

Senate BILL NO. *417*
Dow

1
2 INTRODUCED BY _____
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE THE
5 PROCEDURES FOR CIVIL COMMITMENT UNDER TITLE 38, CHAPTER 13,
6 R.C.M. 1947; TO PROVIDE FOR COURT-ORDERED TREATMENT OF
7 PERSONS NOT SERIOUSLY MENTALLY ILL BUT SUFFERING FROM A
8 MENTAL DISORDER AND IN NEED OF TREATMENT; AND TO AMEND
9 SECTIONS 38-1302 AND 38-1304 THROUGH 38-1307, R.C.M. 1947."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12 Section 1. Section 38-1302, R.C.M. 1947, is amended to
13 read as follows:

14 "38-1302. Definitions. As used in this act ~~chapter~~
15 the following definitions apply:

- 16 (1) "Board" means the mental disabilities board of
17 visitors created by this act ~~chapter~~.
- 18 (2) "Court" means ~~the a~~ district court of the state of
19 Montana.
- 20 (3) "Department" means the department of institutions.
- 21 (4) "Emergency situation" means a situation in which
22 any person is in imminent danger of death or serious bodily
23 harm from the activity of a person who appears to be
24 seriously mentally ill.
- 25 (5) "Mental disorder" means any organic, mental, or

1 emotional impairment which has substantial adverse effects
2 on an individual's cognitive or volitional functions.

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

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

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

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) "Respondent" means a person alleged in a petition
25 filed pursuant to this act ~~chapter~~ to be seriously mentally

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1 ~~ill or to be suffering from a mental disorder.~~
 2 (12) "Responsible person" means any person willing and
 3 able to assume responsibility for a seriously mentally ill
 4 ~~person or a person suffering from a mental disorder~~ or a
 5 person alleged to be seriously mentally ill ~~or to be~~
 6 ~~suffering from a mental disorder~~, including next of kin; the
 7 person's conservator or legal guardian, if any;
 8 representatives of a charitable or religious organization,
 9 or any other person appointed by the court to perform the
 10 functions of a "responsible person" set out in this act
 11 ~~chapter~~. Only one person shall at any one time be the
 12 "responsible person" within the meaning of this act ~~chapter~~.
 13 In appointing a responsible person, the court shall consider
 14 the preference of the respondent. The court may, at any
 15 time for good cause shown, change its designation of the
 16 "responsible person".
 17 (13) "Seriously mentally ill" means suffering from a
 18 mental disorder which has resulted in self-inflicted injury
 19 or injury to others, or the imminent threat thereof; or
 20 which has deprived the person afflicted of the ability to
 21 protect his life or health. No person may be involuntarily
 22 committed to a mental health facility ~~nor detained for~~
 23 ~~evaluation and treatment~~ because he is an epileptic,
 24 mentally deficient, mentally retarded, senile or suffering
 25 from a mental disorder unless the condition causes the

1 person to be seriously mentally ill within the meaning of
 2 this act ~~chapter~~."
 3 Section 2. Section 38-1304, R.C.M. 1947, is amended to
 4 read as follows:
 5 "38-1304. Rights and waiver of rights. (1) Whenever a
 6 person is involuntarily detained, ~~or is examined by a~~
 7 ~~professional person pursuant to section 38-1305~~, or is
 8 notified that he will be the subject of a hearing pursuant
 9 to ~~section 38-1305 or 38-1306~~, the person shall be informed
 10 of his constitutional rights and his rights under this act
 11 ~~chapter~~. A person may waive his procedural rights, provided
 12 that the waiver is knowingly and intentionally made. ~~The~~
 13 ~~right to counsel in a hearing held pursuant to section~~
 14 ~~38-1306 may not be waived~~. The right to treatment provided
 15 for in this act ~~chapter~~ may not be waived.
 16 (2) ~~In the case of a person who has been detained for~~
 17 ~~a seventy-two (72) hour inpatient evaluation and treatment~~
 18 ~~or for a longer period of time~~, a waiver of rights can be
 19 knowingly and intentionally made only with the concurrence
 20 of the patient's attorney or of the responsible person
 21 appointed by the court. The right of the respondent to be
 22 physically present at a hearing may also be waived by ~~his~~
 23 ~~attorney and the responsible person with the concurrence of~~
 24 ~~the professional person and the judge~~ upon a finding
 25 supported by facts that:

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

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

7 (3) In the case of a minor, the waiver of rights can
8 be ~~knowingly and intentionally~~ made:

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

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

13 (c) when the minor is over the age of ~~twelve~~ {12} and
14 ~~the minor is~~ and his parents do not agree, ~~only~~ the minor
15 can make an effective waiver of his rights ~~and only~~ with
16 advice of counsel.

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

20 ~~(4)(5)~~ In addition to any other rights which may be
21 guaranteed by the constitution of the United States ~~and of~~
22 ~~or~~ this state, by the laws of this state, or by this act
23 ~~chapter~~, any a person who is involuntarily detained or
24 against whom a petition is filed pursuant to this act
25 ~~chapter~~ has the following rights:

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

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

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

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

9 (e) the right to remain silent;

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

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

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

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

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

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

25 "38-1305. Petition ~~alleging person as seriously~~

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

8 (2) The petition shall contain:

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

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

14 (c) the purported facts supporting the allegation of
 15 ~~mental illness that the respondent is seriously mentally ill~~
 16 ~~or is suffering from a mental disorder;~~

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

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

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

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

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

11 (3) Upon presentation to the court by the county
 12 attorney, the court shall immediately consider the petition
 13 with or without a hearing to determine if there is ~~probable~~
 14 ~~reasonable~~ cause to believe that the respondent is seriously
 15 mentally ill ~~or is suffering from a mental disorder~~. If the
 16 court finds no such ~~probable~~ ~~reasonable~~ cause, the petition
 17 shall be discharged. If the court finds ~~probable~~ ~~reasonable~~
 18 cause, ~~it shall submit the petition to a professional person~~
 19 ~~for evaluation~~ ~~the respondent shall be brought immediately~~
 20 ~~before the court and advised of his constitutional rights,~~
 21 ~~his rights under this chapter, and the substantive effect of~~
 22 ~~the petition. The respondent may waive his right to be~~
 23 ~~represented by counsel only if such a waiver is knowingly~~
 24 ~~and intentionally made. If the respondent is indigent or~~
 25 ~~unwilling to retain counsel, the court shall appoint counsel~~

1 ~~to represent him unless the right to be represented by~~
 2 ~~counsel has been properly waived. The court shall also~~
 3 ~~appoint a responsible person and set a date and time for a~~
 4 ~~hearing to determine if a 72-hour inpatient evaluation and~~
 5 ~~treatment of the respondent is necessary. The respondent may~~
 6 ~~waive the hearing upon the advice of counsel, or if he has~~
 7 ~~properly waived his right to be represented by counsel, the~~
 8 ~~respondent himself may waive the hearing. If the hearing is~~
 9 ~~waived, the court shall direct that the respondent be~~
 10 ~~detained at a mental health facility for evaluation and~~
 11 ~~treatment not to exceed 72 hours. If probable cause is~~
 12 ~~found, the court may appoint a responsible person to protect~~
 13 ~~the interests of the respondent. The responsible person~~
 14 ~~shall be notified as soon as possible that a petition has~~
 15 ~~been filed. Notice of the petition and the finding of~~
 16 ~~probable cause shall be hand delivered or mailed to the~~
 17 ~~respondent and to the attorney, the person or persons~~
 18 ~~legally responsible for care, support, and maintenance of~~
 19 ~~the respondent, next of kin identified in the petition, and~~
 20 ~~the person or persons identified by the county attorney as~~
 21 ~~possible responsible persons.~~

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

1 ~~professional person, the court may order the respondent to~~
 2 ~~submit to examination by a professional person at a time and~~
 3 ~~place designated by the court. The examination so ordered~~
 4 ~~shall not exceed a period of four (4) hours.~~

5 ~~(b) When the professional person first contacts the~~
 6 ~~respondent, before he begins any examination, he shall give~~
 7 ~~a copy of the petition to the respondent, and shall explain~~
 8 ~~to the respondent the nature of the proceeding and his~~
 9 ~~rights as set forth in the petition.~~

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

1 ~~recommendation shall be mailed or delivered to the~~
 2 ~~respondent, the next of kin, when known, any person~~
 3 ~~responsible for the care, support, and maintenance of the~~
 4 ~~respondent, any other person identified in the petition, and~~
 5 ~~the responsible person, if any, appointed by the court.~~
 6 ~~Notice shall include the date, time, and place of the~~
 7 ~~respondent's next appearance before the court.~~

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

1 ~~(7)(4)~~ The hearing shall be held before the court
 2 without a jury. The respondent may present such testimony
 3 and relevant documentary evidence as he, his counsel, or the
 4 responsible person or counsel desires. The county attorney
 5 shall represent the state. ~~The professional person who made~~
 6 ~~the recommendation shall be present in court and may be~~
 7 ~~cross-examined concerning his recommendation and his report.~~
 8 After a full hearing the court shall determine whether the
 9 respondent is seriously mentally ill or is suffering from a
 10 mental disorder within the definition provided herein
 11 meaning of this chapter. If the court finds the respondent
 12 is not seriously mentally ill or is not suffering from a
 13 mental disorder, he or she shall be discharged and the
 14 petition dismissed. If the court finds the respondent to be
 15 seriously mentally ill or suffering from a mental disorder,
 16 it shall order the respondent him detained at a mental
 17 health facility for examination and treatment not exceeding
 18 ~~seventy-two (72) hours~~. However, the court may dismiss the
 19 petition if the respondent agrees to accept voluntary
 20 treatment or admission to a mental health facility
 21 acceptable to the court.

22 ~~(8)(5)~~ Persons receiving evaluation and treatment
 23 pursuant to this section subsections (3) and (4) of this
 24 section shall be given a reasonable choice of an available
 25 professional person mental health facility qualified to

1 provide such services.

2 (6) If the respondent has voluntarily submitted or
 3 been ordered to submit to a 72-hour inpatient evaluation and
 4 treatment or has undergone a 72-hour emergency evaluation
 5 and treatment pursuant to 38-1307, the professional person
 6 in charge of him during the evaluation and treatment shall
 7 make a report to the court having jurisdiction over the
 8 respondent. A copy of the report shall also be made
 9 available to the respondent or the respondent's counsel, as
 10 well as the respondent's responsible person. The report
 11 shall describe the methods of evaluation and treatment used
 12 on the respondent and shall make a recommendation as to the
 13 need of the respondent for further treatment.

14 (7) If the report required to be made under subsection
 15 (6) of this section recommends that the respondent is not in
 16 need of further treatment, the petition shall be dismissed
 17 and the respondent released from further court supervision.
 18 If the report recommends that the respondent needs further
 19 treatment, he shall again be brought immediately before the
 20 court. The court shall set a date and time for a hearing to
 21 determine the need of the respondent for further treatment,
 22 including commitment to a mental health facility for a
 23 period not to exceed 3 months or any other method of
 24 treatment. The court shall advise the respondent of the
 25 possible outcome of the hearing and his right to trial by

1 jury on the matter. At any time prior to the date set for
 2 hearing, the patient or his counsel may request a jury
 3 trial, whereupon the time set for hearing shall be vacated
 4 and the matter set on the court's jury calendar at the
 5 earliest possible date. The respondent may waive the hearing
 6 upon the advice of his counsel, or if he has properly waived
 7 his right to be represented by counsel, the respondent
 8 himself may waive the hearing. If the hearing is waived, the
 9 court shall direct that the respondent be committed to a
 10 mental health facility for a period not to exceed 3 months
 11 or that the respondent undergo other methods of treatment
 12 acceptable to the court.

13 (8) The respondent shall be present and, unless
 14 counsel has been properly waived, represented by counsel at
 15 all stages of the hearing or trial. The sole question to be
 16 determined by the court or jury, as the case may be, is
 17 whether the respondent is seriously mentally ill or is
 18 suffering from a mental disorder within the meaning set
 19 forth in this chapter. The professional person who was in
 20 charge of the respondent during the 72-hour evaluation and
 21 treatment shall be present in court for the hearing or trial
 22 and subject to cross-examination. The trial shall be
 23 governed by the Montana rules of civil procedure except
 24 that, if tried by a jury, at least three-fourths of the
 25 jurors must concur on a finding that the respondent is

1 seriously mentally ill or is suffering from a mental
 2 disorder. The finding may be appealed to the Montana supreme
 3 court in the same manner as other civil matters. The
 4 standard of proof in the hearing or trial is proof beyond a
 5 reasonable doubt. The court may order the hearing or trial
 6 closed to the public for the protection of the respondent.

7 (9) (a) If, upon hearing or trial, it is determined
 8 that the respondent is not seriously mentally ill or is not
 9 suffering from a mental disorder within the meaning of this
 10 chapter, the petition shall be dismissed and the respondent
 11 released from further court supervision.

12 (b) If it is determined that the respondent is
 13 seriously mentally ill within the meaning of this chapter,
 14 the court shall:

15 (i) commit him to a mental health facility for a
 16 period of not more than 3 months;

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

20 (iii) order outpatient therapy; or

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

22 (c) If it is determined that the respondent is not
 23 seriously mentally ill within the meaning of this chapter
 24 but that he is suffering from a mental disorder and is in
 25 need of treatment, the court may:

1 (i) order outpatient therapy; or

2 (ii) make some other appropriate order for treatment.

3 (d) In no case may the respondent be committed to a
 4 mental health facility unless it is determined that he is
 5 seriously mentally ill within the meaning of this chapter.
 6 In determining which of the above alternatives to order, the
 7 court shall choose the least restrictive alternatives
 8 necessary to protect the respondent and the public and to
 9 permit effective treatment. The court shall consider and
 10 shall describe in its order what alternatives for treatment
 11 of the respondent are available, what alternatives were
 12 investigated, and why the investigated alternatives were not
 13 considered suitable. The court shall enter into the record a
 14 detailed statement of the facts upon which it found the
 15 respondent to be seriously mentally ill or to be suffering
 16 from a mental disorder and in need of treatment. No order
 17 under this subsection may affect the respondent's custody
 18 for more than 3 months."

19 Section 4. Section 38-1306, R.C.M. 1947, is amended to
 20 read as follows:

21 ~~"38-1306. Petition for commitment -- trial --~~
 22 ~~determination of court. Release from commitment -- petition~~
 23 ~~for extension. (1) If in the opinion of the professional~~
 24 ~~person in charge of the patient the person detained under~~
 25 ~~the provisions of section 38-1305 does not require further~~

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

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

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

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

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

1 other civil matters. The standard of proof in any hearing
2 held pursuant to this section shall be proof beyond a
3 reasonable doubt. Any court may order a hearing closed to
4 the public for the protection of the respondents.

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

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

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

16 (c) order outpatient therapy; or

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

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

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

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

17 (6)(2) Not ~~less~~ At least two (2) calendar weeks
18 prior to the end of the three (3) month 3-month period of
19 detention commitment, the professional person in charge of
20 the patient may petition the court for extension of the
21 detention commitment period. The petition shall be
22 accompanied by a written report and evaluation of the
23 patient's mental and physical condition. The report shall
24 describe any tests and evaluation devices which have been
25 employed in evaluating the patient, the course of treatment

1 which has been undertaken for the patient, and the future
 2 course of treatment anticipated by the professional person.
 3 Upon the filing of the petition, the court shall give
 4 written notice of the ~~its~~ filing of ~~the~~ petition to the
 5 patient, his next of kin, if reasonably available, the
 6 responsible person appointed by the court, and to the
 7 patient's counsel. If any person so notified requests a
 8 hearing prior to the termination of the previous ~~detention~~
 9 ~~commitment~~ authority, the court shall immediately set a time
 10 and place for such a hearing on a date not more than ten
 11 ~~(10)~~ days from the receipt of the request ~~petition~~ and shall
 12 notify the same people, including the professional person in
 13 charge of the patient.

14 ~~(3)~~ Procedure on the petition for extension shall be
 15 the same in all respects, as the procedure ~~on the petition~~
 16 ~~in the hearing~~ for the original ~~three (3)-month~~ ~~3-month~~
 17 commitment except ~~that~~ the patient ~~shall~~ ~~is~~ not be entitled
 18 to trial by jury. The hearing shall be held in the district
 19 court having jurisdiction over the facility in which the
 20 patient is detained unless otherwise ordered by the court.
 21 If upon the hearing the court finds ~~that~~ the patient ~~is~~ not
 22 seriously mentally ill within the meaning of this act
 23 ~~chapter, the patient he~~ shall be discharged and the petition
 24 dismissed. If the court finds that the patient continues to
 25 suffer from serious mental illness, the court shall order

1 commitment, custody in relatives, outpatient therapy, or
 2 other ~~order as set forth in subsection (5) of this section~~
 3 ~~treatment~~ except that no order ~~shall~~ ~~may~~ affect his custody
 4 for more than ~~six (6)~~ months. In its order, the court shall
 5 describe what alternatives for treatment of the patient are
 6 available, what alternatives were investigated, and why the
 7 investigated alternatives were not deemed suitable. The
 8 court shall not order continuation of an alternative which
 9 does not include a comprehensive, individualized plan of
 10 treatment for the patient. Any court order for the
 11 continuation of an alternative shall include a specific
 12 finding that a comprehensive, individualized plan of
 13 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 5. Section 38-1307, R.C.M. 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 for up to 72~~
18 ~~hours for emergency evaluation and treatment.~~ At the end of
19 that time, the professional person shall either cause the
20 county attorney to file the petition for treatment provided
21 for in section 38-1305 or shall release the detained person.
22 ~~In either case if the detained person is released,~~ the
23 professional person shall file a report with the court
24 explaining his actions.

25 (3) If a petition for treatment under 38-1305 is

1 filed, no further 72-hour evaluation and treatment of the
2 respondent may be made and, to that extent, the provisions
3 of subsections (3), (4), and (5) of 38-1305 do not apply.
4 The professional person in charge of the respondent during
5 his 72-hour emergency evaluation and treatment shall make a
6 report to the court having jurisdiction over respondent as
7 provided in 38-1305(6). The respondent shall be brought
8 immediately before the court and advised of his
9 constitutional rights, his rights under this chapter, and
10 the substantive effect of the petition. The respondent may
11 waive his right to be represented by counsel only if such a
12 waiver is knowingly and intentionally made. If the
13 respondent is indigent or unwilling to retain counsel, the
14 court shall appoint counsel to represent him unless the
15 right to be represented by counsel has been properly waived.
16 The court shall also appoint a responsible person and set a
17 date and time for a hearing to determine the need of the
18 respondent for further treatment, including commitment to a
19 mental health facility for a period not to exceed 3 months
20 or any other method of treatment. The respondent may request
21 a jury trial or may waive the hearing, as provided by
22 38-1305(7). The hearing or trial shall be conducted as
23 provided by 38-1305(8), and the court shall dispose of the
24 case as provided by 38-1305(9).

25 {3}(4) When the a petition for treatment under 38-1305

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

21 ~~44~~(5) Any A person detained pursuant to this section
 22 shall be detained in the least restrictive environment
 23 required to protect the his life and physical safety of the
 24 person detained or of to protect members of the public.
 25 Whenever possible, a person detained pursuant to this

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

17 (5)(6) The county attorney of any county may make
 18 arrangements with any federal, state, regional, or private
 19 mental facility or with a mental health facility in any
 20 county for the detention of persons held pursuant to this
 21 section."

-End-