

HOUSE BILL NO. 316

INTRODUCED BY ADDY, HAGER, KEENAN, PISTORIA,
MAZUREK, STRATFORD, HANSEN, LORY, BULGER

IN THE HOUSE

JANUARY 20, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 19, 1987 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 20, 1987 PRINTING REPORT.

FEBRUARY 21, 1987 SECOND READING, DO PASS.

 ON MOTION, TAKEN FROM ENGROSSING
AND REREFERRED TO COMMITTEE
ON APPROPRIATIONS.

FEBRUARY 23, 1987 ENGROSSING REPORT.

MARCH 4, 1987 COMMITTEE RECOMMEND BILL
DO PASS. REPORT ADOPTED.

MARCH 5, 1987 PRINTING REPORT.

MARCH 6, 1987 SECOND READING, DO PASS AS AMENDED.

MARCH 7, 1987 ENGROSSING REPORT.

MARCH 9, 1987 THIRD READING, PASSED.
AYES, 93; NOES, 1.

 TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 10, 1987 INTRODUCED AND REFERRED TO COMMITTEE
ON PUBLIC HEALTH, WELFARE & SAFETY.

MARCH 23, 1987 COMMITTEE RECOMMEND BILL BE
CONCURRED IN. REPORT ADOPTED.

MARCH 26, 1987 SECOND READING, CONCURRED IN.

MARCH 28, 1987

THIRD READING, CONCURRED IN.
AYES, 50; NOES, 0.

RETURNED TO HOUSE.

IN THE HOUSE

MARCH 30, 1987

RECEIVED FROM SENATE.

SENT TO ENROLLING.

1 *House* BILL NO. *316*
 2 INTRODUCED BY *Adrian Hager Kenner Patricia J. Longenecker*
 3 *Stratford Steelhead House Tony (Dulger)*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
 5 INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY
 6 OF PERSONS WHO ARE MENTALLY ILL; AND AMENDING SECTIONS
 7 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120,
 8 53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH
 9 53-21-128, MCA."

10
 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 12 Section 1. Section 53-21-102, MCA, is amended to read:
 13 "53-21-102. Definitions. As used in this part, the
 14 following definitions apply:
 15 (1) "Board" or "mental disabilities board of visitors"
 16 means the mental disabilities board of visitors created by
 17 2-15-211.
 18 (2) "Court" means any district court of the state of
 19 Montana.
 20 (3) "Department" means the department of institutions
 21 provided for in Title 2, chapter 15, part 23.
 22 (4) "Emergency situation" means a situation in which
 23 any person is in imminent danger of death or serious bodily
 24 harm from the activity of a person who appears to be
 25 seriously mentally ill.

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

17 (5)(6) "Mental disorder" means any organic, mental, or
 18 emotional impairment which has substantial adverse effects
 19 on an individual's cognitive or volitional functions.

20 (6)(7) "Mental health facility" or "facility" means a
 21 public hospital or a licensed private hospital which is
 22 equipped and staffed to provide treatment for persons with
 23 mental disorders or a community mental health center or any
 24 mental health clinic or treatment center approved by the
 25 department. No correctional institution or facility or jail



1 is a mental health facility within the meaning of this part.

2 (8) "Mentally ill" means suffering from a mental
3 disorder which has not resulted in self-inflicted injury or
4 injury to others or the imminent threat thereof but which:

5 (a) has resulted in behavior that creates serious
6 difficulty in protecting the person's life or health even
7 with the available assistance of family, friends, or others;

8 (b) is treatable, with a reasonable prospect of
9 success and consistent with the least restrictive course of
10 treatment as provided in 53-21-127(3), at or through the
11 facility to which the person is to be committed;

12 (c) has deprived the person of the capacity to make an
13 informed decision concerning treatment;

14 (d) has resulted in the person's refusing or being
15 unable to consent to voluntary admission for treatment; and

16 (e) poses a significant risk of the person's becoming
17 seriously mentally ill, within the meaning of this section,
18 or will, if untreated, predictably result in further serious
19 deterioration in the mental condition of the person.
20 Predictability may be established by the patient's medical
21 history.

22 ~~(7)~~(9) "Next of kin" shall include but need not be
23 limited to the spouse, parents, adult children, and adult
24 brothers and sisters of a person.

25 ~~(8)~~(10) "Patient" means a person committed by the court

1 for treatment for any period of time or who is voluntarily
2 admitted for treatment for any period of time.

3 ~~(9)~~(11) "Peace officer" means any sheriff, deputy
4 sheriff, marshal, policeman, or other peace officer.

5 ~~(10)~~(12) "Professional person" means:

6 (a) a medical doctor; or

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

9 ~~(11)~~(13) "Reasonable medical certainty" means
10 reasonable certainty as judged by the standards of a
11 professional person.

12 ~~(12)~~(14) "Respondent" means a person alleged in a
13 petition filed pursuant to this part to be mentally ill or
14 seriously mentally ill.

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

1 ~~friend-of-respondent, the court shall consider the~~
 2 ~~preference of the respondent. The court may at any time, for~~
 3 ~~good cause shown, change its designation of the friend of~~
 4 ~~respondent.~~

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

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

18 Section 2. Section 53-21-106, MCA, is amended to read:

19 "53-21-106. Certification of professional persons. (1)
 20 The department shall certify professional persons as defined
 21 in 53-21-102~~(10)~~~~(b)~~(12)(b) for the purpose of this part.

22 (2) The department, with reference to recognized
 23 national standards in the field of mental health, shall
 24 adopt standards and rules governing the certification of
 25 professional persons ~~as defined in 53-21-102(10)(b)~~.

1 (3) The rules for certification must address but are
 2 not limited to:

3 (a) the type of education that an individual has
 4 received, including degrees;

5 (b) the type of experience or training received by the
 6 individual;

7 (c) continuing education, training, instruction, and
 8 work experience necessary to maintain certification;

9 (d) an examination instrument to be used to determine
 10 an individual's proficiency and understanding of mental
 11 health laws, diagnosis, and treatment procedures;

12 (e) the procedure for categorical certification
 13 qualifying the level of professional authority and
 14 responsibility of an individual; and

15 (f) specific procedures for certification,
 16 recertification, and revocation of certification."

17 Section 3. Section 53-21-115, MCA, is amended to read:

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

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

1 (2) the right to know, in advance of any hearing, the
 2 names and addresses of any witnesses who will testify in
 3 support of the petition;

4 ~~(2)~~(3) the right in any hearing to be present, to
 5 offer evidence, and to present witnesses in any proceeding
 6 concerning him;

7 ~~(3)~~(4) the right in any hearing to cross-examine
 8 witnesses;

9 ~~(4)~~(5) the right to be represented by counsel;

10 ~~(5)~~(6) the right to remain silent;

11 ~~(6)~~(7) the right in any hearing to be proceeded
 12 against according to the rules of evidence applicable to
 13 civil matters generally;

14 ~~(7)~~(8) the right to view and copy all petitions on
 15 file with the court concerning him;

16 ~~(8)~~(9) the right to be examined by a professional
 17 person of his choice when such professional person is
 18 willing and reasonably available;

19 ~~(9)~~(10) the right to be dressed in his own clothes at
 20 any hearing held pursuant to this part; and

21 ~~(10)~~(11) the right to refuse any but lifesaving
 22 medication for up to 24 hours prior to any hearing held
 23 pursuant to this part."

24 Section 4. Section 53-21-116, MCA, is amended to read:

25 "53-21-116. Right to be present at hearing or trial --

1 appointment of counsel. The person alleged to be mentally
 2 ill or seriously mentally ill has the right to be present at
 3 any hearing or trial. If he has no attorney, the judge shall
 4 appoint one to represent him at either the hearing or the
 5 trial, or both, who shall be compensated from the public
 6 funds of the county where the respondent resides."

7 Section 5. Section 53-21-120, MCA, is amended to read:

8 "53-21-120. Detention to be in least restrictive
 9 environment -- preference for mental health facility --
 10 court relief -- prehearing detention of mentally ill person
 11 prohibited. (1) A person detained pursuant to this part
 12 shall be detained in the least restrictive environment
 13 required to protect the life and physical safety of the
 14 person detained or members of the public; in this respect,
 15 prevention of significant injury to property may be
 16 considered.

17 (2) Whenever possible, a person detained pursuant to
 18 this part shall be detained in a mental health facility and
 19 in the county of residence. If the person detained demands
 20 a jury trial and trial cannot be held within 7 days, the
 21 individual may be sent to the state hospital until time of
 22 trial if arrangements can be made to return him to trial.
 23 Such trial must be held within 30 days. The county of
 24 residence shall pay the cost of travel and professional
 25 services associated with the trial. No person may be

1 detained in any hospital or other medical facility which is
2 not a mental health facility unless such hospital or
3 facility has agreed in writing to admit the person.

4 (3) A person may be detained in a jail or other
5 correctional facility only if no mental health facility is
6 available or if the available mental health facilities are
7 inadequate to protect the person detained and the public. As
8 soon as a mental health facility becomes available or the
9 situation has changed sufficiently that an available mental
10 health facility is adequate for the protection of the person
11 detained and the public, then the detained person shall be
12 transferred from the jail or correctional facility to the
13 mental health facility.

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

18 (5) No detention may be ordered under this part for a
19 person concerning whom a petition has been filed under
20 53-21-121(1)(b)."

21 Section 6. Section 53-21-121, MCA, is amended to read:

22 "53-21-121. Petition for commitment -- contents of --
23 notice of. (1) The county attorney, upon the written request
24 of any person having direct knowledge of the facts, may file
25 a petition with the court;

1 (a) alleging that there is a person within the county
2 who is seriously mentally ill and requesting that the person
3 be committed to a mental health facility for a period of no
4 more than 3 months; or

5 (b) alleging that there is a person within the county
6 who is mentally ill and requesting that the person be
7 committed to a mental health facility for a period of no
8 more than 30 days.

9 (2) The petition shall contain:

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

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

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

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

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

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

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

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

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

1 Section 7. Section 53-21-122, MCA, is amended to read:
 2 "53-21-122. Petition for commitment -- filing of --
 3 initial hearing on. (1) The petition shall be filed with the
 4 clerk of court who shall immediately notify the judge.

5 (2) (a) If a judge is available, he shall consider the
 6 petition, and if he finds no probable cause, it shall be
 7 dismissed.

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

16 (ii) The judge shall:

17 (A) appoint a professional person; and

18 (B) appoint a friend of respondent; and

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

24 (iii) The desires of the respondent shall be taken into
 25 consideration in the appointment of the friend of respondent

1 and in the confirmation of the appointment of the attorney.

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

24 Section 8. Section 53-21-123, MCA, is amended to read:

25 "53-21-123. Examination of respondent following

1 initial hearing -- recommendation of professional person.

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

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

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

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

21 (3) The court may not order further evaluation pending
22 the hearing unless sound medical reasons require additional
23 time for a complete evaluation. Such reasons shall be set
24 forth in the order, along with the amount of additional time
25 needed."

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

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

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

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

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

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

10 (a) ~~--the---respondent---is---suffering--from--a--mental~~
11 ~~disorder;--and~~

12 (b) ~~--the--mental--disorder--has--resulted--in--self--inflicted~~
13 ~~injury--or--injury--to--others--or--the--imminent--threat--thereof--or~~
14 ~~has--deprived--the--person--afflicted--of--the--ability--to--protect~~
15 ~~his--life--or--health. Testimony from a professional person or~~
16 ~~others must be received on each element of the definition of~~
17 ~~mentally ill or seriously mentally ill as those terms are~~
18 ~~defined in 53-21-102.~~

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

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

24 "53-21-127. Posttrial disposition. (1) If, upon trial,
25 it is determined that the respondent is not mentally ill or

1 seriously mentally ill within the meaning of this part, he
2 shall be discharged and the petition dismissed.

3 (2) (a) If it is determined in a proceeding under
4 53-21-121(1)(a) that the respondent is seriously mentally
5 ill within the meaning of this part, the court shall hold a
6 posttrial disposition hearing. The disposition hearing shall
7 be held within 5 days (including Saturdays, Sundays, and
8 holidays unless the fifth day falls on a Saturday, Sunday,
9 or holiday), during which time the court may order further
10 evaluation and treatment of the respondent. At the
11 conclusion of the disposition hearing, the court shall:

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

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

17 (iii) order outpatient therapy; or

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

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

22 (c) In determining which of the above alternatives to
23 order, the court shall choose the least restrictive
24 alternatives necessary to protect the respondent and the
25 public and to permit effective treatment. The court shall

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

7 (3) If it is determined in a proceeding under
8 53-21-121(1)(b) that the respondent is mentally ill within
9 the meaning of this part, the court shall order that he
10 receive treatment for a period of no more than 30 days. The
11 court shall choose the least restrictive course of treatment
12 reasonably available to the respondent. The court must make
13 a separate finding, setting forth the reason therefor if the
14 order includes a requirement of inpatient treatment or
15 involuntary medication. The court may not order inpatient
16 treatment in the Montana state hospital at Warm Springs
17 under this subsection (3). The respondent may not be
18 required to pay for court-ordered treatment unless he is
19 financially able.

20 (4) Before ordering any treatment for a respondent
21 found to be mentally ill under subsection (3), the court
22 shall make findings of fact that treatment appropriate to
23 the needs of the respondent is available. The court shall
24 also indicate on the order the name of the facility that is
25 to be responsible for the management and supervision of the

1 respondent's treatment. No person may use physical force to
 2 administer medication. A court may use any legal means to
 3 enforce an order to take medication, including immediate
 4 detention not to exceed 72 hours, until the mentally ill
 5 person can be returned to the court."

6 Section 11. Section 53-21-128, MCA, is amended to
 7 read:

8 "53-21-128. Petition for extension of commitment
 9 period. (1) To extend the 3-month period of detention
 10 provided for in 53-21-127(2), the procedure set forth in
 11 this subsection (1) must be followed:

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

23 (b) Upon the filing of the petition, the court shall
 24 give written notice of the filing of the petition to the
 25 patient, his next of kin, if reasonably available, the

1 friend of respondent appointed by the court, and the
 2 patient's counsel. If any person so notified requests a
 3 hearing prior to the termination of the previous detention
 4 authority, the court shall immediately set a time and place
 5 for a hearing on a date not more than 10 days from the
 6 receipt of the request and notify the same people, including
 7 the professional person in charge of the patient. If a
 8 hearing is not requested, the court shall enter an order of
 9 commitment for a period not to exceed 6 months.

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

20 (d) If upon the hearing the court finds the patient
 21 not seriously mentally ill within the meaning of this part,
 22 he shall be discharged and the petition dismissed. If the
 23 court finds that the patient continues to suffer from
 24 serious mental illness, the court shall order commitment,
 25 custody in relatives, outpatient therapy, or other order as

1 set forth in 53-21-127(2) except that no order may affect
 2 his custody for more than 6 months. In its order, the court
 3 shall describe what alternatives for treatment of the
 4 patient are available, what alternatives were investigated,
 5 and why the investigated alternatives were not deemed
 6 suitable. The court shall not order continuation of an
 7 alternative which does not include a comprehensive,
 8 individualized plan of treatment for the patient. A court
 9 order for the continuation of an alternative shall include a
 10 specific finding that a comprehensive, individualized plan
 11 of treatment exists.

12 (2) To extend the period of treatment provided for in
 13 53-21-127(3), the procedure set forth in this subsection (2)
 14 must be followed:

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

1 (b) Upon the filing of the petition, the court shall
 2 give written notice of the filing of the petition to the
 3 respondent, his next of kin, if reasonably available, the
 4 friend of respondent appointed by the court, if any, and the
 5 respondent's counsel. If any person so notified requests a
 6 hearing prior to the termination of the previous detention
 7 authority, the court shall immediately set a time and place
 8 for a hearing on a date not more than 5 days from the
 9 receipt of the request and notify the same people, including
 10 the professional person in charge of the respondent. If a
 11 hearing is not requested, the court shall enter an order of
 12 treatment for a period not to exceed 30 days.

13 (c) Procedure on the petition for extension when a
 14 hearing has been requested shall be the same in all respects
 15 as the procedure on the petition under 53-21-121(1)(b) for
 16 the original treatment except that the respondent is not
 17 entitled to trial by jury. The hearing shall be held in the
 18 district court for the county in which the treatment is
 19 being supervised unless otherwise ordered by the court.
 20 Court costs and witness fees, if any, shall be paid by the
 21 county that paid the same costs in the initial proceedings.

22 (d) If upon the hearing the court finds the respondent
 23 not mentally ill within the meaning of this part, the
 24 petition shall be dismissed. If the court finds that the
 25 respondent continues to be mentally ill, the court shall

1 order treatment for the respondent for a period not to
 2 exceed 30 days. In its order, the court shall describe what
 3 alternatives for treatment of the respondent are available,
 4 what alternatives were investigated, and why the
 5 investigated alternatives were not considered suitable. The
 6 court may not order continuation of an alternative which
 7 does not include a comprehensive, individualized plan of
 8 treatment for the respondent. A court order for the
 9 continuation of an alternative shall include a specific
 10 finding that a comprehensive, individualized plan of
 11 treatment exists.

12 (2)(3) Further extensions of the period of detention
 13 provided for in 53-21-127(2) may be obtained under the same
 14 procedure described in subsection (1) of this section except
 15 that the patient's custody may not be affected for more than
 16 1 year without a renewal of the commitment under the
 17 procedures set forth in subsection (1) of this section,
 18 including a statement of the findings required by subsection
 19 (1).

20 (4) The period of treatment provided for in
 21 53-21-127(3) may be extended only once under this section."

22 NEW SECTION. Section 12. Establishment of treatment
 23 plan for mentally ill person. (1) A person ordered to
 24 receive treatment under 53-21-127(3) must have an
 25 individualized treatment plan.

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

4 (3) The treatment plan must contain:

5 (a) a statement of the nature of the specific problems
 6 and specific needs of the patient;

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

9 (c) a description of intermediate and long-range
 10 treatment goals, with a projected timetable for their
 11 attainment;

12 (d) a statement and rationale for the plan of
 13 treatment for achieving these intermediate and long-range
 14 goals; and

15 (e) criteria for release to less restrictive treatment
 16 conditions and criteria for discharge.

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

20 NEW SECTION. Section 13. Compliance with treatment
 21 plan. If the respondent fails to comply or clearly refuses
 22 to comply with all or part of the treatment plan, the
 23 professional person appointed under 53-21-122 shall make all
 24 reasonable efforts to solicit the respondent's compliance.
 25 Such effort must be documented and reported to the court

1 with a recommendation to the court as to whether the
2 respondent should:

- 3 (1) have his case dismissed; or
4 (2) be given a supplemental hearing.

5 NEW SECTION. Section 14. Supplemental hearing. (1) If
6 the respondent requests a hearing to prove he has complied
7 with the treatment plan as provided in [section 13], the
8 hearing must be scheduled within 5 days. The respondent, his
9 attorney, the friend of respondent, and the designated
10 professional person must be notified at least 48 hours in
11 advance.

12 (2) At the hearing, the court must determine whether
13 the respondent has failed to comply with the treatment plan
14 established pursuant to [section 12].

15 (3) (a) If the court determines that the respondent
16 has failed or refused to comply with the treatment plan, it
17 may order the respondent to comply with the treatment plan
18 for the remainder of the 30-day period.

19 (b) If the respondent no longer meets the definition
20 of mentally ill, the court shall discharge the respondent
21 from the order and dismiss the case.

22 NEW SECTION. Section 15. Codification instruction.
23 Sections 12 through 14 are intended to be codified as an
24 integral part of Title 53, chapter 21, part 1, and the
25 provisions of Title 53, chapter 21, part 1, apply to

1 sections 12 through 14.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB316, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for involuntary commitment and treatment in the local community of persons who are mentally ill: and amending sections 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120, 53-21-121 through 53-21-123, and 53-21-126 through 53-21-128, MCA.

ASSUMPTIONS:

1. According to the State Council of Regional Mental Health Centers, 20 patients would be committed under this proposed legislation.
2. There would be a 30-day commitment and a 30-day extension for a total of 60 days of treatment for 20 patients.
3. The patient would be committed to 5 days of inpatient care for a total of 100 per year at the rate of \$105.93/hr. for psychiatrist services.
4. The patient would be seen once per week for outpatient therapy for 1 hour at the rate of \$56.00/hr.
5. The patient would be seen five times per week (four hours per day) for 7 weeks for day treatment services at \$7.07/hr.
6. County or other local resources would provide for five days for acute psychiatric care for the 20 patients. The fiscal impact will be charged to the patient, 3rd party insurer, or the county..
7. The impact on commitments to the Montana State Hospital can not be ascertained.

FISCAL IMPACT:

| <u>Expenditures:</u> | <u>FY88</u> | <u>FY89</u> |
|----------------------|-------------|-------------|
| Inpatient Care | \$ 10,593 | \$ 10,593 |
| Day Treatment | 19,796 | 19,796 |
| Outpatient | 7,840 | 7,840 |
| Total General Fund | \$ 38,229 | \$ 38,229 |

For each patient not committed to the Montana State Hospital the variable cost per patient per day should be saved. The variable costs is \$6.61 per day.

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

The five days of acute psychiatric care for the 20 patients will impact the counties or other local resources by \$22,900 each year of the biennium.

David L. Hunter DATE 1/27/87

DAVID L. HUNTER, BUDGET DIRECTOR
Office of Budget and Program Planning

Kelly Addy DATE 1/28/87

KELLY ADDY, PRIMARY SPONSOR

Fiscal Note for HB316, as introduced.

HB 316

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB316, as introduced.

REVISED FISCAL NOTE

DESCRIPTION OF PROPOSED LEGISLATION:

An act providing for involuntary commitment and treatment in the local community of persons who are mentally ill: and amending sections 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120, 53-21-121 through 53-21-123, and 53-21-126 through 53-21-128, MCA.

ASSUMPTIONS:

1. According to the State Council of Regional Mental Health Centers, 30 patients would be committed under this proposed legislation. One-sixth, or 6 would be private pay patients according to the State Council of Regional Mental Health Centers. Twenty-four would be medicaid eligible.
2. There would be a 30-day commitment and a 30-day extension for a total of 60 days of treatment for 24 Medicaid eligible clients.
3. These Medicaid eligible patients would be initially committed, as part of the 30-day commitment, to inpatient care. Of the 24 Medicaid eligible clients, 16 would be determined eligible for inpatient care. Medicaid will not pay for inpatient care which, though court ordered, has not been determined to be medically necessary.
4. Though denied for inpatient care, the 8 Medicaid eligibles will be eligible for outpatient therapy and day treatment.
5. The average length of inpatient psych care is 7.4 days. The cost per day is \$300. While receiving inpatient psych care, the patient would receive 1 hour of psychiatrists services per day at the rate of \$105.93/hour.
6. The patient would be seen once per week for outpatient therapy for 1 hour at the rate of \$56.00/hr.
7. The patient would be seen for day treatment five times per week (four hours per day) for 6 weeks four days at \$7.07/hr.
8. The impact on commitments to the Montana State Hospital can not be ascertained.
9. The care for eight medicaid patients would be determined not medically necessary even though court ordered. The cost of this care would be borne by local governments.

FISCAL IMPACT:

| | <u>FY88</u> | <u>FY89</u> |
|---------------|-----------------|-----------------|
| Revenue | \$ 0 | \$ 0 |
| Expenditures | <u>80,546</u> | <u>80,546</u> |
| Net Effect | (\$80,546) | (\$80,546) |
| | | |
| General Fund | \$25,042 | \$23,423 |
| Federal Funds | <u>55,504</u> | <u>57,123</u> |
| TOTAL | <u>\$80,546</u> | <u>\$80,546</u> |

David L. Hunter DATE 2/9/87
 DAVID L. HUNTER, BUDGET DIRECTOR

Office of Budget and Program Planning

Kelly Adley DATE 2/10/87
 KELLY ADLEY, PRIMARY SPONSOR

Fiscal Note for HB316, as introduced.

REVISED FISCAL NOTE

HB 316
#2

Fiscal Note Request, HB316, as introduced. REVISED FISCAL NOTE.

Form BD-15

Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUE OR EXPENDITURES:

Eight Medicaid eligible clients would have their inpatient care denied because, though court ordered, the care was not medically necessary. The cost of this care, plus psychiatrists services for these eight, would amount to \$24,031.

TECHNICAL OR MECHANICAL DEFECTS IN PROPOSED LEGISLATION OR CONFLICTS WITH EXISTING LEGISLATION:

This bill includes a definition of mentally ill that could include those persons dually diagnosed as mentally ill and developmentally disabled. The definition of seriously mentally ill (current law 53-21-102(14), MCA) includes an exclusion for such individuals. If dually-diagnosed persons are committed under the proposed legislation, expenditures and general fund costs would increase by \$89,976 in FY88 and \$44,988 in FY89.

APPROVED BY COMMITTEE
ON JUDICIARY

HOUSE BILL NO. 316

INTRODUCED BY ADDY, HAGER, KEENAN, PISTORIA,
MAZUREK, STRATFORD, HANSEN, LORY, BULGER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY
OF PERSONS WHO ARE MENTALLY ILL; AND AMENDING SECTIONS
53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120,
53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH
53-21-128, MCA; PROVIDING FOR A REPORT TO THE LEGISLATURE;
AND INCLUDING A SUNSET PROVISION."

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, 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 mentally ill person, a person alleged
to be mentally ill, a seriously mentally ill person, or a
person alleged to be seriously mentally ill 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, a
representative 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



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 (8) "Mentally ill" means suffering from a mental
 5 disorder which has not resulted in self-inflicted injury or
 6 injury to others or the imminent threat thereof but which:

7 (a) has resulted in behavior that creates serious
 8 difficulty in protecting the person's life or health even
 9 with the available assistance of family, friends, or others;

10 (b) is treatable, with a reasonable prospect of
 11 success and consistent with the least restrictive course of
 12 treatment as provided in 53-21-127(3), at or through the
 13 facility to which the person is to be committed;

14 (c) has deprived the person of the capacity to make an
 15 informed decision concerning treatment;

16 (d) has resulted in the person's refusing or being
 17 unable to consent to voluntary admission for treatment; and

18 (e) poses a significant risk of the person's becoming
 19 seriously mentally ill, within the meaning of this section,
 20 or will, if untreated, predictably result in further serious
 21 deterioration in the mental condition of the person.
 22 Predictability may be established by the patient's medical
 23 history.

24 (7)(9) "Next of kin" shall include but need not be
 25 limited to the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 (8)(10) "Patient" means a person committed by the court
 3 for treatment for any period of time or who is voluntarily
 4 admitted for treatment for any period of time.

5 (9)(11) "Peace officer" means any sheriff, deputy
 6 sheriff, marshal, policeman, or other peace officer.

7 (10)(12) "Professional person" means:

8 (a) a medical doctor; or

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

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

14 (12)(14) "Respondent" means a person alleged in a
 15 petition filed pursuant to this part to be mentally ill or
 16 seriously mentally ill.

17 ~~(13) "Friend of respondent" means any person willing~~
 18 ~~and able to assist a seriously mentally ill person or person~~
 19 ~~alleged to be seriously mentally ill in dealing with legal~~
 20 ~~proceedings, including consultation with legal counsel and~~
 21 ~~others. The friend of respondent may be the next of kin, the~~
 22 ~~person's conservator or legal guardian, if any,~~
 23 ~~representatives of a charitable or religious organization,~~
 24 ~~or any other person appointed by the court to perform the~~
 25 ~~functions of a friend of respondent set out in this part.~~

1 Only one person may at any one time be the friend of
 2 respondent within the meaning of this part. In appointing a
 3 friend of respondent, the court shall consider the
 4 preference of the respondent. The court may at any time, for
 5 good cause shown, change its designation of the friend of
 6 respondent.

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

18 ~~{15}~~(16) "State hospital" means the Montana state
 19 hospital."

20 Section 2. Section 53-21-106, MCA, is amended to read:

21 "53-21-106. Certification of professional persons. (1)
 22 The department shall certify professional persons as defined
 23 in 53-21-102~~{10}~~(b)~~(12)~~(b) for the purpose of this part.

24 (2) The department, with reference to recognized
 25 national standards in the field of mental health, shall

1 adopt standards and rules governing the certification of
 2 professional persons ~~as defined in 53-21-102{10}(b)~~.

3 (3) The rules for certification must address but are
 4 not limited to:

5 (a) the type of education that an individual has
 6 received, including degrees;

7 (b) the type of experience or training received by the
 8 individual;

9 (c) continuing education, training, instruction, and
 10 work experience necessary to maintain certification;

11 (d) an examination instrument to be used to determine
 12 an individual's proficiency and understanding of mental
 13 health laws, diagnosis, and treatment procedures;

14 (e) the procedure for categorical certification
 15 qualifying the level of professional authority and
 16 responsibility of an individual; and

17 (f) specific procedures for certification,
 18 recertification, and revocation of certification."

19 Section 3. Section 53-21-115, MCA, is amended to read:

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

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

3 (2) the right to know, in advance of any hearing, the
4 names and addresses of any witnesses who will testify in
5 support of the petition;

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

9 (4) the right in any hearing to cross-examine
10 witnesses;

11 (5) the right to be represented by counsel;

12 (6) the right to remain silent;

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

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

18 (9) the right to be examined by a professional
19 person of his choice when such professional person is
20 willing and reasonably available;

21 (10) the right to be dressed in his own clothes at
22 any hearing held pursuant to this part; and

23 (11) the right to refuse any but lifesaving
24 medication for up to 24 hours prior to any hearing held
25 pursuant to this part."

1 Section 4. Section 53-21-116, MCA, is amended to read:
2 "53-21-116. Right to be present at hearing or trial --
3 appointment of counsel. The person alleged to be mentally
4 ill or seriously mentally ill has the right to be present at
5 any hearing or trial. If he has no attorney, the judge shall
6 appoint one to represent him at either the hearing or the
7 trial, or both, who shall be compensated from the public
8 funds of the county where the respondent resides."

9 Section 5. Section 53-21-120, MCA, is amended to read:
10 "53-21-120. Detention to be in least restrictive
11 environment -- preference for mental health facility --
12 court relief -- prehearing detention of mentally ill person
13 prohibited. (1) A person detained pursuant to this part
14 shall be detained in the least restrictive environment
15 required to protect the life and physical safety of the
16 person detained or members of the public; in this respect,
17 prevention of significant injury to property may be
18 considered.

19 (2) Whenever possible, a person detained pursuant to
20 this part shall be detained in a mental health facility and
21 in the county of residence. If the person detained demands
22 a jury trial and trial cannot be held within 7 days, the
23 individual may be sent to the state hospital until time of
24 trial if arrangements can be made to return him to trial.
25 Such trial must be held within 30 days. The county of

1 residence shall pay the cost of travel and professional
 2 services associated with the trial. No person may be
 3 detained in any hospital or other medical facility which is
 4 not a mental health facility unless such hospital or
 5 facility has agreed in writing to admit the person.

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

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

20 (5) No detention may be ordered under this part for a
 21 person concerning whom a petition has been filed under
 22 53-21-121(1)(b).

23 NO PERSON MAY BE INVOLUNTARILY COMMITTED TO A
 24 MENTAL HEALTH FACILITY OR DETAINED FOR EVALUATION AND
 25 TREATMENT BECAUSE HE IS AN EPILEPTIC, MENTALLY DEFICIENT,

1 MENTALLY RETARDED, SENILE, OR SUFFERING FROM A MENTAL
 2 DISORDER UNLESS THE CONDITION CAUSES HIM TO BE SERIOUSLY
 3 MENTALLY ILL WITHIN THE MEANING OF THIS PART."

4 Section 6. Section 53-21-121, MCA, is amended to read:

5 "53-21-121. Petition for commitment -- contents of --
 6 notice of. (1) The county attorney, upon the written request
 7 of any person having direct knowledge of the facts, may file
 8 a petition with the court:

9 (a) alleging that there is a person within the county
 10 who is seriously mentally ill and requesting that the person
 11 be committed to a mental health facility for a period of no
 12 more than 3 months; or

13 (b) alleging that there is a person within the county
 14 who is mentally ill and requesting that the person be
 15 committed to a mental health facility for a period of no
 16 more than 30 days.

17 (2) The petition shall contain:

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

20 (b) the name of the respondent and, if known, the
 21 address, age, sex, marital status, and occupation of the
 22 respondent;

23 (c) the purported facts supporting the allegation of
 24 mental illness;

25 (d) the name and address of every person known or

1 believed to be legally responsible for the care, support,
2 and maintenance of the person for whom evaluation is sought;

3 (e) the name and address of the person's next of kin
4 to the extent known to the county attorney and the person
5 requesting the petition;

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

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

16 (h) a statement of the rights of the respondent which
17 shall be in conspicuous print and identified by a suitable
18 heading.

19 (3) Notice of the petition shall be hand-delivered to
20 the respondent and to his counsel on or before the initial
21 appearance of the respondent before the judge or justice of
22 the peace. Notice of the petition and the order setting the
23 date and time of the hearing and the names of the
24 respondent's counsel, professional person, and friend of
25 respondent shall be hand-delivered or mailed to the person

1 or persons legally responsible for care, support, and
2 maintenance of the respondent, the next of kin identified in
3 the petition, and any other person identified by the county
4 attorney as a possible friend of respondent other than the
5 one named as the friend of respondent. The notice may
6 provide, other than as to the respondent and his counsel,
7 that no further notice will be given unless written request
8 is filed with the clerk of court."

9 Section 7. Section 53-21-122, MCA, is amended to read:

10 "53-21-122. Petition for commitment -- filing of --
11 initial hearing on. (1) The petition shall be filed with the
12 clerk of court who shall immediately notify the judge.

13 (2) (a) If a judge is available, he shall consider the
14 petition, and if he finds no probable cause, it shall be
15 dismissed.

16 (b) (i) If the judge finds probable cause, counsel
17 shall be immediately appointed for the respondent, and the
18 respondent shall be brought forthwith before the court with
19 his counsel. The respondent shall be advised of his
20 constitutional rights, his rights under this part, and the
21 substantive effect of the petition. The respondent may at
22 this appearance object to the finding of probable cause for
23 filing the petition.

24 (ii) The judge shall:

25 (A) appoint a professional person; and

1 (B) appoint a friend of respondent; and
 2 (C) set a date and time for the hearing on the
 3 petition, which may not exceed 5 days, including weekends
 4 and holidays, unless the fifth day falls upon a weekend or
 5 holiday and unless additional time is requested on behalf of
 6 the respondent.
 7 (iii) The desires of the respondent shall be taken into
 8 consideration in the appointment of the friend of respondent
 9 and in the confirmation of the appointment of the attorney.
 10 (3) If a judge is not available in the county, the
 11 clerk shall notify a resident judge by telephone and read
 12 the petition to him. If the judge finds no probable cause,
 13 the petition shall be dismissed. If the judge finds probable
 14 cause, he shall cause the clerk to issue an order appointing
 15 counsel and a professional person and setting a date and
 16 time for the hearing on the petition, which may not exceed 5
 17 days, including weekends and holidays, unless the fifth day
 18 falls upon a weekend or holiday and unless additional time
 19 is requested on behalf of the respondent. The order shall
 20 also direct that the respondent be brought forthwith before
 21 a justice of the peace with his counsel to be advised of his
 22 constitutional rights, his rights under this part, and the
 23 contents of the clerk's order, as well as to furnish him
 24 with a copy. The justice of the peace shall ascertain the
 25 desires of the respondent with respect to the appointment of

1 his counsel, and this shall be immediately communicated to
 2 the resident judge. The resident judge may appoint other
 3 counsel, may confer with respondent's counsel and the county
 4 attorney in order to appoint a friend of respondent, and may
 5 do all things necessary through the clerk of court by
 6 telephone as if the resident judge were personally present."
 7 Section 8. Section 53-21-123, MCA, is amended to read:
 8 "53-21-123. Examination of respondent following
 9 initial hearing -- recommendation of professional person.
 10 (1) Following the initial hearing, whether before a judge or
 11 justice of the peace, the respondent shall be examined by
 12 the professional person without unreasonable delay. The
 13 examination may not exceed a period of 4 hours. The
 14 professional person shall immediately notify the county
 15 attorney of his findings in person or by phone and shall
 16 make a written report of his examination to the court, with
 17 copies to the respondent's attorney and the county attorney.
 18 (2) The following action shall be taken based on the
 19 professional person's findings:
 20 (a) If he recommends dismissal, he shall additionally
 21 notify counsel and the respondent, if he has been detained,
 22 shall be released and the petition dismissed. However, the
 23 county attorney may, upon good cause shown, request the
 24 court to order an additional, but no more than one,
 25 examination by a different professional person for a period

1 of no more than 4 hours.

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

4 (3) The court may not order further evaluation pending
5 the hearing unless sound medical reasons require additional
6 time for a complete evaluation. Such reasons shall be set
7 forth in the order, along with the amount of additional time
8 needed."

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

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

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

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

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

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

20 (b) ~~the mental disorder has resulted in self-inflicted~~
21 ~~injury or injury to others or the imminent threat thereof or~~
22 ~~has deprived the person afflicted of the ability to protect~~
23 ~~his life or health.~~ Testimony from a professional person or
24 others must be received on each element of the definition of
25 mentally ill or seriously mentally ill as those terms are

1 defined in 53-21-102.

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

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

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

11 (2) (a) If it is determined in a proceeding under
12 53-21-121(1)(a) that the respondent is seriously mentally
13 ill within the meaning of this part, the court shall hold a
14 posttrial disposition hearing. The disposition hearing shall
15 be held within 5 days (including Saturdays, Sundays, and
16 holidays unless the fifth day falls on a Saturday, Sunday,
17 or holiday), during which time the court may order further
18 evaluation and treatment of the respondent. At the
19 conclusion of the disposition hearing, the court shall:

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

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

25 (iii) order outpatient therapy; or

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

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

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

15 (3) If it is determined in a proceeding under
16 53-21-121(1)(b) that the respondent is mentally ill within
17 the meaning of this part, the court shall order that he
18 receive treatment for a period of no more than 30 days. The
19 court shall choose the least restrictive course of treatment
20 reasonably available to the respondent. The court must make
21 a separate finding, setting forth the reason therefor if the
22 order includes a requirement of inpatient treatment or
23 involuntary medication. The court may not order inpatient
24 treatment in the Montana state hospital at Warm Springs
25 under this subsection (3). The respondent may not be

1 required to pay for court-ordered treatment unless he is
 2 financially able.

3 (4) Before ordering any treatment for a respondent
 4 found to be mentally ill under subsection (3), the court
 5 shall make findings of fact that treatment appropriate to
 6 the needs of the respondent is available. The court shall
 7 also indicate on the order the name of the facility that is
 8 to be responsible for the management and supervision of the
 9 respondent's treatment. No person may use physical force to
 10 administer medication. A court may use any legal means to
 11 enforce an order to take medication, including immediate
 12 detention not to exceed 72 hours, until the mentally ill
 13 person can be returned to the court."

14 Section 11. Section 53-21-128, MCA, is amended to
 15 read:

16 "53-21-128. Petition for extension of commitment
 17 period. (1) To extend the 3-month period of detention
 18 provided for in 53-21-127(2), the procedure set forth in
 19 this subsection (1) must be followed:

20 (a) Not less than 2 calendar weeks prior to the end of
 21 the 3-month period of ~~detention provided for in~~
 22 ~~53-21-127(2)~~, the professional person in charge of the
 23 patient at the place of detention may petition the court for
 24 extension of the detention period. The petition shall be
 25 accompanied by a written report and evaluation of the

1 patient's mental and physical condition. The report shall
 2 describe any tests and evaluation devices which have been
 3 employed in evaluating the patient, the course of treatment
 4 which has been undertaken for the patient, and the future
 5 course of treatment anticipated by the professional person.

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

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

1 that paid the same costs in the initial commitment
2 proceedings.

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

20 (2) To extend the period of treatment provided for in
21 53-21-127(3), the procedure set forth in this subsection (2)
22 must be followed:

23 (a) Not less than 7 days prior to the end of the
24 30-day period of treatment ordered under 53-21-127(3), the
25 professional person in charge of the respondent's care may

1 petition the court for extension of the treatment period.
2 The petition must be accompanied by a written report and
3 evaluation of the respondent's mental and physical
4 condition. The report shall describe any tests and
5 evaluation devices which have been employed in evaluating
6 the respondent, the course of treatment which has been
7 undertaken for the respondent, and the future course of
8 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 respondent, his next of kin, if reasonably available, the
12 friend of respondent appointed by the court, if any, and the
13 respondent'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 5 days from the
17 receipt of the request and notify the same people, including
18 the professional person in charge of the respondent. If a
19 hearing is not requested, the court shall enter an order of
20 treatment for a period not to exceed 30 days.

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 under 53-21-121(1)(b) for
24 the original treatment except that the respondent is not
25 entitled to trial by jury. The hearing shall be held in the

1 district court for the county in which the treatment is
 2 being supervised unless otherwise ordered by the court.
 3 Court costs and witness fees, if any, shall be paid by the
 4 county that paid the same costs in the initial proceedings.

5 (d) If upon the hearing the court finds the respondent
 6 not mentally ill within the meaning of this part, the
 7 petition shall be dismissed. If the court finds that the
 8 respondent continues to be mentally ill, the court shall
 9 order treatment for the respondent for a period not to
 10 exceed 30 days. In its order, the court shall describe what
 11 alternatives for treatment of the respondent are available,
 12 what alternatives were investigated, and why the
 13 investigated alternatives were not considered suitable. The
 14 court may not order continuation of an alternative which
 15 does not include a comprehensive, individualized plan of
 16 treatment for the respondent. A court order for the
 17 continuation of an alternative shall include a specific
 18 finding that a comprehensive, individualized plan of
 19 treatment exists.

20 {2}(3) Further extensions of the period of detention
 21 provided for in 53-21-127(2) may be obtained under the same
 22 procedure described in subsection (1) of this section except
 23 that the patient's custody may not be affected for more than
 24 1 year without a renewal of the commitment under the
 25 procedures set forth in subsection (1) of this section,

1 including a statement of the findings required by subsection
 2 (1).

3 (4) The period of treatment provided for in
 4 53-21-127(3) may be extended only once under this section."

5 NEW SECTION. Section 12. Establishment of treatment
 6 plan for mentally ill person. (1) A person ordered to
 7 receive treatment under 53-21-127(3) must have an
 8 individualized treatment plan.

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

12 (3) The treatment plan must contain:

13 (a) a statement of the nature of the specific problems
 14 and specific needs of the patient;

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

17 (c) a description of intermediate and long-range
 18 treatment goals, with a projected timetable for their
 19 attainment;

20 (d) a statement and rationale for the plan of
 21 treatment for achieving these intermediate and long-range
 22 goals; and

23 (e) criteria for release to less restrictive treatment
 24 conditions and criteria for discharge.

25 (4) The treatment plan may include prescription by a

1 physician of reasonable and appropriate medication that is
 2 consistent with accepted medical standards.

3 NEW SECTION. Section 13. Compliance with treatment
 4 plan. If the respondent fails to comply or clearly refuses
 5 to comply with all or part of the treatment plan, the
 6 professional person appointed under 53-21-122 shall make all
 7 reasonable efforts to solicit the respondent's compliance.
 8 Such effort must be documented and reported to the court
 9 with a recommendation to the court as to whether the
 10 respondent should:

- 11 (1) have his case dismissed; or
- 12 (2) be given a supplemental hearing.

13 NEW SECTION. Section 14. Supplemental hearing. (1) If
 14 the respondent requests a hearing to prove he has complied
 15 with the treatment plan as provided in [section 13], the
 16 hearing must be scheduled within 5 days. The respondent, his
 17 attorney, the friend of respondent, and the designated
 18 professional person must be notified at least 48 hours in
 19 advance.

20 (2) At the hearing, the court must determine whether
 21 the respondent has failed to comply with the treatment plan
 22 established pursuant to [section 12].

23 (3) (a) If the court determines that the respondent
 24 has failed or refused to comply with the treatment plan, it
 25 may order the respondent to comply with the treatment plan

1 for the remainder of the 30-day period.

2 (b) If the respondent no longer meets the definition
 3 of mentally ill, the court shall discharge the respondent
 4 from the order and dismiss the case.

5 NEW SECTION. Section 15. Codification instruction.
 6 Sections 12 through 14 are intended to be codified as an
 7 integral part of Title 53, chapter 21, part 1, and the
 8 provisions of Title 53, chapter 21, part 1, apply to
 9 sections 12 through 14.

10 NEW SECTION. SECTION 16. REPORT TO LEGISLATURE. THE
 11 MENTAL DISABILITIES BOARD OF VISITORS SHALL REPORT TO THE
 12 51ST LEGISLATURE ON THE EFFECTS OF THIS ACT, INCLUDING THE
 13 EFFECTS ON THE TREATMENT AND RIGHTS OF THE MENTALLY ILL AND
 14 THE SERIOUSLY MENTALLY ILL AND THE PROCEDURES ESTABLISHED BY
 15 THIS ACT, AND SHALL INCLUDE IN THE REPORT ANY
 16 RECOMMENDATIONS IT MAY HAVE.

17 NEW SECTION. SECTION 17. EXTENSION OF AUTHORITY. ANY
 18 EXISTING AUTHORITY OF THE DEPARTMENT OF INSTITUTIONS OR THE
 19 MENTAL DISABILITIES BOARD OF VISITORS TO MAKE RULES ON THE
 20 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
 21 PROVISIONS OF THIS ACT.

22 NEW SECTION. SECTION 18. TERMINATION. THIS ACT
 23 TERMINATES JULY 1, 1989.

-End-

HOUSE BILL NO. 316

INTRODUCED BY ADDY, HAGER, KEENAN, PISTORIA,

MAZUREK, STRATFORD, HANSEN, LORY, BULGER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY OF PERSONS WHO ARE MENTALLY ILL; AND AMENDING SECTIONS 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120, 53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH 53-21-128, MCA; PROVIDING FOR A REPORT TO THE LEGISLATURE; AND INCLUDING A SUNSET PROVISION."

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, 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 mentally ill person, a person alleged to be mentally ill, a seriously mentally ill person, or a person alleged to be seriously mentally ill 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, a representative 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

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 (B) "Mentally ill" means suffering from a mental
 5 disorder which has not resulted in self-inflicted injury or
 6 injury to others or the imminent threat thereof but which:

7 (a) has resulted in behavior that creates serious
 8 difficulty in protecting the person's life or health even
 9 with the available assistance of family, friends, or others;

10 (b) is treatable, with a reasonable prospect of
 11 success and consistent with the least restrictive course of
 12 treatment as provided in 53-21-127(3), at or through the
 13 facility to which the person is to be committed;

14 (c) has deprived the person of the capacity to make an
 15 informed decision concerning treatment;

16 (d) has resulted in the person's refusing or being
 17 unable to consent to voluntary admission for treatment; and

18 (e) poses a significant risk of the person's becoming
 19 seriously mentally ill, within the meaning of this section,
 20 or will, if untreated, predictably result in further serious
 21 deterioration in the mental condition of the person.
 22 Predictability may be established by the patient's medical
 23 history.

24 (7)(9) "Next of kin" shall include but need not be
 25 limited to the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 ~~(8)(10)~~ "Patient" means a person committed by the court
 3 for treatment for any period of time or who is voluntarily
 4 admitted for treatment for any period of time.

5 ~~(9)(11)~~ "Peace officer" means any sheriff, deputy
 6 sheriff, marshal, policeman, or other peace officer.

7 ~~(10)(12)~~ "Professional person" means:

8 (a) a medical doctor; or

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

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

14 ~~(12)(14)~~ "Respondent" means a person alleged in a
 15 petition filed pursuant to this part to be mentally ill or
 16 seriously mentally ill.

17 ~~(13) "Friend-of-respondent" means any person willing~~
 18 ~~and able to assist a seriously mentally ill person or person~~
 19 ~~alleged to be seriously mentally ill in dealing with legal~~
 20 ~~proceedings, including consultation with legal counsel and~~
 21 ~~others. The friend-of-respondent may be the next of kin, the~~
 22 ~~person's conservator or legal guardian, if any,~~
 23 ~~representatives of a charitable or religious organization,~~
 24 ~~or any other person appointed by the court to perform the~~
 25 ~~functions of a friend-of-respondent set out in this part.~~

1 Only one person may at any one time be the friend of
 2 respondent within the meaning of this part. In appointing a
 3 friend of respondent, the court shall consider the
 4 preference of the respondent. The court may at any time, for
 5 good cause shown, change its designation of the friend of
 6 respondent.

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

18 ~~{15}~~{16} "State hospital" means the Montana state
 19 hospital."

20 Section 2. Section 53-21-106, MCA, is amended to read:

21 "53-21-106. Certification of professional persons. (1)
 22 The department shall certify professional persons as defined
 23 in 53-21-102~~{10}~~{12}~~(b)~~ for the purpose of this part.

24 (2) The department, with reference to recognized
 25 national standards in the field of mental health, shall

1 adopt standards and rules governing the certification of
 2 professional persons as defined in 53-21-102~~{10}~~{12}.

3 (3) The rules for certification must address but are
 4 not limited to:

5 (a) the type of education that an individual has
 6 received, including degrees;

7 (b) the type of experience or training received by the
 8 individual;

9 (c) continuing education, training, instruction, and
 10 work experience necessary to maintain certification;

11 (d) an examination instrument to be used to determine
 12 an individual's proficiency and understanding of mental
 13 health laws, diagnosis, and treatment procedures;

14 (e) the procedure for categorical certification
 15 qualifying the level of professional authority and
 16 responsibility of an individual; and

17 (f) specific procedures for certification,
 18 recertification, and revocation of certification."

19 Section 3. Section 53-21-115, MCA, is amended to read:

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

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

3 (2) the right to know, in advance of any hearing, the
4 names and addresses of any witnesses who will testify in
5 support of the petition;

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

9 (4) the right in any hearing to cross-examine
10 witnesses;

11 (5) the right to be represented by counsel;

12 (6) the right to remain silent;

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

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

18 (9) the right to be examined by a professional
19 person of his choice when such professional person is
20 willing and reasonably available;

21 (10) the right to be dressed in his own clothes at
22 any hearing held pursuant to this part; and

23 (11) the right to refuse any but lifesaving
24 medication for up to 24 hours prior to any hearing held
25 pursuant to this part."

1 Section 4. Section 53-21-116, MCA, is amended to read:

2 "53-21-116. Right to be present at hearing or trial --
3 appointment of counsel. The person alleged to be mentally
4 ill or seriously mentally ill has the right to be present at
5 any hearing or trial. If he has no attorney, the judge shall
6 appoint one to represent him at either the hearing or the
7 trial, or both, who shall be compensated from the public
8 funds of the county where the respondent resides."

9 Section 5. Section 53-21-120, MCA, is amended to read:

10 "53-21-120. Detention to be in least restrictive
11 environment -- preference for mental health facility --
12 court relief -- prehearing detention of mentally ill person
13 prohibited. (1) A person detained pursuant to this part
14 shall be detained in the least restrictive environment
15 required to protect the life and physical safety of the
16 person detained or members of the public; in this respect,
17 prevention of significant injury to property may be
18 considered.

19 (2) Whenever possible, a person detained pursuant to
20 this part shall be detained in a mental health facility and
21 in the county of residence. If the person detained demands
22 a jury trial and trial cannot be held within 7 days, the
23 individual may be sent to the state hospital until time of
24 trial if arrangements can be made to return him to trial.
25 Such trial must be held within 30 days. The county of

1 residence shall pay the cost of travel and professional
 2 services associated with the trial. No person may be
 3 detained in any hospital or other medical facility which is
 4 not a mental health facility unless such hospital or
 5 facility has agreed in writing to admit the person.

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

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

20 (5) No detention may be ordered under this part for a
 21 person concerning whom a petition has been filed under
 22 53-21-121(1)(b).

23 (6) NO PERSON MAY BE INVOLUNTARILY COMMITTED TO A
 24 MENTAL HEALTH FACILITY OR DETAINED FOR EVALUATION AND
 25 TREATMENT BECAUSE HE IS AN EPILEPTIC, MENTALLY DEFICIENT,

1 MENTALLY RETARDED, SENILE, OR SUFFERING FROM A MENTAL
 2 DISORDER UNLESS THE CONDITION CAUSES HIM TO BE SERIOUSLY
 3 MENTALLY ILL WITHIN THE MEANING OF THIS PART."

4 Section 6. Section 53-21-121, MCA, is amended to read:

5 "53-21-121. Petition for commitment -- contents of --
 6 notice of. (1) The county attorney, upon the written request
 7 of any person having direct knowledge of the facts, may file
 8 a petition with the court;

9 (a) alleging that there is a person within the county
 10 who is seriously mentally ill and requesting that the person
 11 be committed to a mental health facility for a period of no
 12 more than 3 months; or

13 (b) alleging that there is a person within the county
 14 who is mentally ill and requesting that the person be
 15 committed to a mental health facility for a period of no
 16 more than 30 days.

17 (2) The petition shall contain:

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

20 (b) the name of the respondent and, if known, the
 21 address, age, sex, marital status, and occupation of the
 22 respondent;

23 (c) the purported facts supporting the allegation of
 24 mental illness;

25 (d) the name and address of every person known or

1 believed to be legally responsible for the care, support,
 2 and maintenance of the person for whom evaluation is sought;

3 (e) the name and address of the person's next of kin
 4 to the extent known to the county attorney and the person
 5 requesting the petition;

6 (F) the name and address of any person whom the county
 7 attorney believes might be willing and able to be appointed
 8 as friend of respondent;

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

16 (h) a statement of the rights of the respondent which
 17 shall be in conspicuous print and identified by a suitable
 18 heading.

19 (3) Notice of the petition shall be hand-delivered to
 20 the respondent and to his counsel on or before the initial
 21 appearance of the respondent before the judge or justice of
 22 the peace. Notice of the petition and the order setting the
 23 date and time of the hearing and the names of the
 24 respondent's counsel, professional person, and friend of
 25 respondent shall be hand-delivered or mailed to the person

1 or persons legally responsible for care, support, and
 2 maintenance of the respondent, the next of kin identified in
 3 the petition, and any other person identified by the county
 4 attorney as a possible friend of respondent other than the
 5 one named as the friend of respondent. The notice may
 6 provide, other than as to the respondent and his counsel,
 7 that no further notice will be given unless written request
 8 is filed with the clerk of court."

9 Section 7. Section 53-21-122, MCA, is amended to read:
 10 "53-21-122. Petition for commitment -- filing of --
 11 initial hearing on. (1) The petition shall be filed with the
 12 clerk of court who shall immediately notify the judge.

13 (2) (a) If a judge is available, he shall consider the
 14 petition, and if he finds no probable cause, it shall be
 15 dismissed.

16 (b) (i) If the judge finds probable cause, counsel
 17 shall be immediately appointed for the respondent, and the
 18 respondent shall be brought forthwith before the court with
 19 his counsel. The respondent shall be advised of his
 20 constitutional rights, his rights under this part, and the
 21 substantive effect of the petition. The respondent may at
 22 this appearance object to the finding of probable cause for
 23 filing the petition.

24 (ii) The judge shall:

25 (A) appoint a professional person; and

1 (B) appoint a friend of respondent; and

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

7 (iii) The desires of the respondent shall be taken into
8 consideration in the appointment of the friend of respondent
9 and in the confirmation of the appointment of the attorney.

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

1 his counsel, and this shall be immediately communicated to
2 the resident judge. The resident judge may appoint other
3 counsel, may confer with respondent's counsel and the county
4 attorney in order to appoint a friend of respondent, and may
5 do all things necessary through the clerk of court by
6 telephone as if the resident judge were personally present."

7 Section 8. Section 53-21-123, MCA, is amended to read:

8 "53-21-123. Examination of respondent following
9 initial hearing -- recommendation of professional person.

10 (1) Following the initial hearing, whether before a judge or
11 justice of the peace, the respondent shall be examined by
12 the professional person without unreasonable delay. The
13 examination may not exceed a period of 4 hours. The
14 professional person shall immediately notify the county
15 attorney of his findings in person or by phone and shall
16 make a written report of his examination to the court, with
17 copies to the respondent's attorney and the county attorney.

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

20 (a) If he recommends dismissal, he shall additionally
21 notify counsel and the respondent, if he has been detained,
22 shall be released and the petition dismissed. However, the
23 county attorney may, upon good cause shown, request the
24 court to order an additional, but no more than one,
25 examination by a different professional person for a period

1 of no more than 4 hours.

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

4 (3) The court may not order further evaluation pending
5 the hearing unless sound medical reasons require additional
6 time for a complete evaluation. Such reasons shall be set
7 forth in the order, along with the amount of additional time
8 needed."

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

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

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

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

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

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

20 (b) ~~the mental disorder has resulted in self-inflicted~~
21 ~~injury or injury to others or the imminent threat thereof or~~
22 ~~has deprived the person afflicted of the ability to protect~~
23 ~~his life or health. Testimony from a professional person or~~
24 ~~others must be received on each element of the definition of~~
25 ~~mentally ill or seriously mentally ill as those terms are~~

1 defined in 53-21-102.

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

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

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

11 (2) (a) If it is determined in a proceeding under
12 53-21-121(1)(a) that the respondent is seriously mentally
13 ill within the meaning of this part, the court shall hold a
14 posttrial disposition hearing. The disposition hearing shall
15 be held within 5 days (including Saturdays, Sundays, and
16 holidays unless the fifth day falls on a Saturday, Sunday,
17 or holiday), during which time the court may order further
18 evaluation and treatment of the respondent. At the
19 conclusion of the disposition hearing, the court shall:

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

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

25 (iii) order outpatient therapy; or

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

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

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

15 (3) If it is determined in a proceeding under
16 53-21-121(1)(b) that the respondent is mentally ill within
17 the meaning of this part, the court shall order that he
18 receive treatment for a period of no more than 30 days. The
19 court shall choose the least restrictive course of treatment
20 reasonably available to the respondent. The court must make
21 a separate finding, setting forth the reason therefor if the
22 order includes a requirement of inpatient treatment or
23 involuntary medication. The court may not order inpatient
24 treatment in the Montana state hospital at Warm Springs
25 under this subsection (3). The respondent may not be

1 required to pay for court-ordered treatment unless he is
2 financially able.

3 (4) Before ordering any treatment for a respondent
4 found to be mentally ill under subsection (3), the court
5 shall make findings of fact that treatment appropriate to
6 the needs of the respondent is available. The court shall
7 also indicate on the order the name of the facility that is
8 to be responsible for the management and supervision of the
9 respondent's treatment. No person may use physical force to
10 administer medication. A court may use any legal means to
11 enforce an order to take medication, including immediate
12 detention not to exceed 72 hours, until the mentally ill
13 person can be returned to the court."

14 Section 11. Section 53-21-128, MCA, is amended to
15 read:

16 "53-21-128. Petition for extension of commitment
17 period. (1) To extend the 3-month period of detention
18 provided for in 53-21-127(2), the procedure set forth in
19 this subsection (1) must be followed:

20 (a) Not less than 2 calendar weeks prior to the end of
21 the 3-month period of---detention---provided---for---in
22 ~~53-21-127(2)~~, the professional person in charge of the
23 patient at the place of detention may petition the court for
24 extension of the detention period. The petition shall be
25 accompanied by a written report and evaluation of the

1 patient's mental and physical condition. The report shall
2 describe any tests and evaluation devices which have been
3 employed in evaluating the patient, the course of treatment
4 which has been undertaken for the patient, and the future
5 course of treatment anticipated by the professional person.

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

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

1 that paid the same costs in the initial commitment
 2 proceedings.

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

20 (2) To extend the period of treatment provided for in
 21 53-21-127(3), the procedure set forth in this subsection (2)
 22 must be followed:

23 (a) Not less than 7 days prior to the end of the
 24 30-day period of treatment ordered under 53-21-127(3), the
 25 professional person in charge of the respondent's care may

1 petition the court for extension of the treatment period.
 2 The petition must be accompanied by a written report and
 3 evaluation of the respondent's mental and physical
 4 condition. The report shall describe any tests and
 5 evaluation devices which have been employed in evaluating
 6 the respondent, the course of treatment which has been
 7 undertaken for the respondent, and the future course of
 8 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 respondent, his next of kin, if reasonably available, the
 12 friend of respondent appointed by the court, if any, and the
 13 respondent'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 5 days from the
 17 receipt of the request and notify the same people, including
 18 the professional person in charge of the respondent. If a
 19 hearing is not requested, the court shall enter an order of
 20 treatment for a period not to exceed 30 days.

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 under 53-21-121(1)(b) for
 24 the original treatment except that the respondent is not
 25 entitled to trial by jury. The hearing shall be held in the

1 district court for the county in which the treatment is
 2 being supervised unless otherwise ordered by the court.
 3 Court costs and witness fees, if any, shall be paid by the
 4 county that paid the same costs in the initial proceedings.

5 (d) If upon the hearing the court finds the respondent
 6 not mentally ill within the meaning of this part, the
 7 petition shall be dismissed. If the court finds that the
 8 respondent continues to be mentally ill, the court shall
 9 order treatment for the respondent for a period not to
 10 exceed 30 days. In its order, the court shall describe what
 11 alternatives for treatment of the respondent are available,
 12 what alternatives were investigated, and why the
 13 investigated alternatives were not considered suitable. The
 14 court may not order continuation of an alternative which
 15 does not include a comprehensive, individualized plan of
 16 treatment for the respondent. A court order for the
 17 continuation of an alternative shall include a specific
 18 finding that a comprehensive, individualized plan of
 19 treatment exists.

20 (2)(3) Further extensions of the period of detention
 21 provided for in 53-21-127(2) may be obtained under the same
 22 procedure described in subsection (1) of this section except
 23 that the patient's custody may not be affected for more than
 24 1 year without a renewal of the commitment under the
 25 procedures set forth in subsection (1) of this section,

1 including a statement of the findings required by subsection
 2 (1).

3 (4) The period of treatment provided for in
 4 53-21-127(3) may be extended only once under this section."

5 NEW SECTION. Section 12. Establishment of treatment
 6 plan for mentally ill person. (1) A person ordered to
 7 receive treatment under 53-21-127(3) must have an
 8 individualized treatment plan.

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

12 (3) The treatment plan must contain:

13 (a) a statement of the nature of the specific problems
 14 and specific needs of the patient;

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

17 (c) a description of intermediate and long-range
 18 treatment goals, with a projected timetable for their
 19 attainment;

20 (d) a statement and rationale for the plan of
 21 treatment for achieving these intermediate and long-range
 22 goals; and

23 (e) criteria for release to less restrictive treatment
 24 conditions and criteria for discharge.

25 (4) The treatment plan may include prescription by a

1 physician of reasonable and appropriate medication that is
2 consistent with accepted medical standards.

3 NEW SECTION. Section 13. Compliance with treatment
4 plan. If the respondent fails to comply or clearly refuses
5 to comply with all or part of the treatment plan, the
6 professional person appointed under 53-21-122 shall make all
7 reasonable efforts to solicit the respondent's compliance.
8 Such effort must be documented and reported to the court
9 with a recommendation to the court as to whether the
10 respondent should:

- 11 (1) have his case dismissed; or
12 (2) be given a supplemental hearing.

13 NEW SECTION. Section 14. Supplemental hearing. (1) If
14 the respondent requests a hearing to prove he has complied
15 with the treatment plan as provided in [section 13], the
16 hearing must be scheduled within 5 days. The respondent, his
17 attorney, the friend of respondent, and the designated
18 professional person must be notified at least 48 hours in
19 advance.

20 (2) At the hearing, the court must determine whether
21 the respondent has failed to comply with the treatment plan
22 established pursuant to [section 12].

23 (3) (a) If the court determines that the respondent
24 has failed or refused to comply with the treatment plan, it
25 may order the respondent to comply with the treatment plan

1 for the remainder of the 30-day period.

2 (b) If the respondent no longer meets the definition
3 of mentally ill, the court shall discharge the respondent
4 from the order and dismiss the case.

5 NEW SECTION. Section 15. Codification instruction.
6 Sections 12 through 14 are intended to be codified as an
7 integral part of Title 53, chapter 21, part 1, and the
8 provisions of Title 53, chapter 21, part 1, apply to
9 sections 12 through 14.

10 NEW SECTION. SECTION 16. REPORT TO LEGISLATURE. THE
11 MENTAL DISABILITIES BOARD OF VISITORS SHALL REPORT TO THE
12 51ST LEGISLATURE ON THE EFFECTS OF THIS ACT, INCLUDING THE
13 EFFECTS ON THE TREATMENT AND RIGHTS OF THE MENTALLY ILL AND
14 THE SERIOUSLY MENTALLY ILL AND THE PROCEDURES ESTABLISHED BY
15 THIS ACT, AND SHALL INCLUDE IN THE REPORT ANY
16 RECOMMENDATIONS IT MAY HAVE.

17 NEW SECTION. SECTION 17. EXTENSION OF AUTHORITY. ANY
18 EXISTING AUTHORITY OF THE DEPARTMENT OF INSTITUTIONS OR THE
19 MENTAL DISABILITIES BOARD OF VISITORS TO MAKE RULES ON THE
20 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
21 PROVISIONS OF THIS ACT.

22 NEW SECTION. SECTION 18. TERMINATION. THIS ACT
23 TERMINATES JULY 1, 1989.

-End-

HOUSE BILL NO. 316

INTRODUCED BY ADDY, HAGER, KEENAN, PISTORIA,
MAZUREK, STRATFORD, HANSEN, LORY, BULGER

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY
OF PERSONS WHO ARE MENTALLY ILL; AND AMENDING SECTIONS
53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120,
53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH
53-21-128, MCA; PROVIDING FOR A REPORT TO THE LEGISLATURE;
AND INCLUDING A SUNSET PROVISION."

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, 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 mentally ill person, a person alleged
to be mentally ill, a seriously mentally ill person, or a
person alleged to be seriously mentally ill 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, a
representative 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



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 (8) "Mentally ill" means suffering from a mental
 5 disorder which has not resulted in self-inflicted injury or
 6 injury to others or the imminent threat thereof but which:

7 (a) has resulted in behavior that creates serious
 8 difficulty in protecting the person's life or health even
 9 with the available assistance of family, friends, or others;

10 (b) is treatable, with a reasonable prospect of
 11 success and consistent with the least restrictive course of
 12 treatment as provided in 53-21-127(3), at or through the
 13 facility to which the person is to be committed;

14 (c) has deprived the person of the capacity to make an
 15 informed decision concerning treatment;

16 (d) has resulted in the person's refusing or being
 17 unable to consent to voluntary admission for treatment; and

18 (e) poses a significant risk of the person's becoming
 19 seriously mentally ill, within the meaning of this section,
 20 or will, if untreated, predictably result in further serious
 21 deterioration in the mental condition of the person.
 22 Predictability may be established by the patient's medical
 23 history.

24 {7}(9) "Next of kin" shall include but need not be
 25 limited to the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 ~~{8}~~(10) "Patient" means a person committed by the court
 3 for treatment for any period of time or who is voluntarily
 4 admitted for treatment for any period of time.

5 ~~{9}~~(11) "Peace officer" means any sheriff, deputy
 6 sheriff, marshal, policeman, or other peace officer.

7 ~~{10}~~(12) "Professional person" means:

8 (a) a medical doctor; or

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

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

14 ~~{12}~~(14) "Respondent" means a person alleged in a
 15 petition filed pursuant to this part to be mentally ill or
 16 seriously mentally ill.

17 ~~{13}-"Friend-of-respondent"-means-any-person-willing~~
 18 ~~and-able-to-assist-a-seriously-mentally-ill-person-or-person~~
 19 ~~alleged-to-be-seriously-mentally-ill-in-dealing-with-legal~~
 20 ~~proceedings,-including-consultation-with-legal-counsel-and~~
 21 ~~others.-The-friend-of-respondent-may-be-the-next-of-kin,-the~~
 22 ~~person's---conservator---or---legal---guardian,---if---any~~
 23 ~~representatives-of-a-charitable-or-religious-organization,~~
 24 ~~or-any-other-person-appointed-by-the-court-to-perform-the~~
 25 ~~functions-of-a-friend-of-respondent-set-out-in-this-part-~~

1 ~~Only one person may at any one time be the friend of~~
 2 ~~respondent within the meaning of this part. In appointing a~~
 3 ~~friend of respondent, the court shall consider the~~
 4 ~~preference of the respondent. The court may at any time, for~~
 5 ~~good cause shown, change its designation of the friend of~~
 6 ~~respondent.~~

7 ~~{14}(15) "Seriously mentally ill" means suffering from~~
 8 ~~a mental disorder which has resulted in self-inflicted~~
 9 ~~injury or injury to others or the imminent threat thereof or~~
 10 ~~which has deprived the person afflicted of the ability to~~
 11 ~~protect his life or health. For this purpose, injury means~~
 12 ~~physical injury. No person may be involuntarily committed to~~
 13 ~~a mental health facility or detained for evaluation and~~
 14 ~~treatment because he is an epileptic, mentally deficient,~~
 15 ~~mentally retarded, senile, or suffering from a mental~~
 16 ~~disorder unless the condition causes him to be seriously~~
 17 ~~mentally ill within the meaning of this part. NO PERSON MAY~~
 18 ~~BE INVOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY OR~~
 19 ~~DETAINED FOR EVALUATION AND TREATMENT BECAUSE HE IS AN~~
 20 ~~EPILEPTIC OR IS MENTALLY DEFICIENT, MENTALLY RETARDED,~~
 21 ~~SENILE, OR SUFFERING FROM A MENTAL DISORDER UNLESS THE~~
 22 ~~CONDITION CAUSES HIM TO BE SERIOUSLY MENTALLY ILL WITHIN THE~~
 23 ~~MEANING OF THIS PART.~~

24 ~~{15}(16) "State hospital" means the Montana state~~
 25 ~~hospital."~~

1 Section 2. Section 53-21-106, MCA, is amended to read:
 2 "53-21-106. Certification of professional persons. (1)
 3 The department shall certify professional persons as defined
 4 in 53-21-102{10}{b}{12}(b) for the purpose of this part.

5 (2) The department, with reference to recognized
 6 national standards in the field of mental health, shall
 7 adopt standards and rules governing the certification of
 8 professional persons ~~as defined in 53-21-102{10}{b}~~.

9 (3) The rules for certification must address but are
 10 not limited to:

11 (a) the type of education that an individual has
 12 received, including degrees;

13 (b) the type of experience or training received by the
 14 individual;

15 (c) continuing education, training, instruction, and
 16 work experience necessary to maintain certification;

17 (d) an examination instrument to be used to determine
 18 an individual's proficiency and understanding of mental
 19 health laws, diagnosis, and treatment procedures;

20 (e) the procedure for categorical certification
 21 qualifying the level of professional authority and
 22 responsibility of an individual; and

23 (f) specific procedures for certification,
 24 recertification, and revocation of certification."

25 Section 3. Section 53-21-115, MCA, is amended to read:

1 "53-21-115. Procedural rights. In addition to any
 2 other rights which may be guaranteed by the constitution of
 3 the United States and of this state, by the laws of this
 4 state, or by this part, any person who is involuntarily
 5 detained or against whom a petition is filed pursuant to
 6 this part has the following rights:

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

9 (2) the right to know, in advance of any hearing, the
 10 names and addresses of any witnesses who will testify in
 11 support of the petition;

12 (3) (3) the right in any hearing to be present, to
 13 offer evidence, and to present witnesses in any proceeding
 14 concerning him;

15 (4) (4) the right in any hearing to cross-examine
 16 witnesses;

17 (5) (5) the right to be represented by counsel;

18 (6) (6) the right to remain silent;

19 (7) (7) the right in any hearing to be proceeded
 20 against according to the rules of evidence applicable to
 21 civil matters generally;

22 (8) (8) the right to view and copy all petitions on
 23 file with the court concerning him;

24 (9) (9) the right to be examined by a professional
 25 person of his choice when such professional person is

1 willing and reasonably available;

2 (10) (10) the right to be dressed in his own clothes at
 3 any hearing held pursuant to this part; and

4 (11) (11) the right to refuse any but lifesaving
 5 medication for up to 24 hours prior to any hearing held
 6 pursuant to this part."

7 Section 4. Section 53-21-116, MCA, is amended to read:

8 "53-21-116. Right to be present at hearing or trial --
 9 appointment of counsel. The person alleged to be mentally
 10 ill or seriously mentally ill has the right to be present at
 11 any hearing or trial. If he has no attorney, the judge shall
 12 appoint one to represent him at either the hearing or the
 13 trial, or both, who shall be compensated from the public
 14 funds of the county where the respondent resides."

15 Section 5. Section 53-21-120, MCA, is amended to read:

16 "53-21-120. Detention to be in least restrictive
 17 environment -- preference for mental health facility --
 18 court relief -- prehearing detention of mentally ill person
 19 prohibited. (1) A person detained pursuant to this part
 20 shall be detained in the least restrictive environment
 21 required to protect the life and physical safety of the
 22 person detained or members of the public; in this respect,
 23 prevention of significant injury to property may be
 24 considered.

25 (2) Whenever possible, a person detained pursuant to

1 this part shall be detained in a mental health facility and
 2 in the county of residence. If the person detained demands
 3 a jury trial and trial cannot be held within 7 days, the
 4 individual may be sent to the state hospital until time of
 5 trial if arrangements can be made to return him to trial.
 6 Such trial must be held within 30 days. The county of
 7 residence shall pay the cost of travel and professional
 8 services associated with the trial. No person may be
 9 detained in any hospital or other medical facility which is
 10 not a mental health facility unless such hospital or
 11 facility has agreed in writing to admit the person.

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

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

1 (5) No detention may be ordered under this part for a
 2 person concerning whom a petition has been filed under
 3 53-21-121(1)(b).

4 (6) NO PERSON MAY BE INVOLUNTARILY COMMITTED TO A
 5 MENTAL HEALTH FACILITY OR DETAINED FOR EVALUATION AND
 6 TREATMENT BECAUSE HE IS AN EPILEPTIC, MENTALLY DEFICIENT,
 7 MENTALLY RETARDED, SENILE, OR SUFFERING FROM A MENTAL
 8 DISORDER UNLESS THE CONDITION CAUSES HIM TO BE SERIOUSLY
 9 MENTALLY ILL WITHIN THE MEANING OF THIS PART."

10 Section 6. Section 53-21-121, MCA, is amended to read:
 11 "53-21-121. Petition for commitment -- contents of --
 12 notice of. (1) The county attorney, upon the written request
 13 of any person having direct knowledge of the facts, may file
 14 a petition with the court:

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

19 (b) alleging that there is a person within the county
 20 who is mentally ill and requesting that the person be
 21 committed to a mental health facility for a period of no
 22 more than 30 days.

23 (2) The petition shall contain:

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

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

4 (c) the purported facts supporting the allegation of
 5 mental illness;

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

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

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

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

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

25 (3) Notice of the petition shall be hand-delivered to

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

15 Section 7. Section 53-21-122, MCA, is amended to read:

16 "53-21-122. Petition for commitment -- filing of --
 17 initial hearing on. (1) The petition shall be filed with the
 18 clerk of court who shall immediately notify the judge.

19 (2) (a) If a judge is available, he shall consider the
 20 petition, and if he finds no probable cause, it shall be
 21 dismissed.

22 (b) (i) If the judge finds probable cause, counsel
 23 shall be immediately appointed for the respondent, and the
 24 respondent shall be brought forthwith before the court with
 25 his counsel. The respondent shall be advised of his

1 constitutional rights, his rights under this part, and the
 2 substantive effect of the petition. The respondent may at
 3 this appearance object to the finding of probable cause for
 4 filing the petition.

5 (ii) The judge shall:

6 (A) appoint a professional person; and

7 (B) appoint a friend of respondent; and

8 (C) set a date and time for the hearing on the
 9 petition, which may not exceed 5 days, including weekends
 10 and holidays, unless the fifth day falls upon a weekend or
 11 holiday and unless additional time is requested on behalf of
 12 the respondent.

13 (iii) The desires of the respondent shall be taken into
 14 consideration in the appointment of the friend of respondent
 15 and in the confirmation of the appointment of the attorney.

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

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

13 Section 8. Section 53-21-123, MCA, is amended to read:

14 "53-21-123. Examination of respondent following
 15 initial hearing -- recommendation of professional person.
 16 (1) Following the initial hearing, whether before a judge or
 17 justice of the peace, the respondent shall be examined by
 18 the professional person without unreasonable delay. The
 19 examination may not exceed a period of 4 hours. The
 20 professional person shall immediately notify the county
 21 attorney of his findings in person or by phone and shall
 22 make a written report of his examination to the court, with
 23 copies to the respondent's attorney and the county attorney.

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

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

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

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

15 Section 9. 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 mentally ill or seriously mentally ill within
 22 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 appointed by the court
 8 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 professional person that indicates the
 14 professional person's diagnosis may be attached to the
 15 petition, but any matter otherwise inadmissible, such as
 16 hearsay matter, is not admissible merely because it is
 17 contained in the report. The court may order the trial
 18 closed to the public for the protection of the respondent.

19 (4) The professional person may testify as to the
 20 ultimate issue of whether the respondent is mentally ill or
 21 seriously mentally ill. ~~This testimony is insufficient~~
 22 ~~unless accompanied by evidence from the professional person~~
 23 ~~or others that:~~

24 (a) ~~the respondent is suffering from a mental~~
 25 ~~disorder, and~~

1 ~~(b)--the-mental-disorder-has-resulted-in-self-inflicted~~
 2 ~~injury-or-injury-to-others-or-the-imminent-threat-thereof-or~~
 3 ~~has--deprived-the-person-afflicted-of-the-ability-to-protect~~
 4 ~~his-life-or-health- Testimony from a professional person or~~
 5 ~~others must be received on each element of the definition of~~
 6 ~~mentally ill or seriously mentally ill as those terms are~~
 7 ~~defined in 53-21-102.~~

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

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

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

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

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

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

6 (iii) order outpatient therapy; or

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

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

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

21 (3) If it is determined in a proceeding under
 22 53-21-121(1)(b) that the respondent is mentally ill within
 23 the meaning of this part, the court shall order that he
 24 receive treatment for a period of no more than 30 days. The
 25 court shall choose the least restrictive course of treatment

1 reasonably available to the respondent. The court must make
 2 a separate finding, setting forth the reason therefor if the
 3 order includes a requirement of inpatient treatment or
 4 involuntary medication. The court may not order inpatient
 5 treatment in the Montana state hospital at Warm Springs
 6 under this subsection (3). The respondent may not be
 7 required to pay for court-ordered treatment unless he is
 8 financially able.

9 (4) Before ordering any treatment for a respondent
 10 found to be mentally ill under subsection (3), the court
 11 shall make findings of fact that treatment appropriate to
 12 the needs of the respondent is available. The court shall
 13 also indicate on the order the name of the facility that is
 14 to be responsible for the management and supervision of the
 15 respondent's treatment. No person may use physical force to
 16 administer medication. A court may use any legal means to
 17 enforce an order to take medication, including immediate
 18 detention not to exceed 72 hours, until the mentally ill
 19 person can be returned to the court."

20 Section 11. Section 53-21-128, MCA, is amended to
 21 read:

22 "53-21-128. Petition for extension of commitment
 23 period. (1) To extend the 3-month period of detention
 24 provided for in 53-21-127(2), the procedure set forth in
 25 this subsection (1) must be followed:

1 (a) Not less than 2 calendar weeks prior to the end of
 2 the 3-month period ~~of---detention---provided---for---in~~
 3 53-21-127(2), the professional person in charge of the
 4 patient at the place of detention may petition the court for
 5 extension of the detention period. The petition shall be
 6 accompanied by a written report and evaluation of the
 7 patient's mental and physical condition. The report shall
 8 describe any tests and evaluation devices which have been
 9 employed in evaluating the patient, the course of treatment
 10 which has been undertaken for the patient, and the future
 11 course of 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 patient, his next of kin, if reasonably available, the
 15 friend of respondent appointed by the court, and the
 16 patient'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 10 days from the
 20 receipt of the request and notify the same people, including
 21 the professional person in charge of the patient. If a
 22 hearing is not requested, the court shall enter an order of
 23 commitment for a period not to exceed 6 months.

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

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

1 (2) To extend the period of treatment provided for in
 2 53-21-127(3), the procedure set forth in this subsection (2)
 3 must be followed:

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

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

1 treatment for a period not to exceed 30 days.

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

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

1 (2)(3) Further extensions of the period of detention
 2 provided for in 53-21-127(2) may be obtained under the same
 3 procedure described in subsection (1) of this section except
 4 that the patient's custody may not be affected for more than
 5 1 year without a renewal of the commitment under the
 6 procedures set forth in subsection (1) of this section,
 7 including a statement of the findings required by subsection
 8 (1).

9 (4) The period of treatment provided for in
 10 53-21-127(3) may be extended only once under this section."

11 NEW SECTION. Section 12. Establishment of treatment
 12 plan for mentally ill person. (1) A person ordered to
 13 receive treatment under 53-21-127(3) must have an
 14 individualized treatment plan.

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

18 (3) The treatment plan must contain:

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

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

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

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

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

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

9 NEW SECTION. Section 13. Compliance with treatment
10 plan. If the respondent fails to comply or clearly refuses
11 to comply with all or part of the treatment plan, the
12 professional person appointed under 53-21-122 shall make all
13 reasonable efforts to solicit the respondent's compliance.
14 Such effort must be documented and reported to the court
15 with a recommendation to the court as to whether the
16 respondent should:

- 17 (1) have his case dismissed; or
- 18 (2) be given a supplemental hearing.

19 NEW SECTION. Section 14. Supplemental hearing. (1) If
20 the respondent requests a hearing to prove he has complied
21 with the treatment plan as provided in [section 13], the
22 hearing must be scheduled within 5 days. The respondent, his
23 attorney, the friend of respondent, and the designated
24 professional person must be notified at least 48 hours in
25 advance.

1 (2) At the hearing, the court must determine whether
2 the respondent has failed to comply with the treatment plan
3 established pursuant to [section 12].

4 (3) (a) If the court determines that the respondent
5 has failed or refused to comply with the treatment plan, it
6 may order the respondent to comply with the treatment plan
7 for the remainder of the 30-day period.

8 (b) If the respondent no longer meets the definition
9 of mentally ill, the court shall discharge the respondent
10 from the order and dismiss the case.

11 NEW SECTION. Section 15. Codification instruction.
12 Sections 12 through 14 are intended to be codified as an
13 integral part of Title 53, chapter 21, part 1, and the
14 provisions of Title 53, chapter 21, part 1, apply to
15 sections 12 through 14.

16 NEW SECTION. SECTION 16. REPORT TO LEGISLATURE. THE
17 MENTAL DISABILITIES BOARD OF VISITORS SHALL REPORT TO THE
18 51ST LEGISLATURE ON THE EFFECTS OF THIS ACT, INCLUDING THE
19 EFFECTS ON THE TREATMENT AND RIGHTS OF THE MENTALLY ILL AND
20 THE SERIOUSLY MENTALLY ILL AND THE PROCEDURES ESTABLISHED BY
21 THIS ACT, AND SHALL INCLUDE IN THE REPORT ANY
22 RECOMMENDATIONS IT MAY HAVE.

23 NEW SECTION. SECTION 17. EXTENSION OF AUTHORITY. ANY
24 EXISTING AUTHORITY OF THE DEPARTMENT OF INSTITUTIONS OR THE
25 MENTAL DISABILITIES BOARD OF VISITORS TO MAKE RULES ON THE

1 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
2 PROVISIONS OF THIS ACT.
3 NEW SECTION. SECTION 18. TERMINATION. THIS ACT
4 TERMINATES JULY 1, 1989.

-End-

1 HOUSE BILL NO. 316

2 INTRODUCED BY ADDY, HAGER, KEENAN, PISTORIA,

3 MAZUREK, STRATFORD, HANSEN, LORY, BULGER

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR
6 INVOLUNTARY COMMITMENT AND TREATMENT IN THE LOCAL COMMUNITY
7 OF PERSONS WHO ARE MENTALLY ILL; AND AMENDING SECTIONS
8 53-21-102, 53-21-106, 53-21-115, 53-21-116, 53-21-120,
9 53-21-121 THROUGH 53-21-123, AND 53-21-126 THROUGH
10 53-21-128, MCA; PROVIDING FOR A REPORT TO THE LEGISLATURE;
11 AND INCLUDING A SUNSET PROVISION."
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, the
16 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 mentally ill person, a person alleged
5 to be mentally ill, a seriously mentally ill person, or a
6 person alleged to be seriously mentally ill in dealing with
7 legal proceedings, including consultation with legal counsel
8 and others. The friend of respondent may be the next of kin,
9 the person's conservator or legal guardian, if any, a
10 representative of a charitable or religious organization, or
11 any other person appointed by the court to perform the
12 functions of a friend of respondent set out in this part.
13 Only one person may at any one time be the friend of
14 respondent within the meaning of this part. In appointing a
15 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

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 (8) "Mentally ill" means suffering from a mental
5 disorder which has not resulted in self-inflicted injury or
6 injury to others or the imminent threat thereof but which:

7 (a) has resulted in behavior that creates serious
8 difficulty in protecting the person's life or health even
9 with the available assistance of family, friends, or others;

10 (b) is treatable, with a reasonable prospect of
11 success and consistent with the least restrictive course of
12 treatment as provided in 53-21-127(3), at or through the
13 facility to which the person is to be committed;

14 (c) has deprived the person of the capacity to make an
15 informed decision concerning treatment;

16 (d) has resulted in the person's refusing or being
17 unable to consent to voluntary admission for treatment; and

18 (e) poses a significant risk of the person's becoming
19 seriously mentally ill, within the meaning of this section,
20 or will, if untreated, predictably result in further serious
21 deterioration in the mental condition of the person.
22 Predictability may be established by the patient's medical
23 history.

24 (7)(9) "Next of kin" shall include but need not be
25 limited to the spouse, parents, adult children, and adult

1 brothers and sisters of a person.

2 ~~(8)~~(10) "Patient" means a person committed by the court
3 for treatment for any period of time or who is voluntarily
4 admitted for treatment for any period of time.

5 ~~(9)~~(11) "Peace officer" means any sheriff, deputy
6 sheriff, marshal, policeman, or other peace officer.

7 ~~(10)~~(12) "Professional person" means:

8 (a) a medical doctor; or,

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

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

14 ~~(12)~~(14) "Respondent" means a person alleged in a
15 petition filed pursuant to this part to be mentally ill or
16 seriously mentally ill.

17 ~~(13) "Friend-of-respondent" means any person willing~~
18 ~~and able to assist a seriously mentally ill person or person~~
19 ~~alleged to be seriously mentally ill in dealing with legal~~
20 ~~proceedings, including consultation with legal counsel and~~
21 ~~others. The friend-of-respondent may be the next-of-kin, the~~
22 ~~person's conservator or legal guardian, if any,~~
23 ~~representatives of a charitable or religious organization,~~
24 ~~or any other person appointed by the court to perform the~~
25 ~~functions of a friend-of-respondent set out in this part.~~

1 ~~Only one person may at any one time be the friend of~~
 2 ~~respondent within the meaning of this part. In appointing a~~
 3 ~~friend of respondent, the court shall consider the~~
 4 ~~preference of the respondent. The court may at any time, for~~
 5 ~~good cause shown, change its designation of the friend of~~
 6 ~~respondent.~~

7 {14}(15) "Seriously mentally ill" means suffering from
 8 a mental disorder which has resulted in self-inflicted
 9 injury or injury to others or the imminent threat thereof or
 10 which has deprived the person afflicted of the ability to
 11 protect his life or health. For this purpose, injury means
 12 physical injury. ~~No person may be involuntarily committed to~~
 13 ~~a mental health facility or detained for evaluation and~~
 14 ~~treatment because he is an epileptic, mentally deficient,~~
 15 ~~mentally retarded, senile, or suffering from a mental~~
 16 ~~disorder unless the condition causes him to be seriously~~
 17 ~~mentally ill within the meaning of this part. NO PERSON MAY~~
 18 ~~BE INVOLUNTARILY COMMITTED TO A MENTAL HEALTH FACILITY OR~~
 19 ~~DETAINED FOR EVALUATION AND TREATMENT BECAUSE HE IS AN~~
 20 ~~EPILEPTIC OR IS MENTALLY DEFICIENT, MENTALLY RETARDED,~~
 21 ~~SENILE, OR SUFFERING FROM A MENTAL DISORDER UNLESS THE~~
 22 ~~CONDITION CAUSES HIM TO BE SERIOUSLY MENTALLY ILL WITHIN THE~~
 23 ~~MEANING OF THIS PART.~~

24 {15}(16) "State hospital" means the Montana state
 25 hospital."

1 Section 2. Section 53-21-106, MCA, is amended to read:
 2 "53-21-106. Certification of professional persons. (1)
 3 The department shall certify professional persons as defined
 4 in 53-21-102{10}(b)(12)(b) for the purpose of this part.

5 (2) The department, with reference to recognized
 6 national standards in the field of mental health, shall
 7 adopt standards and rules governing the certification of
 8 professional persons ~~as defined in 53-21-102{10}(b).~~

9 (3) The rules for certification must address but are
 10 not limited to:

11 (a) the type of education that an individual has
 12 received, including degrees;

13 (b) the type of experience or training received by the
 14 individual;

15 (c) continuing education, training, instruction, and
 16 work experience necessary to maintain certification;

17 (d) an examination instrument to be used to determine
 18 an individual's proficiency and understanding of mental
 19 health laws, diagnosis, and treatment procedures;

20 (e) the procedure for categorical certification
 21 qualifying the level of professional authority and
 22 responsibility of an individual; and

23 (f) specific procedures for certification,
 24 recertification, and revocation of certification."

25 Section 3. Section 53-21-115, MCA, is amended to read:

1 "53-21-115. Procedural rights. In addition to any
 2 other rights which may be guaranteed by the constitution of
 3 the United States and of this state, by the laws of this
 4 state, or by this part, any person who is involuntarily
 5 detained or against whom a petition is filed pursuant to
 6 this part has the following rights:

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

9 (2) the right to know, in advance of any hearing, the
 10 names and addresses of any witnesses who will testify in
 11 support of the petition;

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

15 (4) the right in any hearing to cross-examine
 16 witnesses;

17 (5) the right to be represented by counsel;

18 (6) the right to remain silent;

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

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

24 (9) the right to be examined by a professional
 25 person of his choice when such professional person is

1 willing and reasonably available;

2 (10) the right to be dressed in his own clothes at
 3 any hearing held pursuant to this part; and

4 (11) the right to refuse any but lifesaving
 5 medication for up to 24 hours prior to any hearing held
 6 pursuant to this part."

7 Section 4. Section 53-21-116, MCA, is amended to read:

8 "53-21-116. Right to be present at hearing or trial --
 9 appointment of counsel. The person alleged to be mentally
 10 ill or seriously mentally ill has the right to be present at
 11 any hearing or trial. If he has no attorney, the judge shall
 12 appoint one to represent him at either the hearing or the
 13 trial, or both, who shall be compensated from the public
 14 funds of the county where the respondent resides."

15 Section 5. Section 53-21-120, MCA, is amended to read:

16 "53-21-120. Detention to be in least restrictive
 17 environment -- preference for mental health facility --
 18 court relief -- prehearing detention of mentally ill person
 19 prohibited. (1) A person detained pursuant to this part
 20 shall be detained in the least restrictive environment
 21 required to protect the life and physical safety of the
 22 person detained or members of the public; in this respect,
 23 prevention of significant injury to property may be
 24 considered.

25 (2) Whenever possible, a person detained pursuant to

1 this part shall be detained in a mental health facility and
 2 in the county of residence. If the person detained demands
 3 a jury trial and trial cannot be held within 7 days, the
 4 individual may be sent to the state hospital until time of
 5 trial if arrangements can be made to return him to trial.
 6 Such trial must be held within 30 days. The county of
 7 residence shall pay the cost of travel and professional
 8 services associated with the trial. No person may be
 9 detained in any hospital or other medical facility which is
 10 not a mental health facility unless such hospital or
 11 facility has agreed in writing to admit the person.

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

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

1 (5) No detention may be ordered under this part for a
 2 person concerning whom a petition has been filed under
 3 53-21-121(1)(b).

4 (6) NO PERSON MAY BE INVOLUNTARILY COMMITTED TO A
 5 MENTAL HEALTH FACILITY OR DETAINED FOR EVALUATION AND
 6 TREATMENT BECAUSE HE IS AN EPILEPTIC, MENTALLY DEFICIENT,
 7 MENTALLY RETARDED, SENILE, OR SUFFERING FROM A MENTAL
 8 DISORDER UNLESS THE CONDITION CAUSES HIM TO BE SERIOUSLY
 9 MENTALLY ILL WITHIN THE MEANING OF THIS PART."

10 Section 6. Section 53-21-121, MCA, is amended to read:

11 "53-21-121. Petition for commitment -- contents of --
 12 notice of. (1) The county attorney, upon the written request
 13 of any person having direct knowledge of the facts, may file
 14 a petition with the court:

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

19 (b) alleging that there is a person within the county
 20 who is mentally ill and requesting that the person be
 21 committed to a mental health facility for a period of no
 22 more than 30 days.

23 (2) The petition shall contain:

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

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

4 (c) the purported facts supporting the allegation of
5 mental illness;

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

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

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

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

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

25 (3) Notice of the petition shall be hand-delivered to

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

15 Section 7. Section 53-21-122, MCA, is amended to read:
16 "53-21-122. Petition for commitment -- filing of --
17 initial hearing on. (1) The petition shall be filed with the
18 clerk of court who shall immediately notify the judge.

19 (2) (a) If a judge is available, he shall consider the
20 petition, and if he finds no probable cause, it shall be
21 dismissed.

22 (b) (i) If the judge finds probable cause, counsel
23 shall be immediately appointed for the respondent, and the
24 respondent shall be brought forthwith before the court with
25 his counsel. The respondent shall be advised of his

1 constitutional rights, his rights under this part, and the
 2 substantive effect of the petition. The respondent may at
 3 this appearance object to the finding of probable cause for
 4 filing the petition.

5 (ii) The judge shall:

6 (A) appoint a professional person; and

7 (B) appoint a friend of respondent; and

8 (C) set a date and time for the hearing on the
 9 petition, which may not exceed 5 days, including weekends
 10 and holidays, unless the fifth day falls upon a weekend or
 11 holiday and unless additional time is requested on behalf of
 12 the respondent.

13 (iii) The desires of the respondent shall be taken into
 14 consideration in the appointment of the friend of respondent
 15 and in the confirmation of the appointment of the attorney.

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

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

13 Section 8. Section 53-21-123, MCA, is amended to read:

14 "53-21-123. Examination of respondent following
 15 initial hearing -- recommendation of professional person.

16 (1) Following the initial hearing, whether before a judge or
 17 justice of the peace, the respondent shall be examined by
 18 the professional person without unreasonable delay. The
 19 examination may not exceed a period of 4 hours. The
 20 professional person shall immediately notify the county
 21 attorney of his findings in person or by phone and shall
 22 make a written report of his examination to the court, with
 23 copies to the respondent's attorney and the county attorney.

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

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

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

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

15 Section 9. 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 mentally ill or seriously mentally ill within
 22 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 appointed by the court
 8 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 professional person that indicates the
 14 professional person's diagnosis may be attached to the
 15 petition, but any matter otherwise inadmissible, such as
 16 hearsay matter, is not admissible merely because it is
 17 contained in the report. The court may order the trial
 18 closed to the public for the protection of the respondent.

19 (4) The professional person may testify as to the
 20 ultimate issue of whether the respondent is mentally ill or
 21 seriously mentally ill. ~~This testimony is insufficient~~
 22 ~~unless accompanied by evidence from the professional person~~
 23 ~~or others that:~~

24 ~~{a} the respondent is suffering from a mental~~
 25 ~~disorder; and~~

~~(b)--the-mental-disorder-has-resulted-in-self-inflicted injury-or-injury-to-others-or-the-imminent-threat-thereof-or has--deprived-the-person-afflicted-of-the-ability-to-protect his-life-or-health: Testimony from a professional person or others must be received on each element of the definition of mentally ill or seriously mentally ill as those terms are defined in 53-21-102.~~

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

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

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

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

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

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

(iii) order outpatient therapy; or

(iv) make some other appropriate order for treatment.

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

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

(3) If it is determined in a proceeding under 53-21-121(1)(b) that the respondent is mentally ill within the meaning of this part, the court shall order that he receive treatment for a period of no more than 30 days. The court shall choose the least restrictive course of treatment

1 reasonably available to the respondent. The court must make
 2 a separate finding, setting forth the reason therefor if the
 3 order includes a requirement of inpatient treatment or
 4 involuntary medication. The court may not order inpatient
 5 treatment in the Montana state hospital at Warm Springs
 6 under this subsection (3). The respondent may not be
 7 required to pay for court-ordered treatment unless he is
 8 financially able.

9 (4) Before ordering any treatment for a respondent
 10 found to be mentally ill under subsection (3), the court
 11 shall make findings of fact that treatment appropriate to
 12 the needs of the respondent is available. The court shall
 13 also indicate on the order the name of the facility that is
 14 to be responsible for the management and supervision of the
 15 respondent's treatment. No person may use physical force to
 16 administer medication. A court may use any legal means to
 17 enforce an order to take medication, including immediate
 18 detention not to exceed 72 hours, until the mentally ill
 19 person can be returned to the court."

20 Section 11. Section 53-21-128, MCA, is amended to
 21 read:

22 "53-21-128. Petition for extension of commitment
 23 period. (1) To extend the 3-month period of detention
 24 provided for in 53-21-127(2), the procedure set forth in
 25 this subsection (1) must be followed:

1 (a) Not less than 2 calendar weeks prior to the end of
 2 the 3-month period ~~of---detention---provided---for---in~~
 3 53-21-127(2), the professional person in charge of the
 4 patient at the place of detention may petition the court for
 5 extension of the detention period. The petition shall be
 6 accompanied by a written report and evaluation of the
 7 patient's mental and physical condition. The report shall
 8 describe any tests and evaluation devices which have been
 9 employed in evaluating the patient, the course of treatment
 10 which has been undertaken for the patient, and the future
 11 course of 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 patient, his next of kin, if reasonably available, the
 15 friend of respondent appointed by the court, and the
 16 patient'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 10 days from the
 20 receipt of the request and notify the same people, including
 21 the professional person in charge of the patient. If a
 22 hearing is not requested, the court shall enter an order of
 23 commitment for a period not to exceed 6 months.

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

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

1 (2) To extend the period of treatment provided for in
 2 53-21-127(3), the procedure set forth in this subsection (2)
 3 must be followed:

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

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

1 treatment for a period not to exceed 30 days.
 2 (c) Procedure on the petition for extension when a
 3 hearing has been requested shall be the same in all respects
 4 as the procedure on the petition under 53-21-121(1)(b) for
 5 the original treatment except that the respondent is not
 6 entitled to trial by jury. The hearing shall be held in the
 7 district court for the county in which the treatment is
 8 being supervised unless otherwise ordered by the court.
 9 Court costs and witness fees, if any, shall be paid by the
 10 county that paid the same costs in the initial proceedings.
 11 (d) If upon the hearing the court finds the respondent
 12 not mentally ill within the meaning of this part, the
 13 petition shall be dismissed. If the court finds that the
 14 respondent continues to be mentally ill, the court shall
 15 order treatment for the respondent for a period not to
 16 exceed 30 days. In its order, the court shall describe what
 17 alternatives for treatment of the respondent are available,
 18 what alternatives were investigated, and why the
 19 investigated alternatives were not considered suitable. The
 20 court may not order continuation of an alternative which
 21 does not include a comprehensive, individualized plan of
 22 treatment for the respondent. A court order for the
 23 continuation of an alternative shall include a specific
 24 finding that a comprehensive, individualized plan of
 25 treatment exists.

1 ~~(2)~~(3) Further extensions of the period of detention
 2 provided for in 53-21-127(2) may be obtained under the same
 3 procedure described in subsection (1) of this section except
 4 that the patient's custody may not be affected for more than
 5 1 year without a renewal of the commitment under the
 6 procedures set forth in subsection (1) of this section,
 7 including a statement of the findings required by subsection
 8 (1).
 9 (4) The period of treatment provided for in
 10 53-21-127(3) may be extended only once under this section."
 11 NEW SECTION. Section 12. Establishment of treatment
 12 plan for mentally ill person. (1) A person ordered to
 13 receive treatment under 53-21-127(3) must have an
 14 individualized treatment plan.
 15 (2) The treatment plan must be developed by
 16 appropriate professional persons and must be implemented no
 17 later than 5 days after the treatment order has been made.
 18 (3) The treatment plan must contain:
 19 (a) a statement of the nature of the specific problems
 20 and specific needs of the patient;
 21 (b) a statement of the least restrictive treatment
 22 conditions necessary to achieve the purposes of commitment;
 23 (c) a description of intermediate and long-range
 24 treatment goals, with a projected timetable for their
 25 attainment;

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

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

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

9 NEW SECTION. Section 13. Compliance with treatment
 10 plan. If the respondent fails to comply or clearly refuses
 11 to comply with all or part of the treatment plan, the
 12 professional person appointed under 53-21-122 shall make all
 13 reasonable efforts to solicit the respondent's compliance.
 14 Such effort must be documented and reported to the court
 15 with a recommendation to the court as to whether the
 16 respondent should:

- 17 (1) have his case dismissed; or
- 18 (2) be given a supplemental hearing.

19 NEW SECTION. Section 14. Supplemental hearing. (1) If
 20 the respondent requests a hearing to prove he has complied
 21 with the treatment plan as provided in [section 13], the
 22 hearing must be scheduled within 5 days. The respondent, his
 23 attorney, the friend of respondent, and the designated
 24 professional person must be notified at least 48 hours in
 25 advance.

1 (2) At the hearing, the court must determine whether
 2 the respondent has failed to comply with the treatment plan
 3 established pursuant to [section 12].

4 (3) (a) If the court determines that the respondent
 5 has failed or refused to comply with the treatment plan, it
 6 may order the respondent to comply with the treatment plan
 7 for the remainder of the 30-day period.

8 (b) If the respondent no longer meets the definition
 9 of mentally ill, the court shall discharge the respondent
 10 from the order and dismiss the case.

11 NEW SECTION. Section 15. Codification instruction.
 12 Sections 12 through 14 are intended to be codified as an
 13 integral part of Title 53, chapter 21, part 1, and the
 14 provisions of Title 53, chapter 21, part 1, apply to
 15 sections 12 through 14.

16 NEW SECTION. SECTION 16. REPORT TO LEGISLATURE. THE
 17 MENTAL DISABILITIES BOARD OF VISITORS SHALL REPORT TO THE
 18 51ST LEGISLATURE ON THE EFFECTS OF THIS ACT, INCLUDING THE
 19 EFFECTS ON THE TREATMENT AND RIGHTS OF THE MENTALLY ILL AND
 20 THE SERIOUSLY MENTALLY ILL AND THE PROCEDURES ESTABLISHED BY
 21 THIS ACT, AND SHALL INCLUDE IN THE REPORT ANY
 22 RECOMMENDATIONS IT MAY HAVE.

23 NEW SECTION. SECTION 17. EXTENSION OF AUTHORITY. ANY
 24 EXISTING AUTHORITY OF THE DEPARTMENT OF INSTITUTIONS OR THE
 25 MENTAL DISABILITIES BOARD OF VISITORS TO MAKE RULES ON THE

1 SUBJECT OF THE PROVISIONS OF THIS ACT IS EXTENDED TO THE
2 PROVISIONS OF THIS ACT.
3 NEW SECTION. SECTION 18. TERMINATION. THIS ACT
4 TERMINATES JULY 1, 1989.

-End-