

Unofficial Draft Copy

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LCCF09

**** Bill No. ****

Introduced By *****

By Request of the *****

A Bill for an Act entitled: "An Act requiring the Department of Public Health and Human Services to develop a plan to close the Montana Developmental Center; requiring the department to move residents into community-based facilities and services; creating a temporary advisory committee; providing guidelines for the transition plan; establishing the department's duties; amending sections 3-5-901, 20-7-401, 46-14-221, 46-23-201, 50-19-204, 53-1-402, 53-1-602, 53-20-102, 53-20-104, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-134, 53-20-140, 53-20-141, 53-20-146, 53-20-148, 53-20-161, 53-20-163, and 53-20-214, MCA; and providing an immediate effective date."

Be it enacted by the Legislature of the State of Montana:

NEW SECTION. **Section 1. Legislative purpose -- direction to department of public health and human services.** It is the purpose of the legislature to provide services to developmentally disabled people in the community, as established in 53-20-101 and 53-20-301. To accomplish this purpose, the legislature directs the department of public health and human services to:

(1) in conjunction with the advisory committee established in [section 2], develop a plan to close the Montana developmental

center under the guidelines established in [sections 1 through 5];

(2) move residents out of the Montana developmental center and into community-based facilities or community-based services during the biennium beginning July 1, 2013;

(3) identify the types of services needed to ensure the safety of both individuals and communities and to provide for both the short-term acute needs and the longer-term specialized needs of individuals with developmental disabilities;

(4) identify alternatives to the Montana developmental center for residents who need a secure placement in a treatment facility when that need cannot be met by community-based facilities or services;

(5) transfer funds as authorized by 53-20-214 and 17-7-139 to develop the facilities and services needed in order to move residents out of the Montana developmental center, including both community-based facilities and services and any alternative state facilities determined to be necessary; and

(6) complete the transition of as many residents as possible out of the Montana developmental center and into community-based facilities or services by June 30, 2015. As part of this transition, the legislature intends for the department to:

(a) actively pursue the timely discharge of residents of the Montana developmental center into community-based facilities and services as soon as they can be served safely and appropriately in the community; and

(b) work with community providers to develop necessary

facilities and services.

NEW SECTION. **Section 2. Transition planning advisory**

committee -- membership -- duties. (1) The governor shall appoint a transition planning advisory committee to assist the department of public health and human services in carrying out the purposes of [sections 1 through 5]. Members shall include but are not limited to representatives of:

(a) the department of public health and human services;

(b) the department of corrections;

(c) the state protection and advocacy program for individuals with development disabilities as authorized by 42 U.S.C. 15043(a) (2);

(d) providers of community-based facilities and community-based services; and

(e) two family members or guardians of individuals who are committed to the Montana developmental center or who were committed within the previous 3 years.

(2) The committee shall advise the department of public health and human services on:

(a) potential locations for residents who will be moved out of the Montana developmental center and into community-based facilities or community-based services;

(b) the costs of providing community-based facilities or services for the residents currently served by the Montana developmental center;

(c) ways in which community-based facilities or services

that are necessary but unavailable may be developed;

(d) whether some residents may need secure placement in a treatment facility and the type of facility that would best meet the needs of those residents;

(e) ways to ensure resident safety in locations outside of the Montana developmental center; and

(f) opportunities for obtaining additional federal funds or other types of funding for community-based facilities or services.

(3) The advisory committee shall meet at least quarterly.

(4) The advisory committee is disbanded no later than June 30, 2015, but may not be disbanded before it has reviewed and provided comment on the final transition plan developed by the department.

NEW SECTION. **Section 3. Transition planning -- department of public health and human services responsibilities.** (1) The department of public health and human services shall provide members of the advisory committee with necessary information and staff support to carry out the committee's duties.

(2) The department shall, in conjunction with the advisory committee, identify opportunities for strategically moving residents out of the Montana developmental center and into community placements as quickly as possible. The process must include identification of funding sources and fund transfers that could be used to develop additional community-based facilities and community-based services as needed.

(3) (a) The department shall complete the transition plan by September 15, 2014.

NEW SECTION. **Section 4. Elements of transition plan.** (1)

The transition plan developed by the department of public health and human services must:

(a) identify the services needed in the community to accommodate individuals who would otherwise be placed at the Montana developmental center, including but not limited to:

(i) psychiatric services;

(ii) crisis stabilization and assessment services;

(iii) secure treatment programs for individuals who are sentenced to the custody of the department as provided in Title 46, chapter 14;

(iv) treatment programs, including programs for individuals with autism spectrum disorders and for individuals with developmental disabilities who have committed sexual offenses; and

(v) services for people whose disabilities require heightened levels of medical care, psychiatric care, structured activities, supervision, or other supports;

(b) analyze the cost of developing and providing the necessary community-based facilities and services;

(c) identify the sources of funding available to pay for needed community-based facilities and services;

(d) determine whether changes are needed to the state's medicaid waiver for community services;

(e) specify the ways in which the department shall identify the treatment and habilitation needs and related costs for each individual who would otherwise be served at the Montana developmental center;

(f) identify the way in which the department will determine the residential facility in which an individual will be placed if:

(i) a court determines that the individual is in need of commitment to the custody of the department of public health and human services for placement in a residential facility under the provisions of Title 53, chapter 2, part 1; or

(ii) the individual is sentenced to the custody of the department as provided in Title 46, chapter 14; and

(f) indicate whether a need will continue to exist for a state-operated facility for some individuals who are typically served by the Montana developmental center.

(2) (a) If the department determines that a need will remain for a state-operated facility to serve some seriously developmentally disabled adults, the department shall:

(i) specify the reasons for that determination in its transition plan;

(ii) estimate the number of individuals to be served annually by a state-operated facility; and

(iii) evaluate the costs and benefits of providing treatment and habilitation at various state-operated facilities, including a facility that may remain on the Montana developmental center campus and facilities at other locations.

(b) The evaluation required under this subsection must include a review of barriers to treatment at facilities other than the Montana developmental center and the changes that could be made at those facilities to allow for treatment of individuals who are currently committed to the Montana developmental center. The department shall report on the findings of the evaluation in its transition plan.

NEW SECTION. **Section 5. Implementation of transition plan.**

In carrying out [sections 1 through 5], the department of public health and human services shall:

- (1) apply for any necessary medicaid waivers;
- (2) develop new community-based facilities and community-based services as needed;
- (3) designate by rule the criteria for a community-based facility to serve as a residential facility for the purposes of Title 53, chapter 2, part 1, or Title 46, chapter 14;
- (4) review and approve or deny applications from community-based facilities seeking designation as a residential facility;
- (5) ensure that a facility designated as a residential facility:
 - (a) has a staff-to-resident ratio that will provide for the safety of both staff and residents;
 - (b) is located in a community with access to a sufficient number of health care providers who are able to:
 - (i) treat mental illness;
 - (ii) prescribe and monitor psychiatric medications;

(iii) conduct clinical assessments, including specialized assessments; and

(iv) provide other specialized services and supports as needed.

(6) provide each district court with a list of residential facilities as defined in 53-20-102;

(7) identify available funds and transfer funds as necessary to develop appropriate community-based facilities or community-based services for individuals who would otherwise be committed to the Montana developmental center;

(8) develop any additional legislation necessary to carry out the purposes of [sections 1 through 5] for presentation to the 64th legislature in 2015;

(9) present budget proposals to the 64th legislature that may be needed to carry out the purposes of [sections 1 through 5]; and

(10) (a) begin moving residents out of the Montana developmental center and into community-based facilities as soon as appropriate community services are available and no later than September 15, 2014.

(b) To the greatest extent possible, the department shall complete the move of residents out of the center and into community-based facilities or services before June 30, 2015.

Section 6. Section 3-5-901, MCA, is amended to read:

"3-5-901. State assumption of district court expenses. (1)
There is a state-funded district court program under the judicial

branch. Under this program, the office of court administrator shall fund all district court costs, except as provided in subsection (3). These costs include but are not limited to the following:

- (a) salaries and benefits for:
 - (i) district court judges;
 - (ii) law clerks;
 - (iii) court reporters, as provided in 3-5-601;
 - (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and
 - (v) other employees of the district court;
- (b) in criminal cases:
 - (i) fees for transcripts of proceedings, as provided in 3-5-604;
 - (ii) witness fees and necessary expenses, as provided in 46-15-116;
 - (iii) juror fees and necessary expenses;
 - (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated expenses, as provided in 46-14-202(4); and
 - (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility ~~of the department of public health and human services~~ and of transporting the defendant back for any proceedings, as provided in 46-14-221(5);
- (c) except as provided in 47-1-201(5), the district court

expenses in all postconviction proceedings held pursuant to Title 46, chapter 21, and in all habeas corpus proceedings held pursuant to Title 46, chapter 22, and appeals from those proceedings;

(d) except as provided in 47-1-201(5), the following expenses incurred by the state in federal habeas corpus cases that challenge the validity of a conviction or of a sentence:

- (i) transcript fees;
- (ii) witness fees; and
- (iii) expenses for psychiatric examinations;

(e) except as provided in 47-1-201(5), the following expenses incurred by the state in a proceeding held pursuant to Title 41, chapter 3, part 4 or 6, that seeks temporary investigative authority of a youth, temporary legal custody of a youth, or termination of the parent-child legal relationship and permanent custody:

- (i) transcript fees;
- (ii) witness fees;
- (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other person having physical or legal custody of the youth except for expenses for services that a person is eligible to receive under a public program that provides medical or psychological evaluation;
- (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and
- (v) expenses associated with court-ordered alternative dispute resolution;

(f) except as provided in 47-1-201(5), costs of juror and witness fees and witness expenses before a grand jury;

(g) costs of the court-sanctioned educational program concerning the effects of dissolution of marriage on children, as required in 40-4-226, and expenses of education when ordered for the investigation and preparation of a report concerning parenting arrangements, as provided in 40-4-215(2)(a);

(h) except as provided in 47-1-201(5), all district court expenses associated with civil jury trials if similar expenses were paid out of the district court fund or the county general fund in any previous year;

(i) all other costs associated with the operation and maintenance of the district court, including contract costs for court reporters who are independent contractors; and

(j) costs associated with the operation and maintenance of the youth court and youth court division operations pursuant to 41-5-111 and subsection (1)(a) of this section, except for those costs paid by other entities identified in Title 41, chapter 5.

(2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the office of court administrator shall reimburse the county within 30 days of receipt of a claim.

(3) For the purposes of subsection (1), district court costs paid by the office of court administrator do not include:

(a) costs for clerks of district court and employees and expenses of the offices of the clerks of district court;

(b) costs of providing and maintaining district court

office space; or

(c) charges incurred against a county by virtue of any provision of Title 7 or 46."

{Internal References to 3-5-901:

| | | | |
|-----------|-----------|------------|-----------|
| 3-1-1601x | 3-5-511x | 3-5-602x | 3-5-604x |
| 3-5-604x | 3-5-902x | 3-5-902x | 3-15-204x |
| 3-15-204x | 26-2-506x | 26-2-506x | 40-4-215x |
| 40-4-226x | 41-5-111x | 46-11-319x | } |

Section 7. Section 20-7-401, MCA, is amended to read:

"20-7-401. Definitions. In this title, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Child with a disability" means a child evaluated in accordance with the regulations of the Individuals With Disabilities Education Act as having a disability and who because of the disability needs special education and related services.

(2) "Free appropriate public education" means special education and related services that:

(a) are provided at public expense under public supervision and direction and without charge;

(b) meet the accreditation standards of the board of public education, the special education requirements of the superintendent of public instruction, and the requirements of the Individuals With Disabilities Education Act;

(c) include preschool, elementary school, and high school education in Montana; and

(d) are provided in conformity with an individualized education program that meets the requirements of the Individuals With Disabilities Education Act.

(3) "Related services" means services in accordance with regulations of the Individuals With Disabilities Education Act that are required to assist a child with a disability to benefit from special education.

(4) "Special education" means specially designed instruction, given at no cost to the parents or guardians, to meet the unique needs of a child with a disability, including but not limited to instruction conducted in a classroom, home, hospital, institution, or other setting and instruction in physical education.

(5) "State-operated adult health care facility providing special education services to its residents" means the Montana state hospital, ~~the Montana developmental center~~ a residential facility as defined in 53-20-102, the Montana mental health nursing care center, or the Montana chemical dependency treatment center.

(6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."

{Internal References to 20-7-401:
20-7-420x 20-9-309x }

Section 8. Section 46-14-221, MCA, is amended to read:

"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses. (1) The issue of the defendant's fitness to proceed may be raised by the court, by the

defendant or the defendant's counsel, or by the prosecutor. When the issue is raised, it must be determined by the court. If neither the prosecutor nor the defendant's counsel contests the finding of the report filed under 46-14-206, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to subpoena and cross-examine the psychiatrists or licensed clinical psychologists who joined in the report and to offer evidence upon the issue.

(2) (a) If the court determines that the defendant lacks fitness to proceed, the proceeding against the defendant must be suspended, except as provided in subsection (4), and the court shall commit the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate mental health facility, as defined in 53-21-102, or residential facility, as defined in 53-20-102, ~~of the department of public health and human services~~ for so long as the unfitness endures or until disposition of the defendant is made pursuant to this section, whichever occurs first.

(b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan, the facility may petition the court for an order requiring compliance. The defendant has a right to a

hearing on the petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific findings that the state has proved an overriding justification for the order and that the treatment being ordered is medically appropriate.

(3) (a) The committing court shall, within 90 days of commitment, review the defendant's fitness to proceed. If the court finds that the defendant is still unfit to proceed and that it does not appear that the defendant will become fit to proceed within the reasonably foreseeable future, the proceeding against the defendant must be dismissed, except as provided in subsection (4).

(b) If the court determines that the defendant lacks fitness to proceed because the defendant has a mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to those provisions.

(c) If the court determines that the defendant lacks fitness to proceed because the defendant has a developmental disability as defined in 53-20-102, the proceeding against the defendant must be dismissed and the prosecutor shall petition the court in the manner provided in Title 53, chapter 20, to determine the disposition of the defendant pursuant to those provisions.

(4) The fact that the defendant is unfit to proceed does

not preclude any legal objection to the prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation of the defendant.

(5) Except as provided in subsection (6), the expenses of transporting the defendant to the custody of the director of the department of public health and human services to be placed in an appropriate facility ~~of the department of public health and human services~~, of the care, custody, and treatment of the defendant at the facility, and of transporting the defendant back are payable by the court or, in district court proceedings, by the office of court administrator.

(6) The cost of care, custody, and treatment at a facility for which the legislature has made a general fund appropriation to the department of public health and human services may not be charged to the office of court administrator."

{Internal References to 46-14-221:
3-5-901a 3-5-901a }

Section 9. Section 46-23-201, MCA, is amended to read:

"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking. (1) Subject to the restrictions contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a prisoner can be released without detriment to the prisoner or to the community, the board may release on nonmedical parole by appropriate order any person who is:

(a) confined in a state prison;

(b) sentenced to the state prison and confined in a prerelease center;

(c) sentenced to prison as an adult pursuant to 41-5-206 and confined in a youth correctional facility;

(d) sentenced to be committed to the custody of the director of the department of public health and human services as provided in 46-14-312 and confined in the Montana state hospital, ~~the Montana developmental center~~ a residential facility as defined in 53-20-102, or the Montana mental health nursing care center.

(2) Persons under sentence of death, persons sentenced to the department who have been placed by the department in a state prison temporarily for assessment or sanctioning, and persons serving sentences imposed under 46-18-202(2) or 46-18-219 may not be granted a nonmedical parole.

(3) A prisoner serving a time sentence may not be paroled under this section until the prisoner has served at least one-fourth of the prisoner's full term.

(4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served 30 years.

(5) A parole may be ordered under this section only for the best interests of society and not as an award of clemency or a reduction of sentence or pardon. A prisoner may be placed on parole only when the board believes that the prisoner is able and willing to fulfill the obligations of a law-abiding citizen.

(6) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing panel conducts

another hearing or review. The board shall adopt by administrative rule a process by which a prisoner may request an earlier hearing or review."

{Internal References to 46-23-201:
46-23-217x }

Section 10. Section 50-19-204, MCA, is amended to read:

"50-19-204. ~~Department and Montana developmental center to furnish assistance when requested.~~ (1) The department and the staff of the ~~Montana developmental center~~ a residential facility as defined in 53-20-102 and as designated by the department shall make available and furnish, when requested, any assistance and services permitted by law to achieve the legislative intent of this part.

(2) The department may determine its procedure for advising the attending physician, the parents, or legal guardian of the newborn infant of any medical results of the test and the availability of assistance, services, or counseling of the department and the staff of the ~~Montana developmental center~~ designated residential facility.

(3) The department may determine procedures for coordination with the ~~Montana developmental center~~ designated residential facility in providing the services and assistance required in this part."

{Internal References to 50-19-204: None.x}

Section 11. Section 53-1-402, MCA, is amended to read:

"53-1-402. Residents and financially responsible persons

liable for cost of care. (1) A resident and a financially responsible person are liable to the department for the resident's cost of care as provided in this part. The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care of residents in the following institutions:

(a) Montana state hospital;

(b) ~~Montana developmental center~~ a residential facility as defined in 53-20-102;

(c) Montana veterans' home;

(d) eastern Montana veterans' home;

(e) southwestern Montana veterans' home;

(f) Montana mental health nursing care center; and

(g) Montana chemical dependency treatment center.

(2) The eastern Montana veterans' home may assess charges on either a per diem and ancillary charge basis or an all-inclusive rate basis if the department contracts with a private vendor to operate the facility as provided for in 10-2-416.

(3) The Montana state hospital and the Montana mental health nursing center may determine the cost of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private entity to operate a mental health managed care program."

{Internal References to 53-1-402:

53-1-401x 53-1-401x 53-1-410x 53-21-701x }

Section 12. Section 53-1-602, MCA, is amended to read:

"53-1-602. Department of public health and human services.

(1) The following components are in the department of public health and human services to carry out the purposes of the department:

(a) mental health services, consisting of the following institutional components for care and treatment of the mentally ill pursuant to Title 53, chapter 21:

(i) the Montana state hospital; and

(ii) the Montana mental health nursing care center;

(b) a community services component, consisting of appropriate services for the care and treatment of the mentally ill pursuant to Title 53, chapter 21, part 10;

(c) chemical dependency services, consisting of appropriate detoxification, inpatient, intensive outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant to Title 53, chapter 24;

(d) an institutional and residential component of the developmental disabilities system for those persons with developmental disabilities who require institutional or residential care according to Title 53, chapter 20, which component consists of ~~the Montana developmental center~~ residential facilities as defined in 53-20-102; and

(e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged veterans as provided by law, consisting of:

- (i) the Montana veterans' home;
- (ii) the eastern Montana veterans' home at Glendive; and
- (iii) the southwestern Montana veterans' home.

(2) A state institution may not be moved, discontinued, or abandoned without the consent of the legislature."

{Internal References to 53-1-602: None.x}

Section 13. Section 53-20-102, MCA, is amended to read:

"53-20-102. Definitions. As used in this part, the following definitions apply:

(1) (a) "Available" means:

(i) that services of an identified provider or providers have been found to be necessary and appropriate for the habilitation of a specific person by the person's individual treatment planning team;

(ii) that funding for the services has been identified and committed for the person's immediate use; and

(iii) that all providers have offered the necessary services for the person's immediate use.

(b) A service is not available simply because similar services are offered by one or more providers in one or more locations to other individuals or because the person has been placed on a waiting list for services or funding.

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

(3) "Case manager" means a person who is responsible for

service coordination, planning, and crisis intervention for persons who are eligible for community-based developmental disability services from the department of public health and human services.

(4) "Community treatment plan" means a comprehensive, individualized plan of care that addresses the habilitation needs of and the risks posed by the behaviors of a respondent who is found to be seriously developmentally disabled.

(5)(a) "Community-based facilities" or "community-based services" means those facilities and services that are available for the evaluation, treatment, and habilitation of persons with developmental disabilities in a community setting.

(b) The term includes community-based facilities designated as residential facilities by the department of public health and human services pursuant to [section 5].

(6) "Court" means a district court of the state of Montana.

(7) "Developmental disabilities professional" means a licensed psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

(a) has training and experience in psychometric testing and evaluation;

(b) has experience in the field of developmental disabilities; and

(c) is certified, as provided in 53-20-106, by the department of public health and human services.

(8) "Developmental disability" means a disability that:

(a) is attributable to mental retardation, cerebral palsy,

epilepsy, autism, or any other neurologically disabling condition closely related to mental retardation;

(b) requires treatment similar to that required by mentally retarded individuals;

(c) originated before the individual attained age 18;

(d) has continued or can be expected to continue indefinitely; and

(e) results in the person having a substantial disability.

(9) "Habilitation" means the process by which a person who has a developmental disability is assisted in acquiring and maintaining those life skills that enable the person to cope more effectively with personal needs and the demands of the environment and in raising the level of the person's physical, mental, and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

(10) "Individual treatment planning team" means the interdisciplinary team of persons involved in and responsible for the habilitation of a resident. The resident is a member of the team.

(11) "Next of kin" includes but is not limited to the spouse, parents, adult children, and adult brothers and sisters of a person.

(12) "Qualified mental retardation professional" means a professional program staff person for the residential facility who the department of public health and human services determines meets the professional requirements necessary for federal certification of the facility.

(13) "Resident" means a person committed to a residential facility.

(14) "Residential facility" or "facility" means ~~the Montana developmental center:~~

(a) a state-owned and operated facility determined by the department of public health and human services to provide the secure setting required for a person committed to the custody of the department for placement in a residential facility; or

(b) a community-based facility designated by the department pursuant to [section 5] as a facility able to meet the needs of a person committed to the custody of the department for placement in a residential facility.

(15) "Residential facility screening team" means a team of persons, appointed as provided in 53-20-133, that is responsible for screening a respondent to determine if the commitment of the respondent to the custody of the department of public health and human services for placement in a residential facility or imposition of a community treatment plan is appropriate.

(16) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously developmentally disabled and for whom the petition requests commitment to the department of public health and human services for placement in a residential facility or imposition of a community treatment plan.

(17) "Responsible person" means a person willing and able to assume responsibility for a person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

(18) "Seriously developmentally disabled" means a person who:

- (a) has a developmental disability;
- (b) is impaired in cognitive functioning; and
- (c) cannot be safely and effectively habilitated through voluntary use of community-based services because of behaviors that pose an imminent risk of serious harm to self or others."

{Internal References to 53-20-102:

| | | | |
|------------|------------|------------|------------|
| 45-5-501x | 45-5-501x | 45-5-502x | 45-5-502x |
| 46-14-101x | 46-14-206x | 46-14-221a | 46-14-221a |
| 46-14-301x | 46-14-312x | 46-16-221x | 46-16-226x |
| 50-5-101x | 52-3-202x | 52-3-803x | 87-2-126x |
| 90-5-101x | } | | |

Section 14. Section 53-20-104, MCA, is amended to read:

"53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board is an independent board of inquiry and review established to ensure that the treatment of all persons committed to the custody of the department of public health and human services for placement in a residential facility is humane and decent and meets the requirements set forth in this part.

(2) The board shall review all plans for experimental research or hazardous treatment procedures involving persons committed to the custody of the department for placement in a residential facility to ensure that the research project is humane and not unduly hazardous and that it complies with the principles of the statement on the use of human subjects for research of the American association on mental deficiency and with the principles for research involving human subjects

required by the United States department of health and human services. An experimental research project involving ~~persons committed to a residential facility~~ residents affected by this part may not ~~be commenced~~ begin unless it is approved by the mental disabilities board of visitors.

(3) The board shall investigate all cases of alleged mistreatment of a resident.

(4) The board shall at least annually inspect every residential facility that is providing a course of residential habilitation and treatment to any person pursuant to this part. The board shall inspect the physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and treatment or habilitation areas. The board shall inquire concerning all habilitation programs being implemented by the facility.

(5) The board shall inspect the file of each person committed to the custody of the department for placement in a residential facility pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall inquire concerning all use of restraints, isolation, or other extraordinary measures.

(6) The board may assist a resident at a residential facility in resolving a grievance the resident may have concerning the resident's commitment or course of treatment and habilitation in the facility.

(7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its physical

facilities or its treatment of a resident, it shall report its findings at once to the ~~superintendent of~~ individual with responsibility for the facility and the director of the department of public health and human services. If appropriate, after waiting a reasonable time for a response from the ~~superintendent~~ individual or the director, the board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed by the court for the resident involved, and the district court that has jurisdiction over the facility.

(8) The board shall report annually to the governor concerning the status of the residential facilities and habilitation programs that it has inspected."

{Internal References to 53-20-104:
2-15-211x }

Section 15. Section 53-20-118, MCA, is amended to read:

"53-20-118. Venue for hearing. (1) Except as provided in 53-20-129, hearings held pursuant to this part must be held in the district court for the district in which:

(a) the respondent resides; or

(b) the residential facility ~~to~~ in which the respondent is ~~committed~~ placed or is to be ~~committed~~ placed is located.

(2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent resides."

{Internal References to 53-20-118: None.x}

Section 16. Section 53-20-121, MCA, is amended to read:

"53-20-121. Petition for involuntary treatment -- contents of. (1) A person who believes that there is a person who is seriously developmentally disabled and in need of ~~commitment to a residential facility or~~ imposition of a community treatment plan or commitment to the department of public health and human services for placement in a residential facility may request the county attorney to file a petition alleging that the person is seriously developmentally disabled and in need of ~~commitment to a residential facility or~~ imposition of a community treatment plan.

(2) The petition must contain:

(a) the name and address of the person requesting the petition and the person's interest in the case;

(b) the name and address of the respondent;

(c) the name and address of the parents or guardian of the respondent and of any other person believed to be legally responsible for the care, support, and maintenance of the respondent;

(d) the name and address of the respondent's next of kin, to the extent known;

(e) the name and address of any person who the county attorney believes might be willing and able to be appointed as a responsible person;

(f) a description of the relief requested, whether ~~commitment to a residential facility or~~ imposition of a community treatment plan or commitment to the custody of the department;
and

(g) a statement of the rights of the respondent and the respondent's parents or guardian that must be in conspicuous print and identified by a suitable heading.

(3) If the petition requests imposition of a community treatment plan, a copy of the proposed community treatment plan must be attached to the petition.

(4) The county attorney shall immediately mail a copy of the petition to the residential facility screening team, the respondent's parents or guardian, if any, and the respondent's counsel. The county attorney shall ensure that the petition is promptly hand-delivered to the respondent."

{Internal References to 53-20-121:
53-20-129a }

Section 17. Section 53-20-125, MCA, is amended to read:

"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or imposition of community treatment plan -- hearing. (1) A court may ~~commit a person to a residential facility or impose a community treatment plan or~~ commit a person to the custody of the department of public health and human services for placement in a residential facility only if the person:

(a) is 18 years of age or older; and

(b) is determined to be seriously developmentally disabled and in need of commitment to ~~a residential facility~~ the custody of the department or imposition of a community treatment plan by the residential facility screening team, as provided in

53-20-133, and by a court, as provided in 53-20-129 or in this section.

(2) After the screening required by 53-20-133, the residential facility screening team shall file its written recommendation and report with the court. The report must include the factual basis for the recommendation and must describe any tests or evaluation devices that have been employed in evaluating the respondent. The residential facility screening team shall provide to the court, the county attorney, the respondent's attorney, and any other party requesting it the social and placement information that the team relied upon in making its determination.

(3) The residential facility team may recommend treatment in a specific residential facility.

~~(3)~~(4) Notice of the determination of the residential facility screening team must be mailed or delivered to:

- (a) the respondent;
- (b) the respondent's parents, guardian, or next of kin, if known;
- (c) the responsible person;
- (d) the respondent's advocate, if any;
- (e) the county attorney;
- (f) the ~~residential facility~~ department of public health and human services;
- (g) the attorney for the respondent, if any; and
- (h) the attorney for the parents or guardian, if any.

~~(4)~~(5) The respondent, the respondent's parents or

guardian, the responsible person, the respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the residential facility screening team. The request for a hearing must be made in writing within 15 days of service of the report.

~~(5)~~(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection ~~(4)~~(5).

~~(6)~~(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

~~(7)~~(8) Upon receiving the report of the residential facility screening team and after a hearing, if one is requested, the court shall enter findings of fact and take one of the following actions:

(a) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled and in need of commitment to the custody of the department of public health and human services for placement in a residential facility, the court shall order the respondent committed to ~~a residential facility~~ the custody of the department for an extended course of treatment and habilitation.

(b) If both the residential facility screening team and the court find that the respondent is seriously developmentally disabled but either the residential facility screening team or the court finds that a less restrictive community treatment plan has been proposed, the court may impose a community treatment plan that meets the conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the

parties or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4), it may order the respondent committed to the custody of the department for placement in a residential facility. The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions of 53-20-133(4) (c) and (4) (d).

(c) If either the residential facility screening team or the court finds that the respondent has a developmental disability but is not seriously developmentally disabled, the court shall dismiss the petition and refer the respondent to the department of public health and human services to be considered for placement in voluntary community-based services according to 53-20-209.

(d) If either the residential facility screening team or the court finds that the respondent does not have a developmental disability or is not in need of developmental disability services, the court shall dismiss the petition.

~~(8)~~(9) (a) If the residential facility screening team recommends ~~commitment to a residential facility or imposition of a community treatment plan~~ or commitment to the department for placement in a residential facility and none of the parties notified of the recommendation request a hearing within 15 days of service of the screening team's report, the court may:

(i) issue an order committing the respondent to the custody of the department for placement in a residential facility for an extended period of treatment and habilitation;

(ii) issue an order imposing a community treatment plan that the court finds meets the conditions set forth in 53-20-133(4);
or

(iii) initiate its own inquiry as to whether an order should be granted.

(b) The court may not impose a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions in 53-20-133(4) (c) and (4) (d).

(c) If the court commits the respondent to the custody of the department for placement in a residential facility, the court may recommend that the respondent be placed in a specific residential facility based on the recommendation of the residential facility screening team and the list provided to the court pursuant to [section 5]. The department shall consider the recommendation when determining the respondent's placement.

~~(9)~~(10) The court may refuse to authorize commitment of a respondent to the custody of the department of public health and human services for placement in a residential facility for an extended period of treatment and habilitation if commitment is not in the best interests of the respondent.

~~(10)~~(11) A court order entered in a proceeding under this part must be provided to the residential facility screening team."

{Internal References to 53-20-125:

53-20-113x 53-20-127x 53-20-127x 53-20-128a
53-20-133a 53-20-140x 53-20-140x 53-20-140x }

Section 18. Section 53-20-126, MCA, is amended to read:

"53-20-126. Maximum period of commitment or treatment plan.

The court order approving the ~~commitment to a residential facility or the imposition of the community treatment plan or~~ commitment to the custody of the department of public health and human services for placement in a residential facility must specify the maximum period of time for which the person is committed or for which a community treatment plan is imposed. The maximum period may not exceed 1 year."

{Internal References to 53-20-126: None.x}

Section 19. Section 53-20-127, MCA, is amended to read:

"53-20-127. Transfer to another facility -- release to community-based alternative -- hearing. (1) If, at any time during the period for which a resident is committed to the custody of the department of public health and human services for placement in a residential facility for an extended period of habilitation and treatment, the qualified mental retardation professional responsible for the resident's habilitation decides that the resident no longer requires placement in a residential facility and that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, the qualified mental retardation professional may release the resident to the community-based alternative.

(2) Notice of the proposed release must be sent at least 15

days prior to the date of release to:

- (a) the resident;
- (b) the resident's parents or guardian;
- (c) the attorney who most recently represented the

resident, if any;

- (d) the responsible person appointed by the court, if any;
- (e) the resident's advocate, if any; and
- (f) the court that ordered the commitment.

(3) If a party that was notified objects to the release, the party may petition the court for a hearing to determine whether the release should be allowed. The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative inquire concerning the propriety of the release.

(4) A resident may be transferred without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical treatment or to a mental health facility for emergency treatment provided that the emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

(5) If a person is committed to the custody of the department of public health and human services for placement in a residential facility for an extended course of habilitation without a hearing and if subsequent to commitment one of the parties who could have requested a hearing learns that an

alternative course of treatment is available that is more suitable to the needs of the resident, the party may request the qualified mental retardation professional responsible for the resident's habilitation to release the resident to the alternative if it is a community-based alternative. A release must comply with the requirements of subsections (1) through (4). If the qualified mental retardation professional in charge of the resident refuses to authorize the release, the party may petition the court for a hearing to determine whether the resident's commitment should be continued. The hearing must comply with the procedures set forth in 53-20-125."

{Internal References to 53-20-127: None.x}

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

"53-20-128. Recombitment -- extension of community treatment plan. (1) The qualified mental retardation professional responsible for a resident's habilitation or the case manager responsible for habilitation of a person under a community treatment plan may request that the county attorney file a petition for recommitment or extension of the order imposing the community treatment plan.

(2) A petition for recommitment or extension must be filed with the district court before the end of the current period of commitment or the expiration of the order imposing the current community treatment plan.

(3) A petition for recommitment or extension of a community treatment plan must be accompanied by a written report containing

the recommendation of the qualified mental retardation professional or case manager and a summary of the current habilitation plan or community treatment plan for the respondent.

(4) The petition must be reviewed in accordance with 53-20-133 by the residential facility screening team.

(5) Copies of the petition for recommitment and the report of the qualified mental retardation professional or case manager must be sent to:

(a) the court that issued the current order;

(b) the residential facility screening team;

(c) the resident;

(d) the resident's parents or guardian or next of kin, if any;

(e) the attorney who most recently represented the resident, if any;

(f) the responsible person appointed by the court, if any; and

(g) the resident's advocate, if any.

(6) The provisions of 53-20-125 apply to a petition for recommitment or extension of an order imposing a community treatment plan.

(7) If either the court or the residential facility screening team finds that the respondent has been placed voluntarily in community-based services or that the need for developmental disabilities services no longer exists, the court shall dismiss the petition.

(8) ~~The court may not order recommitment to~~ If the court

orders recommitment to the custody of the department of public health and human services, the department may not place the respondent in a residential facility that does not have an individualized habilitation plan for the resident.

(9) The court may not extend an order imposing a community treatment plan unless the residential facility screening team certifies that all services in the proposed plan meet the conditions set forth in 53-20-133(4)(c) and (4)(d)."

{Internal References to 53-20-128:

53-20-133a 53-20-140a 53-20-140a }

Section 21. Section 53-20-129, MCA, is amended to read:

"53-20-129. Emergency admission and commitment. (1) A person believed to be seriously developmentally disabled may be admitted to a residential facility or a temporary court-ordered community treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential facility screening team when necessary to protect the person or others from death or serious bodily injury, as defined in 45-2-101.

(2) An emergency admission to a residential facility may be initiated only by a developmental disabilities professional.

(3) An emergency admission to a residential facility may not proceed unless the residential facility and the department of public health and human services are given reasonable notice of the need for placement by the developmental disabilities professional responsible for emergency admission.

(4) A petition for emergency commitment must be filed on the next judicial day after an emergency admission to a residential facility by the county attorney of the county where the respondent resides.

(5) A petition for imposition of an emergency community treatment plan may be filed by the county attorney of the county where the respondent resides and must include or have attached the written report of a case manager. Any temporary community treatment plan must meet the conditions set forth in 53-20-133(4).

(6) The residential facility screening team shall report back to the court on the seventh judicial day following the filing of the petition for emergency commitment or imposition of a temporary community treatment plan.

(7) Once the report of the residential facility screening team is received by the court, continued placement in the residential facility or continued imposition of the temporary community treatment plan may not continue without an order of the court for emergency commitment or continued imposition of the community treatment plan.

(8) A court may order an emergency commitment or continue a temporary community treatment plan only when the residential facility screening team has recommended and the court has determined that the emergency commitment or continued imposition of a community treatment plan is necessary to protect the respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community treatment plan must

meet the conditions set forth in 53-20-133(4).

(9) An order for emergency commitment or continued imposition of a temporary community treatment plan may be entered without a hearing before the court if the court finds that the record supports the order.

(10) An emergency commitment to a residential facility or imposition of a temporary community treatment plan may not continue for longer than 30 days after placement in the residential facility or imposition of a temporary community treatment plan unless a petition has been filed as provided in 53-20-121 for: ~~an extended commitment to the residential facility or for (a) imposition of a community treatment plan: or as provided in 53-20-121 has been filed~~

(b) an extended commitment to the custody of the department of public health and human services for placement in a residential facility."

{Internal References to 53-20-129:

53-20-118a 53-20-125a 53-20-133a 53-20-140a }

Section 22. Section 53-20-130, MCA, is amended to read:

"53-20-130. Patient transfers from mental health facilities. If a person is a patient in a mental health facility and the professional person, as defined in 53-21-102, in charge of the patient determines that the patient is suffering from a developmental disability rather than mental illness and should more properly be committed to the custody of the department of public health and human services for placement in a residential

facility or an appropriate less restrictive alternative, the professional person shall commence proceedings to effect a commitment, consistent with the procedures set forth in this part for commitments generally."

{Internal References to 53-20-130: None.x}

Section 23. Section 53-20-133, MCA, is amended to read:

"53-20-133. Residential facility screening team -- referral by court -- membership -- rules. (1) When the district court receives a petition under this part ~~for commitment to a residential facility~~ or for imposition of a community treatment plan or commitment to the custody of the department of public health and human services for placement in a residential facility, ~~under this part,~~ the court, prior to proceeding, shall refer the respondent to the residential facility screening team for screening to determine whether commitment to a residential facility or imposition of a community treatment plan is appropriate for the respondent.

(2) A court may not commit a respondent to ~~a residential facility~~ the custody of the department of public health and human services or impose a community treatment plan under 53-20-125, 53-20-128, or 53-20-129 unless the residential facility screening team determines that commitment to ~~a residential facility~~ the custody of the department or imposition of a community treatment plan is appropriate for the respondent.

(3) The residential facility screening team may not determine that commitment ~~to a residential facility~~ to the

custody of the department or imposition of a community treatment plan is appropriate on an extended basis unless the residential facility screening team determines that the respondent is seriously developmentally disabled.

(4) The residential facility screening team may not recommend imposition of a community treatment plan unless it finds that the proposed plan:

(a) provides adequate assurances of safety from the consequences of the behaviors of the respondent for both the respondent and the community;

(b) provides effective habilitation services for the respondent's developmental disability;

(c) is funded from public or private sources that are identified, committed, and available to pay for all of the proposed services to the respondent; and

(d) ensures services from identified, qualified providers that are committed and available to provide all of the proposed services to the respondent.

(5) For purposes of this part, the department of public health and human services shall adopt rules providing for the membership and terms of the members of the residential facility screening team and setting forth the criteria and procedures to govern the determinations made by the residential facility screening team."

{Internal References to 53-20-133:

| | | | |
|------------|------------|------------|------------|
| 53-20-102x | 53-20-125x | 53-20-125x | 53-20-125x |
| 53-20-125x | 53-20-125x | 53-20-125x | 53-20-125x |
| 53-20-128x | 53-20-128x | 53-20-129x | 53-20-129x |
| 53-20-140x | 53-20-140x | 53-20-140x | 53-20-140x |

53-20-140x 53-20-140x }

Section 24. Section 53-20-134, MCA, is amended to read:

"53-20-134. Court records to be kept separate -- sealed -- names omitted. Records and papers in proceedings under this part must be maintained separately by each clerk of court. Five days prior to the release of a respondent or resident committed to the custody of the department of public health or human services for placement in a residential facility, the facility shall notify the appropriate clerk of court, and the clerk shall immediately seal the record in the case and omit the name of the respondent or resident from the index or indexes of cases in the court unless the court orders the record opened for good cause shown."

{Internal References to 53-20-134: None.x}

Section 25. Section 53-20-140, MCA, is amended to read:

"53-20-140. Amendment to commitment order or treatment plan -- emergency amendment. (1) A community treatment plan ordered pursuant to 53-20-125 or 53-20-128 may be amended with the consensus of the respondent's individual treatment planning team, including the respondent, without further order of the court. The amended plan must meet the conditions set forth in 53-20-133(4).

(2) An order of commitment to the custody of the department of public health and human services for placement in a residential facility may be amended to an order imposing a community treatment plan with the consensus of the respondent's individual treatment planning team, including the respondent, and

the court shall issue an order imposing the agreed-upon community treatment plan. The community treatment plan must meet the conditions set forth in 53-20-133(4).

(3) Any party may request amendment of a commitment ordered or a community treatment plan imposed under 53-20-125 or 53-20-128 by bringing the matter to the attention of the respondent's individual treatment planning team. If consensus is not reached, any party may request a hearing on a proposed amendment. The court shall request an evaluation of any proposed amendment by the residential facility screening team prior to the hearing.

(4) After a hearing or upon the agreement of the parties on an amendment of a commitment or an order imposing a community treatment plan, the court may make any order which is authorized in 53-20-125, including:

(a) adding, removing, or modifying conditions of a community treatment plan;

(b) substituting commitment to the custody of the department of public health and human services for placement in a residential facility for a community treatment plan; or

(c) substituting imposition of a community treatment plan for commitment to ~~a residential facility~~ the custody of the department.

(5) Any community treatment plan imposed as a result of a request for amendment must meet the conditions set forth in 53-20-133(4). The court may not impose a community treatment plan unless the residential facility screening team certifies that all

services in the proposed plan meet the conditions of 53-20-133(4) (c) and (4) (d).

(6) If the court finds probable cause to believe that the respondent or others are in imminent risk of death or serious bodily injury, as defined in 45-2-101, the court may order a temporary amendment to a community treatment plan, for a period of up to 7 calendar days, without notice to the respondent. A hearing must be scheduled within the 7-day period of the temporary amendment. Any temporarily amended community treatment plan must meet the conditions set forth in 53-20-133(4). The court may not amend a community treatment plan for an extended period unless the residential facility screening team certifies that all services in the proposed amended plan meet the conditions of 53-20-133(4) (c) and (4) (d). The court may not order emergency commitment to the custody of the department of public health and human services for placement in a residential facility except through the process set forth in 53-20-129."

{Internal References to 53-20-140: None.x}

Section 26. Section 53-20-141, MCA, is amended to read:

"53-20-141. Denial of legal rights. (1) Unless specifically stated in an order by the court, a person committed to the custody of the department of public health and human services for placement in a residential facility or for whom a community treatment plan has been imposed for an extended course of habilitation does not forfeit any legal right or suffer any legal disability by reason of the provisions of this part, except to

the extent that it may be necessary to detain the person for habilitation, evaluation, or care.

(2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for the person for a period of more than 30 days, the court ordering the commitment or imposing the community treatment plan may make an order stating specifically any legal rights that are denied and any legal disabilities that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion of the commitment or expiration of the order imposing the community treatment plan if not previously terminated by the court. A conservatorship or guardianship extending beyond the period of the commitment or order imposing a community treatment plan may not be created except according to the procedures set forth under Montana law for the appointment of conservators and guardians generally.

(3) A person who has been committed to the custody of the department of public health and human services for placement in a residential facility or for whom a community treatment plan has been imposed pursuant to this part is, upon the termination of the commitment or expiration of the order imposing the community treatment plan, automatically restored to all of the person's civil and legal rights that may have been lost when the person was committed or the community treatment plan was imposed. However, this subsection does not affect any guardianship or conservatorship created independently of the proceedings

according to the provisions of Montana law relating to the appointment of conservators and guardians generally. Upon termination of any commitment or order imposing a community treatment plan under this part, the qualified mental retardation professional or case manager in charge of the person's care shall give the person a written statement setting forth the substance of this subsection."

{Internal References to 53-20-141:
72-5-602x}

Section 27. Section 53-20-146, MCA, is amended to read:

"53-20-146. Right not to be subjected to certain treatment procedures. (1) Residents of a residential facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

(2) Physical restraint may be employed only when absolutely necessary to protect the resident from injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be employed as punishment, for the convenience of staff, or as a substitute for

a habilitation program. Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional, or a qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort and physical needs of the resident restrained.

(3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic purposes, may not be employed. Legitimate "time out" procedures may be used under close and direct professional supervision as a technique in behavior-shaping programs.

(4) Behavior modification programs involving the use of noxious or aversive stimuli must be reviewed and approved by the mental disabilities board of visitors and may be conducted only with the express and informed consent of the affected resident, if the resident is able to give consent, and of the resident's parents or guardian or the responsible person appointed by the court after opportunities for consultation with independent specialists and with legal counsel. These behavior modification programs may be conducted only under the supervision of and in the presence of a qualified mental retardation professional who has had proper training.

(5) A resident may not be subjected to a behavior

modification program that attempts to extinguish socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only institutional convenience.

(6) Electric shock devices are considered a research technique for the purpose of this part. Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading to repeated and possibly permanent physical damage to the resident and only after alternative techniques have failed. The use of electric shock devices is subject to the conditions prescribed by this part for experimental research generally and may be used only under the direct and specific order of a physician and ~~superintendent of~~ the an individual designated by the department of public health and human services to order the treatment for an individual placed in a residential facility."

{Internal References to 53-20-146: None.x}

Section 28. Section 53-20-148, MCA, is amended to read:

"53-20-148. Right to habilitation. (1) Persons admitted to residential facilities have a right to habilitation, including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation, or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize that each resident, regardless of ability or status, is entitled to develop and

realize the resident's fullest potential. The facility shall implement the principle of normalization so that each resident may live as normally as possible.

(2) Residents have a right to the least restrictive conditions necessary to achieve the purposes of habilitation. To this end, the facility shall make every attempt to move residents from:

- (a) more to less structured living;
- (b) larger to smaller facilities;
- (c) larger to smaller living units;
- (d) group to individual residences;
- (e) segregated from the community to integrated into the community living;
- (f) dependent to independent living.

(3) Within 30 days of admission to a residential facility, each resident must have an evaluation by appropriate specialists for programming purposes.

(4) Each resident must have an individualized habilitation plan formulated by an individual treatment planning team. This plan must be implemented as soon as possible, but no later than 30 days after the resident's admission to the facility. An interim program of habilitation, based on the preadmission evaluation conducted pursuant to this part, must commence promptly upon the resident's admission. Each individualized habilitation plan must contain:

- (a) a statement of the nature of the specific limitations and the needs of the resident;

(b) a description of intermediate and long-range habilitation goals, with a projected timetable for their attainment;

(c) a statement of and an explanation for the plan of habilitation for achieving these intermediate and long-range goals;

(d) a statement of the least restrictive setting for habilitation necessary to achieve the habilitation goals of the resident;

(e) a specification of the professionals and other staff members who are responsible for the particular resident's attaining these habilitation goals;

(f) criteria for release to less restrictive settings for habilitation, based on the resident's needs, including criteria for discharge and a projected date for discharge.

(5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan that includes an identification of services needed to make a satisfactory community placement possible. This plan must be developed by the individual treatment planning team that shall begin preparation of the plan upon the resident's admission to the facility and shall complete the plan as soon as practicable. The parents or guardian or next of kin of the resident, the responsible person appointed by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of the plan and must be informed of the content of the plan.

(6) In the interests of continuity of care, one qualified mental retardation professional shall whenever possible be responsible for supervising the implementation of the habilitation plan, integrating the various aspects of the habilitation program, and recording the resident's progress as measured by objective indicators. The qualified mental retardation professional is also responsible for ensuring that the resident is released when appropriate to a less restrictive habilitation setting.

(7) The habilitation plan must be reviewed monthly by the qualified mental retardation professional responsible for supervising the implementation of the plan and must be modified if necessary. In addition, 6 months after admission and at least annually thereafter, each resident must receive a comprehensive psychological, social, habilitative, and medical diagnosis and evaluation and the resident's habilitation plan must be reviewed and revised accordingly by the individual treatment planning team. A habilitation plan must be reviewed monthly.

(8) Each resident placed in the community must receive transitional habilitation assistance.

(9) ~~The superintendent of the residential facility, or the superintendent's designee,~~ A residential facility shall report in writing to the parents or guardian of the resident or the responsible person at least every 6 months on the resident's habilitation and medical condition. The report must also state any appropriate habilitation program that has not been afforded to the resident because of inadequate habilitation resources.

(10) Each resident, the parents or guardian of each resident, and the responsible person appointed by the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning the care and habilitation of the resident that may be available to assist them in understanding the situation of the resident and the rights of the resident in the facility."

{Internal References to 53-20-148: None.x}

Section 29. Section 53-20-161, MCA, is amended to read:

"53-20-161. Maintenance of records. (1) Complete records for each resident must be maintained and must be readily available to persons who are directly involved with the particular resident and to the mental disabilities board of visitors. All information contained in a resident's records must be considered privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any person properly authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's parents or guardian or the responsible person must be permitted access to the resident's records. Information may not be released from the records of a resident or former resident of the residential facility unless the release of the information has been properly authorized in writing by:

(a) the court;

(b) the resident or former resident if the resident or former resident is over the age of majority and is capable of giving informed consent;

(c) the parents or guardian in charge of a resident under the age of 12;

(d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority and the resident if the resident is capable of giving informed consent;

(e) the guardian of a resident over the age of majority who is incapable of giving informed consent; or

~~(f) the superintendent of the residential facility or the superintendent's designee as custodian of a resident over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;~~

~~(g) the superintendent of the residential facility or the superintendent's designee as custodian of a resident under the age of majority for whom there is no parent or legal guardian; or~~

~~(h) the superintendent of the residential facility or the superintendent's designee as custodian of a resident of that facility whenever release is required by federal or state law or department of public health and human services rules~~

(f) a residential facility, through an individual designated by the department of public health and human services by rule, when the facility is the custodian of a resident:

(i) over the age of majority who is incapable of giving informed consent and for whom no legal guardian has been appointed;

_____ (ii) under the age of majority for whom there is no parent or legal guardian; or

_____ (iii) of the facility whenever release is required by federal or state law or department of public health and human services rules.

(2) Information may not be released by ~~a superintendent or the superintendent's designee as set forth~~ a residential facility as provided in subsection (1) (f), ~~(1) (g), or (1) (h)~~ less than 15 days after sending notice of the proposed release of information to the resident, the resident's parents or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, the resident's advocate, if any, and the court that ordered the admission. If any of the parties ~~so~~ notified under this subsection (2) objects to the release of information, they may petition the court for a hearing to determine whether the release of information should be allowed. Information may not be released pursuant to subsection (1) (f), ~~(1) (g), or (1) (h)~~ unless it is released to further ~~some~~ a legitimate need of the resident or to accomplish a legitimate purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may not be released pursuant to subsection (1) (f), ~~(1) (g), or (1) (h)~~ except in accordance with written policies consistent with the requirements of this part adopted by the facility. Persons receiving notice of a proposed release of information must also receive a copy of the written policy of the facility governing release of information.

(3) These records must include:

- (a) identification data, including the resident's legal status;
- (b) the resident's history, including but not limited to:
 - (i) family data, educational background, and employment record;
 - (ii) prior medical history, both physical and mental, including prior institutionalization;
- (c) the resident's grievances, if any;
- (d) an inventory of the resident's life skills, including mode of communication;
- (e) a record of each physical examination that describes the results of the examination;
- (f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate summary to guide and assist the resident care workers in implementing the resident's habilitation plan;
- (g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes and failures of the habilitation program and whatever modifications are necessary;
- (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the community and any modifications to the postinstitutionalization plan and a summary of the steps that have been taken to implement that plan;
- (i) a medication history and status;
- (j) a summary of each significant contact by a qualified mental retardation professional with a resident;

(k) a summary of the resident's response to the resident's habilitation plan, prepared by a qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly. Wherever possible, the response must be scientifically documented.

(l) a monthly summary of the extent and nature of the resident's work activities and the effect of the activity upon the resident's progress in the habilitation plan;

(m) a signed order by a qualified mental retardation professional or physician for any physical restraints;

(n) a description of any extraordinary incident or accident in the facility involving the resident, to be entered by a staff member noting personal knowledge of the incident or accident or other source of information, including any reports of investigations of the resident's mistreatment;

(o) a summary of family visits and contacts;

(p) a summary of attendance and leaves from the facility;

(q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and immunizations."

{Internal References to 53-20-161: None.x}

Section 30. Section 53-20-163, MCA, is amended to read:

"53-20-163. Abuse of residents prohibited. (1) Every residential facility shall prohibit mistreatment, neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the ~~superintendent of the facility~~

department of public health and human services and to a representative of the residential facility as designated by the department by rule, and there must be a written record that:

(a) each alleged violation has been thoroughly investigated and findings stated; and

(b) the investigation into the alleged violation was initiated within 24 hours of the report of the incident and the results were reported to the director of the department of public health and human services.

(2) The reports must also be made to the mental disabilities board of visitors monthly. Each facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to all staff members."

{Internal References to 53-20-163: None.x}

Section 31. Section 53-20-214, MCA, is amended to read:

"53-20-214. Certain transfers of funds authorized. Funds appropriated to the Montana state hospital or Montana developmental center may be ~~transferred by budget amendment as provided in appropriation acts and with the approval of the governor to the department of public health and human services~~ used for comprehensive developmental disability systems if:

(1) residents of any of those institutions are transferred to a comprehensive developmental disability system resulting in less expenditures at that institution than allowed by legislative appropriation; and

(2) a transfer of appropriations between programs is:

_____ (a) made as provided in 17-7-139; and

_____ (b) approved by the governor."

{Internal References to 53-20-214: None.x}

COORDINATION SECTION. **Section 32. Coordination**

instruction. If both House Bill No. 2 and [this act] are passed and approved and House Bill No. 2 contains an appropriation for the Disability Services Division of the Department of Public Health and Human Services, then House Bill No. 2 is amended to include the following language for the Disability Services Division appropriation: "The appropriation for the Disability Services Division may be used to fund additional community-based facilities and services to accommodate individuals who are at or would otherwise be placed at the Montana developmental center."

NEW SECTION. **Section 33. {standard} Effective date.** [This act] is effective on passage and approval.

- END -

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