

CHAPTER NO. 547

SENATE BILL NO. 393

INTRODUCED BY TOWE

IN THE SENATE

February 6, 1979	Introduced and referred to Committee on Judiciary.
February 19, 1979	Committee recommend bill do pass as amended. Report adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, do pass.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 24, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 26, 1979	Second reading, concurred in.
March 27, 1979	Third reading, concurred in as amended.

IN THE SENATE

March 28, 1979	Returned from second house. Concurred in as amended.
March 30, 1979	Second reading, amendments adopted.

March 31, 1979

Third reading, amendments
adopted. Sent to enrolling.

Reported correctly enrolled.

1 *Spate* BILL NO. 393
 2 INTRODUCED BY _____
 3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
 5 LAWS RELATING TO THE TREATMENT OF THE MENTALLY ILL; AMENDING
 6 SECTIONS 53-21-102, 53-21-103, 53-21-111, 53-21-112,
 7 53-21-115, 53-21-119, 53-21-120, 53-21-126 THROUGH
 8 53-21-128, 53-21-141, 53-21-165, AND 53-21-188, MCA."

9
 10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 53-21-102, MCA, is amended to read:
 12 *53-21-102. Definitions. As used in this part, the
 13 following definitions apply:

14 (1) "Board" or "mental disabilities board of visitors"
 15 means the mental disabilities board of visitors created by
 16 2-15-211.

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

19 (3) "Department" means the department of institutions
 20 provided for in Title 2, chapter 15, part 23.

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 which is
 5 equipped and staffed to provide treatment for persons with
 6 mental disorders or a community mental health center or any
 7 mental health clinic or treatment center approved by the
 8 department. No correctional institution or facility or jail
 9 is a mental health facility within the meaning of this part.

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

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

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

18 (10) "Professional person" means:

19 (a) a medical doctor; or

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

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

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1 person.

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

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

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

1 ~~injury or severe psychological injury.~~ No person may be
2 involuntarily committed to a mental health facility or
3 detained for evaluation and treatment because he is an
4 epileptic, mentally deficient, mentally retarded, senile, or
5 suffering from a mental disorder unless the condition causes
6 him to be seriously mentally ill within the meaning of this
7 part.

8 (15) "State hospital" means the Warm Springs state
9 hospital."

10 Section 2. Section 53-21-103, MCA, is amended to read:
11 "53-21-103. Court records to be kept separate. Records
12 and papers in proceedings under this part shall be
13 maintained separately by the clerks of the several courts.
14 Five days prior to the release of a respondent or patient
15 ~~committed to a mental health facility~~, the facility shall
16 notify the clerk of the court, and the clerk shall
17 immediately seal the record in the case and omit the name of
18 the respondent or patient from the index or indexes of case
19 in the court unless the court orders the record opened for
20 good cause shown."

21 Section 3. Section 53-21-111, MCA, is amended to read:
22 "53-21-111. Voluntary admission. (1) Nothing in this
23 part may be construed in any way as limiting the right of
24 any person to make voluntary application for admission at
25 any time to any mental health facility or professional

1 person. An application for admission to a mental health
 2 facility shall be in writing on a form prescribed by the
 3 facility and approved by the department. It is not valid
 4 unless it is approved by a professional person and a copy is
 5 given to the person voluntarily admitting himself. ~~The form~~
 6 ~~shall contain~~ A statement of the rights of the person
 7 voluntarily applying for admission, as set out in this part,
 8 including the right to release shall be furnished to the
 9 patient within 12 hours.

10 (2) Any applicant who wishes to voluntarily apply for
 11 admission to the state hospital shall first obtain
 12 certification from a professional person that the applicant
 13 is suffering from a mental disorder and that the facilities
 14 available to the mental health region in which the applicant
 15 resides are unable to provide adequate evaluation and
 16 treatment, except such certification is not necessary if the
 17 applicant obtains certification from the regional mental
 18 health director of his mental health region that the
 19 applicant is financially unable to receive evaluation and
 20 treatment from the facilities available to the mental health
 21 region.

22 (3) An application for voluntary admission shall give
 23 the facility the right to detain the applicant for no more
 24 than 5 days, excluding weekends and holidays, past his
 25 written request for release. A mental health facility may

1 adopt rules providing for detention of the applicant for
 2 less than 5 days. The facility must notify all applicants of
 3 such rules and post such rules as provided in 53-21-168a.

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

8 Section 4. Section 53-21-112, MCA, is amended to read:

9 "53-21-112. Voluntary admission of minors. (1)
 10 Notwithstanding any other provision of law, a minor who is
 11 16 years of age or older may consent to receive mental
 12 health services to be rendered by a facility or a person
 13 licensed to practice medicine or psychology in this state.

14 (2) Except as provided by this subsection, voluntary
 15 admission of a minor to a mental health facility for an
 16 inpatient course of treatment shall be for the same period
 17 of time as that for an adult. A minor voluntarily admitted
 18 shall have the right to be released within 5 days of his
 19 request as provided in 53-21-111(3). The minor himself may
 20 make such request. Unless there has been a periodic review
 21 and a voluntary readmission consented to by the minor
 22 patient and his counsel, voluntary admission terminates at
 23 the expiration of 1 year. Counsel shall be appointed for the
 24 minor at the minor's request or at any time he is faced with
 25 potential legal proceedings.

1 (3) If, in any voluntary admission for any period of
 2 time to a mental health facility, a minor fails to join in
 3 the consent of his parents or guardian to the voluntary
 4 admission, then the admission shall be treated as an
 5 involuntary commitment. Notice of the substance of this
 6 subsection and of the right to counsel shall be set forth in
 7 conspicuous type in a conspicuous location on any form or
 8 application used for the voluntary admission of a minor to a
 9 mental health facility. The notice shall be explained to
 10 the minor by ~~the professional person approving the~~
 11 ~~application.~~"

12 Section 5. Section 53-21-115, MCA, is amended to read:

13 "53-21-115. Procedural rights. In addition to any
 14 other rights which may be guaranteed by the constitution of
 15 the United States and of this state, by the laws of this
 16 state, or by this part, any person who is involuntarily
 17 detained or against whom a petition is filed pursuant to
 18 this part has the following rights:

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

21 (2) the right in any hearing to be present, to offer
 22 evidence, and to present witnesses in any proceeding
 23 concerning him;

24 (3) the right in any hearing to cross-examine
 25 witnesses;

1 (4) the right to be represented by counsel;
 2 (5) the right to remain silent;
 3 (6) the right in any hearing to be proceeded against
 4 according to the rules of evidence applicable to civil
 5 matters generally;
 6 (7) the right to view and copy all petitions on file
 7 with the court concerning him;
 8 (8) the right to be examined by a professional person
 9 of his choice when such professional person is willing and
 10 reasonably available;
 11 (9) the right to be dressed in his own clothes at any
 12 hearing held pursuant to this part; and
 13 (10) the right to refuse any but lifesaving medication
 14 for up to 24 hours prior to any hearing held pursuant to
 15 this part."

16 Section 6. Section 53-21-119, MCA, is amended to read:

17 "53-21-119. Waiver of rights. (1) A person may waive
 18 his rights, or ~~his~~ if the person is not capable of making a
 19 intentional and knowing decision, these rights may be waived
 20 by his counsel and responsible person acting together if a
 21 record is made of the reasons for the waiver. The right to
 22 counsel may not be waived. The right to treatment provided
 23 for in this part may not be waived.

24 (2) The right of the respondent to be physically
 25 present at a hearing may also be waived by his attorney and

1 the responsible person with the concurrence of the
2 professional person and the judge upon a finding supported
3 by facts that:

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

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

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

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

18 Section 7. Section 53-21-120, MCA, is amended to read:

19 "53-21-120. Detention to be in least restrictive
20 environment -- preference for mental health facility --
21 court relief. (1) A person detained pursuant to this part
22 shall be detained in the least restrictive environment
23 required to protect the life and physical safety of the
24 person detained or members of the public; in this respect,
25 prevention of significant injury to property may be

1 considered.

2 (2) Whenever possible, a person detained pursuant to
3 this part shall be detained in a mental health facility and
4 in the county of residence. If the person detained demands
5 a jury trial and trial cannot be held within 7 days, the
6 individual may be sent to the state hospital until time of
7 trial if arrangements can be made to return him to trial. 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.

12 (3) A person may be detained in a jail or other
13 correctional facility only if no mental health facility is
14 available or if the available mental health facilities are
15 inadequate to protect the person detained and the public. As
16 soon as a mental health facility becomes available or the
17 situation has changed sufficiently that an available mental
18 health facility is adequate for the protection of the person
19 detained and the public, then the detained person shall be
20 transferred from the jail or correctional facility to the
21 mental health facility.

22 (4) A person detained prior to involuntary commitment
23 may apply to the court for immediate relief with respect to
24 the need for detention or the adequacy of the facility being
25 utilized to detain."

1 Section 8. Section 53-21-126, MCA, is amended to read:

2 "53-21-126. Trial or hearing on petition. (1) The
3 respondent shall be present unless his presence has been
4 waived as provided in 53-21-119(2), and he shall be
5 represented by counsel at all stages of the trial. The trial
6 shall be limited to the determination of whether or not the
7 respondent is seriously mentally ill within the meaning set
8 forth in this part.

9 (2) The standard of proof in any hearing held pursuant
10 to this section is proof beyond a reasonable doubt with
11 respect to any physical facts or evidence and clear and
12 convincing evidence as to all other matters, except that
13 mental disorders shall be evidenced to a reasonable medical
14 certainty. Imminent threat of self-inflicted injury or
15 injury to others shall be evidenced by overt acts,
16 sufficiently recent in time as to be material and relevant
17 as to the respondent's present condition.

18 (3) The professional person appointed by the court
19 shall be present for the trial and subject to
20 cross-examination. The trial shall be governed by the
21 Montana Rules of Civil Procedure except that, if tried by a
22 jury, at least two-thirds of the jurors must concur on a
23 finding that the ~~patient~~ respondent is seriously mentally
24 ill. The written report of the professional person that
25 indicates the professional person's diagnosis may be

1 attached to the petition, but any matter otherwise
2 inadmissible, such as hearsay matter, is not admissible
3 merely because it is contained in the report. The court may
4 order the trial closed to the public for the protection of
5 the respondent.

6 (4) The professional person may testify as to the
7 ultimate issue of whether the respondent is seriously
8 mentally ill. This testimony is insufficient unless
9 accompanied by evidence from the professional person or
10 others that:

11 (a) the respondent is suffering from a mental
12 disorder; and

13 (b) the mental disorder has resulted in self-inflicted
14 injury or injury to others or the imminent threat thereof or
15 has deprived the person afflicted of the ability to protect
16 his life or health.

17 ~~(4)(5)~~ The court, upon the showing of good cause and
18 when it is in the best interests of the respondent, may
19 order a change of venue."

20 Section 9. Section 53-21-127, MCA, is amended to read:

21 "53-21-127. Posttrial disposition. (1) If, upon trial,
22 it is determined that the ~~patient~~ respondent is not
23 seriously mentally ill within the meaning of this part, he
24 shall be discharged and the petition dismissed.

25 (2) (a) If it is determined that the respondent is

1 seriously mentally ill within the meaning of this part, the
 2 court shall hold a posttrial disposition hearing. The
 3 disposition hearing shall be held within 5 days (including
 4 Saturdays, Sundays, and holidays unless the fifth day falls
 5 on a Saturday, Sunday, or holiday), during which time the
 6 court may order further evaluation and treatment of the
 7 respondent. At the conclusion of the disposition hearing,
 8 the court shall:

9 (i) commit the respondent to a facility for a period
 10 of not more than 3 months;

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

14 (iii) order outpatient therapy; or

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

16 (b) No treatment ordered pursuant to this subsection
 17 may affect the respondent's custody for a period of more
 18 than 3 months.

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

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

4 Section 10. Section 53-21-128, MCA, is amended to
 5 read:

6 "53-21-128. Petition for extension of commitment
 7 period. (1) (a) Not less than 2 calendar weeks prior to the
 8 end of the 3-month period of detention provided for in
 9 53-21-127(2), the professional person in charge of the
 10 patient at the place of detention may petition the court for
 11 extension of the detention period. The petition shall be
 12 accompanied by a written report and evaluation of the
 13 patient's mental and physical condition. The report shall
 14 describe any tests and evaluation devices which have been
 15 employed in evaluating the patient, the course of treatment
 16 which has been undertaken for the patient, and the future
 17 course of treatment anticipated by the professional person.

18 (b) Upon the filing of the petition, the court shall
 19 give written notice of the filing of the petition to the
 20 patient, his next of kin, if reasonably available, the
 21 responsible person appointed by the court, and the patient's
 22 counsel. If any person so notified requests a hearing prior
 23 to the termination of the previous detention authority, the
 24 court shall immediately set a time and place for a hearing
 25 on a date not more than 10 days from the receipt of the

1 request and notify the same people, including the
2 professional person in charge of the patient. If a hearing
3 is not requested, the court shall enter an order of
4 commitment for a period not to exceed 6 months.

5 (c) Procedure on the petition for extension when a
6 hearing has been requested shall be the same in all respects
7 as the procedure on the petition for the original 3-month
8 commitment except the patient is not entitled to trial by
9 jury. The hearing shall be held in the district court
10 having jurisdiction over the facility in which the patient
11 is detained unless otherwise ordered by the court. ~~Court~~
12 ~~costs and witness fees, if any, shall be paid by the county~~
13 ~~that paid the same costs in the initial commitment~~
14 ~~proceedings.~~

15 (d) If upon the hearing the court finds the patient
16 not seriously mentally ill within the meaning of this part,
17 he shall be discharged and the petition dismissed. If the
18 court finds that the patient continues to suffer from
19 serious mental illness, the court shall order commitment,
20 custody in relatives, outpatient therapy, or other order as
21 set forth in 53-21-127(2) except that no order may affect
22 his custody for more than 6 months. In its order, the court
23 shall describe what alternatives for treatment of the
24 patient are available, what alternatives were investigated,
25 and why the investigated alternatives were not deemed

1 suitable. The court shall not order continuation of an
2 alternative which does not include a comprehensive,
3 individualized plan of treatment for the patient. A court
4 order for the continuation of an alternative shall include a
5 specific finding that a comprehensive, individualized plan
6 of treatment exists.

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

14 Section 11. Section 53-21-141, MCA, is amended to
15 read:

16 "53-21-141. Civil and legal rights of person
17 committed. (1) Unless specifically stated in an order by the
18 court, a person involuntarily committed to a facility for a
19 period of evaluation or treatment does not forfeit any legal
20 right or suffer any legal disability by reason of the
21 provisions of this part except insofar as it may be
22 necessary to detain the person for treatment, evaluation, or
23 care. All communication between an alleged mentally ill
24 person and a professional person is privileged under normal
25 privileged communication rules unless it is clearly

1 explained to the person in advance that the purpose of an
 2 interview is for evaluation and not treatment.

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

17 (3) A person who has been committed to a mental health
 18 facility pursuant to this part is automatically restored
 19 upon the termination of the commitment to all of his civil
 20 and legal rights which may have been lost when he was
 21 committed. This subsection does not affect, however, a
 22 guardianship or conservatorship created independently of the
 23 commitment proceedings according to the provisions of
 24 Montana law relating to the appointment of conservators and
 25 guardians generally. A person who leaves a mental health

1 facility following a period of evaluation and treatment
 2 shall be given a written statement setting forth the
 3 substance of this subsection.

4 (4) A person committed to a mental health facility
 5 prior to July 1, 1975, enjoys all the rights and privileges
 6 of a person committed after that date."

7 Section 12. Section 53-21-165, MCA, is amended to
 8 read:

9 "53-21-165. Records to be maintained. Complete patient
 10 records shall be kept by the mental health facility and
 11 shall be available to any person authorized ~~in writing~~ by
 12 the patient in writing to receive these records and upon
 13 approval of the authorization by the board. The records
 14 shall also be made available to any attorney charged with
 15 representing the patient or any professional person charged
 16 with evaluating or treating the patient. These records shall
 17 include:

18 (1) identification data, including the patient's legal
 19 status;

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

23 (b) prior medical history, both physical and mental,
 24 including prior hospitalization;

25 (3) the chief complaints of the patient and the chief

1 complaints of others regarding the patient;

2 (4) an evaluation which notes the onset of illness,
3 the circumstances leading to admission, attitudes, behavior,
4 estimate of intellectual functioning, memory functioning,
5 orientation, and an inventory of the patient's assets in
6 descriptive rather than interpretative fashion;

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

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

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

16 (8) a copy of the individualized after-care plan and
17 any modifications thereto and a summary of the steps that
18 have been taken to implement that plan;

19 (9) a medication history and status which includes the
20 signed orders of the prescribing physician. The staff person
21 administering the medication shall indicate by signature
22 that orders have been carried out.

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

25 (11) a detailed summary, on at least a weekly basis, by

1 a professional person involved in the patient's treatment,
2 of the patient's progress along the treatment plan;

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

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

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

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

15 (16) a summary by the professional person in charge of
16 the facility or his appointed agent of his findings after
17 the 30-day review provided for in 53-21-163."

18 Section 13. Section 53-21-188, MCA, is amended to
19 read:

20 "53-21-188. Maintenance of indigent patients on
21 discharge. Prior to the discharge of a committed patient
22 from a mental health facility, the professional person in
23 charge of the facility shall notify the welfare department
24 of the county from which the patient was committed. The
25 county welfare department shall at once ascertain whether

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

8 Section 14. Instructions to the code commissioner. All
9 references to "responsible person" in Title 53, chapter 21,
10 shall be changed to "friend of respondent" by the code
11 commissioner.

-End-

SB 393

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2 INTRODUCED BY TOME

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15 means the mental disabilities board of visitors created by
16 2-15-211.17 (2) "Court" means any district court of the state of
18 Montana.19 (3) "Department" means the department of institutions
20 provided for in Title 2, chapter 15, part 23.21 (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 which is
5 equipped and staffed to provide treatment for persons with
6 mental disorders or a community mental health center or any
7 mental health clinic or treatment center approved by the
8 department. No correctional institution or facility or jail
9 is a mental health facility within the meaning of this part.10 (7) "Next of kin" shall include but need not be
11 limited to the spouse, parents, adult children, and adult
12 brothers and sisters of a person.13 (8) "Patient" means a person committed by the court
14 for treatment for any period of time or who is voluntarily
15 admitted for treatment for any period of time.16 (9) "Peace officer" means any sheriff, deputy sheriff,
17 marshal, policeman, or other peace officer.

18 (10) "Professional person" means:

19 (a) a medical doctor; or

20 (b) a person trained in the field of mental health and
21 certified by the department in accordance with standards of
22 professional licensing boards, federal regulations, and the
23 joint commission on accreditation of hospitals.24 (11) "Reasonable medical certainty" means reasonable
25 certainty as judged by the standards of a professional

1 person.

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

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

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

1 ~~injury or says a psychological injury.~~ No person may be
2 involuntarily committed to a mental health facility or
3 detained for evaluation and treatment because he is an
4 epileptic, mentally deficient, mentally retarded, senile, or
5 suffering from a mental disorder unless the condition causes
6 him to be seriously mentally ill within the meaning of this
7 part.

8 (15) "State hospital" means the Warm Springs state
9 hospital."

10 Section 2. Section 53-21-103, MCA, is amended to read:
11 "53-21-103. Court records to be kept separate. Records
12 and papers in proceedings under this part shall be
13 maintained separately by the clerks of the several courts.
14 Five days prior to the release of a respondent or patient
15 ~~committed to a mental health facility~~, the facility shall
16 notify the clerk of the court, and the clerk shall
17 immediately seal the record in the case and omit the name of
18 the respondent or patient from the index or indexes of cases
19 in the court unless the court orders the record opened for
20 good cause shown."

21 Section 3. Section 53-21-111, MCA, is amended to read:
22 "53-21-111. Voluntary admission. (1) Nothing in this
23 part may be construed in any way as limiting the right of
24 any person to make voluntary application for admission at
25 any time to any mental health facility or professional

1 person. An application for admission to a mental health
 2 facility shall be in writing on a form prescribed by the
 3 facility and approved by the department. It is not valid
 4 unless it is approved by a professional person and a copy is
 5 given to the person voluntarily admitting himself. ~~The form~~
 6 ~~shall contain a~~ A statement of the rights of the person
 7 voluntarily applying for admission, as set out in this part,
 8 including the right to release shall be furnished to the
 9 patient within 12 hours.

10 (2) Any applicant who wishes to voluntarily apply for
 11 admission to the state hospital shall first obtain
 12 certification from a professional person that the applicant
 13 is suffering from a mental disorder and that the facilities
 14 available to the mental health region in which the applicant
 15 resides are unable to provide adequate evaluation and
 16 treatment. ~~except such certification is not necessary if the~~
 17 ~~applicant obtains certification from the regional mental~~
 18 ~~health director of his mental health region that the~~
 19 ~~applicant is financially unable to receive evaluation and~~
 20 ~~treatment from the facilities available to the mental health~~
 21 ~~region.~~

22 (3) An application for voluntary admission shall give
 23 the facility the right to detain the applicant for no more
 24 than 5 days, excluding weekends and holidays, past his
 25 written request for release. A mental health facility may

1 adopt rules providing for detention of the applicant for
 2 less than 5 days. The facility must notify all applicants of
 3 such rules and post such rules as provided in 53-21-168.

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

8 Section 4. Section 53-21-112, MCA, is amended to read:

9 "53-21-112. Voluntary admission of minors. (1)
 10 Notwithstanding any other provision of law, a minor who is
 11 16 years of age or older may consent to receive mental
 12 health services to be rendered by a facility or a person
 13 licensed to practice medicine or psychology in this state.

14 (2) Except as provided by this subsection, voluntary
 15 admission of a minor to a mental health facility for an
 16 inpatient course of treatment shall be for the same period
 17 of time as that for an adult. A minor voluntarily admitted
 18 shall have the right to be released within 5 days of his
 19 request as provided in 53-21-111(3). The minor himself may
 20 make such request. Unless there has been a periodic review
 21 and a voluntary readmission consented to by the minor
 22 patient and his counsel, voluntary admission terminates at
 23 the expiration of 1 year. Counsel shall be appointed for the
 24 minor at the minor's request or at any time he is faced with
 25 potential legal proceedings.

1 (3) If, in any voluntary admission for any period of
 2 time to a mental health facility, a minor fails to join in
 3 the consent of his parents or guardian to the voluntary
 4 admission, then the admission shall be treated as an
 5 involuntary commitment. Notice of the substance of this
 6 subsection and of the right to counsel shall be set forth in
 7 conspicuous type in a conspicuous location on any form or
 8 application used for the voluntary admission of a minor to a
 9 mental health facility. The notice shall be explained to
 10 the minor by--the--professional--person--approving--the
 11 application."

12 Section 5. Section 53-21-115, MCA, is amended to read:
 13 "53-21-115. Procedural rights. In addition to any
 14 other rights which may be guaranteed by the constitution of
 15 the United States and of this state, by the laws of this
 16 state, or by this part, any person who is involuntarily
 17 detained or against whom a petition is filed pursuant to
 18 this part has the following rights:

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

21 (2) the right in any hearing to be present, to offer
 22 evidence, and to present witnesses in any proceeding
 23 concerning him;

24 (3) the right in any hearing to cross-examine
 25 witnesses;

1 (4) the right to be represented by counsel;
 2 (5) the right to remain silent;
 3 (6) the right in any hearing to be proceeded against
 4 according to the rules of evidence applicable to civil
 5 matters generally;
 6 (7) the right to view and copy all petitions on file
 7 with the court concerning him;
 8 (8) the right to be examined by a professional person
 9 of his choice when such professional person is willing and
 10 reasonably available;
 11 (9) the right to be dressed in his own clothes at any
 12 hearing held pursuant to this part; and
 13 (10) the right to refuse any but lifesaving medication
 14 for up to 24 hours prior to any hearing held pursuant to
 15 this part."

16 Section 6. Section 53-21-119, MCA, is amended to read:
 17 "53-21-119. Waiver of rights. (1) A person may waive
 18 his rights, or his if the person is not capable of making an
 19 intentional and knowing decision, these rights may be waived
 20 by his counsel and responsible person acting together if a
 21 record is made of the reasons for the waiver. The right to
 22 counsel may not be waived. The right to treatment provided
 23 for in this part may not be waived.

24 (2) The right of the respondent to be physically
 25 present at a hearing may also be waived by his attorney and

1 the responsible person with the concurrence of the
2 professional person and the judge upon a finding supported
3 by facts that:

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

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

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

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

18 Section 7. Section 53-21-120, MCA, is amended to read:

19 "53-21-120. Detention to be in least restrictive
20 environment -- preference for mental health facility --
21 court relief. (1) A person detained pursuant to this part
22 shall be detained in the least restrictive environment
23 required to protect the life and physical safety of the
24 person detained or members of the public; in this respects
25 prevention of significant injury to property may be

1 considered.

2 (2) Whenever possible, a person detained pursuant to
3 this part shall be detained in a mental health facility and
4 in the county of residence. If the person detained demands
5 a jury trial and trial cannot be held within 7 days, the
6 individual may be sent to the state hospital HOSPITAL until
7 time of trial if arrangements can be made to return him to
8 trial. SUCH TRIAL MUST BE HELD WITHIN A REASONABLE PERIOD OF
9 TIME. No person may be detained in any hospital or other
10 medical facility which is not a mental health facility
11 unless such hospital or facility has agreed in writing to
12 admit the person.

13 (3) A person may be detained in a jail or other
14 correctional facility only if no mental health facility is
15 available or if the available mental health facilities are
16 inadequate to protect the person detained and the public. As
17 soon as a mental health facility becomes available or the
18 situation has changed sufficiently that an available mental
19 health facility is adequate for the protection of the person
20 detained and the public, then the detained person shall be
21 transferred from the jail or correctional facility to the
22 mental health facility.

23 (4) A person detained prior to involuntary commitment
24 may apply to the court for immediate relief with respect to
25 the need for detention or the adequacy of the facility being

1 utilized to detain."

2 Section 8. Section 53-21-126, MCA, is amended to read:

3 "53-21-126. Trial or hearing on petition. (1) The
4 respondent shall be present unless his presence has been
5 waived as provided in 53-21-119(2), and he shall be
6 represented by counsel at all stages of the trial. The trial
7 shall be limited to the determination of whether or not the
8 respondent is seriously mentally ill within the meaning set
9 forth in this part.

10 (2) The standard of proof in any hearing held pursuant
11 to this section is proof beyond a reasonable doubt with
12 respect to any physical facts or evidence and clear and
13 convincing evidence as to all other matters, except that
14 mental disorders shall be evidenced to a reasonable medical
15 certainty. Imminent threat of self-inflicted injury or
16 injury to others shall be evidenced by overt acts,
17 sufficiently recent in time as to be material and relevant
18 as to the respondent's present condition.

19 (3) The professional person appointed by the court
20 shall be present for the trial and subject to
21 cross-examination. The trial shall be governed by the
22 Montana Rules of Civil Procedure except that, if tried by a
23 jury, at least two-thirds of the jurors must concur on a
24 finding that the patient respondent is seriously mentally
25 ill. The written report of the professional person that

1 indicates the professional person's diagnosis may be
2 attached to the petition, but any matter otherwise
3 inadmissible, such as hearsay matter, is not admissible
4 merely because it is contained in the report. The court may
5 order the trial closed to the public for the protection of
6 the respondent.

7 (4) The professional person may testify as to the
8 ultimate issue of whether the respondent is seriously
9 mentally ill. This testimony is insufficient unless
10 accompanied by evidence from the professional person or
11 others that:

12 (a) the respondent is suffering from a mental
13 disorder; and

14 (b) the mental disorder has resulted in self-inflicted
15 injury or injury to others or the imminent threat thereof or
16 has deprived the person afflicted of the ability to protect
17 his life or health.

18 (4)(5) The court, upon the showing of good cause and
19 when it is in the best interests of the respondent, may
20 order a change of venue."

21 Section 9. Section 53-21-127, MCA, is amended to read:

22 "53-21-127. Posttrial disposition. (1) If, upon trial,
23 it is determined that the patient respondent is not
24 seriously mentally ill within the meaning of this part, he
25 shall be discharged and the petition dismissed.

1 (2) (a) If it is determined that the respondent is
 2 seriously mentally ill within the meaning of this part, the
 3 court shall hold a posttrial disposition hearing. The
 4 disposition hearing shall be held within 5 days (including
 5 Saturdays, Sundays, and holidays unless the fifth day falls
 6 on a Saturday, Sunday, or holiday), during which time the
 7 court may order further evaluation and treatment of the
 8 respondent. At the conclusion of the disposition hearing,
 9 the court shall:

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

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

15 (iii) order outpatient therapy; or

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

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

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

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

5 Section 10. Section 53-21-128, MCA, is amended to
 6 read:

7 "53-21-128. Petition for extension of commitment
 8 period. (1) (a) Not less than 2 calendar weeks prior to the
 9 end of the 3-month period of detention provided for in
 10 53-21-127(2), the professional person in charge of the
 11 patient at the place of detention may petition the court for
 12 extension of the detention period. The petition shall be
 13 accompanied by a written report and evaluation of the
 14 patient's mental and physical condition. The report shall
 15 describe any tests and evaluation devices which have been
 16 employed in evaluating the patient, the course of treatment
 17 which has been undertaken for the patient, and the future
 18 course of treatment anticipated by the professional person.

19 (b) Upon the filing of the petition, the court shall
 20 give written notice of the filing of the petition to the
 21 patient, his next of kin, if reasonably available, the
 22 responsible person appointed by the court, and the patient's
 23 counsel. If any person so notified requests a hearing prior
 24 to the termination of the previous detention authority, the
 25 court shall immediately set a time and place for a hearing

1 on a date not more than 10 days from the receipt of the
2 request and notify the same people, including the
3 professional person in charge of the patient. If a hearing
4 is not requested, the court shall enter an order of
5 commitment for a period not to exceed 6 months.

6 (c) Procedure on the petition for extension when a
7 hearing has been requested shall be the same in all respects
8 as the procedure on the petition for the original 3-month
9 commitment except the patient is not entitled to trial by
10 jury. The hearing shall be held in the district court
11 having jurisdiction over the facility in which the patient
12 is detained unless otherwise ordered by the court. ~~Court~~
13 ~~costs and witness fees, if any, shall be paid by the county~~
14 ~~that paid the same costs in the initial commitment~~
15 ~~proceedings.~~

16 (d) If upon the hearing the court finds the patient
17 not seriously mentally ill within the meaning of this part,
18 he shall be discharged and the petition dismissed. If the
19 court finds that the patient continues to suffer from
20 serious mental illness, the court shall order commitment,
21 custody in relatives, outpatient therapy, or other order as
22 set forth in 53-21-127(2) except that no order may affect
23 his custody for more than 6 months. In its order, the court
24 shall describe what alternatives for treatment of the
25 patient are available, what alternatives were investigated,

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

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

15 Section 11. Section 53-21-141, MCA, is amended to
16 read:

17 "53-21-141. Civil and legal rights of person
18 committed. (1) Unless specifically stated in an order by the
19 court, a person involuntarily committed to a facility for a
20 period of evaluation or treatment does not forfeit any legal
21 right or suffer any legal disability by reason of the
22 provisions of this part except insofar as it may be
23 necessary to detain the person for treatment, evaluation, or
24 care. ~~All communication between an alleged mentally ill~~
25 ~~person and a professional person is privileged under normal~~

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

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

18 (3) A person who has been committed to a mental health
 19 facility pursuant to this part is automatically restored
 20 upon the termination of the commitment to all of his civil
 21 and legal rights which may have been lost when he was
 22 committed. This subsection does not affect, however, a
 23 guardianship or conservatorship created independently of the
 24 commitment proceedings according to the provisions of
 25 Montana law relating to the appointment of conservators and

1 guardians generally. A person who leaves a mental health
 2 facility following a period of evaluation and treatment
 3 shall be given a written statement setting forth the
 4 substance of this subsection.

5 (4) A person committed to a mental health facility
 6 prior to July 1, 1975, enjoys all the rights and privileges
 7 of a person committed after that date."

8 Section 12. Section 53-21-165, MCA, is amended to
 9 read:

10 "53-21-165. Records to be maintained. Complete patient
 11 records shall be kept by the mental health facility and
 12 shall be available to any person authorized in writing by
 13 the patient in writing to receive these records and upon
 14 approval of the authorization by the board. The records
 15 shall also be made available to any attorney charged with
 16 representing the patient or any professional person charged
 17 with evaluating or treating the patient. These records shall
 18 include:

19 (1) identification data, including the patient's legal
 20 status;

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

24 (b) prior medical history, both physical and mental,
 25 including prior hospitalization;

1 (3) the chief complaints of the patient and the chief
2 complaints of others regarding the patient;

3 (4) an evaluation which notes the onset of illness,
4 the circumstances leading to admission, attitudes, behavior,
5 estimate of intellectual functioning, memory functioning,
6 orientation, and an inventory of the patient's assets in
7 descriptive rather than interpretative fashion;

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

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

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

17 (8) a copy of the individualized after-care plan and
18 any modifications thereto and a summary of the steps that
19 have been taken to implement that plan;

20 (9) a medication history and status which includes the
21 signed orders of the prescribing physician. The staff person
22 administering the medication shall indicate by signature
23 that orders have been carried out.

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

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

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

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

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

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

16 (16) a summary by the professional person in charge of
17 the facility or his appointed agent of his findings after
18 the 30-day review provided for in 53-21-163."

19 Section 13. Section 53-21-188, MCA, is amended to
20 read:

21 "53-21-188. Maintenance of indigent patients on
22 discharge. Prior to the discharge of a committed patient
23 from a mental health facility, the professional person in
24 charge of the facility shall notify the welfare department
25 of the county from which the patient was committed. The

1 county welfare department shall at once ascertain whether
2 the discharged patient is in financial need. If the patient
3 is found to be in financial need, the county welfare
4 department shall properly care for and maintain the
5 discharged patient under the laws of this state relating to
6 public assistance until the patient is able to care for
7 himself or until another provision has been made for care of
8 the patient."

9 Section 14. Instructions to the code commissioner. All
10 references to "responsible person" in Title 53, chapter 21,
11 shall be changed to "friend of respondent" by the code
12 commissioner.

-End-

1 SENATE BILL NO. 393

2 INTRODUCED BY TOWE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 LAWS RELATING TO THE TREATMENT OF THE MENTALLY ILL; AMENDING
6 SECTIONS 53-21-102, 53-21-103, 53-21-111, 53-21-112,
7 53-21-115, 53-21-119, 53-21-120, 53-21-126 THROUGH
8 53-21-128, 53-21-141, 53-21-165, AND 53-21-188, MCA."

9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. Section 53-21-102, MCA, is amended to read:

12 "53-21-102. Definitions. As used in this part, the
13 following definitions apply:

14 (1) "Board" or "mental disabilities board of visitors"
15 means the mental disabilities board of visitors created by
16 2-15-211.

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

19 (3) "Department" means the department of institutions
20 provided for in Title 2, chapter 15, part 23.

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 which is
5 equipped and staffed to provide treatment for persons with
6 mental disorders or a community mental health center or any
7 mental health clinic or treatment center approved by the
8 department. No correctional institution or facility or jail
9 is a mental health facility within the meaning of this part.

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

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

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

18 (10) "Professional person" means:

19 (a) a medical doctor; or

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

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

1 person.

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

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

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

1 ~~injury or severe psychological injury.~~ No person may be
2 involuntarily committed to a mental health facility or
3 detained for evaluation and treatment because he is an
4 epileptic, mentally deficient, mentally retarded, senile, or
5 suffering from a mental disorder unless the condition causes
6 him to be seriously mentally ill within the meaning of this
7 part.

8 (15) "State hospital" means the Warm Springs state
9 hospital."

10 Section 2. Section 53-21-103, MCA, is amended to read:

11 "53-21-103. Court records to be kept separate. Records
12 and papers in proceedings under this part shall be
13 maintained separately by the clerks of the several courts.
14 Five days prior to the release of a respondent or patient
15 ~~committed to a mental health facility~~, the facility shall
16 notify the clerk of the court, and the clerk shall
17 immediately seal the record in the case and omit the name of
18 the respondent or patient from the index or indexes of cases
19 in the court unless the court orders the record opened for
20 good cause shown."

21 Section 3. Section 53-21-111, MCA, is amended to read:

22 "53-21-111. Voluntary admission. (1) Nothing in this
23 part may be construed in any way as limiting the right of
24 any person to make voluntary application for admission at
25 any time to any mental health facility or professional

1 person. An application for admission to a mental health
 2 facility shall be in writing on a form prescribed by the
 3 facility and approved by the department. It is not valid
 4 unless it is approved by a professional person and a copy is
 5 given to the person voluntarily admitting himself. ~~The form~~
 6 ~~shall contain~~ a statement of the rights of the person
 7 voluntarily applying for admission, as set out in this part,
 8 including the right to release shall be furnished to the
 9 patient within 12 hours.

10 (2) Any applicant who wishes to voluntarily apply for
 11 admission to the state hospital shall first obtain
 12 certification from a professional person that the applicant
 13 is suffering from a mental disorder and that the facilities
 14 available to the mental health region in which the applicant
 15 resides are unable to provide adequate evaluation and
 16 treatment. ~~except such certification is not necessary if the~~
 17 ~~applicant obtains certification from the regional mental~~
 18 ~~health director of his mental health region that the~~
 19 ~~applicant is financially unable to receive evaluation and~~
 20 ~~treatment from the facilities available to the mental health~~
 21 region. EXCEPT SUCH CERTIFICATION IS NOT NECESSARY IF THE
 22 APPLICANT OBTAINS CERTIFICATION FROM THE REGIONAL MENTAL
 23 HEALTH DIRECTOR OF HIS MENTAL HEALTH REGION THAT THE
 24 APPLICANT IS FINANCIALLY UNABLE TO RECEIVE EVALUATION AND
 25 TREATMENT FROM THE FACILITIES AVAILABLE TO THE MENTAL HEALTH

1 REGION.

2 (3) An application for voluntary admission shall give
 3 the facility the right to detain the applicant for no more
 4 than 5 days, excluding weekends and holidays, past his
 5 written request for release. A mental health facility may
 6 adopt rules providing for detention of the applicant for
 7 less than 5 days. The facility must notify all applicants of
 8 such rules and post such rules as provided in 53-21-168.

9 (4) Any person voluntarily entering or remaining in
 10 any mental health facility shall enjoy all the rights
 11 secured to a person involuntarily committed to the
 12 facility."

13 Section 4. Section 53-21-112, MCA, is amended to read:
 14 "53-21-112. Voluntary admission of minors. (1)
 15 Notwithstanding any other provision of law, a minor who is
 16 16 years of age or older may consent to receive mental
 17 health services to be rendered by a facility or a person
 18 licensed to practice medicine or psychology in this state.

19 (2) Except as provided by this subsection, voluntary
 20 admission of a minor to a mental health facility for an
 21 inpatient course of treatment shall be for the same period
 22 of time as that for an adult. A minor voluntarily admitted
 23 shall have the right to be released within 5 days of his
 24 request as provided in 53-21-111(3). The minor himself may
 25 make such request. Unless there has been a periodic review

1 and a voluntary readmission consented to by the minor
 2 patient and his counsel, voluntary admission terminates at
 3 the expiration of 1 year. Counsel shall be appointed for the
 4 minor at the minor's request or at any time he is faced with
 5 potential legal proceedings.

6 (3) If, in any voluntary admission for any period of
 7 time to a mental health facility, a minor fails to join in
 8 the consent of his parents or guardian to the voluntary
 9 admission, then the admission shall be treated as an
 10 involuntary commitment. Notice of the substance of this
 11 subsection and of the right to counsel shall be set forth in
 12 conspicuous type in a conspicuous location on any form or
 13 application used for the voluntary admission of a minor to a
 14 mental health facility. The notice shall be explained to
 15 the minor ~~by the professional person approving the~~
 16 ~~application.~~"

17 Section 5. Section 53-21-115, MCA, is amended to read:

18 "53-21-115. Procedural rights. In addition to any
 19 other rights which may be guaranteed by the constitution of
 20 the United States and of this state, by the laws of this
 21 state, or by this part, any person who is involuntarily
 22 detained or against whom a petition is filed pursuant to
 23 this part has the following rights:

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

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

4 (3) the right in any hearing to cross-examine
 5 witnesses;

6 (4) the right to be represented by counsel;

7 (5) the right to remain silent;

8 (6) the right in any hearing to be proceeded against
 9 according to the rules of evidence applicable to civil
 10 matters generally;

11 (7) the right to view and copy all petitions on file
 12 with the court concerning him;

13 (8) the right to be examined by a professional person
 14 of his choice when such professional person is willing and
 15 reasonably available;

16 (9) the right to be dressed in his own clothes at any
 17 hearing held pursuant to this part; and

18 (10) the right to refuse any but lifesaving medication
 19 for up to 24 hours prior to any hearing held pursuant to
 20 this part."

21 Section 6. Section 53-21-119, MCA, is amended to read:

22 "53-21-119. Waiver of rights. (1) A person may waive
 23 his rights, or ~~his~~ if the person is not capable of making an
 24 intentional and knowing decision, these rights may be waived
 25 by his counsel and responsible person acting together if a

1 record is made of the reasons for the waiver. The right to
2 counsel may not be waived. The right to treatment provided
3 for in this part may not be waived.

4 (2) The right of the respondent to be physically
5 present at a hearing may also be waived by his attorney and
6 the responsible person with the concurrence of the
7 professional person and the judge upon a finding supported
8 by facts that:

9 (a) the presence of the respondent at the hearing
10 would be likely to seriously adversely affect his mental
11 condition; and

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

15 (3) (a) In the case of a minor, provided that a record
16 is made of the reasons for the waiver, his rights may be
17 waived by the mutual consent of his counsel and parents or
18 guardian or guardian ad litem if there are no parents or
19 guardian.

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

23 Section 7. Section 53-21-120, MCA, is amended to read:

24 "53-21-120. Detention to be in least restrictive
25 environment -- preference for mental health facility --

1 court relief. (1) A person detained pursuant to this part
2 shall be detained in the least restrictive environment
3 required to protect the life and physical safety of the
4 person detained or members of the public in this respect,
5 prevention of significant injury to property may be
6 considered.

7 (2) Whenever possible, a person detained pursuant to
8 this part shall be detained in a mental health facility and
9 in the county of residence. If the person detained demands
10 a jury trial and trial cannot be held within 7 days, the
11 individual may be sent to the state hospital HOSPITAL until
12 time of trial if arrangements can be made to return him to
13 trial. SUCH TRIAL MUST BE HELD WITHIN A REASONABLE PERIOD OF
14 TIME 30 DAYS. THE COUNTY OF RESIDENCE SHALL PAY THE COST OF
15 TRAVEL AND PROFESSIONAL SERVICES ASSOCIATED WITH THE TRIAL.
16 No person may be detained in any hospital or other medical
17 facility which is not a mental health facility unless such
18 hospital or facility has agreed in writing to admit the
19 person.

20 (3) A person may be detained in a jail or other
21 correctional facility only if no mental health facility is
22 available or if the available mental health facilities are
23 inadequate to protect the person detained and the public. As
24 soon as a mental health facility becomes available or the
25 situation has changed sufficiently that an available mental

1 health facility is adequate for the protection of the person
2 detained and the public, then the detained person shall be
3 transferred from the jail or correctional facility to the
4 mental health facility.

5 (4) A person detained prior to involuntary commitment
6 may apply to the court for immediate relief with respect to
7 the need for detention or the adequacy of the facility being
8 utilized to detain."

9 Section 8. Section 53-21-126, MCA, is amended to read:

10 "53-21-126. Trial or hearing on petition. (1) The
11 respondent shall be present unless his presence has been
12 waived as provided in 53-21-119(2), and he shall be
13 represented by counsel at all stages of the trial. The trial
14 shall be limited to the determination of whether or not the
15 respondent is seriously mentally ill within the meaning set
16 forth in this part.

17 (2) The standard of proof in any hearing held pursuant
18 to this section is proof beyond a reasonable doubt with
19 respect to any physical facts or evidence and clear and
20 convincing evidence as to all other matters, except that
21 mental disorders shall be evidenced to a reasonable medical
22 certainty. Imminent threat of self-inflicted injury or
23 injury to others shall be evidenced by overt acts,
24 sufficiently recent in time as to be material and relevant
25 as to the respondent's present condition.

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

14 ~~(4) The professional person may testify as to the~~
15 ~~ultimate issue of whether the respondent is seriously~~
16 ~~mentally ill. This testimony is insufficient unless~~
17 ~~accompanied by evidence from the professional person or~~
18 ~~others that:~~

19 ~~(a) the respondent is suffering from a mental~~
20 ~~disorder; and~~

21 ~~(b) the mental disorder has resulted in self-inflicted~~
22 ~~injury or injury to others or the imminent threat thereof or~~
23 ~~has deprived the person afflicted of the ability to protect~~
24 ~~his life or health.~~

25 ~~(4)(5) The court, upon the showing of good cause and~~

1 when it is in the best interests of the respondent, may
2 order a change of venue."

3 Section 9. Section 53-21-127, MCA, is amended to read:

4 "53-21-127. Posttrial disposition. (1) If, upon trial,
5 it is determined that the patient respondent is not
6 seriously mentally ill within the meaning of this part, he
7 shall be discharged and the petition dismissed.

8 (2) (a) If it is determined that the respondent is
9 seriously mentally ill within the meaning of this part, the
10 court shall hold a posttrial disposition hearing. The
11 disposition hearing shall be held within 5 days (including
12 Saturdays, Sundays, and holidays unless the fifth day falls
13 on a Saturday, Sunday, or holiday), during which time the
14 court may order further evaluation and treatment of the
15 respondent. At the conclusion of the disposition hearing,
16 the court shall:

17 (i) commit the respondent to a facility for a period
18 of not more than 3 months;

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

22 (iii) order outpatient therapy; or

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

24 (b) No treatment ordered pursuant to this subsection
25 may affect the respondent's custody for a period of more

1 than 3 months.

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

12 Section 10. Section 53-21-128, MCA, is amended to
13 read:

14 "53-21-128. Petition for extension of commitment
15 period. (1) (a) Not less than 2 calendar weeks prior to the
16 end of the 3-month period of detention provided for in
17 53-21-127(2), the professional person in charge of the
18 patient at the place of detention may petition the court for
19 extension of the detention period. The petition shall be
20 accompanied by a written report and evaluation of the
21 patient's mental and physical condition. The report shall
22 describe any tests and evaluation devices which have been
23 employed in evaluating the patient, the course of treatment
24 which has been undertaken for the patient, and the future
25 course of treatment anticipated by the professional person.

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

13 (c) Procedure on the petition for extension when a
 14 hearing has been requested shall be the same in all respects
 15 as the procedure on the petition for the original 3-month
 16 commitment except the patient is not entitled to trial by
 17 jury. The hearing shall be held in the district court
 18 having jurisdiction over the facility in which the patient
 19 is detained unless otherwise ordered by the court. ~~Court~~
 20 ~~costs and witness fees, if any, shall be paid by the county~~
 21 ~~that paid the same costs in the initial commitment~~
 22 ~~proceedings.~~

23 (d) If upon the hearing the court finds the patient
 24 not seriously mentally ill within the meaning of this part,
 25 he shall be discharged and the petition dismissed. If the

1 court finds that the patient continues to suffer from
 2 serious mental illness, the court shall order commitment,
 3 custody in relatives, outpatient therapy, or other order as
 4 set forth in 53-21-127(2) except that no order may affect
 5 his custody for more than 6 months. In its order, the court
 6 shall describe what alternatives for treatment of the
 7 patient are available, what alternatives were investigated,
 8 and why the investigated alternatives were not deemed
 9 suitable. The court shall not order continuation of an
 10 alternative which does not include a comprehensive,
 11 individualized plan of treatment for the patient. A court
 12 order for the continuation of an alternative shall include a
 13 specific finding that a comprehensive, individualized plan
 14 of treatment exists.

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

22 Section 11. Section 53-21-141, MCA, is amended to
 23 read:

24 "53-21-141. Civil and legal rights of person
 25 committed. (1) Unless specifically stated in an order by the

1 court, a person involuntarily committed to a facility for a
 2 period of evaluation or treatment does not forfeit any legal
 3 right or suffer any legal disability by reason of the
 4 provisions of this part except insofar as it may be
 5 necessary to detain the person for treatment, evaluation, or
 6 care. ~~All communication between an alleged mentally ill
 7 person and a professional person is privileged under normal
 8 privileged communication rules unless it is clearly
 9 explained to the person in advance that the purpose of an
 10 interview is for evaluation and not treatment.~~

11 (2) Whenever a person is committed to a mental health
 12 facility for a period of 3 months or longer, the court
 13 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 appoint a person
 17 to act as conservator of the respondent's property. Any
 18 conservatorship created pursuant to this section terminates
 19 upon the conclusion of the involuntary commitment if not
 20 sooner terminated by the court. A conservatorship or
 21 guardianship extending beyond the period of involuntary
 22 commitment may not be created except according to the
 23 procedures set forth under Montana law for the appointment
 24 of conservators and guardians generally.

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

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

12 (4) A person committed to a mental health facility
 13 prior to July 1, 1975, enjoys all the rights and privileges
 14 of a person committed after that date.*

15 Section 12, Section 53-21-165, MCA, is amended to
 16 read:

17 "53-21-165. Records to be maintained. Complete patient
 18 records shall be kept by the mental health facility and
 19 shall be available to any person authorized in writing by
 20 the patient ~~in writing to receive these records~~ and upon
 21 ~~approval of the authorization~~ by the board. The records
 22 shall also be made available to any attorney charged with
 23 representing the patient or any professional person charged
 24 with evaluating or treating the patient. These records shall
 25 include:

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

1 have been taken to implement that plan;
 2 (9) a medication history and status which includes the
 3 signed orders of the prescribing physician. The staff person
 4 administering the medication shall indicate by signature
 5 that orders have been carried out.
 6 (10) a detailed summary of each significant contact by
 7 a professional person with the patient;
 8 (11) a detailed summary, on at least a weekly basis, by
 9 a professional person involved in the patient's treatment,
 10 of the patient's progress along the treatment plan;
 11 (12) a weekly summary of the extent and nature of the
 12 patient's work activities and the effect of such activity
 13 upon the patient's progress along the treatment plan;
 14 (13) a signed order by a professional person for any
 15 restrictions on visitations and communications;
 16 (14) a signed order by a professional person for any
 17 physical restraints and isolation;
 18 (15) a detailed summary of any extraordinary incident
 19 in the facility involving the patient, to be entered by a
 20 staff member noting that he has personal knowledge of the
 21 incident or specifying his other source of information and
 22 initialed within 24 hours by a professional person; and
 23 (16) a summary by the professional person in charge of
 24 the facility or his appointed agent of his findings after
 25 the 30-day review provided for in 53-21-163."

1 Section 13. Section 53-21-188, MCA, is amended to
2 read:

3 "53-21-188. Maintenance of indigent patients on
4 discharge. Prior to the discharge of a ~~committed~~ patient
5 from a mental health facility, the professional person in
6 charge of the facility shall notify the welfare department
7 of the county from which the patient was committed. The
8 county welfare department shall at once ascertain whether
9 the discharged patient is in financial need. If the patient
10 is found to be in financial need, the county welfare
11 department shall properly care for and maintain the
12 discharged patient under the laws of this state relating to
13 public assistance until the patient is able to care for
14 himself or until another provision has been made for care of
15 the patient."

16 Section 14. Instructions to the code commissioner. All
17 references to "responsible person" in Title 53, chapter 21,
18 shall be changed to "friend of respondent" by the code
19 commissioner.

-End-

March 23, 1979

HOUSE OF REPRESENTATIVES

Judiciary Committee amendments to SENATE BILL NO. 393,
third reading copy, as follows:

1. Page 5, line 21.

Following: "~~region~~"

Insert: ", except such certification is not necessary if the applicant obtains certification from the regional mental health director of his mental health region that the applicant is financially unable to receive evaluation and treatment from the facilities available to the mental health region"

2. Page 10, lines 8 and 9.

Following: "WITHIN"

Strike: "A REASONABLE PERIOD OF TIME"

Insert: "30 days. The county of residence shall pay the cost of travel and professional services associated with the trial"

AND AS AMENDED
BE CONCURRED IN