

SENATE BILL NO. 375

INTRODUCED BY TOWE, BARDANOUVE

IN THE SENATE

February 11, 1985	Introduced and referred to Committee on Public Health, Welfare and Safety.
February 13, 1985	On motion, taken from Committee on Public Health, Welfare and Safety and rereferred to Committee on Judiciary. Motion adopted.
February 22, 1985	Committee recommend bill do pass as amended. Report adopted.
February 23, 1985	Bill printed and placed on members' desks.
February 25, 1985	Second reading, do pass.
February 26, 1985	Considered correctly engrossed.
February 27, 1985	Third reading, passed. Ayes, 50; Noes, 0. Transmitted to House.

IN THE HOUSE

March 7, 1985	Introduced and referred to Committee on Judiciary.
March 27, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 30, 1985	Second reading, concurred in.

April 1, 1985

Third reading, concurred in.

Returned to Senate with
amendments.

IN THE SENATE

April 1, 1985

Received from House.

April 3, 1985

Second reading, amendments
concurred in.

April 5, 1985

Third reading, amendments
concurred in.
Ayes, 44; Noes, 0.

Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. 375
 2 INTRODUCED BY *D. Budanowicz*

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NOTICE
 5 AND A HEARING PRIOR TO REVOCATION OF A MENTAL HEALTH
 6 PATIENT'S CONDITIONAL RELEASE STATUS; AMENDING SECTION
 7 53-21-183, MCA."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

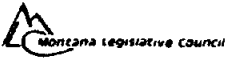
10 Section 1. Section 53-21-183, MCA, is amended to read:

11 "53-21-183. Release conditioned on receipt of
 12 outpatient care. (1) When, in the opinion of the
 13 professional person in charge of a mental health facility
 14 providing involuntary treatment, the committed person can be
 15 appropriately served by outpatient care prior to the
 16 expiration of the period of commitment, then outpatient care
 17 may be required as a condition for early release for a
 18 period which, when added to the inpatient treatment period,
 19 except as provided in [section 5], may not exceed the period
 20 of commitment. If the mental health facility designated to
 21 provide outpatient care is other than the facility providing
 22 involuntary treatment, the outpatient facility so designated
 23 must agree in writing to assume such responsibility.

24 (2) The mental health facility designated to provide
 25 outpatient care or the professional person in charge of the

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

11 ~~(3) If the mental health facility designated to~~
 12 ~~provide outpatient care determines that a conditionally~~
 13 ~~released person is failing to adhere to the terms and~~
 14 ~~conditions of his release and because of that failure has~~
 15 ~~become a substantial danger to himself or other persons,~~
 16 ~~then, upon notification by the mental health facility~~
 17 ~~designated to provide outpatient care or on his own motion,~~
 18 ~~the professional person in charge of the patient's case may~~
 19 ~~order that the conditionally released person be apprehended~~
 20 ~~and returned to the facility from which he was conditionally~~
 21 ~~released. The professional person in charge of the patient's~~
 22 ~~case may modify or rescind the order at any time. The~~
 23 ~~professional person shall mail or deliver notice to the~~
 24 ~~person detained, his attorney, if any, his guardian or~~
 25 ~~conservator, if any, his next of kin, if known, and the~~



1 friend--of-respondent-appointed-by-the-court--The-sheriff-of
 2 the-county-where-the-mental-health-facility-is--located--and
 3 from--which-the-patient-is-being-transferred-has-the-duty-of
 4 transporting-a-patient-under-the-provisions-of-this-section.
 5 (4)--The-proceedings-set-forth--in--subsection--(3)--of
 6 this--section-may-be-initiated-by-the-professional-person-in
 7 charge-of-the-patient's-case-on-the--same--basis--set--forth
 8 therein--without--the--professional--person--requiring--or
 9 ordering-the-apprehension-and-detention-of-the-conditionally
 10 released-person.

11 (5)(3) Notice in writing to the court which committed
 12 the patient for treatment and the county attorney who
 13 initiated the action shall be provided by the professional
 14 person in charge of him at least 5 days prior to his release
 15 from commitment or outpatient care.

16 (4) This section and [sections 2 through 5] do not
 17 apply to a temporary release, certified as such by the
 18 professional person in charge of the mental health facility,
 19 from the facility for the purposes of a home visit not
 20 exceeding 30 days."

21 NEW SECTION. Section 2. Rehospitalization of patient
 22 conditionally released from inpatient treatment facilities
 23 -- petition. (1) A proceeding for the rehospitalization of
 24 a patient conditionally released from an inpatient mental
 25 health facility pursuant to 53-21-182 or 53-21-183 is

1 commenced by the filing of a written petition in any
 2 district court by the county attorney, the professional
 3 person in charge of the patient's case, or the patient's
 4 next of kin. Upon the filing of a petition under this
 5 subsection, the clerk of court shall notify each district
 6 court that committed the patient for the period of his
 7 present hospitalization under 53-21-127 or 53-21-128 and
 8 request that the file of the earlier proceeding or
 9 proceedings be forwarded to the clerk. The file or files
 10 must be promptly forwarded.

11 (2) The patient has the rights set forth in 53-21-115
 12 in a proceeding under this section.

13 (3) The petition must state:

14 (a) the patient's name and last-known address;
 15 (b) the name and address of the patient's spouse, next
 16 of kin, attorney, or the friend of respondent appointed by
 17 the court, if any and if this information is reasonably
 18 ascertainable;

19 (c) that the patient has been determined by the
 20 district court to be seriously mentally ill within the
 21 meaning of this part and is presently under a valid order of
 22 commitment pursuant to 53-21-127 or 53-21-128;

23 (d) a simple and precise statement of the facts
 24 showing that the patient has violated a condition of the
 25 release, that the violation has caused a deterioration of

1 the patient's mental disorder, and that as a result of this
2 deterioration the patient can no longer be appropriately
3 served by outpatient care; and

4 (e) a statement of the rights of the respondent,
5 including those set forth in 53-21-115, which must be in
6 conspicuous print and identified by a suitable heading.

7 (4) The petition must be filed with the clerk of
8 court, who shall immediately notify the judge.

9 (5) The judge shall issue notice of the time and place
10 of the hearing on the petition. The hearing must be held no
11 more than 5 days after the date the petition is filed,
12 including weekends and holidays, unless the fifth day falls
13 upon a weekend or holiday or unless additional time is
14 requested by the patient. Further, the judge must ensure
15 that the notice and copy of the petition are immediately
16 hand-delivered to the patient, to his friend or respondent,
17 if any, and to his counsel.

18 NEW SECTION. Section 3. Detention of conditionally
19 released patient pending hearing. The court may not order
20 detention of the conditionally released patient pending the
21 hearing, except as permitted under 53-21-124.

22 NEW SECTION. Section 4. Hearing on rehospitalization
23 petition -- revocation of conditional release. (1) The
24 court may order that the patient's conditional release
25 status be revoked and that the patient be returned to the

1 mental health facility from which he was conditionally
2 released or sent to another appropriate inpatient mental
3 health facility if, after a hearing, the court finds by
4 clear and convincing evidence that:

5 (a) the conditionally released patient has been
6 determined by the district court to be seriously mentally
7 ill and is presently under a valid order of commitment
8 pursuant to 53-21-127 or 53-21-128; and

9 (b) the conditionally released patient has violated a
10 condition of the release, that the violation has caused a
11 deterioration of the patient's mental condition, and that as
12 a result of this deterioration the patient can no longer be
13 appropriately served by outpatient care.

14 (2) A revocation of the patient's conditional release
15 status under subsection (1) must be based on the testimony
16 of the professional person responsible for the patient's
17 case.

18 (3) If the court revokes the patient's conditional
19 release status pursuant to subsection (1), a treatment plan
20 must be updated or a new plan prepared for the patient as
21 required by and within the time set forth in 53-21-162.

22 (4) Except as provided in [section 5], an order
23 revoking the patient's conditional release status may not
24 order hospitalization or impose other conditions of release
25 that extend beyond the expiration date of the order

1 committing the patient under 53-21-127 or 53-21-128.

2 NEW SECTION. Section 5. Extension of conditions of
3 release -- hearing. (1) Conditions of release may be
4 extended by the district court beyond the expiration date of
5 the order committing the patient under 53-21-127 or
6 53-21-128, but in no case for longer than 3 years beyond
7 that date, upon a showing by clear and convincing evidence
8 that:

9 (a) continuation of the conditions of release is
10 necessary to prevent the deterioration of the patient's
11 mental disorder; and

12 (b) the deterioration will predictably result in the
13 necessity of further inpatient care for the person.
14 Predictability may be established by the patient's medical
15 history.

16 (2) Not less than 2 calendar weeks prior to the end of
17 the period of detention ordered under 53-21-127 or 53-21-128
18 or the period of extension ordered under subsection (5) of
19 this section, the professional person responsible for the
20 patient's case may petition the court for extension of the
21 conditions of release. The petition must be accompanied by
22 a written report and evaluation of the patient's mental and
23 physical condition. The report must describe any tests and
24 evaluation devices which have been employed in evaluating
25 the patient, the course of treatment which has been

1 undertaken for the patient, and the future course of
2 treatment anticipated by the professional person.

3 (3) Upon the filing of the petition, the court shall
4 give written notice of the filing of the petition to the
5 patient, his next of kin, if reasonably available, the
6 friend of respondent appointed by the court, if any, and the
7 patient's counsel. If any person so notified requests a
8 hearing prior to the end of the period of detention ordered
9 under 53-21-127 or 53-21-128, the court shall immediately
10 set a time and place for a hearing on a date not more than
11 10 days from the receipt of the request and notify the same
12 people, including the professional person in charge of the
13 patient. If a hearing is not requested, the court shall
14 enter an order extending the conditions of release for a
15 period not to exceed 6 months.

16 (4) Procedure on the petition for extension is the
17 same in all respects as the procedure for hearing on a
18 rehospitalization petition pursuant to [section 4] except
19 that in an extension proceeding, the finding required is
20 that set forth in subsection (1) of this section. The
21 hearing must be held in the district court for the county in
22 which the patient is residing. Court costs and witness fees,
23 if any, must be paid by the county that paid the same costs
24 in the initial commitment proceeding.

25 (5) If upon the hearing the court finds that the

1 showing required by subsection (1) has not been made, the
2 conditions of release may not be extended. If the court
3 finds that the required showing has been made, the court may
4 extend the conditions of release as recommended by the
5 professional person. In its order, the court shall describe
6 what alternatives for treatment of the patient are
7 available, what alternatives were investigated, and why the
8 investigated alternatives were not deemed suitable. The
9 court may not order continuation of an alternative that does
10 not include a comprehensive, individualized plan of
11 treatment for the patient as required by 53-21-162. 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 (6) Further extensions may be obtained under the same
16 procedure described in this section except that the
17 patient's custody may not be affected for more than 1 year
18 without a renewal of the extension under the procedures set
19 forth in this section, including a hearing and a statement
20 of the findings required by subsection (5).

21 NEW SECTION. Section 6. Codification instruction.
22 Sections 2 through 5 are intended to be codified as an
23 integral part of Title 53, chapter 21, part 1, and the
24 provisions of Title 53, chapter 21, part 1, apply to
25 sections 2 through 5.

-End-

RE-REFERRED AND
APPROVED BY COMMITTEE
ON JUDICIARY

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2 INTRODUCED BY TOWE, BARDANOUE

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16 expiration of the period of commitment, then outpatient care
17 may be required as a condition for early release for a
18 period which, when added to the inpatient treatment period,
19 except as provided in [section 5], may not exceed the period
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21 provide outpatient care is other than the facility providing
22 involuntary treatment, the outpatient facility so designated
23 must agree in writing to assume such responsibility.

24 (2) The mental health facility designated to provide
25 outpatient care or the professional person in charge of the

1 patient's case may modify the conditions for continued
2 release when the modification is in the best interest of the
3 patient. This includes the authorization to transfer the
4 patient to another mental health facility designated to
5 provide outpatient care, provided the transfer is in the
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7 designated agrees in writing to assume responsibility.
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23 ~~professional person shall mail or deliver notice to the~~
24 ~~person detained, his attorney, if any, his guardian or~~
25 ~~conservator, if any, his next of kin, if known, and the~~

SECOND READING

~~friend of respondent appointed by the court. The sheriff of the county where the mental health facility is located and from which the patient is being transferred has the duty of transporting a patient under the provisions of this section.~~

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

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

(4) This section and [sections 2 through 5] do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

NEW SECTION. Section 2. Rehospitalization of patient conditionally released from inpatient treatment facilities -- petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is

commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of his present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be seriously mentally ill within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of

1 the patient's mental disorder, and that as a result of this
2 deterioration the patient can no longer be appropriately
3 served by outpatient care; and

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5 including those set forth in 53-21-115, which must be in
6 conspicuous print and identified by a suitable heading.

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8 court, who shall immediately notify the judge.

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10 of the hearing on the petition. The hearing must be held no
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17 if any, and to his counsel.

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19 released patient pending hearing. The court may not order
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22 NEW SECTION. Section 4. Hearing on rehospitalization
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18 (3) If the court revokes the patient's conditional
19 release status pursuant to subsection (1), a treatment plan
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23 revoking the patient's conditional release status may not
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7 that date, upon a showing by clear and convincing evidence
8 that:

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10 necessary to prevent the deterioration of the patient's
11 mental disorder; and

12 (b) the deterioration will predictably result in the
13 necessity of further inpatient care for the person.
14 Predictability may be established by the patient's medical
15 history.

16 (2) Not less than 2 calendar weeks prior to the end of
17 the period of detention ordered under 53-21-127 or 53-21-128
18 or the period of extension ordered under subsection (5) of
19 this section, the professional person responsible for the
20 patient's case may petition the court for extension of the
21 conditions of release. The petition must be accompanied by
22 a written report and evaluation of the patient's mental and
23 physical condition. The report must describe any tests and
24 evaluation devices which have been employed in evaluating
25 the patient, the course of treatment which has been

1 undertaken for the patient, and the future course of
2 treatment anticipated by the professional person.

3 (3) Upon the filing of the petition, the court shall
4 give written notice of the filing of the petition to the
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7 patient's counsel. If any person so notified requests a
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12 people, including the professional person in charge of the
13 patient. If a hearing is not requested, the court shall
14 enter an order extending the conditions of release for a
15 period not to exceed 6 months.

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17 same in all respects as the procedure for hearing on a
18 rehospitalization petition pursuant to [section 4] except
19 that in an extension proceeding, the finding required is
20 that set forth in subsection (1) of this section. The
21 hearing must be held in the district court for the county in
22 which the patient is residing. Court costs and witness fees,
23 if any, must be paid by the county that paid the same costs
24 in the initial commitment proceeding.

25 (5) If upon the hearing the court finds that the

1 showing required by subsection (1) has not been made, the
 2 conditions of release may not be extended. If the court
 3 finds that the required showing has been made, the court may
 4 extend the conditions of release as recommended by the
 5 professional person. In its order, the court shall describe
 6 what alternatives for treatment of the patient are
 7 available, what alternatives were investigated, and why the
 8 investigated alternatives were not deemed suitable. The
 9 court may not order continuation of an alternative that does
 10 not include a comprehensive, individualized plan of
 11 treatment for the patient as required by 53-21-162. 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 (6) Further extensions may be obtained under the same
 16 procedure described in this section except that the
 17 patient's custody may not be affected for more than 1 year
 18 without a renewal of the extension under the procedures set
 19 forth in this section, including a hearing and a statement
 20 of the findings required by subsection (5). EXTENSIONS UNDER
 21 THIS SUBSECTION MAY NOT EXTEND THE 3-YEAR EXTENSION
 22 LIMITATION PROVIDED IN SUBSECTION (1).

23 NEW SECTION. Section 6. Codification instruction.
 24 Sections 2 through 5 are intended to be codified as an
 25 integral part of Title 53, chapter 21, part 1, and the

1 provisions of Title 53, chapter 21, part 1, apply to
 2 sections 2 through 5.

-End-

SENATE BILL NO. 375

INTRODUCED BY TOWE, BARDANOUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NOTICE AND A HEARING PRIOR TO REVOCATION OF A MENTAL HEALTH PATIENT'S CONDITIONAL RELEASE STATUS; AMENDING SECTION 53-21-183, MCA."

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

Section 1. Section 53-21-183, MCA, is amended to read:

"53-21-183. Release conditioned on receipt of outpatient care. (1) When, in the opinion of the professional person in charge of a mental health facility providing involuntary treatment, the committed person can be appropriately served by outpatient care prior to the expiration of the period of commitment, then outpatient care may be required as a condition for early release for a period which, when added to the inpatient treatment period, except as provided in [section 5], may not exceed the period of commitment. If the mental health facility designated to provide outpatient care is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility.

(2) The mental health facility designated to provide outpatient care or the professional person in charge of the

patient's case may modify the conditions for continued release when the modification is in the best interest of the patient. This includes the authorization to transfer the patient to another mental health facility designated to provide outpatient care, provided the transfer is in the best interest of the patient and the outpatient facility so designated agrees in writing to assume responsibility. Notice of an intended transfer shall be given to the professional person in charge of the mental health facility that provided the involuntary treatment.

~~(3) If the mental health facility designated to provide outpatient care determines that a conditionally released person is failing to adhere to the terms and conditions of his release and because of that failure has become a substantial danger to himself or other persons, then upon notification by the mental health facility designated to provide outpatient care or on his own motion, the professional person in charge of the patient's case may order that the conditionally released person be apprehended and returned to the facility from which he was conditionally released. The professional person in charge of the patient's case may modify or rescind the order at any time. The professional person shall mail or deliver notice to the person detained, his attorney, if any, his guardian or conservator, if any, his next of kin, if known, and the~~

THIRD READING

SB 375



~~friend--of-respondent-appointed-by-the-court--The-sheriff-of
the-county-where-the-mental-health-facility-is--located--and
from--which-the-patient-is-being-transferred-has-the-duty-of
transporting-a-patient-under-the-provisions-of-this-section-~~

~~{4}--The-proceedings-set-forth--in--subsection--{3}--of
this--section-may-be-initiated-by-the-professional-person-in
charge-of-the-patient's-case-on-the--same--basis--set--forth
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ordering-the-apprehension-and-detention-of-the-conditionally
released-person-~~

{5}(3) Notice in writing to the court which committed the patient for treatment and the county attorney who initiated the action shall be provided by the professional person in charge of him at least 5 days prior to his release from commitment or outpatient care.

{4} This section and [sections 2 through 5] do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days."

NEW SECTION. Section 2. Rehospitalization of patient conditionally released from inpatient treatment facilities -- petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is

commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of his present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be seriously mentally ill within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of

1 the patient's mental disorder, and that as a result of this
 2 deterioration the patient can no longer be appropriately
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4 (e) a statement of the rights of the respondent,
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 23 petition -- revocation of conditional release. (1) The
 24 court may order that the patient's conditional release
 25 status be revoked and that the patient be returned to the

1 mental health facility from which he was conditionally
 2 released or sent to another appropriate inpatient mental
 3 health facility if, after a hearing, the court finds by
 4 clear and convincing evidence that:

5 (a) the conditionally released patient has been
 6 determined by the district court to be seriously mentally
 7 ill and is presently under a valid order of commitment
 8 pursuant to 53-21-127 or 53-21-128; and

9 (b) the conditionally released patient has violated a
 10 condition of the release, that the violation has caused a
 11 deterioration of the patient's mental condition, and that as
 12 a result of this deterioration the patient can no longer be
 13 appropriately served by outpatient care.

14 (2) A revocation of the patient's conditional release
 15 status under subsection (1) must be based on the testimony
 16 of the professional person responsible for the patient's
 17 case.

18 (3) If the court revokes the patient's conditional
 19 release status pursuant to subsection (1), a treatment plan
 20 must be updated or a new plan prepared for the patient as
 21 required by and within the time set forth in 53-21-162.

22 (4) Except as provided in [section 5], an order
 23 revoking the patient's conditional release status may not
 24 order hospitalization or impose other conditions of release
 25 that extend beyond the expiration date of the order

1 committing the patient under 53-21-127 or 53-21-128.

2 NEW SECTION. Section 5. Extension of conditions of
3 release -- hearing. (1) Conditions of release may be
4 extended by the district court beyond the expiration date of
5 the order committing the patient under 53-21-127 or
6 53-21-128, but in no case for longer than 3 years beyond
7 that date, upon a showing by clear and convincing evidence
8 that:

9 (a) continuation of the conditions of release is
10 necessary to prevent the deterioration of the patient's
11 mental disorder; and

12 (b) the deterioration will predictably result in the
13 necessity of further inpatient care for the person.
14 Predictability may be established by the patient's medical
15 history.

16 (2) Not less than 2 calendar weeks prior to the end of
17 the period of detention ordered under 53-21-127 or 53-21-128
18 or the period of extension ordered under subsection (5) of
19 this section, the professional person responsible for the
20 patient's case may petition the court for extension of the
21 conditions of release. The petition must be accompanied by
22 a written report and evaluation of the patient's mental and
23 physical condition. The report must describe any tests and
24 evaluation devices which have been employed in evaluating
25 the patient, the course of treatment which has been

1 undertaken for the patient, and the future course of
2 treatment anticipated by the professional person.

3 (3) Upon the filing of the petition, the court shall
4 give written notice of the filing of the petition to the
5 patient, his next of kin, if reasonably available, the
6 friend of respondent appointed by the court, if any, and the
7 patient's counsel. If any person so notified requests a
8 hearing prior to the end of the period of detention ordered
9 under 53-21-127 or 53-21-128, the court shall immediately
10 set a time and place for a hearing on a date not more than
11 10 days from the receipt of the request and notify the same
12 people, including the professional person in charge of the
13 patient. If a hearing is not requested, the court shall
14 enter an order extending the conditions of release for a
15 period not to exceed 6 months.

16 (4) Procedure on the petition for extension is the
17 same in all respects as the procedure for hearing on a
18 rehospitalization petition pursuant to [section 4] except
19 that in an extension proceeding, the finding required is
20 that set forth in subsection (1) of this section. The
21 hearing must be held in the district court for the county in
22 which the patient is residing. Court costs and witness fees,
23 if any, must be paid by the county that paid the same costs
24 in the initial commitment proceeding.

25 (5) If upon the hearing the court finds that the

1 showing required by subsection (1) has not been made, the
2 conditions of release may not be extended. If the court
3 finds that the required showing has been made, the court may
4 extend the conditions of release as recommended by the
5 professional person. In its order, the court shall describe
6 what alternatives for treatment of the patient are
7 available, what alternatives were investigated, and why the
8 investigated alternatives were not deemed suitable. The
9 court may not order continuation of an alternative that does
10 not include a comprehensive, individualized plan of
11 treatment for the patient as required by 53-21-162. 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 (6) Further extensions may be obtained under the same
16 procedure described in this section except that the
17 patient's custody may not be affected for more than 1 year
18 without a renewal of the extension under the procedures set
19 forth in this section, including a hearing and a statement
20 of the findings required by subsection (5). EXTENSIONS UNDER
21 THIS SUBSECTION MAY NOT EXTEND THE 3-YEAR EXTENSION
22 LIMITATION PROVIDED IN SUBSECTION (1).

23 NEW SECTION. Section 6. Codification instruction.
24 Sections 2 through 5 are intended to be codified as an
25 integral part of Title 53, chapter 21, part 1, and the

1 provisions of Title 53, chapter 21, part 1, apply to
2 sections 2 through 5.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 27

19 85

MR. Speaker:

We, your committee on **Judiciary**

having had under consideration **Senate** Bill No. **375**

Third reading copy (Blue)
color

CONDITIONAL RELEASE OF MENTAL HEALTH PATIENTS -- REVOCATION OF COND. RELEASE

Respectfully report as follows: That **Senate** Bill No. **375**

be amended as follows:

1. Page 7, line 6.
Strike: "3"
Insert: "2"
2. Page 9, line 21.
Strike: "3-YEAR"
Insert: "2-year"

MK

AND AS AMENDED,
~~XXXXXX~~ BE CONCURRED IN

5/27

Tom Hannah
.....
REP. TOM HANNAH Chairman.

1 SENATE BILL NO. 375

2 INTRODUCED BY TOWE, BARDANOUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR NOTICE
5 AND A HEARING PRIOR TO REVOCATION OF A MENTAL HEALTH
6 PATIENT'S CONDITIONAL RELEASE STATUS; AMENDING SECTION
7 53-21-183, MCA."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 53-21-183, MCA, is amended to read:

11 "53-21-183. Release conditioned on receipt of
12 outpatient care. (1) When, in the opinion of the
13 professional person in charge of a mental health facility
14 providing involuntary treatment, the committed person can be
15 appropriately served by outpatient care prior to the
16 expiration of the period of commitment, then outpatient care
17 may be required as a condition for early release for a
18 period which, when added to the inpatient treatment period,
19 except as provided in [section 5], may not exceed the period
20 of commitment. If the mental health facility designated to
21 provide outpatient care is other than the facility providing
22 involuntary treatment, the outpatient facility so designated
23 must agree in writing to assume such responsibility.

24 (2) The mental health facility designated to provide
25 outpatient care or the professional person in charge of the

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

11 ~~{3}--if--the--mental--health--facility--designated---to
12 provide--outpatient--care--determines--that--a--conditionally
13 released--person--is--failing--to--adhere--to--the--terms--and
14 conditions--of--his--release--and--because--of--that--failure--has
15 become--a--substantial--danger--to--himself--or--other--persons;
16 then,--upon--notification--by--the--mental--health--facility
17 designated--to--provide--outpatient--care--or--on--his--own--motion,
18 the--professional--person--in--charge--of--the--patient's--case--may
19 order--that--the--conditionally--released--person--be--apprehended
20 and--returned--to--the--facility--from--which--he--was--conditionally
21 released--The--professional--person--in--charge--of--the--patient's
22 case--may--modify--or--rescind--the--order--at--any--time--The
23 professional--person--shall--mail--or--deliver--notice---to--the
24 person--detained,--his--attorney,--if--any,--his--guardian--or
25 conservator,--if--any,--his--next--of--kin,--if--known,--and--the~~

~~friend--of-respondent-appointed-by-the-court--The-sheriff-of
the-county-where-the-mental-health-facility-is--located--and
from--which-the-patient-is-being-transferred-has-the-duty-of
transporting-a-patient-under-the-provisions-of-this-section.~~

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

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

(4) This section and [sections 2 through 5] do not apply to a temporary release, certified as such by the professional person in charge of the mental health facility, from the facility for the purposes of a home visit not exceeding 30 days.

NEW SECTION. Section 2. Rehospitalization of patient conditionally released from inpatient treatment facilities -- petition. (1) A proceeding for the rehospitalization of a patient conditionally released from an inpatient mental health facility pursuant to 53-21-182 or 53-21-183 is

commenced by the filing of a written petition in any district court by the county attorney, the professional person in charge of the patient's case, or the patient's next of kin. Upon the filing of a petition under this subsection, the clerk of court shall notify each district court that committed the patient for the period of his present hospitalization under 53-21-127 or 53-21-128 and request that the file of the earlier proceeding or proceedings be forwarded to the clerk. The file or files must be promptly forwarded.

(2) The patient has the rights set forth in 53-21-115 in a proceeding under this section.

(3) The petition must state:

(a) the patient's name and last-known address;

(b) the name and address of the patient's spouse, next of kin, attorney, or the friend of respondent appointed by the court, if any and if this information is reasonably ascertainable;

(c) that the patient has been determined by the district court to be seriously mentally ill within the meaning of this part and is presently under a valid order of commitment pursuant to 53-21-127 or 53-21-128;

(d) a simple and precise statement of the facts showing that the patient has violated a condition of the release, that the violation has caused a deterioration of

1 the patient's mental disorder, and that as a result of this
 2 deterioration the patient can no longer be appropriately
 3 served by outpatient care; and

4 (e) a statement of the rights of the respondent,
 5 including those set forth in 53-21-115, which must be in
 6 conspicuous print and identified by a suitable heading.

7 (4) The petition must be filed with the clerk of
 8 court, who shall immediately notify the judge.

9 (5) The judge shall issue notice of the time and place
 10 of the hearing on the petition. The hearing must be held no
 11 more than 5 days after the date the petition is filed,
 12 including weekends and holidays; unless the fifth day falls
 13 upon a weekend or holiday or unless additional time is
 14 requested by the patient. Further, the judge must ensure
 15 that the notice and copy of the petition are immediately
 16 hand-delivered to the patient, to his friend or respondent,
 17 if any, and to his counsel.

18 NEW SECTION. Section 3. Detention of conditionally
 19 released patient pending hearing. The court may not order
 20 detention of the conditionally released patient pending the
 21 hearing, except as permitted under 53-21-124.

22 NEW SECTION. Section 4. Hearing on rehospitalization
 23 petition -- revocation of conditional release. (1) The
 24 court may order that the patient's conditional release
 25 status be revoked and that the patient be returned to the

1 mental health facility from which he was conditionally
 2 released or sent to another appropriate inpatient mental
 3 health facility if, after a hearing, the court finds by
 4 clear and convincing evidence that:

5 (a) the conditionally released patient has been
 6 determined by the district court to be seriously mentally
 7 ill and is presently under a valid order of commitment
 8 pursuant to 53-21-127 or 53-21-128; and

9 (b) the conditionally released patient has violated a
 10 condition of the release, that the violation has caused a
 11 deterioration of the patient's mental condition, and that as
 12 a result of this deterioration the patient can no longer be
 13 appropriately served by outpatient care.

14 (2) A revocation of the patient's conditional release
 15 status under subsection (1) must be based on the testimony
 16 of the professional person responsible for the patient's
 17 case.

18 (3) If the court revokes the patient's conditional
 19 release status pursuant to subsection (1), a treatment plan
 20 must be updated or a new plan prepared for the patient as
 21 required by and within the time set forth in 53-21-162.

22 (4) Except as provided in [section 5], an order
 23 revoking the patient's conditional release status may not
 24 order hospitalization or impose other conditions of release
 25 that extend beyond the expiration date of the order

1 committing the patient under 53-21-127 or 53-21-128.

2 NEW SECTION. Section 5. Extension of conditions of
3 release -- hearing. (1) Conditions of release may be
4 extended by the district court beyond the expiration date of
5 the order committing the patient under 53-21-127 or
6 53-21-128, but in no case for longer than 3 2 years beyond
7 that date, upon a showing by clear and convincing evidence
8 that:

9 (a) continuation of the conditions of release is
10 necessary to prevent the deterioration of the patient's
11 mental disorder; and

12 (b) the deterioration will predictably result in the
13 necessity of further inpatient care for the person.
14 Predictability may be established by the patient's medical
15 history.

16 (2) Not less than 2 calendar weeks prior to the end of
17 the period of detention ordered under 53-21-127 or 53-21-128
18 or the period of extension ordered under subsection (5) of
19 this section, the professional person responsible for the
20 patient's case may petition the court for extension of the
21 conditions of release. The petition must be accompanied by
22 a written report and evaluation of the patient's mental and
23 physical condition. The report must describe any tests and
24 evaluation devices which have been employed in evaluating
25 the patient, the course of treatment which has been

1 undertaken for the patient, and the future course of
2 treatment anticipated by the professional person.

3 (3) Upon the filing of the petition, the court shall
4 give written notice of the filing of the petition to the
5 patient, his next of kin, if reasonably available, the
6 friend of respondent appointed by the court, if any, and the
7 patient's counsel. If any person so notified requests a
8 hearing prior to the end of the period of detention ordered
9 under 53-21-127 or 53-21-128, the court shall immediately
10 set a time and place for a hearing on a date not more than
11 10 days from the receipt of the request and notify the same
12 people, including the professional person in charge of the
13 patient. If a hearing is not requested, the court shall
14 enter an order extending the conditions of release for a
15 period not to exceed 6 months.

16 (4) Procedure on the petition for extension is the
17 same in all respects as the procedure for hearing on a
18 rehospitalization petition pursuant to [section 4] except
19 that in an extension proceeding, the finding required is
20 that set forth in subsection (1) of this section. The
21 hearing must be held in the district court for the county in
22 which the patient is residing. Court costs and witness fees,
23 if any, must be paid by the county that paid the same costs
24 in the initial commitment proceeding.

25 (5) If upon the hearing the court finds that the

1 showing required by subsection (1) has not been made, the
 2 conditions of release may not be extended. If the court
 3 finds that the required showing has been made, the court may
 4 extend the conditions of release as recommended by the
 5 professional person. In its order, the court shall describe
 6 what alternatives for treatment of the patient are
 7 available, what alternatives were investigated, and why the
 8 investigated alternatives were not deemed suitable. The
 9 court may not order continuation of an alternative that does
 10 not include a comprehensive, individualized plan of
 11 treatment for the patient as required by 53-21-162. 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 (6) Further extensions may be obtained under the same
 16 procedure described in this section except that the
 17 patient's custody may not be affected for more than 1 year
 18 without a renewal of the extension under the procedures set
 19 forth in this section, including a hearing and a statement
 20 of the findings required by subsection (5). EXTENSIONS UNDER
 21 THIS SUBSECTION MAY NOT EXTEND THE 3-YEAR 2-YEAR EXTENSION
 22 LIMITATION PROVIDED IN SUBSECTION (1).

23 NEW SECTION. Section 6. Codification instruction.
 24 Sections 2 through 5 are intended to be codified as an
 25 integral part of Title 53, chapter 21, part 1, and the

1 provisions of Title 53, chapter 21, part 1, apply to
 2 sections 2 through 5.

-End-