Section 15. Section 38-1328, R.C.M. 1947, is amended  
24 to read as follows:

25 "38-1328. Records to be maintained. Complete patient

1 records shall be kept by the mental health facility and  
 2 shall be available to any ~~professional~~ person ~~or attorney~~  
 3 authorized in writing by the patient and the board. The  
 4 records shall also be made available to any attorney charged  
 5 with representing the patient or any professional person  
 6 charged with evaluating or treating the patient. These  
 7 records shall include:

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

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

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

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

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

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

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

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

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

25 (15) a detailed summary of any extraordinary incident

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

6 (16) a summary by the professional person in charge of  
 7 the facility or his appointed agent of his findings after  
 8 the ~~fifteen~~ (15) day 30-day review provided for in section  
 9 38-1325."

10 Section 16. Section 38-1330, R.C.M. 1947, is amended  
 11 to read as follows:

12 "38-1330. 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 representing but not  
 16 limited to consumers, the medical sciences DOCTORS OF  
 17 MEDICINE, and the behavioral sciences, at least three (3) of  
 18 whom shall may not be professional persons and at least one  
 19 (1) of whom shall be a representative of an organization  
 20 concerned with the care and welfare of the mentally ill. No  
 21 one may be a member of the board who is a FULL-TIME agent  
 22 or employee of the ANY department of institutions OF AGENCY  
 23 OF THE STATE or of any a mental health facility affected by  
 24 this ~~act~~ chapter. If a board of similar title and structure  
 25 is created in any act concerning the treatment of the

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

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

15 (3) The board shall review all plans for experimental  
 16 research involving persons admitted to ~~any~~ a 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~~ a mental health facility  
 25 affected by this ~~act~~ shall chapter may be commenced unless



1 it is 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~~ chapter. The  
5 board shall inspect the physical plant, including  
6 residential, recreational, dining, and sanitary facilities.  
7 It shall visit all wards and treatment areas. The board  
8 shall inquire concerning all treatment programs being  
9 implemented by the facility.

10 (5) The board shall annually insure that a treatment  
11 plan exists and is being implemented for each patient  
12 admitted or committed to a mental health facility under this  
13 ~~act~~ chapter. The board shall inquire concerning all use of  
14 restraints, isolation, or other extraordinary measures.

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

19 ~~(7) The board shall employ and be responsible for~~  
20 ~~full-time legal counsel at the Warm Springs state hospital,~~  
21 ~~whose responsibility shall be to act on behalf of all~~  
22 ~~patients at the institution. The board shall insure that~~  
23 ~~there is sufficient legal staff and facilities to insure~~  
24 ~~availability to all patients and shall require that the~~  
25 ~~appointed counsel periodically interview every patient and~~

1 ~~examine his files and records. The board may employ~~  
2 ~~additional legal counsel for representation of patients in a~~  
3 ~~similar manner at any other mental health facility having~~  
4 ~~inpatient capability. The expense of the legal counsel~~  
5 ~~employed by the board shall be paid by the department of~~  
6 ~~institutions at a rate commensurate with the compensation~~  
7 ~~paid to the legal counsel employed by other state agencies.~~

8 ~~(7) (8)~~ If the board believes that any facility is  
9 failing to comply with the provisions of this ~~act~~ chapter in  
10 regard to its physical facilities or its treatment of any  
11 patient, it shall report its findings at once to ~~THE~~  
12 ~~PROFESSIONAL PERSON IN CHARGE OF THE FACILITY AND, IF~~  
13 ~~APPROPRIATE AFTER WAITING A REASONABLE TIME FOR A RESPONSE~~  
14 ~~FROM SUCH PROFESSIONAL PERSON, THE BOARD MAY NOTIFY~~ the next  
15 of kin or guardian of any patient involved, the responsible  
16 person appointed by the court for any patient involved, ~~the~~  
17 ~~professional person in charge of the facility,~~ the director  
18 of the department of institutions, and the district court  
19 which has jurisdiction over the facility.

20 ~~(8) (9)~~ The mental disabilities board of visitors shall  
21 report annually to the governor and shall report to each  
22 session of the ~~Montana~~ legislature concerning the status of  
23 the mental health facilities and treatment programs which it  
24 has inspected.

25 ~~(9) (10)~~ The mental disabilities board of visitors shall

1 be attached to the governor for administrative purposes. It  
2 may employ staff for the purpose of carrying out its duties  
3 as set out in this ~~act~~ chapter."

4 Section 17. Section 38-1331, R.C.M. 1947, is amended  
5 to read as follows:

6 "~~38-1331. Standards for treatment to be known~~  
7 Statement of rights to be furnished and posted. Each patient  
8 ~~and his next of kin, guardian, conservator, or the~~  
9 ~~responsible person appointed by the court~~ shall promptly  
10 upon ~~the patient's~~ his admission receive, in language he  
11 understands, a written notice, statement in language he  
12 understands, of all the above standards for adequate  
13 treatment of all of his rights under this chapter, including  
14 the right to treatment, the right to the development of a  
15 treatment plan, and the right to and the availability of  
16 legal counsel, and the rules for patient labor. In addition  
17 a copy of ~~all the above standards~~ the foregoing statement  
18 shall be posted in each ward."

19 SECTION 18. REPEALER. SECTION 80-1908, R.C.M. 1947,  
20 IS REPEALED.

-End-

SENATE BILL NO. 413

INTRODUCED BY TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL PERSONS AND TO AMEND SECTIONS 38-1301 THROUGH 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328, 38-1330, AND 38-1331, R.C.M. 1947; REPEALING SECTION 80-1908, R.C.M. 1947."

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

Section 1. Section 38-1301, R.C.M. 1947, is amended to read as follows:

"38-1301. Purpose of ~~act~~ chapter. The purpose of this ~~act~~ chapter 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~~

There are no changes in SB 413 and due to length will not be rerun. Please refer to yellow copy for complete text.

THIRD READING

~~when this is done to accomplish this goal whenever possible in a community-based setting;~~

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so mentally ill as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this chapter."

Section 2. Section 38-1302, R.C.M. 1947, is amended to read as follows:

"38-1302. Definitions. As used in this ~~act~~ chapter, the following definitions apply:

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

(2) "Court" means ~~the~~ any 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

1 public hospital or a licensed private hospital WHICH IS  
 2 EQUIPPED AND STAFFED TO PROVIDE TREATMENT FOR PERSONS WITH  
 3 MENTAL DISORDERS or, a community mental health center, or  
 4 any mental health clinic or treatment center approved by the  
 5 department. No correctional institution or facility, or  
 6 jail, is a mental health facility within the meaning of this  
 7 ~~act~~ chapter.

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

11 (8) "Patient" means ~~a person committed by the court to~~  
 12 ~~a seventy-two (72) hour evaluation or treatment or for a~~  
 13 ~~longer period~~ a person committed by the court for treatment  
 14 for any period of time.

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

17 (10) "Professional person" means:

18 (a) a medical doctor, or

19 (b) a person trained in the field of mental health and  
 20 certified by the department of institutions in accordance  
 21 with standards of professional licensing boards, federal  
 22 regulations, and the joint commission on accreditation of  
 23 hospitals.

24 (11) "Reasonable medical certainty" means reasonable  
 25 certainty as judged by the standards of a professional

1 person.

2 ~~(11)~~ (12) "Respondent" means a person alleged in a  
 3 petition filed pursuant to this ~~act~~ chapter to be seriously  
 4 mentally ill.

5 ~~(12)~~ (13) "Responsible person" means any person willing  
 6 and able to assume responsibility for a seriously mentally  
 7 ill person, or person alleged to be seriously mentally ill,  
 8 including next of kin, the person's conservator or legal  
 9 guardian, if any, representatives of a charitable or  
 10 religious organization, or any other person appointed by the  
 11 court to perform the functions of a "responsible person" set  
 12 out in this ~~act~~ chapter. Only one person ~~shall~~ may at any  
 13 one time be the "responsible person" within the meaning of  
 14 this ~~act~~ chapter. In appointing a responsible person, the  
 15 court shall consider the preference of the respondent. The  
 16 court may, at any time for good cause shown, change its  
 17 designation of the "responsible person".

18 ~~(13)~~ (14) "Seriously mentally ill" means suffering from  
 19 a mental disorder which has resulted in self-inflicted  
 20 injury or injury to others, or the imminent threat thereof,  
 21 or which has deprived the person afflicted of the ability to  
 22 protect his life or health. No person may be involuntarily  
 23 committed to a mental health facility ~~or~~ OR detained for  
 24 evaluation and treatment because he is an epileptic,  
 25 mentally deficient, mentally retarded, senile, or suffering

HOUSE OF REPRESENTATIVES

March 25, 1977

HOUSE COMMITTEE ON JUDICIARY AMENDMENTS TO SENATE BILL 413

1. Amend page 6, section 3, subsection (3), lines 3 and 4.

Following: "for"

Strike: "10 days after his initial admission and for"

2. Amend page 6, section 3, subsection (3), line 5.

Following: "days"

Insert: ", excluding weekends and holidays,"

Following: "release"

Strike: "thereafter"

3. Amend page 7, section 3, subsection (8), line 4.

Following: "voluntary"

Strike: "commitment"

Insert: "admission"

4. Amend page 7, section 3, subsection (8), line 7.

Following: "adult."

Insert: "A minor voluntarily admitted shall have the right to be released within 5 days of his request as provided in 38-1303 (3) The minor himself may make such request."

5. Amend page 7, section 3, subsection (8), line 8.

Following: "voluntary"

Strike: "recommitment"

Insert: "readmission"

6. Amend page 7, section 3, subsection (8), line 9.

Following: "voluntary"

Strike: "commitment"

Insert: "admission"

7. Amend page 7, section 3, subsection (9), line 16.

Following: "voluntary"

Strike: "commitment"

Insert: "admission"

8. Amend page 7, section 3, subsection (9), line 19.

Following: line 18

Strike: "commitment"

Insert: "admission"

Following: "the"

Strike: "commitment"

Insert: "admission"

continued on page 2

Page 2

HOUSE OF REPRESENTATIVES AMENDMENTS SENATE BILL 413

March 25, 1977

9. Amend page 7, section 3, subsection (9), line 23.

Following: "voluntary"

Strike: "commitment"

Insert: "admission"

10. Amend page 14, section 5, subsection (3)(b), line 13.

Following: "petition."

Insert: "The respondent may, at this appearance, object to the finding of probable cause for filing the petition."

11. Amend page 16, section 5, subsection (4), line 15.

Following: "person"

Insert: "(a)"

12. Amend page 16, section 5, subsection (4), line 21.

Following: "hours."

Strike: "IF THE PROFESSIONAL PERSON"

Insert: "(b)"

13. Amend page 16, section 5, subsection (4), lines 22 through 25.

Following: "CONTINUE, THE"

Strike: lines 22 through 25 in their entirety

Insert: "hearing shall be held as scheduled. The court may not order further evaluation pending the hearing unless sound medical reasons shall be set forth in the order along with the amount of additional time needed."

14. Amend page 17, section 5, subsection (5), lines 23 through 25.

Following: "court."

Strike: lines 23 through 25 in their entirety

15. Amend page 18, section 5, subsection (5), line 1.

Following: line 25 on page 17

Strike: "pending the hearing, in which case counsel"

Insert: "The court may not order detention of respondent pending the hearing unless requested by the county attorney and upon the existence of probable cause for detention. Counsel"

16. Amend page 27, section 6, subsection (3), line 1.

Following: "patient."

Insert: "If a hearing is not requested, the court shall enter an order of commitment for not to exceed 6 months."

continued on page 3

HOUSE OF REPRESENTATIVES AMENDMENTS TO SENATE BILL 413

Page 3

March 25, 1977

17. Amend page 45, section 16, subsection (1), lines 22 and 23.

Following: "the"

Strike: "ANY"

Insert: "the"

Following: "institutions"

Strike: "OR AGENCY OF THE STATE"

Insert: "of institutions"

18. Amend page 48, section 16, subsection (8), line 12.

Following: "FACILITY"

Insert: "and the director of the department of institutions:"

AS AMENDED CONCURRED IN

## COMMITTEE OF THE WHOLE AMENDMENT

April 7, 1977

MR. CHAIRMAN: I MOVE TO AMEND SENATE BILL NO. 413, third reading copy, as follow

1. Amend title, line 6.

Following: "SECTIONS"

Insert: "38-1232,"

2. Amend page 45, section 16, line 24.

Following: "chapter"

Insert: ", except this prohibition does not affect any employee of a state college or university"

3. Amend page 49, line 19.

Following: line 18

Insert: "Section 18. Section 38-1232, R.C.M. 1947, is amended to read as follows:

"38-1232. Mental disabilities board of visitors--duties. (1) The governor shall appoint a mental disabilities board of visitors. The board shall consist of five ~~(5)~~ persons representing but not limited to consumers, doctors of medicine, and the behavioral sciences, at least three ~~(3)~~ of whom shall may not be professional persons and at least one ~~(1)~~ of whom shall be a representative of an organization concerned with the care and welfare of the developmentally disabled. No one may be a member of the board who is an a full-time agent or employee of the any department of institutions, or agency of the state or of any residential facility affected by this act, except this prohibition does not affect any employee of a state college or university. If a board of similar title and structure is created in any act concerning the treatment of the mentally ill, then only one ~~(1)~~ board shall be created to perform the functions set-out-in of both acts and the board so created shall include at least one ~~(1)~~ representative of an organization concerned with the care and welfare of the mentally ill and one representative of an organization concerned with the care and welfare of the mentally retarded or developmentally disabled.

(2) The mental disabilities board of visitors shall be an independent board of inquiry and review to assure that the treatment of all persons admitted to a residential facility is humane and decent and meets the requirements set forth in this act.

The board shall review all plans for experimental research or hazardous treatment procedures involving persons admitted to any residential facility to assure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects required by the United States department of health, education and welfare. No experimental research project involving persons admitted to any residential facility affected by this act shall may be commenced unless it is approved by the mental disabilities board of visitors. The board shall investigate all cases of alleged mistreatment of a resident.

---more---



(3) The Board shall, at least annually, inspect every residential facility which is providing a course of residential habilitation and treatment to any person pursuant to this act. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the institution.

(4) The board shall inspect the file of each person admitted to a residential facility pursuant to this act to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation or other extraordinary measures.

(5) The board may assist any patient at a residential facility in resolving any grievance he may have concerning his admission or his course of treatment and habilitation in the facility.

(6) If the board believes that any facility is failing to comply with the provisions of this act in regard to its physical facilities or its treatment of any resident, it shall report its findings at once to the professional person in charge of the facility and the director of the department of institutions. If appropriate after waiting a reasonable time for a response from such professional person, the board may notify the parents or guardian of any patient involved, the next of kin, if known, the responsible person appointed by the court for any patient involved, ~~the professional person in charge of the facility, the director of the department of institutions~~ and the district court which has jurisdiction over the facility.

(7) The mental disabilities board of visitors shall report annually to the governor and shall report to each session of the Montana legislature concerning the status of the residential facilities and habilitation program which it has inspected.

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

Renumber: subsequent section

AS AMENDED BE CONCURRED IN

HOUSE OF REPRESENTATIVES

APRIL 1, 1977

Committee of the Whole Amendment to SENATE BILL NO.413, third reading copy as follows:

1. Standing Committee Report, House Judiciary Committee, dated March 25, 1977.

Strike: amendments #11, 12, and 16 in their entirety

2. Amend page 16, section 5, subsection (4), line 15.

Following: "."

Strike: "If the professional person"

Insert: "The following action shall be taken based on the professional person's findings:

(a) If he "

3. Amend page 16, section 5, subsection (4), line 21.

Following: "hours."

Strike: "IF THE PROFESSIONAL PERSON"

Insert: "(b) If he "

4. Amend page 27, section 6, subsection (3), line 1.

Following: "patient."

Insert: "If a hearing is not requested, the court shall enter an order of commitment for a period not to exceed 6 months."

5. Amend page 48, section 16, subsection (8), lines 17 and 18.

Following: "facility,"

Strike: "the director of the department of institutions,"

AS AMENDED  
BE CONCURRED IN

1 SENATE BILL NO. 413

2 INTRODUCED BY TOWE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
5 CLARIFY THE LAWS RELATING TO THE COMMITMENT OF MENTALLY ILL  
6 PERSONS AND TO AMEND SECTIONS ~~38-1232~~, 38-1301 THROUGH  
7 38-1310, 38-1313, 38-1322, 38-1324, 38-1325, 38-1328,  
8 38-1330, AND 38-1331, R.C.M. 1947; REPEALING SECTION  
9 80-1908, R.C.M. 1947."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12 Section 1. Section 38-1301, R.C.M. 1947, is amended to  
13 read as follows:

14 "38-1301. Purpose of ~~act chapter~~. The purpose of this  
15 ~~act chapter~~ is:

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

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

1 ~~when this is done to accomplish this goal whenever possible~~  
2 ~~in a community-based setting;~~

3 ~~(3) to accomplish this goal in an institutionalized~~  
4 ~~setting only when less restrictive alternatives are~~  
5 ~~unavailable or inadequate and only when a person is so~~  
6 ~~mentally ill as to require institutionalized care; and~~

7 ~~(4) to assure that due process of law is accorded any~~  
8 ~~person coming under the provisions of this chapter."~~

9 Section 2. Section 38-1302, R.C.M. 1947, is amended to  
10 read as follows:

11 "38-1302. Definitions. As used in this ~~act chapter~~,  
12 ~~the following definitions apply:~~

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

15 (2) "Court" means the ~~any~~ district court of the state  
16 of Montana.

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

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

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

25 (6) "Mental health facility" or "facility" means a

1 public hospital or a licensed private hospital WHICH IS  
 2 EQUIPPED AND STAFFED TO PROVIDE TREATMENT FOR PERSONS WITH  
 3 MENTAL DISORDERS or, a community mental health center, or  
 4 any mental health clinic or treatment center approved by the  
 5 department. No correctional institution or facility, or  
 6 jail, is a mental health facility within the meaning of this  
 7 act chapter.

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

11 (8) "Patient" means ~~a person committed by the court to~~  
 12 ~~a seventy-two (72) hour evaluation or treatment or for a~~  
 13 ~~longer period~~ a person committed by the court for treatment  
 14 for any period of time.

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

17 (10) "Professional person" means:

18 (a) a medical doctor, or

19 (b) a person trained in the field of mental health and  
 20 certified by the department of institutions in accordance  
 21 with standards of professional licensing boards, federal  
 22 regulations, and the joint commission on accreditation of  
 23 hospitals.

24 (11) "Reasonable medical certainty" means reasonable  
 25 certainty as judged by the standards of a professional

1 person.

2 ~~(12)~~(12) "Respondent" means a person alleged in a  
 3 petition filed pursuant to this ~~act~~ chapter to be seriously  
 4 mentally ill.

5 ~~(13)~~(13) "Responsible person" means any person willing  
 6 and able to assume responsibility for a seriously mentally  
 7 ill person or person alleged to be seriously mentally ill,  
 8 including next of kin, the person's conservator or legal  
 9 guardian, if any, representatives of a charitable or  
 10 religious organization, or any other person appointed by the  
 11 court to perform the functions of a "responsible person" set  
 12 out in this ~~act~~ chapter. Only one person shall ~~may~~ at any  
 13 one time be the "responsible person" within the meaning of  
 14 this ~~act~~ chapter. In appointing a responsible person, the  
 15 court shall consider the preference of the respondent. The  
 16 court may, at any time for good cause shown, change its  
 17 designation of the "responsible person".

18 ~~(14)~~(14) "Seriously mentally ill" means suffering from  
 19 a mental disorder which has resulted in self-inflicted  
 20 injury or injury to others, or the imminent threat thereof, or  
 21 which has deprived the person afflicted of the ability to  
 22 protect his life or health. No person may be involuntarily  
 23 committed to a mental health facility ~~nor~~ OR detained for  
 24 evaluation and treatment because he is an epileptic,  
 25 mentally deficient, mentally retarded, senile, or suffering

1 from a mental disorder unless the condition causes the  
2 person him to be seriously mentally ill within the meaning  
3 of this ~~act~~ chapter."

4 Section 3. Section 38-1303, R.C.M. 1947, is amended to  
5 read as follows:

6 "38-1303. Voluntary admission -- cost of admission.  
7 (1) Nothing in this ~~act~~ chapter ~~may~~ be construed in  
8 any way as limiting the right of any person to make  
9 voluntary application for admission at any time to any  
10 mental health facility or professional person. An  
11 application for admission to a mental health facility shall  
12 be in writing on a form prescribed by the facility and  
13 approved by the department ~~of institutions~~. It ~~shall~~ is not  
14 be valid unless it is approved by a professional person and  
15 a copy is given to the person voluntarily admitting himself.  
16 The form shall contain a statement of the rights of the  
17 person voluntarily applying for admission, as set out in  
18 this ~~act~~ chapter, including the right to release.

19 (2) Any applicant who wishes to voluntarily apply for  
20 admission to the Montana state hospital shall first obtain  
21 certification ~~from--the--regional--mental--health--director--of~~  
22 ~~his--mental--health--region--or--if--not--reasonably--available~~  
23 from a professional person that the applicant is suffering  
24 from a mental disorder and that the facilities available to  
25 the mental health region in which the applicant resides are

1 unable to provide adequate evaluation and treatment.

2 (3) An application for voluntary admission shall give  
3 the facility the right to detain the applicant for 19 days  
4 ~~after his initial admission and for~~ no more than ~~five--(5)~~  
5 days, EXCLUDING WEEKENDS AND HOLIDAYS, past his written  
6 request for release ~~thereafter~~.

7 (4) The cost of involuntarily committing a patient who  
8 is voluntarily admitted to a mental health facility at the  
9 time the involuntary proceedings are commenced shall be  
10 borne by the county of the patient's residence at the time  
11 of admission.

12 (5) The costs of transportation to a mental health  
13 facility under this section shall be provided by the  
14 ~~patient, his parents, guardian, or~~ the welfare department of  
15 the county of the patient's residence. However, if  
16 protective proceedings under Title 91A, chapter 5, have been  
17 or are initiated with respect to the person, the welfare  
18 department may seek reimbursement. If no one else is  
19 available to transport him, the sheriff shall transport the  
20 person.

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

24 (7) Notwithstanding any other provision of law, a  
25 minor who is ~~sixteen--(16)~~ years of age or older may consent

1 to receive mental health services to be rendered by a  
2 facility or a person licensed to practice medicine or  
3 psychology in this state.

4 ~~(8) Voluntary Except as provided by this subsection,~~  
5 ~~voluntary commitment ADMISSION of a minor to a mental health~~  
6 ~~facility for an in-patient course of treatment shall be for~~  
7 ~~a period of no more than thirty (30) days the same period of~~  
8 ~~time as that for an adult. A MINOR VOLUNTARILY ADMITTED~~  
9 ~~SHALL HAVE THE RIGHT TO BE RELEASED WITHIN 5 DAYS OF HIS~~  
10 ~~REQUEST AS PROVIDED IN 38-1303(3). THE MINOR HIMSELF MAY~~  
11 ~~MAKE SUCH REQUEST. Unless there has been a periodic review~~  
12 ~~and a voluntary recommitment READMISSION consented to by the~~  
13 ~~minor patient and his counsel, voluntary commitment~~  
14 ~~ADMISSION terminates at the expiration of 1 year. If the~~  
15 ~~professional person in charge of a minor patient determines~~  
16 ~~that the commitment should continue for a period of more~~  
17 ~~than thirty (30) days, he shall commence involuntary~~  
18 ~~commitment proceedings in accordance with this act. Counsel~~  
19 ~~shall be appointed for the minor.~~

20 (9) If, in any voluntary commitment ADMISSION for any  
21 period of time to a mental health facility, a minor fails to  
22 join in the consent of his parents or guardian to the  
23 voluntary commitment ADMISSION, then the commitment  
24 ADMISSION shall be treated as an involuntary commitment.  
25 Notice of the substance of this subsection and of the right

1 to counsel shall be set forth in conspicuous type in a  
2 conspicuous location on any form or application used for the  
3 voluntary commitment ADMISSION of a minor to a mental health  
4 facility. The notice shall be explained to the minor by the  
5 professional person approving the application."

6 Section 4. Section 38-1304, R.C.M. 1947, is amended to  
7 read as follows:

8 \*38-1304. Rights and waiver of rights. (1) Whenever a  
9 person is involuntarily detained, or is examined by a  
10 professional person pursuant to section 38-1305, or is  
11 notified that he will be the subject of a hearing pursuant  
12 to section 38-1305 or 38-1306, the person shall be informed  
13 of his constitutional rights and his rights under this act  
14 chapter. A person may waive his procedural rights, provided  
15 that the waiver is knowingly and intentionally made or his  
16 rights may be waived by his counsel and responsible person  
17 acting together if a record is made of the reasons for the  
18 waiver. The right to counsel in a hearing held pursuant to  
19 section 38-1306 may not be waived. The right to treatment  
20 provided for in this act chapter may not be waived.

21 (2) In the case of a person who has been detained for  
22 a seventy-two (72) hour inpatient evaluation and treatment  
23 or for a longer period of time, a waiver of rights can be  
24 knowingly and intentionally made only with the concurrence  
25 of the patient's attorney or of the responsible person

1 ~~appointed--by--the-court.~~ The right of the respondent to be  
 2 physically present at a hearing may also be waived by his  
 3 attorney and the responsible person with the concurrence of  
 4 the professional person and the judge upon a finding  
 5 supported by facts that:

6 (a) the presence of the respondent at the hearing  
 7 would be likely to seriously adversely affect his mental  
 8 condition; and

9 (b) an alternative location for the hearing in  
 10 surroundings familiar to the respondent would not prevent  
 11 such adverse affects on his mental condition.

12 (3) ~~(a) In the case of a minor, provided that a record~~  
 13 ~~is made of the reasons for the waiver, of his rights can be~~  
 14 ~~knowingly and intentionally made:~~

15 ~~(a)--when the minor is under the age of twelve--(12)--by~~  
 16 ~~the parents of the minor;~~

17 ~~(b)--when the minor is over the age of twelve--(12)--by~~  
 18 ~~the youth and his parents;~~

19 ~~(c)--when the minor is over the age of twelve--(12)--and~~  
 20 ~~the minor and his parents do not agree, the minor can make~~  
 21 ~~an effective waiver of his rights only with advice of~~  
 22 ~~counsel; may be waived by the mutual consent of his counsel~~  
 23 ~~and parents or guardian or guardian ad litem if there are no~~  
 24 ~~parents or guardian.~~

25 (b) If there is an apparent conflict of interest

1 between a minor and his parents or guardian, the court ~~may~~  
 2 ~~shall~~ appoint a guardian ad litem for ~~the minor him.~~

3 (4) In addition to any other rights which may be  
 4 guaranteed by the constitution of the United States and of  
 5 this state, by the laws of this state or by this ~~act~~  
 6 ~~chapter~~, any person who is involuntarily detained or against  
 7 whom a petition is filed pursuant to this ~~act~~ ~~chapter~~ has  
 8 the following rights:

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

11 (b) the right in any hearing to be present, to offer  
 12 evidence, and to present witnesses in any proceeding  
 13 concerning him;

14 (c) the right in any hearing to cross-examine  
 15 witnesses;

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

17 (e) the right to remain silent;

18 (f) the right in any hearing to be proceeded against  
 19 according to the rules of evidence applicable to civil  
 20 matters generally;

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

23 (h) the right to be examined by a professional person  
 24 of his choice when such professional person is reasonably  
 25 available;

1 (i) the right to be dressed in his own clothes at any  
2 hearing held pursuant to this ~~act~~ chapter; and

3 (j) the right to refuse any but lifesaving medication  
4 for up to ~~twenty-four~~(24) hours prior to any hearing held  
5 pursuant to this ~~act~~ chapter.

6 (5) A person detained pursuant to this chapter shall  
7 be detained in the least restrictive environment required to  
8 protect the life and physical safety of the person detained  
9 or members of the public. Whenever possible, a person  
10 detained pursuant to this chapter shall be detained in a  
11 mental health facility and in the county of residence. NO  
12 PERSON MAY BE DETAINED IN ANY HOSPITAL OR OTHER MEDICAL  
13 FACILITY WHICH IS NOT A MENTAL HEALTH FACILITY UNLESS SUCH  
14 HOSPITAL OR FACILITY HAS AGREED IN WRITING TO ADMIT THE  
15 PERSON. A person may be detained in a jail or other  
16 correctional facility only if no mental health facility is  
17 available or if the available mental health facilities are  
18 inadequate to protect the person detained and the public. As  
19 soon as a mental health facility becomes available or the  
20 situation has changed sufficiently that an available mental  
21 health facility is adequate for the protection of the person  
22 detained and the public, then the detained person shall be  
23 transferred from the jail or correctional facility to the  
24 mental health facility. A person detained prior to  
25 involuntary commitment may apply to the court for immediate

1 relief with respect to the need for detention or the  
2 adequacy of the facility being utilized to detain."

3 Section 5. Section 38-1305, R.C.M. 1947, is amended to  
4 read as follows:

5 "38-1305. Petition alleging person as seriously  
6 mentally ill -- contents and procedure. (1) ~~A~~ The county  
7 attorney<sub>1</sub> ~~on his own initiative or~~ upon the written request  
8 of any person<sub>2</sub> may file a petition with the court alleging  
9 that there is a person within the county who is seriously  
10 mentally ill and requesting that ~~an evaluation of the~~  
11 ~~person's condition be made~~ the person be committed to a  
12 mental health facility for a period of no more than 3  
13 months.

- 14 (2) The petition shall contain:  
15 (a) the name and address of the person requesting the  
16 petition and his interest in the case;  
17 (b) the name of the respondent, and, if known, the  
18 address, age, sex, marital status, and occupation of the  
19 respondent;  
20 (c) the purported facts supporting the allegation of  
21 mental illness;  
22 (d) the name and address of every person known or  
23 believed to be legally responsible for the care, support,  
24 and maintenance of the person for whom evaluation is sought;  
25 (e) the name and address of the person's next of kin,



1 to the extent known to the county attorney and the person  
2 requesting the petition;

3 (f) the name and address of any person whom the county  
4 attorney believes might be willing and able to be appointed  
5 as responsible person;

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

13 (h) a statement of the rights of the respondent which  
14 shall be in conspicuous print and identified by a suitable  
15 heading.

16 ~~(3) Upon presentation to the court by the county~~  
17 ~~attorney, the court shall immediately consider the petition~~  
18 ~~with or without a hearing to determine if there is probable~~  
19 ~~cause to believe that the respondent is seriously mentally~~  
20 ~~ill. If the court finds no such probable cause, the~~  
21 ~~petition shall be discharged. If the court finds probable~~  
22 ~~cause, it shall submit the petition to a professional person~~  
23 ~~for evaluation. If probable cause is found, the court may~~  
24 ~~appoint a responsible person to protect the interests of the~~  
25 ~~respondent. The responsible person shall be notified as~~

1 ~~soon as possible that a petition has been filed. Notice of~~  
2 ~~the petition and the finding of probable cause shall be hand~~  
3 ~~delivered or mailed to the respondent and to the attorney,~~  
4 ~~the person or persons legally responsible for care, support,~~  
5 ~~and maintenance of the respondent, next of kin identified in~~  
6 ~~the petition, and the person or persons identified by the~~  
7 ~~county attorney as possible responsible persons.~~

8 (a) The petition shall be filed with the clerk of  
9 court who shall immediately notify the judge.

10 (b) If a judge is available, he shall consider the  
11 petition and if he finds no probable cause it shall be  
12 dismissed. If the judge finds probable cause, counsel shall  
13 be immediately appointed for the respondent and the  
14 respondent shall be brought forthwith before the court with  
15 his counsel. The respondent shall be advised of his  
16 constitutional rights, his rights under this chapter, and  
17 the substantive effect of the petition. THE RESPONDENT MAY,  
18 AT THIS APPEARANCE, OBJECT TO THE FINDING OF PROBABLE CAUSE  
19 FOR FILING THE PETITION. The judge shall appoint a  
20 professional person and a responsible person and set a date  
21 and time for the hearing on the petition, which may not  
22 exceed 5 days, including weekends and holidays unless the  
23 fifth day falls upon a weekend or holiday and unless  
24 additional time is requested on behalf of the respondent.  
25 The desires of the respondent shall be taken into

1 consideration in the appointment of the responsible person  
 2 and in the confirmation of the appointment of the attorney.

3 (c) If a judge is not available in the county, the  
 4 clerk shall notify a resident judge by telephone and read  
 5 the petition to him. If the judge finds no probable cause,  
 6 the petition shall be dismissed. If the judge finds probable  
 7 cause, he shall cause the clerk to issue an order appointing  
 8 counsel, AND a professional person, and setting a date and  
 9 time for the hearing on the petition, which may not exceed 5  
 10 days, including weekends and holidays unless the fifth day  
 11 falls upon a weekend or holiday and unless additional time  
 12 is requested on behalf of the respondent. The order shall  
 13 also direct that the respondent be brought forthwith before  
 14 a justice of the peace with his counsel to be advised of his  
 15 constitutional rights, his rights under this chapter, and  
 16 the contents of the clerk's order as well as to furnish him  
 17 with a copy. The justice of the peace shall ascertain the  
 18 desires of the respondent with respect to the appointment of  
 19 his counsel, and this shall be immediately communicated to  
 20 the resident judge. The resident judge may appoint other  
 21 counsel, may confer with respondent's counsel and the county  
 22 attorney in order to appoint a responsible person, and may  
 23 do all things necessary through the clerk of court by  
 24 telephone as if the resident judge were personally present.

25 (4) ~~(a)~~ Upon receipt of the petition, the

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

8 ~~(b) When the professional person first contacts the~~  
 9 ~~respondent, before he begins any examination, he shall give~~  
 10 ~~a copy of the petition to the respondent and shall explain~~  
 11 ~~to the respondent the nature of the proceeding and his~~  
 12 ~~rights as set forth in the petition. Following the initial~~  
 13 ~~hearing, whether before a judge or justice of the peace, the~~  
 14 ~~respondent shall be examined by the professional person~~  
 15 ~~without unreasonable delay. The examination may not exceed a~~  
 16 ~~period of 4 hours. The professional person shall immediately~~  
 17 ~~notify the court COUNTY ATTORNEY of his findings in person~~  
 18 ~~or by phone and shall make a written report of his~~  
 19 ~~examination to the court, with copies to the respondent's~~  
 20 ~~attorney and the county attorney. If the professional person~~  
 21 ~~~~(A)~~ THE FOLLOWING ACTION SHALL BE TAKEN BASED ON THE~~  
 22 ~~PROFESSIONAL PERSON'S FINDINGS:~~

23 ~~(A) IF HE recommends dismissal, he shall additionally~~  
 24 ~~notify counsel and the respondent shall be released and the~~  
 25 ~~petition dismissed. However, the county attorney may, upon~~

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1 good cause shown, request the court to order an additional,  
 2 but no more than one, examination by a different  
 3 professional person for a period of no more than 4 hours. IF  
 4 THE PROFESSIONAL PERSON (B) IF THE PROFESSIONAL PERSON

5 (B) IF HE FINDS THAT COMMITMENT PROCEEDINGS SHOULD  
 6 CONTINUE, THE COURT MAY ORDER FURTHER EVALUATION PRIOR TO  
 7 THE HEARING BUT THE RESPONDENT MAY NOT BE DETAINED EXCEPT AS  
 8 PROVIDED IN THIS SECTION. HEARING SHALL BE HELD AS  
 9 SCHEDULED. THE COURT MAY NOT ORDER FURTHER EVALUATION  
 10 PENDING THE HEARING UNLESS SOUND MEDICAL REASONS REQUIRE  
 11 ADDITIONAL TIME FOR A COMPLETE EVALUATION; SUCH REASONS  
 12 SHALL BE SET FORTH IN THE ORDER ALONG WITH THE AMOUNT OF  
 13 ADDITIONAL TIME NEEDED.

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

1 any tests or evaluation devices which the professional  
 2 person employed in evaluating the respondent. If the  
 3 professional person recommends that a seventy-two (72) hour  
 4 evaluation and treatment be ordered, notice of this  
 5 recommendation shall be mailed or delivered to the  
 6 respondent, the next of kin, when known, any person  
 7 responsible for the care, support, and maintenance of the  
 8 respondent, any other person identified in the petition, and  
 9 the responsible person, if any, appointed by the court.  
 10 Notice shall include the date, time, and place of the  
 11 respondent's next appearance before the court. The judge  
 12 can, UPON REQUEST OF THE COUNTY ATTORNEY AND upon probable  
 13 cause for detention, order detention of the respondent  
 14 pending the hearing, in which case counsel THE COURT MAY NOT  
 15 ORDER DETENTION OF RESPONDENT PENDING THE HEARING UNLESS  
 16 REQUESTED BY THE COUNTY ATTORNEY AND UPON THE EXISTENCE OF  
 17 PROBABLE CAUSE FOR DETENTION. COUNSEL shall be orally  
 18 notified immediately. Counsel for the respondent may then  
 19 request a detention hearing, which shall be held forthwith.  
 20 In the event of detention, the respondent shall be detained  
 21 in the least restrictive setting necessary to assure his  
 22 presence and assure his safety and the safety of others AS  
 23 PROVIDED IN 38-1304(5). He shall have the right to be  
 24 examined additionally by a professional person of his  
 25 choice. Unless objection is made by counsel for the

1 respondent, he shall continue to be evaluated and treated by  
 2 the professional person pending the hearing.

3 ~~(6) In the event the examining professional person~~  
 4 ~~recommends a seventy-two (72) hour inpatient evaluation and~~  
 5 ~~treatment the respondent shall be brought before the court~~  
 6 ~~by the county attorney without undue delay, advised of the~~  
 7 ~~recommendation, supplied with a copy of the petition and the~~  
 8 ~~recommendation and advised of his rights to a hearing and to~~  
 9 ~~counsel. If a responsible person has not yet been~~  
 10 ~~appointed, the court shall appoint a responsible person at~~  
 11 ~~this time. If the right to a hearing and to counsel are~~  
 12 ~~waived, the court shall direct that the respondent be~~  
 13 ~~detained at a mental health facility for evaluation and~~  
 14 ~~treatment not to exceed seventy-two (72) hours. If a~~  
 15 ~~hearing is requested by the respondent, his attorney or the~~  
 16 ~~responsible person appointed by the court, a time and place~~  
 17 ~~shall be set for the hearing. The matter shall be given~~  
 18 ~~precedence over all other court matters. If the respondent~~  
 19 ~~is unwilling or unable to retain counsel, the court shall~~  
 20 ~~appoint counsel and be responsible for notification. Notice~~  
 21 of the petition shall be hand delivered to the respondent  
 22 and to his counsel on or before the initial appearance of  
 23 the respondent before the judge or justice of the peace.  
 24 Notice of the petition and the order setting the date and  
 25 time of the hearing and the names of the respondent's

1 counsel, professional person, and responsible person shall  
 2 be hand delivered or mailed to the person or persons legally  
 3 responsible for care, support, and maintenance of the  
 4 respondent, the next of kin identified in the petition, and  
 5 any other person identified by the county attorney as a  
 6 possible responsible person other than the one named as the  
 7 responsible person. The notice may provide, other than as to  
 8 the respondent and his counsel, that no further notice will  
 9 be given unless written request is filed with the clerk of  
 10 court. At any time prior to the date set for hearing, the  
 11 respondent, through his counsel, may request a jury trial,  
 12 whereupon the time set for hearing shall be vacated and the  
 13 matter set on the court's jury calendar at the earliest date  
 14 possible, the matter taking precedence over all other  
 15 matters. If there is not a jury in attendance, a jury shall  
 16 be selected in the manner provided in 93-1512 and a date set  
 17 for trial by jury not later than 7 days, exclusive of  
 18 Saturdays, Sundays, and holidays.

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

1 ~~After full hearing the court shall determine whether the~~  
 2 ~~respondent is seriously mentally ill within the definition~~  
 3 ~~provided herein. If the court finds the respondent is not~~  
 4 ~~seriously mentally ill, he or she shall be discharged and~~  
 5 ~~the petition dismissed. If the court finds the respondent~~  
 6 ~~to be seriously mentally ill, it shall order the respondent~~  
 7 ~~detained at a mental health facility for examination and~~  
 8 ~~treatment not exceeding seventy two (72) hours. However,~~  
 9 ~~the court may dismiss the petition if the respondent agrees~~  
 10 ~~to accept voluntary treatment or admission to a mental~~  
 11 ~~health facility. The respondent shall be present unless his~~  
 12 ~~presence has been waived as provided in 38-1304(2), and he~~  
 13 ~~shall be represented by counsel at all stages of the trial.~~  
 14 ~~The trial shall be limited to the determination of whether~~  
 15 ~~or not the respondent is seriously mentally ill within the~~  
 16 ~~meaning set forth in this chapter. The standard of proof in~~  
 17 ~~any hearing held pursuant to this section is proof beyond a~~  
 18 ~~reasonable doubt with respect to any physical facts or~~  
 19 ~~evidence and clear and convincing evidence as to all other~~  
 20 ~~matters. Mental disorder, EXCEPT THAT MENTAL DISORDERS shall~~  
 21 ~~be evidenced to a reasonable medical certainty; imminent~~  
 22 ~~threat of self-inflicted injury or injury to others shall be~~  
 23 ~~evidenced by overt acts, sufficiently recent in time as to~~  
 24 ~~be material and relevant as to the respondent's present~~  
 25 ~~condition. The professional person appointed by the court~~

1 shall be present for the trial and subject to  
 2 cross-examination. The trial shall be governed by the  
 3 Montana rules of civil procedure except that, if tried by a  
 4 jury, at least two-thirds of the jurors must concur on a  
 5 finding that the patient is seriously mentally ill. The  
 6 court may order the trial closed to the public for the  
 7 protection of the respondent. If, upon trial, it is  
 8 determined that the patient is not seriously mentally ill  
 9 within the meaning of this chapter, he shall be discharged  
 10 and the petition dismissed.

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. The court, upon the showing of good cause and~~  
 15 ~~when it is in the best interests of the respondent, may~~  
 16 ~~order a change of venue."~~

17 Section 6. Section 38-1306, R.C.M. 1947, is amended to  
 18 read as follows:

19 "38-1306. ~~Petition for commitment-----trial-----~~  
 20 ~~determination of court. Posttrial disposition -- petition~~  
 21 ~~for extension. (1) If in the opinion of the professional~~  
 22 ~~person in charge of the patient the person detained under~~  
 23 ~~the provisions of section 38-1305 does not require further~~  
 24 ~~evaluation or treatment he shall be released within~~  
 25 ~~seventy two (72) hours. If in the opinion of the~~

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

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

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

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

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

1 reasonable doubts. Any court may order a hearing closed to  
2 the public for the protection of the respondent.

3 ~~(5)(1)~~ (a) If, upon hearing, it is determined that the  
4 patient is not seriously mentally ill within the meaning of  
5 this act, he shall be discharged and the petition of the  
6 professional person dismissed. If it is determined that the  
7 patient respondent is seriously mentally ill within the  
8 meaning of this act chapter the court shall hold a posttrial  
9 disposition hearing. The disposition hearing shall be held  
10 within 5 days (including Saturdays, Sundays, and holidays  
11 unless the fifth day falls on a Saturday, Sunday, or  
12 holiday), during which time the court may order further  
13 evaluation and treatment of the respondent. At the  
14 conclusion of the disposition hearing, the court shall:

15 ~~(i)~~ (i) commit the patient respondent to a facility for  
16 a period of not more than ~~three~~(3) months;

17 ~~(ii)~~ (ii) order the patient respondent to be placed in  
18 the care and custody of his relative or guardian or some  
19 other appropriate place other than an institution;

20 ~~(iii)~~ (iii) order outpatient therapy; or

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

23 (b) No treatment ordered pursuant to this subsection  
24 shall may affect the patient's respondent's custody for a  
25 period of more than ~~three~~(3) months.

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

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

22 ~~(3)~~ (3) Not less than ~~two~~(2) calendar weeks prior to  
23 the end of the ~~three~~(3)-month 3-month period of detention,  
24 the professional person in charge of the patient AT THE  
25 PLACE OF DETENTION may petition the court for extension of

1 the detention period. The petition shall be accompanied by  
 2 a written report and evaluation of the patient's mental and  
 3 physical condition. The report shall describe any tests and  
 4 evaluation devices which have been employed in evaluating  
 5 the patient, the course of treatment which has been  
 6 undertaken for the patient, and the future course of  
 7 treatment anticipated by the professional person. Upon the  
 8 filing of the petition, the court shall give written notice  
 9 of the filing of the petition to the patient, his next of  
 10 kin, if reasonably available, the responsible person  
 11 appointed by the court, and to the patient's counsel. If  
 12 any person so notified requests a hearing prior to the  
 13 termination of the previous detention authority, the court  
 14 shall immediately set a time and place for such a hearing on  
 15 a date not more than ten-~~(10)~~ days from the receipt of the  
 16 request and notify the same people including the  
 17 professional person in charge of the patient. ~~IF A HEARING~~  
 18 ~~IS NOT REQUESTED, THE COURT SHALL ENTER AN ORDER OF~~  
 19 ~~COMMITMENT FOR NOT TO EXCEED 6 MONTHS. IF A HEARING IS NOT~~  
 20 ~~REQUESTED, THE COURT SHALL ENTER AN ORDER OF COMMITMENT FOR~~  
 21 ~~A PERIOD NOT TO EXCEED 6 MONTHS.~~ Procedure on the petition  
 22 for extension, when a hearing has been requested, shall be  
 23 the same in all respects, as the procedure on the petition  
 24 for the original three-~~(3)~~-month 1-month commitment except  
 25 the patient ~~shall~~ is not be entitled to trial by jury. The

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

22 ~~(7)(4)~~ Further extensions may be obtained under the  
 23 same procedure described in subsection ~~(6)(3)~~ of this  
 24 section except that the patient's custody ~~shall~~ may not be  
 25 affected for more than one-~~(1)~~ year, without a renewal of



1 the commitment under the procedures set forth in subsection  
2 ~~(6)(3)~~ of this section, including a statement of the  
3 findings required by subsection ~~(6)(3)~~.

4 ~~(8)(5)~~ At any time during the patient's commitment the  
5 court may on its own initiative or upon application of the  
6 professional person in charge of the patient, the patient,  
7 his next of kin, his attorney, or the responsible person  
8 appointed by the court, order the patient to be placed in  
9 the care and custody of relatives or guardians or to be  
10 provided outpatient therapy or other appropriate placement  
11 or treatment."

12 Section 7. Section 38-1307, R.C.M. 1947, is amended to  
13 read as follows:

14 "38-1307. 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 AND TREATED until the next regular business day.

1 At that time, the professional person shall ~~either cause the~~  
2 ~~county attorney to file the petition provided for in section~~  
3 ~~38-1305 or shall~~ release the detained person or file his  
4 findings with the county attorney who, if he determines  
5 probable cause to exist, shall file the petition provided  
6 for in 38-1305 in the county of the respondent's residence.  
7 In either case, the professional person shall file a report  
8 with the court explaining his actions.

9 ~~(3) When the petition is filed, after an emergency~~  
10 ~~detention, the court may order the respondent detained for~~  
11 ~~the amount of time necessary for a professional person to~~  
12 ~~conduct the examination and inquiry provided for in section~~  
13 ~~38-1305 and to report his findings and recommendations to~~  
14 ~~the court. In no case shall such detention exceed~~  
15 ~~twenty-four (24) hours from the time of the filing of the~~  
16 ~~petition. Saturday, Sunday, and legal holidays shall not~~  
17 ~~be included in computing the twenty-four (24) hour period.~~  
18 ~~The court may also order the respondent detained during the~~  
19 ~~seventy-two (72) hour evaluation and treatment period if~~  
20 ~~ordered, and through the period of the hearing on initial~~  
21 ~~commitment, if held. No period of detention shall be~~  
22 ~~ordered by the court pursuant to this section unless the~~  
23 ~~court finds that such detention is required in the interest~~  
24 ~~of public safety or the life or safety of the respondent.~~  
25 ~~An order of detention shall include a statement of the~~

1 ~~factuel-basis-for-the-order.~~  
 2 ~~(4)--Any-person-detained-pursuant-to-this-section-shall~~  
 3 ~~be-detained-in-the-least-restrictive-environment-required-to~~  
 4 ~~protect-the-life-and-physical-safety-of-the-person-detained~~  
 5 ~~or-of-members-of-the-public. Whenever possible, a person~~  
 6 ~~detained-pursuant-to-this-section-shall-be-detained-in-a~~  
 7 ~~mental-health-facility. A person may be detained in a jail~~  
 8 ~~or-other-correctional-facility-only-if-no-mental-health~~  
 9 ~~facility-is-available-or-if-the-available-mental-health~~  
 10 ~~facilities-are-inadequate-to-protect-the-person-detained-and~~  
 11 ~~the-public. As soon as a mental health facility becomes~~  
 12 ~~available-or-the-situation-has-changed-sufficiently-that-an~~  
 13 ~~available-mental-health-facility-is-adequate-for--the~~  
 14 ~~protection-of--the--person-detained-and-of-the-public, then~~  
 15 ~~the-detained-person-shall-be-transferred-from--the--jail--or~~  
 16 ~~correctional--facility-to-the-mental-health-facility. In no~~  
 17 ~~case--shall--a--person--be--detained--in--a--jail--or--other~~  
 18 ~~correctional--facility-pursuant-to-this-section-for-a-longer~~  
 19 ~~period-of-time-than-is-required-for-the-county-attorney-to~~  
 20 ~~file-a-petition-and-for-a-professional-person-to-complete~~  
 21 ~~his-initial-examination-and-inquiry-and-report-his-findings~~  
 22 ~~to-the-court.~~  
 23 (5)(3) The county attorney of any county may make  
 24 arrangements with any federal, state, regional, or private  
 25 mental facility or with a mental health facility in any

1 county for the detention of persons held pursuant to this  
 2 section."  
 3 Section 8. Section 38-1308, R.C.M. 1947, is amended to  
 4 read as follows:  
 5 "38-1308. Outpatient care -- conditional release. (1)  
 6 When<sub>2</sub> in the opinion of the professional person in charge of  
 7 a mental health facility providing involuntary treatment,  
 8 the committed person can be appropriately served by  
 9 outpatient care prior to the expiration of the period of  
 10 commitment, then such outpatient care may be required as a  
 11 condition for early release for a period which, when added  
 12 to the inpatient treatment period, shall ~~may~~ not exceed the  
 13 period of commitment. If the mental health facility  
 14 designated to provide outpatient care is other than the  
 15 facility providing involuntary treatment, the outpatient  
 16 facility so designated must agree in writing to assume such  
 17 responsibility.  
 18 (2) The mental health facility designated to provide  
 19 outpatient care or the professional person in charge of the  
 20 patient's case may modify the conditions for continued  
 21 release when such ~~the~~ modification is in the best interest  
 22 of the patient. This includes the authorization to transfer  
 23 the patient to another mental health facility designated to  
 24 provide outpatient care provided the transfer is in the best  
 25 interest of the patient and the outpatient facility so

1 designated agrees in writing to assume responsibility.  
 2 Notice of an intended transfer shall be given to the  
 3 professional person in charge of the mental health facility  
 4 that provided the involuntary treatment.

5 (3) If the mental health facility designated to  
 6 provide outpatient care determines that a conditionally  
 7 released person is failing to adhere to the terms and  
 8 conditions of his release, and because of that failure has  
 9 become a substantial danger to himself or other persons,  
 10 then, upon notification by the mental health facility  
 11 designated to provide outpatient care, or on his own motion,  
 12 the professional person in charge of the patient's case may  
 13 order that the conditionally released person be apprehended  
 14 and returned to the facility from which he was conditionally  
 15 released. The professional person in charge of the patient's  
 16 case may modify or rescind ~~such the~~ order at any time. The  
 17 professional person shall mail or deliver notice to the  
 18 person detained, his attorney, if any, and his guardian or  
 19 conservator, if any, his next of kin, if known, and the  
 20 responsible person appointed by the court. The sheriff of  
 21 the county where the mental health facility is located and  
 22 from which the patient is being transferred has the duty of  
 23 transporting a patient under the provisions of this section.

24 (4) The proceedings set forth in subsection (3) of  
 25 this section may be initiated by the professional person in

1 charge of the patient's case on the same basis set forth  
 2 therein without the professional person requiring or  
 3 ordering the apprehension and detention of the conditionally  
 4 released person.

5 ~~Upon expiration of the period of commitment, or when~~  
 6 ~~the patient is released from outpatient care, notice in~~  
 7 ~~writing to the court which committed the patient for~~  
 8 ~~treatment shall be provided by the professional person in~~  
 9 ~~charge of the patient.~~

10 (5) Notice in writing to the court which committed the  
 11 patient for treatment AND THE COUNTY ATTORNEY WHO INITIATED  
 12 THE ACTION shall be provided by the professional person in  
 13 charge of him at least 5 days prior to his release from  
 14 commitment or outpatient care."

15 Section 9. Section 38-1309, R.C.M. 1947, is amended to  
 16 read as follows:

17 "38-1309. Right to counsel and appeal — examination  
 18 of respondent — records. (1) The person alleged to be  
 19 seriously mentally ill ~~shall have~~ has the right to be  
 20 present at any hearing or trial. If he has no attorney, the  
 21 judge shall appoint an ~~attorney one~~ to represent him at  
 22 either the hearing or the trial, or both, who shall be  
 23 compensated from the public funds of the county where the  
 24 respondent resides. ~~if the court determines that the~~  
 25 ~~respondent is financially unable to employ an attorney, the~~

1 ~~court shall appoint counsel who shall be compensated from~~  
 2 ~~the public funds of the county where the respondent resides.~~  
 3 The county of residence shall also pay all precommitment  
 4 expenses including transportation to a mental health  
 5 facility incurred in connection with the detention,  
 6 examination, and precommitment custody of the respondent.  
 7 The fact that a person is examined, hospitalized, or  
 8 receives medical, psychological, or other mental health  
 9 treatment pursuant to this chapter does not relieve a third  
 10 party from a contractual obligation to pay for the cost of  
 11 the examination, hospitalization, or treatment.

12 (2) The respondent or the responsible person appointed  
 13 by the court may secure an attorney of his own choice and at  
 14 his own expense to represent the respondent. The respondent,  
 15 his attorney, or the responsible person appointed by the  
 16 court may secure a professional person of his own choice to  
 17 examine the respondent and to testify at the hearing before  
 18 the court or jury as to the 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 ~~the~~ examination, the court shall appoint a professional  
 23 person other than the professional person requesting the  
 24 commitment to perform the examination. Whenever possible,  
 25 the court shall allow the respondent a reasonable choice of

1 an 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 the~~ order by the  
 7 court at the conclusion of any hearing ~~as a the~~ result of  
 8 which such an order may be entered.

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

19 Section 10. Section 38-1310, R.C.M. 1947, is amended  
 20 to read as follows:

21 \*38-1310. Transfer or commitment to facility --  
 22 procedure. No person who is in the custody of the department  
 23 of institutions for any purpose other than treatment of  
 24 severe mental illness ~~shall may~~ be transferred or committed  
 25 to a mental health facility for more than 10 days unless

1 such ~~the~~ transfer or commitment is effected according to the  
 2 procedures set out in this ~~act chapter~~. ~~However, proceedings~~  
 3 ~~for involuntary commitment may be commenced in the county of~~  
 4 ~~the mental health facility where the person is, in the~~  
 5 ~~county of the institution from which the person was~~  
 6 ~~transferred to the mental health facility, or in the county~~  
 7 ~~of the person's residence. Notice of a transfer shall be~~  
 8 ~~given immediately to any assigned counsel at the mental~~  
 9 ~~health facility and to the parents of minors, guardians,~~  
 10 ~~responsible persons, or conservators, as the case may be."~~

11 Section 11. Section 38-1313, R.C.M. 1947, is amended  
 12 to read as follows:

13 "38-1313. Civil and legal rights of person committed.

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

20 (2) Whenever any a person is committed to a mental  
 21 health facility for a period of ~~three-<sup>(3)</sup>~~ months or longer,  
 22 the court ordering the commitment may make an order stating  
 23 specifically any legal rights which are denied the  
 24 respondent and any legal disabilities which are imposed on  
 25 him. As part of its order, the court may appoint a person

1 to act as conservator of the respondent's property. Any  
 2 conservatorship created pursuant to this section ~~shall~~  
 3 ~~terminate~~ terminates upon the conclusion of the involuntary  
 4 commitment if not sooner terminated by the court. A  
 5 conservatorship or guardianship extending beyond the period  
 6 of involuntary commitment may not be created except  
 7 according to the procedures set forth under Montana law for  
 8 the appointment of conservators and guardians generally.

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

22 (4) Any A person committed to a mental health facility  
 23 prior to ~~the effective date of this act~~ ~~shall~~ enjoy July 1,  
 24 1975, enjoys all the rights and privileges of a person  
 25 committed after ~~the effective~~ that ~~date of this act.~~

1 (5) No person who has received evaluation or treatment  
 2 under any ~~of the~~ provisions of this ~~act shall~~ chapter may be  
 3 discriminated against because of such ~~that~~ status. For  
 4 purposes of this section, "discrimination" means giving any  
 5 unfavorable weight to the fact of hospitalization or  
 6 outpatient care and treatment unrelated to a person's  
 7 present capacity to meet standards applicable to all  
 8 persons. The fact that a person has received evaluation and  
 9 treatment, whether voluntarily or involuntarily, at any a  
 10 mental health facility ~~shall~~ may not be admitted into  
 11 evidence in any a subsequent proceeding for involuntary  
 12 commitment or for the appointment of a guardian or  
 13 conservator ~~unless it has probative value in the formulation~~  
 14 ~~of an opinion by a professional person as to the~~  
 15 ~~determination of serious mental illness or a prescribed~~  
 16 ~~course of treatment and the court determines that the~~  
 17 ~~probative value outweighs the prejudice. IT IS NECESSARY TO~~  
 18 ~~A DETERMINATION OF THE PRESENT CONDITION OF THE RESPONDENT~~  
 19 ~~OR THE PROGNOSIS FOR TREATMENT IN THE PRESENT CASE AND THE~~  
 20 ~~JUDGE DETERMINES THAT THE NEED FOR THE EVIDENCE OUTWEIGHS~~  
 21 ~~THE PREJUDICIAL EFFECT OF ITS ADMISSION."~~

22 Section 12. Section 38-1322, R.C.M. 1947, is amended  
 23 to read as follows:

24 "38-1322. Treatment procedures -- restrictions.  
 25 Patients have a right not to be subjected to treatment

1 procedures such as lobotomy, aversive reinforcement  
 2 conditioning, or other unusual or hazardous treatment  
 3 procedures without their express and informed consent after  
 4 consultation with counsel, the legal guardian, if any, the  
 5 responsible person appointed by the court, and any other  
 6 interested party of the patient's choice. At least one ~~of~~  
 7 of those consulted must consent to the treatment ~~along with~~  
 8 ~~the patient's counsel.~~ If there is no responsible person or  
 9 if the responsible person appointed by the court is no  
 10 longer available, then a responsible person who is in no way  
 11 connected with the facility or with the department of  
 12 institutions shall be appointed before any such treatment  
 13 procedure can be employed. The facility shall send notice  
 14 of intent to employ extraordinary treatment procedures to  
 15 the patient, his next of kin, if known, the legal guardian,  
 16 if any, the attorney who most recently represented him, and  
 17 the responsible person appointed by the court at least ten  
 18 ~~ten~~ days prior to the commencement of such ~~the~~  
 19 extraordinary treatment program."

20 Section 13. Section 38-1324, R.C.M. 1947, is amended  
 21 to read as follows:

22 "38-1324. Treatment plan for patient established. (1)  
 23 Each patient admitted as an inpatient to a mental health  
 24 facility ~~for a period of more than seventy-two (72) hours~~  
 25 shall have a comprehensive physical and mental examination

1 and review of behavioral status within ~~forty-eight (48)~~  
2 hours after admission to the mental health facility.

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

10 (a) a statement of the nature of the specific problems  
11 and specific needs of the patient;

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

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

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

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

23 (f) criteria for release to less restrictive treatment  
24 conditions, and criteria for discharge; and

25 (g) a notation of any therapeutic tasks and labor to

1 be performed by the patient.

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

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

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

23 Section 14. Section 38-1325, R.C.M. 1947, is amended  
24 to read as follows:

25 "38-1325. Examination following commitment. No later

1 than ~~fifteen-(15)~~ 30 days after a patient is committed to a  
 2 mental health facility, the professional person in charge of  
 3 the facility, or his appointed, professionally qualified  
 4 agent, shall ~~examine~~ reevaluate the committed patient and  
 5 shall determine whether ~~the patient he~~ continues to require  
 6 commitment to the facility and whether a treatment plan  
 7 complying with this ~~act~~ chapter has been implemented. If  
 8 the 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. if for sound professional reasons a  
 13 treatment plan has not been implemented, this fact shall be  
 14 reported immediately to the professional person in charge of  
 15 the facility, the director of the department of  
 16 institutions, the mental disabilities board of visitors, and  
 17 the patient's counsel."

18 Section 15. Section 38-1328, R.C.M. 1947, is amended  
 19 to read as follows:

20 "38-1328. Records to be maintained. Complete patient  
 21 records shall be kept by the mental health facility and  
 22 shall be available to any professional person ~~or--attorney~~  
 23 authorized in writing by the patient and the board. The  
 24 records shall also be made available to any attorney charged  
 25 with representing the patient or any professional person

1 ~~charged with evaluating or treating the patient.~~ These  
 2 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 rather than~~ 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; and

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~~ 30-day review provided for in section  
4 38-1325."

5 Section 16. Section 38-1330, R.C.M. 1967, is amended  
6 to read as follows:

7 "38-1330. Mental disabilities board of visitors --  
8 creation and responsibilities. (1) The governor shall  
9 appoint a mental disabilities board of visitors. The board  
10 shall consist of five {5} persons representing but not  
11 limited to consumers, the ~~medical sciences~~ DOCTORS OF  
12 MEDICINE, and the behavioral sciences, at least three {3} of  
13 whom ~~shall~~ may not be professional persons and at least one  
14 {1} of whom shall be a representative of an organization  
15 concerned with the care and welfare of the mentally ill. No  
16 one may be a member of the board who is an A FULL-TIME agent  
17 or employee of the ~~ANY THE~~ department of ~~institutions~~ OR  
18 AGENCY OF THE STATE OF INSTITUTIONS or of ~~any a~~ mental  
19 health facility affected by this ~~act~~ chapter, EXCEPT THIS  
20 PROHIBITION DOES NOT AFFECT ANY EMPLOYEE OF A STATE COLLEGE  
21 OR UNIVERSITY. If a board of similar title and structure is  
22 created in any act concerning the treatment of the mentally  
23 retarded or developmentally disabled, then only one board  
24 shall be created to perform the functions ~~set out in~~ of both  
25 ~~acts~~ and the board so created shall include at least one {1}

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

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

11 (3) The board shall review all plans for experimental  
12 research involving persons admitted to any a 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 a mental health facility  
21 affected by this act ~~shall~~ ~~chapter may~~ be commenced unless  
22 it is 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 ~~chapter.~~ The

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

6 (5) The board shall annually insure that a treatment  
7 plan exists and is being implemented for each patient  
8 admitted or committed to a mental health facility under this  
9 act ~~chapter.~~ The board shall inquire concerning all use of  
10 restraints, isolation, or other extraordinary measures.

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

15 ~~(7) The board shall employ and be responsible for~~  
16 ~~full-time legal counsel at the Warm Springs state hospital,~~  
17 ~~whose responsibility shall be to act on behalf of all~~  
18 ~~patients at the institution. The board shall insure that~~  
19 ~~there is sufficient legal staff and facilities to insure~~  
20 ~~availability to all patients and shall require that the~~  
21 ~~appointed counsel periodically interview every patient and~~  
22 ~~examine his files and records. The board may employ~~  
23 ~~additional legal counsel for representation of patients in a~~  
24 ~~similar manner at any other mental health facility having~~  
25 ~~inpatient capability. The expense of the legal counsel~~

1 ~~employed by the board shall be paid by the department of~~  
 2 ~~institutions at a rate commensurate with the compensation~~  
 3 ~~paid to the legal counsel employed by other state agencies.~~

4 {7}(8) If the board believes that any facility is  
 5 failing to comply with the provisions of this act chapter in  
 6 regard to its physical facilities or its treatment of any  
 7 patient, it shall report its findings at once to THE  
 8 PROFESSIONAL PERSON IN CHARGE OF THE FACILITY AND THE  
 9 DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS AND, IF  
 10 APPROPRIATE AFTER WAITING A REASONABLE TIME FOR A RESPONSE  
 11 FROM SUCH PROFESSIONAL PERSON, THE BOARD MAY NOTIFY the next  
 12 of kin or guardian of any patient involved, the responsible  
 13 person appointed by the court for any patient involved, the  
 14 ~~professional person in charge of the facility, the director~~  
 15 ~~of the department of institutions,~~ and the district court  
 16 which has jurisdiction over the facility.

17 {8}(9) The mental disabilities board of visitors shall  
 18 report annually to the governor and shall report to each  
 19 session of the Montana legislature concerning the status of  
 20 the mental health facilities and treatment programs which it  
 21 has inspected.

22 {9}(10) The mental disabilities board of visitors shall  
 23 be attached to the governor for administrative purposes. It  
 24 may employ staff for the purpose of carrying out its duties  
 25 as set out in this act chapter."

1 Section 17. Section 38-1331, R.C.M. 1947, is amended  
 2 to read as follows:

3 "38-1331. ~~Standards for treatment to be known~~  
 4 Statement of rights to be furnished and posted. Each patient  
 5 ~~and his next of kin, guardian, conservator, or the~~  
 6 ~~responsible person appointed by the court~~ shall promptly  
 7 upon the patient's his admission receive, in language he  
 8 understands, a written notice, ~~statement in language he~~  
 9 ~~understands of all the above standards for adequate~~  
 10 ~~treatment of all of his rights under this chapter, including~~  
 11 the right to treatment, the right to the development of a  
 12 treatment plan, and the right to and the availability of  
 13 legal counsel, and the rules for patient labor. In addition  
 14 a copy of ~~all the above standards~~ the foregoing statement  
 15 shall be posted in each ward."

16 SECTION 18. SECTION 38-1232, R.C.M. 1947, IS AMENDED  
 17 TO READ AS FOLLOWS:

18 "38-1232. Mental disabilities board of visitors --  
 19 duties. (1) The governor shall appoint a mental disabilities  
 20 board of visitors. The board shall consist of five {5}  
 21 persons representing but not limited to consumers, doctors  
 22 of medicine, and the behavioral sciences, at least three  
 23 {3} of whom ~~shall~~ may not be professional persons and at  
 24 least one {1} of whom shall be a representative of an  
 25 organization concerned with the care and welfare of the

1 developmentally disabled. No one may be a member of the  
 2 board who is on a full-time agent or employee of the any  
 3 department of institutions or agency of the state or of ~~any~~  
 4 residential facility affected by this act, except this  
 5 prohibition does not affect any employee of a state college  
 6 or university. If a board of similar title and structure is  
 7 created in any act concerning the treatment of the mentally  
 8 ill, then only one ~~(1)~~ board shall be created to perform the  
 9 functions ~~set-out-in~~ of both ~~acts~~ and the board so created  
 10 shall include at least one ~~(1)~~ representative of an  
 11 organization concerned with the care and welfare of the  
 12 mentally ill and one representative of an organization  
 13 concerned with the care and welfare of the mentally retarded  
 14 or developmentally disabled.

15 (2) The mental disabilities board of visitors shall be  
 16 an independent board of inquiry and review to assure that  
 17 the treatment of all persons admitted to a residential  
 18 facility is humane and decent and meets the requirements set  
 19 forth in this act.

20 The board shall review all plans for experimental  
 21 research or hazardous treatment procedures involving persons  
 22 admitted to any residential facility to assure that the  
 23 research project is humane and not unduly hazardous and that  
 24 it complies with the principles of the statement on the use  
 25 of human subjects for research of the American association

1 on mental deficiency and with the principles for research  
 2 involving human subjects required by the United States  
 3 department of health, education and welfare. No  
 4 experimental research project involving persons admitted to  
 5 any residential facility affected by this act ~~shall~~ may be  
 6 commenced unless it is approved by the mental disabilities  
 7 board of visitors. The board shall investigate all cases of  
 8 alleged mistreatment of a resident.

9 (3) The board shall, at least annually, inspect every  
 10 residential facility which is providing a course of  
 11 residential habilitation and treatment to any person  
 12 pursuant to this act. The board shall inspect the physical  
 13 plant, including residential, recreational, dining, and  
 14 sanitary facilities. It shall visit all wards and treatment  
 15 or habilitation areas. The board shall inquire concerning  
 16 all habilitation programs being implemented by the  
 17 institution.

18 (4) The board shall inspect the file of each person  
 19 admitted to a residential facility pursuant to this act to  
 20 insure that a habilitation plan exists and is being  
 21 implemented. The board shall inquire concerning all use of  
 22 restraints, isolation or other extraordinary measures.

23 (5) The board may assist any patient at a residential  
 24 facility in resolving any grievance he may have concerning  
 25 his admission or his course of treatment and habilitation in

1 the facility.

2 (6) If the board believes that any facility is failing  
3 to comply with the provisions of this act in regard to its  
4 physical facilities or its treatment of any resident, it  
5 shall report its findings at once to the professional person  
6 in charge of the facility and the director of the department  
7 of institutions. If appropriate after waiting a reasonable  
8 time for a response from such professional person, the board  
9 may notify the parents or guardian of any patient involved,  
10 the next of kin, if known, the responsible person appointed  
11 by the court for any patient involved, ~~the professional~~  
12 ~~person in charge of the facility, the director of the~~  
13 ~~department of institutions~~ and the district court which has  
14 jurisdiction over the facility.

15 (7) The mental disabilities board of visitors shall  
16 report annually to the governor and shall report to each  
17 session of the Montana legislature concerning the status of  
18 the residential facilities and habilitation programs which  
19 it has inspected.

20 (8) The mental disabilities board of visitors shall be  
21 attached to the governor for administrative purposes. It  
22 may employ staff for the purpose of carrying out its duties  
23 as set out in this act."

24 SECTION 19, REPEALER, SECTION 80-1908, R.C.M. 1947,  
25 IS REPEALED.

-End-

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