

SENATE BILL NO. 376

2/09 Introduced
2/11 Referred to Public Health, Welfare & Safety
2/13 Rereferred to Judiciary
2/19 Fiscal Note Requested
2/20 Hearing
2/22 Committee Report-Bill Pass As Amended
2/23 Fiscal Note Received
2/25 2nd Reading Pass
2/27 3rd Reading Pass

Transmitted to House

3/06 Referred to Judiciary
3/20 Hearing
3/30 Committee Report-No Recommendation
4/03 2nd Reading Concurred
4/05 3rd Reading Not Concurred
4/05 Bill Killed

1 Senate BILL NO. 376
 2 INTRODUCED BY Sen. Budaman

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 INVOLUNTARY COMMITMENT FOR MENTAL HEALTH TREATMENT IN THE
 6 LOCAL COMMUNITY OF PERSONS WHO ARE NOT A DANGER TO
 7 THEMSELVES OR OTHERS BUT WHO SUFFER FROM A MENTAL DISORDER
 8 AND ARE LIKELY TO BECOME A DANGER TO THEMSELVES OR OTHERS IF
 9 THEY DO NOT RECEIVE TREATMENT; AMENDING SECTIONS 53-21-102,
 10 53-21-116, 53-21-120, 53-21-121, 53-21-123, AND 53-21-126
 11 THROUGH 53-21-128, MCA."

12
 13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 Section 1. Section 53-21-102, MCA, is amended to read:
 15 "53-21-102. Definitions. As used in this part parts 1
 16 and 2 of this chapter, the following definitions apply:

- 17 (1) "Board" or "mental disabilities board of visitors"
 18 means the mental disabilities board of visitors created by
 19 2-15-211.
- 20 (2) "Court" means any district court of the state of
 21 Montana.
- 22 (3) "Department" means the department of institutions
 23 provided for in Title 2, chapter 15, part 23.
- 24 (4) "Emergency situation" means a situation in which
 25 any person is in imminent danger of death or serious bodily

1 harm from the activity of a person who appears to be
 2 seriously mentally ill.

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

19 †5†(6) "Mental disorder" means any organic, mental, or
 20 emotional impairment which has substantial adverse effects
 21 on an individual's cognitive or volitional functions.

22 †6†(7) "Mental health facility" or "facility" means a
 23 public hospital or a licensed private hospital which is
 24 equipped and staffed to provide treatment for persons with
 25 mental disorders or a community mental health center or any



1 mental health clinic or treatment center approved by the
2 department. No correctional institution or facility or jail
3 is a mental health facility within the meaning of this part.

4 ~~{7}~~{8} "Next of kin" shall include but need not be
5 limited to the spouse, parents, adult children, and adult
6 brothers and sisters of a person.

7 ~~{8}~~{9} "Patient" means a person committed by the court
8 for treatment for any period of time or who is voluntarily
9 admitted for treatment for any period of time.

10 ~~{9}~~{10} "Peace officer" means any sheriff, deputy
11 sheriff, marshal, policeman, or other peace officer.

12 {11} "Person in need of treatment" means a person who:

13 {a} suffers from a mental disorder;

14 {b} has been deprived by reason of his mental disorder
15 of the capacity to function without major disruption to
16 person or property even with the available assistance of
17 family friends, or others;

18 {c} as a result of his mental disorder is unable to
19 understand his need for treatment and to give or withhold
20 informed consent to the treatment; and

21 {d} who, if his mental disorder is untreated, will
22 predictably suffer further serious deterioration in his
23 mental condition. Predictability may be established by the
24 patient's medical history.

25 ~~{10}~~{12} "Professional person" means:

1 (a) a medical doctor; or

2 (b) a person who has been certified, as provided for
3 in 53-21-106, by the department.

4 ~~{11}~~{13} "Reasonable medical certainty" means
5 reasonable certainty as judged by the standards of a
6 professional person.

7 ~~{12}~~{14} "Respondent" means a person alleged in a
8 petition filed pursuant to this part to be seriously
9 mentally ill or in need of treatment.

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

25 ~~{14}~~{15} "Seriously mentally ill" means suffering from

1 a mental disorder which has resulted in self-inflicted
 2 injury or injury to others or the imminent threat thereof or
 3 which has deprived the person afflicted of the ability to
 4 protect his life or health. For this purpose, injury means
 5 physical injury. No person may be involuntarily committed to
 6 a mental health facility or detained for evaluation and
 7 treatment because he is an epileptic, mentally deficient,
 8 mentally retarded, senile, or suffering from a mental
 9 disorder unless the condition causes him to be seriously
 10 mentally ill within the meaning of this part.

11 ~~(15)~~(16) "State hospital" means the Montana state
 12 hospital."

13 Section 2. Section 53-21-116, MCA, is amended to read:

14 "53-21-116. Right to be present at hearing or trial --
 15 appointment of counsel. The person alleged to be seriously
 16 mentally ill or in need of treatment has the right to be
 17 present at any hearing or trial. If he has no attorney, the
 18 judge shall appoint one to represent him at either the
 19 hearing or the trial, or both, who shall be compensated from
 20 the public funds of the county where the respondent
 21 resides."

22 Section 3. Section 53-21-120, MCA, is amended to read:

23 "53-21-120. Detention to be in least restrictive
 24 environment -- prehearing detention of person in need of
 25 treatment prohibited -- preference for mental health

1 facility -- court relief. (1) A person detained pursuant to
 2 this part shall be detained in the least restrictive
 3 environment required to protect the life and physical safety
 4 of the person detained or members of the public; in this
 5 respect, 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 until time of
 12 trial if arrangements can be made to return him to trial.
 13 Such trial must be held within 30 days. The county of
 14 residence shall pay the cost of travel and professional
 15 services associated with the trial. No person may be
 16 detained in any hospital or other medical facility which is
 17 not a mental health facility unless such hospital or
 18 facility has agreed in writing to admit the person.

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

1 detained and the public, then the detained person shall be
2 transferred from the jail or correctional facility to the
3 mental health facility.

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

8 (5) No detention may be ordered under this part for a
9 person concerning whom a petition for treatment has been
10 filed under 53-21-121(1)(b)."

11 Section 4. Section 53-21-121, MCA, is amended to read:

12 "53-21-121. Petition for commitment -- person in need
13 of treatment -- contents of -- notice of. (1) The county
14 attorney, upon the written request of any person, may file a
15 petition with the court:

16 (a) alleging that there is a person within the county
17 who is seriously mentally ill and requesting that the person
18 be committed to a mental health facility for inpatient
19 treatment for a period of no more than 3 months; or

20 (b) alleging that there is a person within the county
21 who is in need of treatment and requesting that the person
22 be committed for treatment for a period of no more than 30
23 days.

24 (2) The petition shall contain:

25 (a) the name and address of the person requesting the

1 petition and his interest in the case;

2 (b) the name of the respondent and, if known, the
3 address, age, sex, marital status, and occupation of the
4 respondent;

5 (c) the purported facts supporting the allegation of
6 mental illness or the allegation of the person's need of
7 treatment;

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

11 (e) the name and address of the person's next of kin
12 to the extent known to the county attorney and the person
13 requesting the petition;

14 (f) the name and address of any person whom the county
15 attorney believes might be willing and able to be appointed
16 as friend of respondent;

17 (g) the name, address, and telephone number of the
18 attorney, if any, who has most recently represented the
19 person for whom evaluation is sought; if there is no
20 attorney, there shall be a statement as to whether to the
21 best knowledge of the person requesting the petition the
22 person for whom evaluation is sought is indigent and
23 therefore unable to afford the services of an attorney; and

24 (h) a statement of the rights of the respondent which
25 shall be in conspicuous print and identified by a suitable

1 heading.

2 (3) Notice of the petition shall be hand-delivered to
3 the respondent and to his counsel on or before the initial
4 appearance of the respondent before the judge or justice of
5 the peace. Notice of the petition and the order setting the
6 date and time of the hearing and the names of the
7 respondent's counsel, professional person, and friend of
8 respondent shall be hand-delivered or mailed to the person
9 or persons legally responsible for care, support, and
10 maintenance of the respondent, the next of kin identified in
11 the petition, and any other person identified by the county
12 attorney as a possible friend of respondent other than the
13 one named as the friend of respondent. The notice may
14 provide, other than as to the respondent and his counsel,
15 that no further notice will be given unless written request
16 is filed with the clerk of court."

17 Section 5. Section 53-21-123, MCA, is amended to read:

18 "53-21-123. Examination of respondent following
19 initial hearing -- recommendation of professional person.
20 (1) Following the initial hearing, whether before a judge or
21 justice of the peace, the respondent shall be examined by
22 the professional person without unreasonable delay. The
23 examination may not exceed a period of 4 hours. The
24 professional person shall immediately notify the county
25 attorney of his findings in person or by phone and shall

1 make a written report of his examination to the court, with
2 copies to the respondent's attorney and the county attorney.

3 (2) The following action shall be taken based on the
4 professional person's findings:

5 (a) If he recommends dismissal, he shall additionally
6 notify counsel and the respondent, if he has been detained,
7 shall be released and the petition dismissed. However, the
8 county attorney may, upon good cause shown, request the
9 court to order an additional, but no more than one,
10 examination by a different professional person for a period
11 of no more than 4 hours.

12 (b) If he finds that commitment proceedings should
13 continue, the hearing shall be held as scheduled.

14 (3) The court may not order further evaluation pending
15 the hearing unless sound medical reasons require additional
16 time for a complete evaluation. Such reasons shall be set
17 forth in the order, along with the amount of additional time
18 needed."

19 Section 6. Section 53-21-126, MCA, is amended to read:

20 "53-21-126. Trial or hearing on petition. (1) The
21 respondent shall be present unless his presence has been
22 waived as provided in 53-21-119(2), and he shall be
23 represented by counsel at all stages of the trial. The trial
24 shall be limited to the determination of whether or not the
25 respondent is seriously mentally ill or in need of treatment

1 within the meaning set forth in this part.

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

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

23 (4) The professional person may testify as to the
24 ultimate issue of whether the respondent is seriously
25 mentally ill or in need of treatment. Testimony on the

1 issue of whether the respondent is seriously mentally ill
2 ~~This--testimony~~ is insufficient unless accompanied by
3 evidence from the professional person or others that:

4 (a) the respondent is suffering from a mental
5 disorder; and

6 (b) the mental disorder has resulted in self-inflicted
7 injury or injury to others or the imminent threat thereof or
8 has deprived the person afflicted of the ability to protect
9 his life or health.

10 (5) The court, upon the showing of good cause and when
11 it is in the best interests of the respondent, may order a
12 change of venue."

13 Section 7. Section 53-21-127, MCA, is amended to read:
14 "53-21-127. Posttrial disposition. (1) If, upon trial,
15 it is determined that the a respondent alleged to be
16 seriously mentally ill is not seriously mentally ill within
17 the meaning of this part or a respondent alleged to be in
18 need of treatment is not in need of treatment within the
19 meaning of this part, he shall be discharged and the
20 petition dismissed.

21 (2) (a) If it is determined in a proceeding for
22 inpatient commitment under 53-21-121(1)(a) that the
23 respondent is seriously mentally ill within the meaning of
24 this part, the court shall hold a posttrial disposition
25 hearing. The disposition hearing shall be held within 5 days

1 (including Saturdays, Sundays, and holidays unless the fifth
2 day falls on a Saturday, Sunday, or holiday), during which
3 time the court may order further evaluation and treatment of
4 the respondent. At the conclusion of the disposition
5 hearing, the court shall:

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

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

11 (iii) order outpatient therapy; or

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

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

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

1 (3) If it is determined in a proceeding for treatment
2 under 53-21-121(1)(b) that the person is in need of
3 treatment within the meaning of this part, the court shall
4 order that he receive treatment. The court shall choose the
5 least restrictive course of treatment reasonably available
6 to the person found to be in need of treatment. The court
7 must make a separate finding setting forth the reason
8 therefor if the order includes a requirement of inpatient
9 treatment or involuntary medication. The court may not order
10 inpatient treatment in the Montana state hospital at Warm
11 Springs under this subsection (3). The person may not be
12 required to pay for court-ordered treatment.

13 (4) Before ordering any treatment for a person found
14 to be in need of treatment under subsection (3), the court
15 shall make findings of fact that treatment appropriate to
16 the needs of the respondent is available. The court shall
17 also indicate on the order the name of the professional
18 person who is to be responsible for the management and
19 supervision of the respondent's treatment."

20 Section 8. Section 53-21-128, MCA, is amended to read:
21 "53-21-128. Petition for extension of commitment
22 period. (1) To extend the period of detention provided for
23 in 53-21-127(2), the procedure set forth in this subsection
24 (1) must be followed:

25 (a) Not less than 2 calendar weeks prior to the end of

1 the 3-month period of detention ~~provided---for---in~~
 2 ~~53-21-127(2)~~, the professional person in charge of the
 3 patient at the place of detention may petition the court for
 4 extension of the detention period. The petition shall be
 5 accompanied by a written report and evaluation of the
 6 patient's mental and physical condition. The report shall
 7 describe any tests and evaluation devices which have been
 8 employed in evaluating the patient, the course of treatment
 9 which has been undertaken for the patient, and the future
 10 course of treatment anticipated by the professional person.

11 (b) Upon the filing of the petition, the court shall
 12 give written notice of the filing of the petition to the
 13 patient, his next of kin, if reasonably available, the
 14 friend of respondent appointed by the court, and the
 15 patient's counsel. If any person so notified requests a
 16 hearing prior to the termination of the previous detention
 17 authority, the court shall immediately set a time and place
 18 for a hearing on a date not more than 10 days from the
 19 receipt of the request and notify the same people, including
 20 the professional person in charge of the patient. If a
 21 hearing is not requested, the court shall enter an order of
 22 commitment for a period not to exceed 6 months.

23 (c) Procedure on the petition for extension when a
 24 hearing has been requested shall be the same in all respects
 25 as the procedure on the petition for the original 3-month

1 commitment except the patient is not entitled to trial by
 2 jury. The hearing shall be held in the district court
 3 having jurisdiction over the facility in which the patient
 4 is detained unless otherwise ordered by the court. Court
 5 costs and witness fees, if any, shall be paid by the county
 6 that paid the same costs in the initial commitment
 7 proceedings.

8 (d) If upon the hearing the court finds the patient
 9 not seriously mentally ill within the meaning of this part,
 10 he shall be discharged and the petition dismissed. If the
 11 court finds that the patient continues to suffer from
 12 serious mental illness, the court shall order commitment,
 13 custody in relatives, outpatient therapy, or other order as
 14 set forth in 53-21-127(2) except that no order may affect
 15 his custody for more than 6 months. In its order, the court
 16 shall describe what alternatives for treatment of the
 17 patient are available, what alternatives were investigated,
 18 and why the investigated alternatives were not deemed
 19 suitable. The court shall not order continuation of an
 20 alternative which does not include a comprehensive,
 21 individualized plan of treatment for the patient. A court
 22 order for the continuation of an alternative shall include a
 23 specific finding that a comprehensive, individualized plan
 24 of treatment exists.

25 (2) To extend the period of treatment of a person

1 found in need of treatment under 53-21-127(3), the procedure
 2 set forth in this subsection (2) must be followed:

3 (a) Not less than 7 days prior to the end of the
 4 30-day period of treatment ordered under 53-21-127(3), the
 5 professional person in charge of the respondent's care may
 6 petition the court for extension of the treatment period.
 7 The petition must be accompanied by a written report and
 8 evaluation of the respondent's mental and physical
 9 condition. The report shall describe any tests and
 10 evaluation devices which have been employed in evaluating
 11 the respondent, the course of treatment which has been
 12 undertaken for the respondent, and the future course of
 13 treatment anticipated by the professional person.

14 (b) Upon the filing of the petition, the court shall
 15 give written notice of the filing of the petition to the
 16 respondent, his next of kin, if reasonably available, the
 17 friend of respondent appointed by the court, if any, and the
 18 respondent's counsel. If any person so notified requests a
 19 hearing prior to the termination of the previous detention
 20 authority, the court shall immediately set a time and place
 21 for a hearing on a date not more than 5 days from the
 22 receipt of the request and notify the same people, including
 23 the professional person in charge of the respondent. If a
 24 hearing is not requested, the court shall enter an order of
 25 treatment for a period not to exceed 30 days.

1 (c) Procedure on the petition for extension when a
 2 hearing has been requested shall be the same in all respects
 3 as the procedure on the petition under 53-21-121(1)(b) for
 4 the original treatment except that the patient is not
 5 entitled to trial by jury. The hearing shall be held in the
 6 district court for the county in which the treatment is
 7 being supervised unless otherwise ordered by the court.
 8 Court costs and witness fees, if any, shall be paid by the
 9 county that paid the same costs in the initial proceedings
 10 under 53-21-121(1)(b).

11 (d) If upon the hearing the court finds the respondent
 12 not in need of treatment within the meaning of this part,
 13 the petition shall be dismissed. If the court finds that
 14 the respondent continues to be in need of treatment, the
 15 court shall order treatment for the respondent. In its
 16 order, the court shall describe what alternatives for
 17 treatment of the respondent are available, what alternatives
 18 were investigated, and why the investigated alternatives
 19 were not considered suitable. The court may not order
 20 continuation of an alternative which does not include a
 21 comprehensive, individualized plan of treatment for the
 22 respondent. A court order for the continuation of an
 23 alternative shall include a specific finding that a
 24 comprehensive, individualized plan of treatment exists.

25 (2)(3) Further extensions may be obtained under the

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

8 NEW SECTION. Section 9. Establishment of treatment
9 plan for person in need of care. (1) A person ordered to
10 receive treatment under 53-21-127(3) must have an
11 individualized treatment plan.

12 (2) The treatment plan must be developed by
13 appropriate professional persons and must be implemented no
14 later than 5 days after the treatment order has been made.

15 (3) Each treatment plan must contain:

16 (a) a statement of the nature of the specific problems
17 and specific needs of the patient;

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

20 (c) a description of intermediate and long-range
21 treatment goals, with a projected timetable for their
22 attainment;

23 (d) a statement and rationale for the plan of
24 treatment for achieving these intermediate and long-range
25 goals; and

1 (e) criteria for release to less restrictive treatment
2 conditions and criteria for discharge.

3 (4) The treatment plan may include prescription by a
4 physician of reasonable and appropriate medication that is
5 consistent with accepted medical standards.

6 NEW SECTION. Section 10. Compliance with treatment
7 plan. If the respondent fails to comply or clearly refuses
8 to comply with all or part of the treatment plan, the
9 professional person designated under 53-21-127 shall make
10 all reasonable effort to solicit the respondent's
11 compliance. Such effort must be documented and reported to
12 the court with a recommendation to the court as to whether
13 the respondent should:

14 (1) have his case dismissed; or

15 (2) be given a supplemental hearing.

16 NEW SECTION. Section 11. Codification instruction.
17 Sections 9 and 10 are intended to be codified as an integral
18 part of Title 53, chapter 21, part 1, and the provisions of
19 Title 53, chapter 21, part 1, apply to sections 9 and 10.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN477-85

Form BD-15

In compliance with a written request received February 19 19 85, there is hereby submitted a Fiscal Note for S.B. 376 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for involuntary commitment for mental health treatment in the local community of persons who are not a danger to themselves or others but who suffer from a mental disorder and are likely to become a danger to themselves or others if they do not receive treatment; amending Sections 53-21-102, 53-21-116, 53-21-120, 53-21-123, and 53-21-126 through 53-21-128, MCA."

ASSUMPTIONS:

1. Persons "in need of treatment" will not be sent to Montana State Hospital (53-21-127 Section 3) but will be treated in the community.
2. Court costs for the hearings will be paid by the counties (MCA 53-21-128 Section 2-c).
3. The appropriations for purchasing services from the Community Mental Health Centers will not be increased due to this bill.

FISCAL IMPACT:

There is no fiscal impact to the State as a result of this bill.

AFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

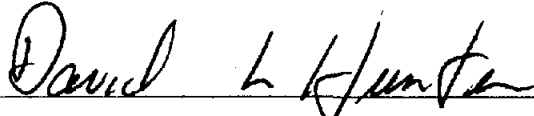
1. There will be a cost impact to the Counties for the additional court hearings and for the medical treatment provided by a private psychologist if this treatment is so ordered by the court.
2. The Community Mental Health Center's caseload will be increased by providing services to these individuals who the court ordered for treatment to be provided by the centers.
3. The fiscal impact to local entities cannot be determined because background data does not exist for this particular clientele group. The caseload may increase for Community Mental Health Centers but the extent is unknown.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

N/A

TECHNICAL OR MECHANICAL DEFECTS OR CONFLICTS WITH EXISTING LEGISLATION:

N/A



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Feb 22, 1985
SB 376

RE-REFERRED AND

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 376

INTRODUCED BY TOWE, BARDANOUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INVOLUNTARY COMMITMENT FOR MENTAL HEALTH TREATMENT IN THE LOCAL COMMUNITY OF PERSONS WHO ARE NOT A DANGER TO THEMSELVES OR OTHERS BUT WHO SUFFER FROM A MENTAL DISORDER AND ARE LIKELY TO BECOME A DANGER TO THEMSELVES OR OTHERS IF THEY DO NOT RECEIVE TREATMENT; AMENDING SECTIONS 53-21-102, 53-21-116, 53-21-120, 53-21-121, 53-21-123, AND 53-21-126 THROUGH 53-21-128, MCA."

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

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

"53-21-102. Definitions. As used in this part parts 1 and 2 of this chapter, the following definitions apply:

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

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

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

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily

harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person, a person alleged to be seriously mentally ill, a person in need of treatment, or a person alleged to be in need of treatment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

~~f5~~(6) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

~~f6~~(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any



1 mental health clinic or treatment center approved by the
 2 department. No correctional institution or facility or jail
 3 is a mental health facility within the meaning of this part.

4 ~~(7)~~(8) "Next of kin" shall include but need not be
 5 limited to the spouse, parents, adult children, and adult
 6 brothers and sisters of a person.

7 ~~(8)~~(9) "Patient" means a person committed by the court
 8 for treatment for any period of time or who is voluntarily
 9 admitted for treatment for any period of time.

10 ~~(9)~~(10) "Peace officer" means any sheriff, deputy
 11 sheriff, marshal, policeman, or other peace officer.

12 (11) "Person in need of treatment" means a person WHO
 13 DOES NOT PRESENT AN IMMINENT THREAT OF DANGER, BUT who:

14 (a) suffers from a mental disorder;

15 (b) has been deprived by reason of his mental disorder
 16 of the capacity to function without major disruption to
 17 person or property even with the available assistance of
 18 family, friends, or others;

19 (c) as a result of his mental disorder is unable to
 20 understand his need for treatment and to give or withhold
 21 informed consent to the treatment; and

22 (d) who, if his mental disorder is untreated, will
 23 predictably suffer further serious deterioration in his
 24 mental condition. Predictability may be established by the
 25 patient's medical history.

1 ~~(10)~~(12) "Professional person" means:

2 (a) a medical doctor; or

3 (b) a person who has been certified, as provided for
 4 in 53-21-106, by the department.

5 ~~(11)~~(13) "Reasonable medical certainty" means
 6 reasonable certainty as judged by the standards of a
 7 professional person.

8 ~~(12)~~(14) "Respondent" means a person alleged in a
 9 petition filed pursuant to this part to be seriously
 10 mentally ill or in need of treatment.

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

1 ~~(14)~~(15) "Seriously mentally ill" means suffering from
 2 a mental disorder which has resulted in self-inflicted
 3 injury or injury to others or the imminent threat thereof or
 4 which has deprived the person afflicted of the ability to
 5 protect his life or health. For this purpose, injury means
 6 physical injury. No person may be involuntarily committed to
 7 a mental health facility or detained for evaluation and
 8 treatment because he is an epileptic, mentally deficient,
 9 mentally retarded, senile, or suffering from a mental
 10 disorder unless the condition causes him to be seriously
 11 mentally ill within the meaning of this part.

12 ~~(15)~~(16) "State hospital" means the Montana state
 13 hospital."

14 Section 2. Section 53-21-116, MCA, is amended to read:
 15 "53-21-116. Right to be present at hearing or trial --
 16 appointment of counsel. The person alleged to be seriously
 17 mentally ill or in need of treatment has the right to be
 18 present at any hearing or trial. If he has no attorney, the
 19 judge shall appoint one to represent him at either the
 20 hearing or the trial, or both, who shall be compensated from
 21 the public funds of the county where the respondent
 22 resides."

23 Section 3. Section 53-21-120, MCA, is amended to read:
 24 "53-21-120. Detention to be in least restrictive
 25 environment -- prehearing detention of person in need of

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

8 (2) Whenever possible, a person detained pursuant to
 9 this part shall be detained in a mental health facility and
 10 in the county of residence. If the person detained demands
 11 a jury trial and trial cannot be held within 7 days, the
 12 individual may be sent to the state hospital until time of
 13 trial if arrangements can be made to return him to trial.
 14 Such trial must be held within 30 days. The county of
 15 residence shall pay the cost of travel and professional
 16 services associated with the trial. No person may be
 17 detained in any hospital or other medical facility which is
 18 not a mental health facility unless such hospital or
 19 facility has agreed in writing to admit the 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 (5) No detention may be ordered under this part for a
10 person concerning whom a petition for treatment has been
11 filed under 53-21-121(1)(b)."

12 Section 4. Section 53-21-121, MCA, is amended to read:

13 "53-21-121. Petition for commitment -- person in need
14 of treatment -- contents of -- notice of. (1) The county
15 attorney, upon the written request of any-person A RELATIVE
16 WITHIN THE FIRST DEGREE OF CONSANGUINITY OR AFFINITY OR A
17 LEGAL GUARDIAN, may file a petition with the court;

18 (a) alleging that there is a person within the county
19 who is seriously mentally ill and requesting that the person
20 be committed to a mental health facility for inpatient
21 treatment for a period of no more than 3 months; or

22 (b) alleging that there is a person within the county
23 who is in need of treatment and requesting that the person
24 be committed for treatment for a period of no more than 30
25 days.

1 (2) The petition shall contain:

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

4 (b) the name of the respondent and, if known, the
5 address, age, sex, marital status, and occupation of the
6 respondent;

7 (c) the purported facts supporting the allegation of
8 mental illness or the allegation of the person's need of
9 treatment;

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

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

16 (f) the name and address of any person whom the county
17 attorney believes might be willing and able to be appointed
18 as friend of respondent;

19 (g) the name, address, and telephone number of the
20 attorney, if any, who has most recently represented the
21 person for whom evaluation is sought; if there is no
22 attorney, there shall be a statement as to whether to the
23 best knowledge of the person requesting the petition the
24 person for whom evaluation is sought is indigent and
25 therefore unable to afford the services of an attorney; and

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

4 (3) Notice of the petition shall be hand-delivered to
5 the respondent and to his counsel on or before the initial
6 appearance of the respondent before the judge or justice of
7 the peace. Notice of the petition and the order setting the
8 date and time of the hearing and the names of the
9 respondent's counsel, professional person, and friend of
10 respondent shall be hand-delivered or mailed to the person
11 or persons legally responsible for care, support, and
12 maintenance of the respondent, the next of kin identified in
13 the petition, and any other person identified by the county
14 attorney as a possible friend of respondent other than the
15 one named as the friend of respondent. The notice may
16 provide, other than as to the respondent and his counsel,
17 that no further notice will be given unless written request
18 is filed with the clerk of court."

19 Section 5. Section 53-21-123, MCA, is amended to read:

20 "53-21-123. Examination of respondent following
21 initial hearing -- recommendation of professional person.

22 (1) Following the initial hearing, whether before a judge or
23 justice of the peace, the respondent shall be examined by
24 the professional person without unreasonable delay. The
25 examination may not exceed a period of 4 hours. The

1 professional person shall immediately notify the county
2 attorney of his findings in person or by phone and shall
3 make a written report of his examination to the court, with
4 copies to the respondent's attorney and the county attorney.

5 (2) The following action shall be taken based on the
6 professional person's findings:

7 (a) If he recommends dismissal, he shall additionally
8 notify counsel and the respondent, if he has been detained,
9 shall be released and the petition dismissed. However, the
10 county attorney may, upon good cause shown, request the
11 court to order an additional, but no more than one,
12 examination by a different professional person for a period
13 of no more than 4 hours.

14 (b) If he finds that commitment proceedings should
15 continue, the hearing shall be held as scheduled.

16 (3) The court may not order further evaluation pending
17 the hearing unless sound medical reasons require additional
18 time for a complete evaluation. Such reasons shall be set
19 forth in the order, along with the amount of additional time
20 needed."

21 Section 6. Section 53-21-126, MCA, is amended to read:

22 "53-21-126. Trial or hearing on petition. (1) The
23 respondent shall be present unless his presence has been
24 waived as provided in 53-21-119(2), and he shall be
25 represented by counsel at all stages of the trial. The trial

1 shall be limited to the determination of whether or not the
2 respondent is seriously mentally ill or in need of treatment
3 within the meaning set forth in this part.

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

13 (3) The professional person appointed by the court
14 shall be present for the trial and subject to
15 cross-examination. The trial shall be governed by the
16 Montana Rules of Civil Procedure except that, if tried by a
17 jury, at least two-thirds of the jurors must concur on a
18 finding that the respondent is seriously mentally ill. The
19 written report of the professional person that indicates the
20 professional person's diagnosis may be attached to the
21 petition, but any matter otherwise inadmissible, such as
22 hearsay matter, is not admissible merely because it is
23 contained in the report. The court may order the trial
24 closed to the public for the protection of the respondent.

25 (4) The professional person may testify as to the

1 ultimate issue of whether the respondent is seriously
2 mentally ill or in need of treatment. Testimony on the
3 issue of whether the respondent is seriously mentally ill
4 ~~This--testimony~~ is insufficient unless accompanied by
5 evidence from the professional person or others that:

6 (a) the respondent is suffering from a mental
7 disorder; and

8 (b) the mental disorder has resulted in self-inflicted
9 injury or injury to others or the imminent threat thereof or
10 has deprived the person afflicted of the ability to protect
11 his life or health.

12 (5) The court, upon the showing of good cause and when
13 it is in the best interests of the respondent, may order a
14 change of venue."

15 Section 7. Section 53-21-127, MCA, is amended to read:

16 "53-21-127. Posttrial disposition. (1) If, upon trial,
17 it is determined that the a respondent alleged to be
18 seriously mentally ill is not seriously mentally ill within
19 the meaning of this part or a respondent alleged to be in
20 need of treatment is not in need of treatment within the
21 meaning of this part, he shall be discharged and the
22 petition dismissed.

23 (2) (a) If it is determined in a proceeding for
24 inpatient--commitment under 53-21-121(1)(a) that the
25 respondent is seriously mentally ill within the meaning of

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

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

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

13 (iii) order outpatient therapy; or

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

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

18 (c) In determining which of the above alternatives to
 19 order, the court shall choose the least restrictive
 20 alternatives necessary to protect the respondent and the
 21 public and to permit effective treatment. The court shall
 22 consider and shall describe in its order what alternatives
 23 for treatment of the respondent are available, what
 24 alternatives were investigated, and why the investigated
 25 alternatives were not deemed suitable. The court shall enter

1 into the record a detailed statement of the facts upon which
 2 it found the respondent to be seriously mentally ill.

3 (3) If it is determined in a proceeding for treatment
 4 under 53-21-121(1)(b) that the person is in need of
 5 treatment within the meaning of this part, the court shall
 6 order that he receive treatment. The court shall choose the
 7 least restrictive course of treatment reasonably available
 8 to the person found to be in need of treatment. The court
 9 must make a separate finding setting forth the reason
 10 therefor if the order includes a requirement of inpatient
 11 treatment or involuntary medication. The court may not order
 12 inpatient treatment in the Montana state hospital at Warm
 13 Springs under this subsection (3). The person may not be
 14 required to pay for court-ordered treatment UNLESS HE IS
 15 FINANCIALLY ABLE.

16 (4) Before ordering any treatment for a person found
 17 to be in need of treatment under subsection (3), the court
 18 shall make findings of fact that treatment appropriate to
 19 the needs of the respondent is available. The court shall
 20 also indicate on the order the name of the professional
 21 person-who FACILITY WHICH is to be responsible for the
 22 management and supervision of the respondent's treatment."

23 Section 8. Section 53-21-128, MCA, is amended to read:
 24 "53-21-128. Petition for extension of commitment
 25 period. (1) To extend the period of detention provided for

1 in 53-21-127(2), the procedure set forth in this subsection
 2 (1) must be followed:

3 (a) Not less than 2 calendar weeks prior to the end of
 4 the 3-month period of detention ~~provided---for---in~~
 5 ~~53-21-127(2)~~, the professional person in charge of the
 6 patient at the place of detention may petition the court for
 7 extension of the detention period. The petition shall be
 8 accompanied by a written report and evaluation of the
 9 patient's mental and physical condition. The report shall
 10 describe any tests and evaluation devices which have been
 11 employed in evaluating the patient, the course of treatment
 12 which has been undertaken for the patient, and the future
 13 course of treatment anticipated by the professional person.

14 (b) Upon the filing of the petition, the court shall
 15 give written notice of the filing of the petition to the
 16 patient, his next of kin, if reasonably available, the
 17 friend of respondent appointed by the court, and the
 18 patient's counsel. If any person so notified requests a
 19 hearing prior to the termination of the previous detention
 20 authority, the court shall immediately set a time and place
 21 for a hearing on a date not more than 10 days from the
 22 receipt of the request and notify the same people, including
 23 the professional person in charge of the patient. If a
 24 hearing is not requested, the court shall enter an order of
 25 commitment for a period not to exceed 6 months.

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

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

1 specific finding that a comprehensive, individualized plan
2 of treatment exists.

3 (2) To extend the period of treatment of a person
4 found in need of treatment under 53-21-127(3), the procedure
5 set forth in this subsection (2) must be followed:

6 (a) Not less than 7 days prior to the end of the
7 30-day period of treatment ordered under 53-21-127(3), the
8 professional person in charge of the respondent's care may
9 petition the court for extension of the treatment period.
10 The petition must be accompanied by a written report and
11 evaluation of the respondent's mental and physical
12 condition. The report shall describe any tests and
13 evaluation devices which have been employed in evaluating
14 the respondent, the course of treatment which has been
15 undertaken for the respondent, and the future course of
16 treatment anticipated by the professional person.

17 (b) Upon the filing of the petition, the court shall
18 give written notice of the filing of the petition to the
19 respondent, his next of kin, if reasonably available, the
20 friend of respondent appointed by the court, if any, and the
21 respondent's counsel. If any person so notified requests a
22 hearing prior to the termination of the previous detention
23 authority, the court shall immediately set a time and place
24 for a hearing on a date not more than 5 days from the
25 receipt of the request and notify the same people, including

1 the professional person in charge of the respondent. If a
2 hearing is not requested, the court shall enter an order of
3 treatment for a period not to exceed 30 days.

4 (c) Procedure on the petition for extension when a
5 hearing has been requested shall be the same in all respects
6 as the procedure on the petition under 53-21-121(1)(b) for
7 the original treatment except that the patient is not
8 entitled to trial by jury. The hearing shall be held in the
9 district court for the county in which the treatment is
10 being supervised unless otherwise ordered by the court.
11 Court costs and witness fees, if any, shall be paid by the
12 county that paid the same costs in the initial proceedings
13 under 53-21-121(1)(b).

14 (d) If upon the hearing the court finds the respondent
15 not in need of treatment within the meaning of this part,
16 the petition shall be dismissed. If the court finds that
17 the respondent continues to be in need of treatment, the
18 court shall order treatment for the respondent. In its
19 order, the court shall describe what alternatives for
20 treatment of the respondent are available, what alternatives
21 were investigated, and why the investigated alternatives
22 were not considered suitable. The court may not order
23 continuation of an alternative which does not include a
24 comprehensive, individualized plan of treatment for the
25 respondent. A court order for the continuation of an

1 alternative shall include a specific finding that a
2 comprehensive, individualized plan of treatment exists.

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

12 NEW SECTION. Section 9. Establishment of treatment
13 plan for person in need of care. (1) A person ordered to
14 receive treatment under 53-21-127(3) must have an
15 individualized treatment plan.

16 (2) The treatment plan must be developed by
17 appropriate professional persons and must be implemented no
18 later than 5 days after the treatment order has been made.

19 (3) Each treatment plan must contain:

20 (a) a statement of the nature of the specific problems
21 and specific needs of the patient;

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

24 (c) a description of intermediate and long-range
25 treatment goals, with a projected timetable for their

1 attainment;

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

5 (e) criteria for release to less restrictive treatment
6 conditions and criteria for discharge.

7 (4) The treatment plan may include prescription by a
8 physician of reasonable and appropriate medication that is
9 consistent with accepted medical standards.

10 NEW SECTION. Section 10. Compliance with treatment
11 plan. If the respondent fails to comply or clearly refuses
12 to comply with all or part of the treatment plan, the
13 professional person designated under 53-21-127 shall make
14 all reasonable effort to solicit the respondent's
15 compliance. Such effort must be documented and reported to
16 the court with a recommendation to the court as to whether
17 the respondent should:

18 (1) have his case dismissed; or

19 (2) be given a supplemental hearing.

20 NEW SECTION. Section 11. Codification instruction.
21 Sections 9 and 10 are intended to be codified as an integral
22 part of Title 53, chapter 21, part 1, and the provisions of
23 Title 53, chapter 21, part 1, apply to sections 9 and 10.

-End-

1 SENATE BILL NO. 376

2 INTRODUCED BY TOWE, BARDANOUE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
5 INVOLUNTARY COMMITMENT FOR MENTAL HEALTH TREATMENT IN THE
6 LOCAL COMMUNITY OF PERSONS WHO ARE NOT A DANGER TO
7 THEMSELVES OR OTHERS BUT WHO SUFFER FROM A MENTAL DISORDER
8 AND ARE LIKELY TO BECOME A DANGER TO THEMSELVES OR OTHERS IF
9 THEY DO NOT RECEIVE TREATMENT; AMENDING SECTIONS 53-21-102,
10 53-21-116, 53-21-120, 53-21-121, 53-21-123, AND 53-21-126
11 THROUGH 53-21-128, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

15 "53-21-102. Definitions. As used in this part parts 1
16 and 2 of this chapter, the following definitions apply:17 (1) "Board" or "mental disabilities board of visitors"
18 means the mental disabilities board of visitors created by
19 2-15-211.20 (2) "Court" means any district court of the state of
21 Montana.22 (3) "Department" means the department of institutions
23 provided for in Title 2, chapter 15, part 23.24 (4) "Emergency situation" means a situation in which
25 any person is in imminent danger of death or serious bodily1 harm from the activity of a person who appears to be
2 seriously mentally ill.

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

19 ~~(5)~~(6) "Mental disorder" means any organic, mental, or
20 emotional impairment which has substantial adverse effects
21 on an individual's cognitive or volitional functions.22 ~~(6)~~(7) "Mental health facility" or "facility" means a
23 public hospital or a licensed private hospital which is
24 equipped and staffed to provide treatment for persons with
25 mental disorders or a community mental health center or any

1 mental health clinic or treatment center approved by the
 2 department. No correctional institution or facility or jail
 3 is a mental health facility within the meaning of this part.

4 ~~(7)~~(8) "Next of kin" shall include but need not be
 5 limited to the spouse, parents, adult children, and adult
 6 brothers and sisters of a person.

7 ~~(8)~~(9) "Patient" means a person committed by the court
 8 for treatment for any period of time or who is voluntarily
 9 admitted for treatment for any period of time.

10 ~~(9)~~(10) "Peace officer" means any sheriff, deputy
 11 sheriff, marshal, policeman, or other peace officer.

12 (11) "Person in need of treatment" means a person WHO
 13 DOES NOT PRESENT AN IMMINENT THREAT OF DANGER, BUT who:

14 (a) suffers from a mental disorder;

15 (b) has been deprived by reason of his mental disorder
 16 of the capacity to function without major disruption to
 17 person or property even with the available assistance of
 18 family, friends, or others;

19 (c) as a result of his mental disorder is unable to
 20 understand his need for treatment and to give or withhold
 21 informed consent to the treatment; and

22 (d) who, if his mental disorder is untreated, will
 23 predictably suffer further serious deterioration in his
 24 mental condition. Predictability may be established by the
 25 patient's medical history.

1 ~~(10)~~(12) "Professional person" means:

2 (a) a medical doctor; or

3 (b) a person who has been certified, as provided for
 4 in 53-21-106, by the department.

5 ~~(11)~~(13) "Reasonable medical certainty" means
 6 reasonable certainty as judged by the standards of a
 7 professional person.

8 ~~(12)~~(14) "Respondent" means a person alleged in a
 9 petition filed pursuant to this part to be seriously
 10 mentally ill or in need of treatment.

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

1 ~~(14)~~(15) "Seriously mentally ill" means suffering from
 2 a mental disorder which has resulted in self-inflicted
 3 injury or injury to others or the imminent threat thereof or
 4 which has deprived the person afflicted of the ability to
 5 protect his life or health. For this purpose, injury means
 6 physical injury. No person may be involuntarily committed to
 7 a mental health facility or detained for evaluation and
 8 treatment because he is an epileptic, mentally deficient,
 9 mentally retarded, senile, or suffering from a mental
 10 disorder unless the condition causes him to be seriously
 11 mentally ill within the meaning of this part.

12 ~~(15)~~(16) "State hospital" means the Montana state
 13 hospital."

14 Section 2. Section 53-21-116, MCA, is amended to read:

15 "53-21-116. Right to be present at hearing or trial --
 16 appointment of counsel. The person alleged to be seriously
 17 mentally ill or in need of treatment has the right to be
 18 present at any hearing or trial. If he has no attorney, the
 19 judge shall appoint one to represent him at either the
 20 hearing or the trial, or both, who shall be compensated from
 21 the public funds of the county where the respondent
 22 resides."

23 Section 3. Section 53-21-120, MCA, is amended to read:

24 "53-21-120. Detention to be in least restrictive
 25 environment -- prehearing detention of person in need of

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

8 (2) Whenever possible, a person detained pursuant to
 9 this part shall be detained in a mental health facility and
 10 in the county of residence. If the person detained demands
 11 a jury trial and trial cannot be held within 7 days, the
 12 individual may be sent to the state hospital until time of
 13 trial if arrangements can be made to return him to trial.
 14 Such trial must be held within 30 days. The county of
 15 residence shall pay the cost of travel and professional
 16 services associated with the trial. No person may be
 17 detained in any hospital or other medical facility which is
 18 not a mental health facility unless such hospital or
 19 facility has agreed in writing to admit the 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 (5) No detention may be ordered under this part for a
10 person concerning whom a petition for treatment has been
11 filed under 53-21-121(1)(b)."

12 Section 4. Section 53-21-121, MCA, is amended to read:

13 "53-21-121. Petition for commitment -- person in need
14 of treatment -- contents of -- notice of. (1) The county
15 attorney, upon the written request of any-person A RELATIVE
16 WITHIN THE FIRST DEGREE OF CONSANGUINITY OR AFFINITY OR A
17 LEGAL GUARDIAN, may file a petition with the court:

18 (a) alleging that there is a person within the county
19 who is seriously mentally ill and requesting that the person
20 be committed to a mental health facility for inpatient
21 treatment for a period of no more than 3 months; or

22 (b) alleging that there is a person within the county
23 who is in need of treatment and requesting that the person
24 be committed for treatment for a period of no more than 30
25 days.

1 (2) The petition shall contain:

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

4 (b) the name of the respondent and, if known, the
5 address, age, sex, marital status, and occupation of the
6 respondent;

7 (c) the purported facts supporting the allegation of
8 mental illness or the allegation of the person's need of
9 treatment;

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

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

16 (f) the name and address of any person whom the county
17 attorney believes might be willing and able to be appointed
18 as friend of respondent;

19 (g) the name, address, and telephone number of the
20 attorney, if any, who has most recently represented the
21 person for whom evaluation is sought; if there is no
22 attorney, there shall be a statement as to whether to the
23 best knowledge of the person requesting the petition the
24 person for whom evaluation is sought is indigent and
25 therefore unable to afford the services of an attorney; and

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

4 (3) Notice of the petition shall be hand-delivered to
5 the respondent and to his counsel on or before the initial
6 appearance of the respondent before the judge or justice of
7 the peace. Notice of the petition and the order setting the
8 date and time of the hearing and the names of the
9 respondent's counsel, professional person, and friend of
10 respondent shall be hand-delivered or mailed to the person
11 or persons legally responsible for care, support, and
12 maintenance of the respondent, the next of kin identified in
13 the petition, and any other person identified by the county
14 attorney as a possible friend of respondent other than the
15 one named as the friend of respondent. The notice may
16 provide, other than as to the respondent and his counsel,
17 that no further notice will be given unless written request
18 is filed with the clerk of court."

19 Section 5. Section 53-21-123, MCA, is amended to read:

20 "53-21-123. Examination of respondent following
21 initial hearing -- recommendation of professional person.

22 (1) Following the initial hearing, whether before a judge or
23 justice of the peace, the respondent shall be examined by
24 the professional person without unreasonable delay. The
25 examination may not exceed a period of 4 hours. The

1 professional person shall immediately notify the county
2 attorney of his findings in person or by phone and shall
3 make a written report of his examination to the court, with
4 copies to the respondent's attorney and the county attorney.

5 (2) The following action shall be taken based on the
6 professional person's findings:

7 (a) If he recommends dismissal, he shall additionally
8 notify counsel and the respondent, if he has been detained,
9 shall be released and the petition dismissed. However, the
10 county attorney may, upon good cause shown, request the
11 court to order an additional, but no more than one,
12 examination by a different professional person for a period
13 of no more than 4 hours.

14 (b) If he finds that commitment proceedings should
15 continue, the hearing shall be held as scheduled.

16 (3) The court may not order further evaluation pending
17 the hearing unless sound medical reasons require additional
18 time for a complete evaluation. Such reasons shall be set
19 forth in the order, along with the amount of additional time
20 needed."

21 Section 6. Section 53-21-126, MCA, is amended to read:

22 "53-21-126. Trial or hearing on petition. (1) The
23 respondent shall be present unless his presence has been
24 waived as provided in 53-21-119(2), and he shall be
25 represented by counsel at all stages of the trial. The trial

1 shall be limited to the determination of whether or not the
2 respondent is seriously mentally ill or in need of treatment
3 within the meaning set forth in this part.

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

13 (3) The professional person appointed by the court
14 shall be present for the trial and subject to
15 cross-examination. The trial shall be governed by the
16 Montana Rules of Civil Procedure except that, if tried by a
17 jury, at least two-thirds of the jurors must concur on a
18 finding that the respondent is seriously mentally ill. The
19 written report of the professional person that indicates the
20 professional person's diagnosis may be attached to the
21 petition, but any matter otherwise inadmissible, such as
22 hearsay matter, is not admissible merely because it is
23 contained in the report. The court may order the trial
24 closed to the public for the protection of the respondent,

25 (4) The professional person may testify as to the

1 ultimate issue of whether the respondent is seriously
2 mentally ill or in need of treatment. Testimony on the
3 issue of whether the respondent is seriously mentally ill
4 ~~This--testimony~~ is insufficient unless accompanied by
5 evidence from the professional person or others that:

6 (a) the respondent is suffering from a mental
7 disorder; and

8 (b) the mental disorder has resulted in self-inflicted
9 injury or injury to others or the imminent threat thereof or
10 has deprived the person afflicted of the ability to protect
11 his life or health.

12 (5) The court, upon the showing of good cause and when
13 it is in the best interests of the respondent, may order a
14 change of venue."

15 Section 7. Section 53-21-127, MCA, is amended to read:
16 "53-21-127. Posttrial disposition. (1) If, upon trial,
17 it is determined that the a respondent alleged to be
18 seriously mentally ill is not seriously mentally ill within
19 the meaning of this part or a respondent alleged to be in
20 need of treatment is not in need of treatment within the
21 meaning of this part, he shall be discharged and the
22 petition dismissed.

23 (2) (a) If it is determined in a proceeding for
24 inpatient--commitment under 53-21-121(1)(a) that the
25 respondent is seriously mentally ill within the meaning of

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

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

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

13 (iii) order outpatient therapy; or

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

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

18 (c) In determining which of the above alternatives to
 19 order, the court shall choose the least restrictive
 20 alternatives necessary to protect the respondent and the
 21 public and to permit effective treatment. The court shall
 22 consider and shall describe in its order what alternatives
 23 for treatment of the respondent are available, what
 24 alternatives were investigated, and why the investigated
 25 alternatives were not deemed suitable. The court shall enter

1 into the record a detailed statement of the facts upon which
 2 it found the respondent to be seriously mentally ill.

3 (3) If it is determined in a proceeding for treatment
 4 under 53-21-121(1)(b) that the person is in need of
 5 treatment within the meaning of this part, the court shall
 6 order that he receive treatment. The court shall choose the
 7 least restrictive course of treatment reasonably available
 8 to the person found to be in need of treatment. The court
 9 must make a separate finding setting forth the reason
 10 therefor if the order includes a requirement of inpatient
 11 treatment or involuntary medication. The court may not order
 12 inpatient treatment in the Montana state hospital at Warm
 13 Springs under this subsection (3). The person may not be
 14 required to pay for court-ordered treatment UNLESS HE IS
 15 FINANCIALLY ABLE.

16 (4) Before ordering any treatment for a person found
 17 to be in need of treatment under subsection (3), the court
 18 shall make findings of fact that treatment appropriate to
 19 the needs of the respondent is available. The court shall
 20 also indicate on the order the name of the professional
 21 person-who FACILITY WHICH is to be responsible for the
 22 management and supervision of the respondent's treatment."

23 Section 8. Section 53-21-128, MCA, is amended to read:
 24 "53-21-128. Petition for extension of commitment
 25 period. (1) To extend the period of detention provided for

1 in 53-21-127(2), the procedure set forth in this subsection
 2 (1) must be followed:

3 (a) Not less than 2 calendar weeks prior to the end of
 4 the 3-month period of detention provided---for---in
 5 53-21-127(2), the professional person in charge of the
 6 patient at the place of detention may petition the court for
 7 extension of the detention period. The petition shall be
 8 accompanied by a written report and evaluation of the
 9 patient's mental and physical condition. The report shall
 10 describe any tests and evaluation devices which have been
 11 employed in evaluating the patient, the course of treatment
 12 which has been undertaken for the patient, and the future
 13 course of treatment anticipated by the professional person.

14 (b) Upon the filing of the petition, the court shall
 15 give written notice of the filing of the petition to the
 16 patient, his next of kin, if reasonably available, the
 17 friend of respondent appointed by the court, and the
 18 patient's counsel. If any person so notified requests a
 19 hearing prior to the termination of the previous detention
 20 authority, the court shall immediately set a time and place
 21 for a hearing on a date not more than 10 days from the
 22 receipt of the request and notify the same people, including
 23 the professional person in charge of the patient. If a
 24 hearing is not requested, the court shall enter an order of
 25 commitment for a period not to exceed 6 months.

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

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

1 specific finding that a comprehensive, individualized plan
2 of treatment exists.

3 (2) To extend the period of treatment of a person
4 found in need of treatment under 53-21-127(3), the procedure
5 set forth in this subsection (2) must be followed:

6 (a) Not less than 7 days prior to the end of the
7 30-day period of treatment ordered under 53-21-127(3), the
8 professional person in charge of the respondent's care may
9 petition the court for extension of the treatment period.
10 The petition must be accompanied by a written report and
11 evaluation of the respondent's mental and physical
12 condition. The report shall describe any tests and
13 evaluation devices which have been employed in evaluating
14 the respondent, the course of treatment which has been
15 undertaken for the respondent, and the future course of
16 treatment anticipated by the professional person.

17 (b) Upon the filing of the petition, the court shall
18 give written notice of the filing of the petition to the
19 respondent, his next of kin, if reasonably available, the
20 friend of respondent appointed by the court, if any, and the
21 respondent's counsel. If any person so notified requests a
22 hearing prior to the termination of the previous detention
23 authority, the court shall immediately set a time and place
24 for a hearing on a date not more than 5 days from the
25 receipt of the request and notify the same people, including

1 the professional person in charge of the respondent. If a
2 hearing is not requested, the court shall enter an order of
3 treatment for a period not to exceed 30 days.

4 (c) Procedure on the petition for extension when a
5 hearing has been requested shall be the same in all respects
6 as the procedure on the petition under 53-21-121(1)(b) for
7 the original treatment except that the patient is not
8 entitled to trial by jury. The hearing shall be held in the
9 district court for the county in which the treatment is
10 being supervised unless otherwise ordered by the court.
11 Court costs and witness fees, if any, shall be paid by the
12 county that paid the same costs in the initial proceedings
13 under 53-21-121(1)(b).

14 (d) If upon the hearing the court finds the respondent
15 not in need of treatment within the meaning of this part,
16 the petition shall be dismissed. If the court finds that
17 the respondent continues to be in need of treatment, the
18 court shall order treatment for the respondent. In its
19 order, the court shall describe what alternatives for
20 treatment of the respondent are available, what alternatives
21 were investigated, and why the investigated alternatives
22 were not considered suitable. The court may not order
23 continuation of an alternative which does not include a
24 comprehensive, individualized plan of treatment for the
25 respondent. A court order for the continuation of an

1 alternative shall include a specific finding that a
 2 comprehensive, individualized plan of treatment exists.

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

12 NEW SECTION. Section 9. Establishment of treatment
 13 plan for person in need of care. (1) A person ordered to
 14 receive treatment under 53-21-127(3) must have an
 15 individualized treatment plan.

16 (2) The treatment plan must be developed by
 17 appropriate professional persons and must be implemented no
 18 later than 5 days after the treatment order has been made.

19 (3) Each treatment plan must contain:

20 (a) a statement of the nature of the specific problems
 21 and specific needs of the patient;

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

24 (c) a description of intermediate and long-range
 25 treatment goals, with a projected timetable for their

1 attainment;

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

5 (e) criteria for release to less restrictive treatment
 6 conditions and criteria for discharge.

7 (4) The treatment plan may include prescription by a
 8 physician of reasonable and appropriate medication that is
 9 consistent with accepted medical standards.

10 NEW SECTION. Section 10. Compliance with treatment
 11 plan. If the respondent fails to comply or clearly refuses
 12 to comply with all or part of the treatment plan, the
 13 professional person designated under 53-21-127 shall make
 14 all reasonable effort to solicit the respondent's
 15 compliance. Such effort must be documented and reported to
 16 the court with a recommendation to the court as to whether
 17 the respondent should:

18 (1) have his case dismissed; or

19 (2) be given a supplemental hearing.

20 NEW SECTION. Section 11. Codification instruction.
 21 Sections 9 and 10 are intended to be codified as an integral
 22 part of Title 53, chapter 21, part 1, and the provisions of
 23 Title 53, chapter 21, part 1, apply to sections 9 and 10.

-End-

STANDING COMMITTEE REPORT

HOUSE

March 30 1985
page 1 of 4

MR. Speaker:.....

We, your committee on Judiciary.....

having had under consideration Senate Bill No. 376.....

Third reading copy (Blue)
color

COMMITMENT FOR OUTPATIENT TREATMENT

Respectfully report as follows: That Senate Bill No. 376.....
be amended as follows:

- 1. Title, line 5.
Following: "HEALTH"
Insert: "OUTPATIENT"
- 2. Title, line 10.
Following: "53-21-121"
Strike: ", "
Insert: "through"
- 3. Page 3, line 13.
Strike: "DANGER"
Insert: "injury"

(continued)

Chairman.....

March 30 1985

page 2 of 4
SB 376

- 4. Page 7, line 15.
Following: "person"
Strike: "A RELATIVE" through "GUARDIAN" on line 17
Insert: "any person"

- 5. Page 9, following line 18.
Insert: "Section 5, Section 53-21-122, MCA, is amended to read:
"53-21-122. Petition for commitment -- filing of --
initial hearing on. (1) The petition shall be filed with
the clerk of court who shall immediately notify the judge.
(2)(a) If a judge is available, he shall consider the
petition, and if he finds no probable cause, it shall be
dismissed.
(b)(i) If the judge finds probable cause, counsel shall
be immediately appointed for the respondent, and the
respondent shall be brought forthwith before the court with
his counsel. The respondent shall be advised of his
constitutional rights, his rights under this part, and the
substantive effect of the petition. The respondent may at
this appearance object to the finding of probable cause for
filing the petition.
(ii) The judge shall:
(A) appoint a one professional person in a proceeding
under 53-21-121(1)(a) or two professional persons in a
proceeding under 53-21-121(1)(b) and
(B) appoint a friend of respondent, and
(C) set a date and time for the hearing on the petition,
which may not exceed 5 days, including weekends and
holidays, unless the fifth day falls upon a weekend or
holiday and unless additional time is requested on behalf
of the respondent.
(iii) The desires of the respondent shall be taken into
consideration in the appointment of the friend of
respondent and in the confirmation of the appointment of
the attorney.
(3) If a judge is not available in the county, the clerk
shall notify a resident judge by telephone and read the
petition to him. If the judge finds no probable cause, the
petition shall be dismissed. If the judge finds probable
cause, he shall cause the clerk to issue an order
appointing counsel and a one professional person in a
proceeding under 53-21-121(1)(a) or two professional
persons in a proceeding under 53-21-121(1)(b) and setting a
date and time for the hearing on the petition, which may
not exceed 5 days, including weekends and holidays, unless

(continued)

Chairman.....

the fifth day falls upon a weekend or holiday and unless additional time is requested on behalf of the respondent. The order shall also direct that the respondent be brought forthwith before a justice of the peace with his counsel to be advised of his constitutional rights, his rights under this part, and the contents of the clerk's order, as well as to furnish him with a copy. The justice of the peace shall ascertain the desires of the respondent with respect to the appointment of his counsel, and this shall be immediately communicated to the resident judge. The resident judge may appoint other counsel, may confer with respondent's counsel and the county attorney in order to appoint a friend of respondent, and may do all things necessary through the clerk of court by telephone as if the resident judge were personally present."

Renumber subsequent sections.

6. Page 9, line 24.
Following: "person"
Insert: "or persons as required by 53-21-122,"

7. Page 10, line 1.
Following: "person"
Insert: "or persons"

8. Page 10, line 2.
Strike: "his"
Insert: "their"

9. Page 10, line 3.
Strike: "his examination"
Insert: "their examinations"

10. Page 10, line 5.
Following: "(2)"
Strike: "The"
Insert: "In a proceeding under 53-21-121(1)(a), the"

11. Page 10, following line 15.
Insert: "(3) In a proceeding under 53-21-121(1)(b), the following action shall be taken, based on the professional persons' findings:
(a) If they both recommend dismissal, they shall additionally notify counsel and the petition shall be dismissed. However, the county attorney may, upon good cause shown, request the court to order two, but no more than two, additional examinations, of no more than 4 hours'

(continued)

Chairman.

duration each, to be given by different professional persons.

(b) If at least one professional person finds that commitment proceedings should continue, the hearing shall be held as scheduled."

Renumber: subsequent subsection

12. Page 11, line 13.
Following: "person"
Insert: "or persons"

13. Page 11, line 19.
Following: "report of"
Strike: "the"
Insert: "each"

14. Page 11, line 25.
Following: "person"
Insert: "or persons"

15. Page 14, line 8.
Following: "treatment."
Strike: "The court" through "medication." on line 11.

16. Page 14, line 12.
Following: "treatment"
Strike: "in the" through "Springs" on line 13.
Insert: "or forcible administration of medication"

17. Page 18, line 18.
Following: "respondent"
Insert: "for a period not to exceed 30 days"

AND AS AMENDED,
WITHOUT RECOMMENDATION

Tom Hannah
REP. TOM HANNAH Chairman.

SENATE BILL NO. 376

INTRODUCED BY TOWE, BARDANOUE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INVOLUNTARY COMMITMENT FOR MENTAL HEALTH OUTPATIENT TREATMENT IN THE LOCAL COMMUNITY OF PERSONS WHO ARE NOT A DANGER TO THEMSELVES OR OTHERS BUT WHO SUFFER FROM A MENTAL DISORDER AND ARE LIKELY TO BECOME A DANGER TO THEMSELVES OR OTHERS IF THEY DO NOT RECEIVE TREATMENT; AMENDING SECTIONS 53-21-102, 53-21-116, 53-21-120, 53-21-121, THROUGH 53-21-123, AND 53-21-126 THROUGH 53-21-128, MCA."

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

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

"53-21-102. Definitions. As used in this part parts 1 and 2 of this chapter, the following definitions apply:

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

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

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

(4) "Emergency situation" means a situation in which any person is in imminent danger of death or serious bodily

harm from the activity of a person who appears to be seriously mentally ill.

(5) "Friend of respondent" means any person willing and able to assist a seriously mentally ill person, a person alleged to be seriously mentally ill, a person in need of treatment, or a person alleged to be in need of treatment in dealing with legal proceedings, including consultation with legal counsel and others. The friend of respondent may be the next of kin, the person's conservator or legal guardian, if any, representatives of a charitable or religious organization, or any other person appointed by the court to perform the functions of a friend of respondent set out in this part. Only one person may at any one time be the friend of respondent within the meaning of this part. In appointing a friend of respondent, the court shall consider the preference of the respondent. The court may at any time, for good cause shown, change its designation of the friend of respondent.

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

{6}(7) "Mental health facility" or "facility" means a public hospital or a licensed private hospital which is equipped and staffed to provide treatment for persons with mental disorders or a community mental health center or any

REFERENCE BILL



1 mental health clinic or treatment center approved by the
2 department. No correctional institution or facility or jail
3 is a mental health facility within the meaning of this part.

4 {7}(8) "Next of kin" shall include but need not be
5 limited to the spouse, parents, adult children, and adult
6 brothers and sisters of a person.

7 {8}(9) "Patient" means a person committed by the court
8 for treatment for any period of time or who is voluntarily
9 admitted for treatment for any period of time.

10 {9}(10) "Peace officer" means any sheriff, deputy
11 sheriff, marshal, policeman, or other peace officer.

12 (11) "Person in need of treatment" means a person WHO
13 DOES NOT PRESENT AN IMMINENT THREAT OF DANGER INJURY, BUT
14 who:

15 (a) suffers from a mental disorder;

16 (b) has been deprived by reason of his mental disorder
17 of the capacity to function without major disruption to
18 person or property even with the available assistance of
19 family, friends, or others;

20 (c) as a result of his mental disorder is unable to
21 understand his need for treatment and to give or withhold
22 informed consent to the treatment; and

23 (d) who, if his mental disorder is untreated, will
24 predictably suffer further serious deterioration in his
25 mental condition. Predictability may be established by the

1 patient's medical history.

2 {10}(12) "Professional person" means:

3 (a) a medical doctor; or

4 (b) a person who has been certified, as provided for
5 in 53-21-106, by the department.

6 {11}(13) "Reasonable medical certainty" means
7 reasonable certainty as judged by the standards of a
8 professional person.

9 {12}(14) "Respondent" means a person alleged in a
10 petition filed pursuant to this part to be seriously
11 mentally ill or in need of treatment.

12 {13}-"Friend-of-respondent"-means-any-person-willing
13 and-able-to-assist-a-seriously-mentally-ill-person-or-person
14 alleged-to-be-seriously-mentally-ill-in-dealing-with-legal
15 proceedings,-including-consultation-with-legal-counsel-and
16 others.-The-friend-of-respondent-may-be-the-next-of-kin,-the
17 person's---conservator---or---legal---guardian,---if---any,
18 representatives-of-a-charitable-or-religious-organization,
19 or-any-other-person-appointed-by-the-court-to-perform-the
20 functions-of-a-friend-of-respondent-set-out-in-this-part.
21 Only-one-person-may-at-any-one-time-be-the-friend-of
22 respondent-within-the-meaning-of-this-part,-in-appointing-a
23 friend---of---respondent,-the-court-shall-consider-the
24 preference-of-the-respondent.-The-court-may-at-any-time,-for
25 good-cause-shown,-change-its-designation-of-the-friend-of

1 respondent:

2 {14}(15) "Seriously mentally ill" means suffering from
3 a mental disorder which has resulted in self-inflicted
4 injury or injury to others or the imminent threat thereof or
5 which has deprived the person afflicted of the ability to
6 protect his life or health. For this purpose, injury means
7 physical injury. No person may be involuntarily committed to
8 a mental health facility or detained for evaluation and
9 treatment because he is an epileptic, mentally deficient,
10 mentally retarded, senile, or suffering from a mental
11 disorder unless the condition causes him to be seriously
12 mentally ill within the meaning of this part.

13 {15}(16) "State hospital" means the Montana state
14 hospital."

15 Section 2. Section 53-21-116, MCA, is amended to read:

16 "53-21-116. Right to be present at hearing or trial --
17 appointment of counsel. The person alleged to be seriously
18 mentally ill or in need of treatment has the right to be
19 present at any hearing or trial. If he has no attorney, the
20 judge shall appoint one to represent him at either the
21 hearing or the trial, or both, who shall be compensated from
22 the public funds of the county where the respondent
23 resides."

24 Section 3. Section 53-21-120, MCA, is amended to read:

25 "53-21-120. Detention to be in least restrictive

1 environment -- prehearing detention of person in need of
2 treatment prohibited -- preference for mental health
3 facility -- court relief. (1) A person detained pursuant to
4 this part shall be detained in the least restrictive
5 environment required to protect the life and physical safety
6 of the person detained or members of the public; in this
7 respect, prevention of significant injury to property may be
8 considered.

9 (2) Whenever possible, a person detained pursuant to
10 this part shall be detained in a mental health facility and
11 in the county of residence. If the person detained demands
12 a jury trial and trial cannot be held within 7 days, the
13 individual may be sent to the state hospital until time of
14 trial if arrangements can be made to return him to trial.
15 Such trial must be held within 30 days. The county of
16 residence shall pay the cost of travel and professional
17 services associated with the trial. No person may be
18 detained in any hospital or other medical facility which is
19 not a mental health facility unless such hospital or
20 facility has agreed in writing to admit the person.

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

1 situation has changed sufficiently that an available mental
2 health facility is adequate for the protection of the person
3 detained and the public, then the detained person shall be
4 transferred from the jail or correctional facility to the
5 mental health facility.

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

10 (5) No detention may be ordered under this part for a
11 person concerning whom a petition for treatment has been
12 filed under 53-21-121(1)(b)."

13 Section 4. Section 53-21-121, MCA, is amended to read:

14 "53-21-121. Petition for commitment -- person in need
15 of treatment -- contents of -- notice of. (1) The county
16 attorney, upon the written request of any-person A-RELATIVE
17 WITHIN-THE-FIRST-DEGREE-OP-CONSANGUINITY-OR--AFFINITY--OR--A
18 LEGAL--GUARDIAN ANY PERSON, may file a petition with the
19 court:

20 (a) alleging that there is a person within the county
21 who is seriously mentally ill and requesting that the person
22 be committed to a mental health facility for inpatient
23 treatment for a period of no more than 3 months; or

24 (b) alleging that there is a person within the county
25 who is in need of treatment and requesting that the person

1 be committed for treatment for a period of no more than 30
2 days.

3 (2) The petition shall contain:

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

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

9 (c) the purported facts supporting the allegation of
10 mental illness or the allegation of the person's need of
11 treatment;

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

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

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

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

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

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

6 (3) Notice of the petition shall be hand-delivered to
7 the respondent and to his counsel on or before the initial
8 appearance of the respondent before the judge or justice of
9 the peace. Notice of the petition and the order setting the
10 date and time of the hearing and the names of the
11 respondent's counsel, professional person, and friend of
12 respondent shall be hand-delivered or mailed to the person
13 or persons legally responsible for care, support, and
14 maintenance of the respondent, the next of kin identified in
15 the petition, and any other person identified by the county
16 attorney as a possible friend of respondent other than the
17 one named as the friend of respondent. The notice may
18 provide, other than as to the respondent and his counsel,
19 that no further notice will be given unless written request
20 is filed with the clerk of court."

21 SECTION 5. SECTION 53-21-122, MCA, IS AMENDED TO READ:

22 "53-21-122. Petition for commitment -- filing of --
23 initial hearing on. (1) The petition shall be filed with the
24 clerk of court who shall immediately notify the judge.

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

1 petition, and if he finds no probable cause, it shall be
2 dismissed.

3 (b) (i) If the judge finds probable cause, counsel
4 shall be immediately appointed for the respondent, and the
5 respondent shall be brought forthwith before the court with
6 his counsel. The respondent shall be advised of his
7 constitutional rights, his rights under this part, and the
8 substantive effect of the petition. The respondent may at
9 this appearance object to the finding of probable cause for
10 filing the petition.

11 (ii) The judge shall:

12 (A) appoint a one professional person and in a
13 proceeding under 53-21-121(1)(a) or two professional persons
14 in a proceeding under 53-21-121(1)(b);

15 (B) appoint a friend of respondent; and

16 (C) set a date and time for the hearing on the
17 petition, which may not exceed 5 days, including weekends
18 and holidays, unless the fifth day falls upon a weekend or
19 holiday and unless additional time is requested on behalf of
20 the respondent.

21 (iii) The desires of the respondent shall be taken into
22 consideration in the appointment of the friend of respondent
23 and in the confirmation of the appointment of the attorney.

24 (3) If a judge is not available in the county, the
25 clerk shall notify a resident judge by telephone and read

1 the petition to him. If the judge finds no probable cause,
 2 the petition shall be dismissed. If the judge finds probable
 3 cause, he shall cause the clerk to issue an order appointing
 4 counsel and ~~a~~ one professional person in a proceeding under
 5 53-21-121(1)(a) or two professional persons in a proceeding
 6 under 53-21-121(1)(b) and setting a date and time for the
 7 hearing on the petition, which may not exceed 5 days,
 8 including weekends and holidays, unless the fifth day falls
 9 upon a weekend or holiday and unless additional time is
 10 requested on behalf of the respondent. The order shall also
 11 direct that the respondent be brought forthwith before a
 12 justice of the peace with his counsel to be advised of his
 13 constitutional rights, his rights under this part, and the
 14 contents of the clerk's order, as well as to furnish him
 15 with a copy. The justice of the peace shall ascertain the
 16 desires of the respondent with respect to the appointment of
 17 his counsel, and this shall be immediately communicated to
 18 the resident judge. The resident judge may appoint other
 19 counsel, may confer with respondent's counsel and the county
 20 attorney in order to appoint a friend of respondent, and may
 21 do all things necessary through the clerk of court by
 22 telephone as if the resident judge were personally present."

23 Section 6. Section 53-21-123, MCA, is amended to read:

24 "53-21-123. Examination of respondent following
 25 initial hearing -- recommendation of professional person.

1 (1) Following the initial hearing, whether before a judge or
 2 justice of the peace, the respondent shall be examined by
 3 the professional person OR PERSONS AS REQUIRED BY 53-21-122,
 4 without unreasonable delay. The examination may not exceed
 5 a period of 4 hours. The professional person OR PERSONS
 6 shall immediately notify the county attorney of his THEIR
 7 findings in person or by phone and shall make a written
 8 report of his-examination THEIR EXAMINATIONS to the court,
 9 with copies to the respondent's attorney and the county
 10 attorney.

11 (2) The IN A PROCEEDING UNDER 53-21-121(1)(A), THE
 12 following action shall be taken based on the professional
 13 person's findings:

14 (a) If he recommends dismissal, he shall additionally
 15 notify counsel and the respondent, if he has been detained,
 16 shall be released and the petition dismissed. However, the
 17 county attorney may, upon good cause shown, request the
 18 court to order an additional, but no more than one,
 19 examination by a different professional person for a period
 20 of no more than 4 hours.

21 (b) If he finds that commitment proceedings should
 22 continue, the hearing shall be held as scheduled.

23 (3) IN A PROCEEDING UNDER 53-21-121(1)(B), THE
 24 FOLLOWING ACTION SHALL BE TAKEN, BASED ON THE PROFESSIONAL
 25 PERSONS' FINDINGS:

1 (A) IF THEY BOTH RECOMMEND DISMISSAL, THEY SHALL
 2 ADDITIONALLY NOTIFY COUNSEL AND THE PETITION SHALL BE
 3 DISMISSED. HOWEVER, THE COUNTY ATTORNEY MAY, UPON GOOD CAUSE
 4 SHOWN, REQUEST THE COURT TO ORDER TWO, BUT NO MORE THAN TWO,
 5 ADDITIONAL EXAMINATIONS, OF NO MORE THAN 4 HOURS' DURATION
 6 EACH, TO BE GIVEN BY DIFFERENT PROFESSIONAL PERSONS.

7 (B) IF AT LEAST ONE PROFESSIONAL PERSON FINDS THAT
 8 COMMITMENT PROCEEDINGS SHOULD CONTINUE, THE HEARING SHALL BE
 9 HELD AS SCHEDULED.

10 ~~(3)~~(4) The court may not order further evaluation
 11 pending the hearing unless sound medical reasons require
 12 additional time for a complete evaluation. Such reasons
 13 shall be set forth in the order, along with the amount of
 14 additional time needed."

15 Section 7. Section 53-21-126, MCA, is amended to read:

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

23 (2) The standard of proof in any hearing held pursuant
 24 to this section is proof beyond a reasonable doubt with
 25 respect to any physical facts or evidence and clear and

1 convincing evidence as to all other matters, except that
 2 mental disorders shall be evidenced to a reasonable medical
 3 certainty. Imminent threat of self-inflicted injury or
 4 injury to others shall be evidenced by overt acts,
 5 sufficiently recent in time as to be material and relevant
 6 as to the respondent's present condition.

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

20 (4) The professional person OR PERSONS may testify as
 21 to the ultimate issue of whether the respondent is seriously
 22 mentally ill or in need of treatment. Testimony on the
 23 issue of whether the respondent is seriously mentally ill
 24 ~~This---testimony~~ is insufficient unless accompanied by
 25 evidence from the professional person or others that:

1 (a) the respondent is suffering from a mental
2 disorder; and

3 (b) the mental disorder has resulted in self-inflicted
4 injury or injury to others or the imminent threat thereof or
5 has deprived the person afflicted of the ability to protect
6 his life or health.

7 (5) The court, upon the showing of good cause and when
8 it is in the best interests of the respondent, may order a
9 change of venue."

10 Section 8. Section 53-21-127, MCA, is amended to read:

11 "53-21-127. Posttrial disposition. (1) If, upon trial,
12 it is determined that the a respondent alleged to be
13 seriously mentally ill is not seriously mentally ill within
14 the meaning of this part or a respondent alleged to be in
15 need of treatment is not in need of treatment within the
16 meaning of this part, he shall be discharged and the
17 petition dismissed.

18 (2) (a) If it is determined in a proceeding for
19 inpatient---commitment under 53-21-121(1)(a) that the
20 respondent is seriously mentally ill within the meaning of
21 this part, the court shall hold a posttrial disposition
22 hearing. The disposition hearing shall be held within 5 days
23 (including Saturdays, Sundays, and holidays unless the fifth
24 day falls on a Saturday, Sunday, or holiday), during which
25 time the court may order further evaluation and treatment of

1 the respondent. At the conclusion of the disposition
2 hearing, the court shall:

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

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

8 (iii) order outpatient therapy; or

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

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

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

23 (3) If it is determined in a proceeding for treatment
24 under 53-21-121(1)(b) that the person is in need of
25 treatment within the meaning of this part, the court shall

1 order that he receive treatment. The court shall choose the
 2 least restrictive course of treatment reasonably available
 3 to the person found to be in need of treatment. The--court
 4 must--make--a--separate--finding--setting--forth--the--reason
 5 therefor--if--the--order--includes--a--requirement--of--inpatient
 6 treatment--or--involuntary--medication. The court may not order
 7 inpatient treatment in--the--Montana--state--hospital--at--Warm
 8 Springs OR FORCIBLE ADMINISTRATION OF MEDICATION under this
 9 subsection (3). The person may not be required to pay for
 10 court-ordered treatment UNLESS HE IS FINANCIALLY ABLE.

11 (4) Before ordering any treatment for a person found
 12 to be in need of treatment under subsection (3), the court
 13 shall make findings of fact that treatment appropriate to
 14 the needs of the respondent is available. The court shall
 15 also indicate on the order the name of the professional
 16 person--who FACILITY WHICH is to be responsible for the
 17 management and supervision of the respondent's treatment."

18 Section 9. Section 53-21-128, MCA, is amended to read:

19 "53-21-128. Petition for extension of commitment
 20 period. (1) To extend the period of detention provided for
 21 in 53-21-127(2), the procedure set forth in this subsection
 22 (1) must be followed:

23 (a) Not less than 2 calendar weeks prior to the end of
 24 the 3-month period of detention provided---for---in
 25 53-21-127(2), the professional person in charge of the

1 patient at the place of detention may petition the court for
 2 extension of the detention period. The petition shall be
 3 accompanied by a written report and evaluation of the
 4 patient's mental and physical condition. The report shall
 5 describe any tests and evaluation devices which have been
 6 employed in evaluating the patient, the course of treatment
 7 which has been undertaken for the patient, and the future
 8 course of treatment anticipated by the professional person.

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

21 (c) Procedure on the petition for extension when a
 22 hearing has been requested shall be the same in all respects
 23 as the procedure on the petition for the original 3-month
 24 commitment except the patient is not entitled to trial by
 25 jury. The hearing shall be held in the district court

1 having jurisdiction over the facility in which the patient
 2 is detained unless otherwise ordered by the court. Court
 3 costs and witness fees, if any, shall be paid by the county
 4 that paid the same costs in the initial commitment
 5 proceedings.

6 (d) If upon the hearing the court finds the patient
 7 not seriously mentally ill within the meaning of this part,
 8 he shall be discharged and the petition dismissed. If the
 9 court finds that the patient continues to suffer from
 10 serious mental illness, the court shall order commitment,
 11 custody in relatives, outpatient therapy, or other order as
 12 set forth in 53-21-127(2) except that no order may affect
 13 his custody for more than 6 months. In its order, the court
 14 shall describe what alternatives for treatment of the
 15 patient are available, what alternatives were investigated,
 16 and why the investigated alternatives were not deemed
 17 suitable. The court shall not order continuation of an
 18 alternative which does not include a comprehensive,
 19 individualized plan of treatment for the patient. A court
 20 order for the continuation of an alternative shall include a
 21 specific finding that a comprehensive, individualized plan
 22 of treatment exists.

23 (2) To extend the period of treatment of a person
 24 found in need of treatment under 53-21-127(3), the procedure
 25 set forth in this subsection (2) must be followed:

1 (a) Not less than 7 days prior to the end of the
 2 30-day period of treatment ordered under 53-21-127(3), the
 3 professional person in charge of the respondent's care may
 4 petition the court for extension of the treatment period.
 5 The petition must be accompanied by a written report and
 6 evaluation of the respondent's mental and physical
 7 condition. The report shall describe any tests and
 8 evaluation devices which have been employed in evaluating
 9 the respondent, the course of treatment which has been
 10 undertaken for the respondent, and the future course of
 11 treatment anticipated by the professional person.

12 (b) Upon the filing of the petition, the court shall
 13 give written notice of the filing of the petition to the
 14 respondent, his next of kin, if reasonably available, the
 15 friend of respondent appointed by the court, if any, and the
 16 respondent's counsel. If any person so notified requests a
 17 hearing prior to the termination of the previous detention
 18 authority, the court shall immediately set a time and place
 19 for a hearing on a date not more than 5 days from the
 20 receipt of the request and notify the same people, including
 21 the professional person in charge of the respondent. If a
 22 hearing is not requested, the court shall enter an order of
 23 treatment for a period not to exceed 30 days.

24 (c) Procedure on the petition for extension when a
 25 hearing has been requested shall be the same in all respects

1 as the procedure on the petition under 53-21-121(1)(b) for
 2 the original treatment except that the patient is not
 3 entitled to trial by jury. The hearing shall be held in the
 4 district court for the county in which the treatment is
 5 being supervised unless otherwise ordered by the court.
 6 Court costs and witness fees, if any, shall be paid by the
 7 county that paid the same costs in the initial proceedings
 8 under 53-21-121(1)(b).

9 (d) If upon the hearing the court finds the respondent
 10 not in need of treatment within the meaning of this part,
 11 the petition shall be dismissed. If the court finds that
 12 the respondent continues to be in need of treatment, the
 13 court shall order treatment for the respondent FOR A PERIOD
 14 NOT TO EXCEED 30 DAYS. In its order, the court shall
 15 describe what alternatives for treatment of the respondent
 16 are available, what alternatives were investigated, and why
 17 the investigated alternatives were not considered suitable.
 18 The court may not order continuation of an alternative which
 19 does not include a comprehensive, individualized plan of
 20 treatment for the respondent. A court order for the
 21 continuation of an alternative shall include a specific
 22 finding that a comprehensive, individualized plan of
 23 treatment exists.

24 {2}{3} Further extensions may be obtained under the
 25 same procedure procedures PROCEDURE described in subsection

1 subsections SUBSECTION (1) and-{2} of this section except
 2 that the patient's custody may not be affected for more than
 3 1 year without a renewal of the commitment under the
 4 procedures set forth in subsection subsections SUBSECTION
 5 (1) and-{2} of this section, including a statement of the
 6 findings required by subsection subsections SUBSECTION (1)
 7 and-{2}."

8 NEW SECTION. Section 10. Establishment of treatment
 9 plan for person in need of care. (1) A person ordered to
 10 receive treatment under 53-21-127(3) must have an
 11 individualized treatment plan.

12 (2) The treatment plan must be developed by
 13 appropriate professional persons and must be implemented no
 14 later than 5 days after the treatment order has been made.

15 (3) Each treatment plan must contain:

16 (a) a statement of the nature of the specific problems
 17 and specific needs of the patient;

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

20 (c) a description of intermediate and long-range
 21 treatment goals, with a projected timetable for their
 22 attainment;

23 (d) a statement and rationale for the plan of
 24 treatment for achieving these intermediate and long-range
 25 goals; and

1 (e) criteria for release to less restrictive treatment
2 conditions and criteria for discharge.

3 (4) The treatment plan may include prescription by a
4 physician of reasonable and appropriate medication that is
5 consistent with accepted medical standards.

6 NEW SECTION. Section 11. Compliance with treatment
7 plan. If the respondent fails to comply or clearly refuses
8 to comply with all or part of the treatment plan, the
9 professional person designated under 53-21-127 shall make
10 all reasonable effort to solicit the respondent's
11 compliance. Such effort must be documented and reported to
12 the court with a recommendation to the court as to whether
13 the respondent should:

14 (1) have his case dismissed; or

15 (2) be given a supplemental hearing.

16 NEW SECTION. Section 12. Codification instruction.
17 Sections 9 and 10 are intended to be codified as an integral
18 part of Title 53, chapter 21, part 1, and the provisions of
19 Title 53, chapter 21, part 1, apply to sections 9 and 10.

-End-