

## 1 SENATE BILL NO. 254

2 INTRODUCED BY M. CAFERRO

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT APPOINTING A TEMPORARY TRANSITION PLANNING  
5 COMMITTEE TO DEVELOP A PLAN TO CLOSE THE MONTANA DEVELOPMENTAL CENTER; REQUIRING  
6 THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO IMPLEMENT THE PLAN BY MOVING  
7 RESIDENTS INTO COMMUNITY-BASED FACILITIES AND SERVICES; PROVIDING GUIDELINES FOR THE  
8 TRANSITION PLAN; ESTABLISHING THE DEPARTMENT'S DUTIES; REQUIRING THAT EXCESS FACILITY  
9 REVENUE BE PAID TOWARD THE REMAINDER OF THE PRINCIPAL AND INTEREST OF THE LOAN FOR  
10 THE MONTANA DEVELOPMENTAL CENTER; AMENDING SECTIONS 3-5-901, 20-7-401, 46-14-221,  
11 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,  
12 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,  
13 53-20-148, 53-20-161, 53-20-163, 53-20-214, AND 90-7-220, MCA; AND PROVIDING AN IMMEDIATE  
14 EFFECTIVE DATE."

15

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

17

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

22 (1) in conjunction with the transition planning committee established in [section 2], develop and  
23 implement a plan to close the Montana developmental center under the guidelines established in [sections 1  
24 through 5];

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

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

30 (4) identify alternatives to the Montana developmental center for residents who need a secure placement

1 in a treatment facility when that need cannot be met by community-based facilities or services;

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

5 (6) complete the transition of as many residents as possible out of the Montana developmental center  
6 and into community-based facilities or services by December 31, 2014, with no more than 12 residents remaining  
7 at the facility by this date. As part of this transition, the legislature intends for the department to:

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

11 (b) work with community providers to develop necessary facilities and services.

12

13 **NEW SECTION. Section 2. Transition planning committee -- membership -- duties.** (1) There is  
14 a transition planning committee to develop a plan for the department of public health and human services to follow  
15 in carrying out the purposes of [sections 1 through 5].

16 (2) The committee consists of 15 members appointed no later than July 1, 2013, as follows:

17 (a) two members of the Montana senate appointed by the senate committee on committees and each  
18 representing a different political party;

19 (b) two members of the Montana house of representatives appointed by the speaker and each  
20 representing a different political party;

21 (c) one representative of the department of public health and human services;

22 (d) one representative of the department of corrections;

23 (e) one representative of the state protection and advocacy program for individuals with development  
24 disabilities as authorized by 42 U.S.C. 15043(a)(2);

25 (f) two representatives of providers of community-based facilities and community-based services;

26 (g) two family members or guardians of individuals who are committed to the Montana developmental  
27 center or who were committed within the previous 20 years;

28 (h) two labor union members;

29 (i) one representative of the mental disabilities board of visitors; and

30 (j) one representative of the Montana council on developmental disabilities.

1 (3) The governor shall appoint the committee members described in subsections (2)(c) through (2)(j).

2 (4) (a) Legislative members of the committee are entitled to receive compensation as provided in  
3 5-2-302.

4 (b) Committee members who are full-time salaried employees of the state are entitled to reimbursement  
5 for expenses as provided in 2-18-501 through 2-18-503.

6 (5) The committee shall develop a plan to close the Montana developmental center under the guidelines  
7 established in [sections 1 through 5]. The committee shall complete the transition plan by July 1, 2014.

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

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

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

13 (c) ways in which community-based facilities or services that are necessary but unavailable may be  
14 developed;

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

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

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

20 (7) The committee shall meet at least quarterly.

21 (8) The committee must be disbanded no later than June 30, 2015.

22

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

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

30

1            **NEW SECTION. Section 4. Elements of transition plan.** (1) The transition plan developed by the  
2 transition planning committee must:

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

5            (i) psychiatric services;

6            (ii) crisis stabilization and assessment services;

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

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

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

13           (b) analyze the cost of developing and providing the necessary community-based facilities and services  
14 using a cost-based reimbursement methodology;

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

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

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

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

21           (i) a court determines that the individual is in need of commitment to the custody of the department of  
22 public health and human services for placement in a residential facility under the provisions of Title 53, chapter  
23 20, part 1; or

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

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

27

28           **NEW SECTION. Section 5. Implementation of transition plan.** (1) In carrying out [sections 1 through  
29 5], the department of public health and human services shall:

30           (a) apply for any necessary medicaid waivers, including both existing and new waivers, to offset the costs

- 1 of transition planning, the discharge process, and community services for former residents of the Montana  
2 developmental center;
- 3 (b) develop new community-based facilities and community-based services as needed;
- 4 (c) designate by rule the criteria for a community-based facility to serve as a residential facility for the  
5 purposes of Title 53, chapter 20, part 1, or Title 46, chapter 14;
- 6 (d) review and approve or deny applications from community-based facilities seeking designation as a  
7 residential facility;
- 8 (e) ensure that a facility designated as a residential facility:
- 9 (i) has a staff-to-resident ratio that will provide for the safety of both staff and residents;
- 10 (ii) is located in a community with access to a sufficient number of health care providers who are able to:
- 11 (A) treat mental illness;
- 12 (B) prescribe and monitor psychiatric medications;
- 13 (C) conduct clinical assessments, including specialized assessments; and
- 14 (D) provide other specialized services and supports as needed;
- 15 (f) provide each district court with a list of residential facilities as defined in 53-20-102;
- 16 (g) identify available funds and transfer funds as necessary to develop appropriate community-based  
17 facilities or community-based services for individuals who would otherwise be committed to the Montana  
18 developmental center;
- 19 (h) develop any additional legislation necessary to carry out the purposes of [sections 1 through 5] for  
20 presentation to the 64th legislature in 2015;
- 21 (i) present budget proposals to the 64th legislature that may be needed to carry out the purposes of  
22 [sections 1 through 5]; and
- 23 (j) begin moving residents out of the Montana developmental center and into community-based facilities  
24 as soon as appropriate community services are available and no later than September 15, 2014. To the greatest  
25 extent possible, the department shall complete the move of residents out of the center and into community-based  
26 facilities or services before December 31, 2014, with no more than 12 residents remaining at the center by this  
27 date.
- 28 (2) (a) If the department determines that a need will remain for a state-operated facility to serve some  
29 seriously developmentally disabled adults, the department shall:
- 30 (i) specify the reasons for that determination;

1 (ii) estimate the number of individuals to be served annually by a state-operated facility; and  
 2 (iii) evaluate the costs and benefits of providing treatment and habilitation at various state-operated  
 3 facilities, including a facility that may remain on the Montana developmental center campus and facilities at other  
 4 locations.

5 (b) The evaluation required under subsection (2)(a) must include a review of barriers to treatment at  
 6 facilities other than the Montana developmental center and the changes that could be made at those facilities to  
 7 allow for treatment of individuals who are currently committed to the Montana developmental center.

8 The department shall report on the findings of the evaluation.

9

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

11 **"3-5-901. State assumption of district court expenses.** (1) There is a state-funded district court  
 12 program under the judicial branch. Under this program, the office of court administrator shall fund all district court  
 13 costs, except as provided in subsection (3). These costs include but are not limited to the following:

14 (a) salaries and benefits for:

15 (i) district court judges;

16 (ii) law clerks;

17 (iii) court reporters, as provided in 3-5-601;

18 (iv) juvenile probation officers, youth division offices staff, and assessment officers of the youth court; and

19 (v) other employees of the district court;

20 (b) in criminal cases:

21 (i) fees for transcripts of proceedings, as provided in 3-5-604;

22 (ii) witness fees and necessary expenses, as provided in 46-15-116;

23 (iii) juror fees and necessary expenses;

24 (iv) for a psychiatric examination under 46-14-202, the cost of the examination and other associated  
 25 expenses, as provided in 46-14-202(4); and

26 (v) for commitment under 46-14-221, the cost of transporting the defendant to the custody of the director  
 27 of the department of public health and human services to be placed in an appropriate facility of the department  
 28 of public health and human services and of transporting the defendant back for any proceedings, as provided in  
 29 46-14-221(5);

30 (c) except as provided in 47-1-201(5), the district court expenses in all postconviction proceedings held

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

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

5 (i) transcript fees;

6 (ii) witness fees; and

7 (iii) expenses for psychiatric examinations;

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

11 (i) transcript fees;

12 (ii) witness fees;

13 (iii) expenses for medical and psychological evaluation of a youth or the youth's parent, guardian, or other  
14 person having physical or legal custody of the youth except for expenses for services that a person is eligible to  
15 receive under a public program that provides medical or psychological evaluation;

16 (iv) expenses associated with appointment of a guardian ad litem or child advocate for the youth; and

17 (v) expenses associated with court-ordered alternative dispute resolution;

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

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

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

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

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

30 (2) If a cost is not paid directly by the office of court administrator, the county shall pay the cost and the

1 office of court administrator shall reimburse the county within 30 days of receipt of a claim.

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

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

6 (b) costs of providing and maintaining district court office space; or

7 (c) charges incurred against a county by virtue of any provision of Title 7 or 46."  
8

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

10 **"20-7-401. Definitions.** In this title, unless the context clearly indicates otherwise, the following  
11 definitions apply:

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

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

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

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

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

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

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

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

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

30 (6) "Surrogate parent" means an individual appointed to safeguard a child's rights and protect the child's



1 interests in educational evaluation, placement, and hearing or appeal procedures concerning the child."

2

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

4 **"46-14-221. Determination of fitness to proceed -- effect of finding of unfitness -- expenses.** (1)

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

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

18 (b) The facility shall develop an individualized treatment plan to assist the defendant to gain fitness to  
19 proceed. The treatment plan may include a physician's prescription of reasonable and appropriate medication  
20 that is consistent with accepted medical standards. If the defendant refuses to comply with the treatment plan,  
21 the facility may petition the court for an order requiring compliance. The defendant has a right to a hearing on the  
22 petition. The court shall enter into the record a detailed statement of the facts upon which an order is made, and  
23 if compliance with the individualized treatment plan is ordered, the court shall also enter into the record specific  
24 findings that the state has proved an overriding justification for the order and that the treatment being ordered  
25 is medically appropriate.

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

30 (b) If the court determines that the defendant lacks fitness to proceed because the defendant has a

1 mental disorder, the proceeding against the defendant must be dismissed and the prosecutor shall petition the  
2 court in the manner provided in Title 53, chapter 21, to determine the disposition of the defendant pursuant to  
3 those provisions.

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

8 (4) The fact that the defendant is unfit to proceed does not preclude any legal objection to the  
9 prosecution that is susceptible to fair determination prior to trial and that is made without the personal participation  
10 of the defendant.

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

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

19

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

21 **"46-23-201. Prisoners eligible for nonmedical parole -- rulemaking.** (1) Subject to the restrictions  
22 contained in subsections (2) through (5) and when in the board's opinion there is reasonable probability that a  
23 prisoner can be released without detriment to the prisoner or to the community, the board may release on  
24 nonmedical parole by appropriate order any person who is:

25 (a) confined in a state prison;

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

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

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

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

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

6 (4) A prisoner serving a life sentence may not be paroled under this section until the prisoner has served  
 7 30 years.

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

11 (6) If a hearing panel denies parole, it may order that the prisoner serve up to 6 years before a hearing  
 12 panel conducts another hearing or review. The board shall adopt by administrative rule a process by which a  
 13 prisoner may request an earlier hearing or review."  
 14

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

16 **"50-19-204. Department and ~~Montana developmental center~~ to furnish assistance when**  
 17 **requested.** (1) The department and the staff of the ~~Montana developmental center~~ a residential facility as defined  
 18 in 53-20-102 and as designated by the department shall make available and furnish, when requested, any  
 19 assistance and services permitted by law to achieve the legislative intent of this part.

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

23 (3) The department may determine procedures for coordination with the ~~Montana developmental center~~  
 24 designated residential facility in providing the services and assistance required in this part."  
 25

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

27 **"53-1-402. Residents and financially responsible persons liable for cost of care.** (1) A resident and  
 28 a financially responsible person are liable to the department for the resident's cost of care as provided in this part.  
 29 The cost of care includes the applicable per diem and ancillary charges or all-inclusive rate charges for the care  
 30 of residents in the following institutions:

- 1 (a) Montana state hospital;
- 2 (b) ~~Montana developmental center~~ a residential facility as defined in 53-20-102;
- 3 (c) Montana veterans' home;
- 4 (d) eastern Montana veterans' home;
- 5 (e) southwestern Montana veterans' home;
- 6 (f) Montana mental health nursing care center; and
- 7 (g) Montana chemical dependency treatment center.

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

11 (3) The Montana state hospital and the Montana mental health nursing center may determine the cost  
12 of care using an all-inclusive rate or per diem and ancillary charges if the department contracts with a private  
13 entity to operate a mental health managed care program."  
14

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

16 **"53-1-602. Department of public health and human services.** (1) The following components are in  
17 the department of public health and human services to carry out the purposes of the department:

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

20 (i) the Montana state hospital; and

21 (ii) the Montana mental health nursing care center;

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

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

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

30 (e) the veterans' nursing homes for the nursing home and domiciliary care of honorably discharged

1 veterans as provided by law, consisting of:

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

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

7

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

9 **"53-20-102. Definitions.** As used in this part, unless the context requires otherwise, the following  
 10 definitions apply:

11 (1) ~~(a)~~ "Available" means:

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

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

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

16 ~~(b) A service is not available simply because similar services are offered by one or more providers in one~~  
 17 ~~or more locations to other individuals or because the person has been placed on a waiting list for services or~~  
 18 ~~funding an appropriate community services plan has been submitted by an identified and qualified provider and~~  
 19 ~~has been verified and approved by the department of public health and human services.~~

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

22 (3) "Case manager" means a person who is responsible for service coordination, planning, and crisis  
 23 intervention for persons who are eligible for community-based developmental disability services from the  
 24 department of public health and human services.

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

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

1           **(b) The term includes community-based facilities designated as residential facilities by the department**  
2 **of public health and human services.**

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

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

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

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

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

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

10          (a) is attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically  
11 disabling condition closely related to mental retardation;

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

13          (c) originated before the individual attained age 18;

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

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

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

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

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

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

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

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

29          **(a) a state-owned and operated facility determined by the department of public health and human**  
30 **services to provide the secure setting required for a person committed to the custody of the department for**

1 placement in a residential facility; or

2 (b) a community-based facility designated by the department as a facility able to meet the needs of a  
3 person committed to the custody of the department for placement in a residential facility.

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

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

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

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

14 (a) has a developmental disability;

15 (b) is impaired in cognitive functioning; and

16 (c) cannot be safely and effectively habilitated through voluntary use of community-based services  
17 because of behaviors that pose an imminent risk of serious harm to self or others."

18

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

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

24 (2) The board shall review all plans for experimental research or hazardous treatment procedures  
25 involving persons committed to the custody of the department for placement in a residential facility to ensure that  
26 the research project is humane and not unduly hazardous and that it complies with the principles of the statement  
27 on the use of human subjects for research of the American association on mental deficiency and with the  
28 principles for research involving human subjects required by the United States department of health and human  
29 services. An experimental research project involving ~~persons committed to a residential facility~~ residents affected  
30 by this part may not ~~be commenced~~ begin unless it is approved by the mental disabilities board of visitors.

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

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

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

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

11 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard to its  
12 physical facilities or its treatment of a resident, it shall report its findings at once to the ~~superintendent of individual~~  
13 responsible for the facility and the director of the department of public health and human services. If appropriate,  
14 after waiting a reasonable time for a response from the ~~superintendent individual~~ or the director, the board may  
15 notify the parents or guardian of the resident involved, the next of kin, if known, the responsible person appointed  
16 by the court for the resident involved, and the district court that has jurisdiction over the facility.

17 (8) The board shall report annually to the governor concerning the status of the residential facilities and  
18 habilitation programs that it has inspected."  
19

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

21 **"53-20-118. Venue for hearing.** (1) Except as provided in 53-20-129, hearings held pursuant to this part  
22 must be held in the district court for the district in which:

23 (a) the respondent resides; or

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

26 (2) The cost of any hearing held pursuant to this part must be borne by the county where the respondent  
27 resides."  
28

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

30 **"53-20-121. Petition for involuntary treatment -- contents of.** (1) A person who believes that there



1 is a person who is seriously developmentally disabled and in need of ~~commitment to a residential facility or~~  
 2 imposition of a community treatment plan or commitment to the department of public health and human services  
 3 for placement in a residential facility may request the county attorney to file a petition alleging that the person is  
 4 seriously developmentally disabled and in need of commitment ~~to a residential facility~~ or imposition of a  
 5 community treatment plan.

6 (2) The petition must contain:

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

8 (b) the name and address of the respondent;

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

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

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

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

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

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

20 (4) The county attorney shall immediately mail a copy of the petition to the residential facility screening  
 21 team, the respondent's parents or guardian, if any, and the respondent's counsel. The county attorney shall  
 22 ensure that the petition is promptly hand-delivered to the respondent."  
 23

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

25 **"53-20-125. Outcome of screening -- recommendation for commitment to residential facility or**  
 26 **imposition of community treatment plan -- hearing.** (1) A court may ~~commit a person to a residential facility~~  
 27 ~~or~~ impose a community treatment plan or commit a person to the custody of the department of public health and  
 28 human services for placement in a residential facility only if the person:

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

30 (b) is determined to be seriously developmentally disabled and in need of commitment to ~~a residential~~

1 facility the custody of the department or imposition of a community treatment plan by the residential facility  
 2 screening team, as provided in 53-20-133, and by a court, as provided in 53-20-129 or in this section.

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

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

10 ~~(3)~~(4) Notice of the determination of the residential facility screening team must be mailed or delivered  
 11 to:

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

20 ~~(4)~~(5) The respondent, the respondent's parents or guardian, the responsible person, the respondent's  
 21 advocate, if any, or the attorney for any party may request that a hearing be held on the recommendation of the  
 22 residential facility screening team. The request for a hearing must be made in writing within 15 days of service  
 23 of the report.

24 ~~(5)~~(6) Notice of the hearing must be mailed or delivered to each of the parties listed in subsection ~~(4)~~ (5).

25 ~~(6)~~(7) The hearing must be held before the court without jury. The rules of civil procedure apply.

26 ~~(7)~~(8) Upon receiving the report of the residential facility screening team and after a hearing, if one is  
 27 requested, the court shall enter findings of fact and take one of the following actions:

- 28 (a) If both the residential facility screening team and the court find that the respondent is seriously  
 29 developmentally disabled and in need of commitment to a residential facility, the court shall order the respondent  
 30 committed to the custody of the department of public health and human services for placement in a residential

1 facility for an extended course of treatment and habilitation.

2 (b) If both the residential facility screening team and the court find that the respondent is seriously  
3 developmentally disabled but either the residential facility screening team or the court finds that a less restrictive  
4 community treatment plan has been proposed, the court may impose a community treatment plan that meets the  
5 conditions set forth in 53-20-133(4). If the court finds that a community treatment plan proposed by the parties  
6 or recommended by the residential facility screening team does not meet the conditions set forth in 53-20-133(4),  
7 it may order the respondent committed to the custody of the department for placement in a residential facility. The  
8 court may not impose a community treatment plan unless the residential facility screening team certifies that all  
9 services in the proposed plan meet the conditions of 53-20-133(4)(c) and (4)(d).

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

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

17 ~~(8)(9)~~ (a) If the residential facility screening team recommends ~~commitment to a residential facility or~~  
18 imposition of a community treatment plan or commitment to the department for placement in a residential facility  
19 and none of the parties notified of the recommendation request a hearing within 15 days of service of the  
20 screening team's report, the court may:

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

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

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

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

28 (c) If the court commits the respondent to the custody of the department for placement in a residential  
29 facility, the court may recommend that the respondent be placed in a specific residential facility based on the  
30 recommendation of the residential facility screening team and a list provided to the court by the department. The

1 department shall consider the recommendation when determining the respondent's placement.

2       ~~(9)~~(10) The court may refuse to authorize commitment of a respondent to the custody of the department  
3 of public health and human services for placement in a residential facility for an extended period of treatment and  
4 habilitation if commitment is not in the best interests of the respondent.

5       ~~(10)~~(11) A court order entered in a proceeding under this part must be provided to the residential facility  
6 screening team."

7

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

9       **"53-20-126. Maximum period of commitment or treatment plan.** The court order approving ~~the~~  
10 ~~commitment to a residential facility or the imposition of the community treatment plan or commitment to the~~  
11 custody of the department of public health and human services for placement in a residential facility must specify  
12 the maximum period of time for which the person is committed or for which a community treatment plan is  
13 imposed. The maximum period may not exceed 1 year."

14

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

16       **"53-20-127. Transfer to another facility -- release to community-based alternative -- hearing.** (1)  
17 If, at any time during the period for which a resident is committed to the custody of the department of public health  
18 and human services for placement in a residential facility for an extended period of habilitation and treatment, the  
19 qualified mental retardation professional responsible for the resident's habilitation decides that the resident no  
20 longer requires placement in a residential facility and that there exist sufficient community-based alternatives to  
21 provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety  
22 of the resident and others, the qualified mental retardation professional may release the resident to the  
23 community-based alternative.

24       (2) Notice of the proposed release must be sent at least 15 days prior to the date of release to:

- 25       (a) the resident;
- 26       (b) the resident's parents or guardian;
- 27       (c) the attorney who most recently represented the resident, if any;
- 28       (d) the responsible person appointed by the court, if any;
- 29       (e) the resident's advocate, if any; and
- 30       (f) the court that ordered the commitment.

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

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

9 (5) If a person is committed to the custody of the department of public health and human services for  
10 placement in a residential facility for an extended course of habilitation without a hearing and if subsequent to  
11 commitment one of the parties who could have requested a hearing learns that an alternative course of treatment  
12 is available that is more suitable to the needs of the resident, the party may request the qualified mental  
13 retardation professional responsible for the resident's habilitation to release the resident to the alternative if it is  
14 a community-based alternative. A release must comply with the requirements of subsections (1) through (4). If  
15 the qualified mental retardation professional in charge of the resident refuses to authorize the release, the party  
16 may petition the court for a hearing to determine whether the resident's commitment should be continued. The  
17 hearing must comply with the procedures set forth in 53-20-125."

18

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

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

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

26 (3) A petition for recommitment or extension of a community treatment plan must be accompanied by  
27 a written report containing the recommendation of the qualified mental retardation professional or case manager  
28 and a summary of the current habilitation plan or community treatment plan for the respondent.

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

30 (5) Copies of the petition for recommitment and the report of the qualified mental retardation professional

1 or case manager must be sent to:

2 (a) the court that issued the current order;

3 (b) the residential facility screening team;

4 (c) the resident;

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

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

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

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

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

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

14 (8) ~~The court may not order recommitment to~~ If the court orders recommitment to the custody of the  
15 department of public health and human services, the department may not place the respondent in a residential  
16 facility that does not have an individualized habilitation plan for the resident.

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

20

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

22 **"53-20-129. Emergency admission and commitment.** (1) A person believed to be seriously  
23 developmentally disabled may be admitted to a residential facility or a temporary court-ordered community  
24 treatment plan may be imposed on an emergency basis without notice to the person or approval by the residential  
25 facility screening team when necessary to protect the person or others from death or serious bodily injury, as  
26 defined in 45-2-101.

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

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

1 the developmental disabilities professional responsible for emergency admission.

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

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

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

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

14 (8) A court may order an emergency commitment or continue a temporary community treatment plan  
15 only when the residential facility screening team has recommended and the court has determined that the  
16 emergency commitment or continued imposition of a community treatment plan is necessary to protect the  
17 respondent or others from death or serious bodily injury, as defined in 45-2-101. Any temporary community  
18 treatment plan must meet the conditions set forth in 53-20-133(4).

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

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

25 (a) imposition of a community treatment plan; or as provided in 53-20-121 has been filed

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

28

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

30 **"53-20-130. Patient transfers from mental health facilities.** If a person is a patient in a mental health

1 facility and the professional person, as defined in 53-21-102, in charge of the patient determines that the patient  
 2 is suffering from a developmental disability rather than mental illness and should more properly be committed to  
 3 the custody of the department of public health and human services for placement in a residential facility or an  
 4 appropriate less restrictive alternative, the professional person shall commence proceedings to effect a  
 5 commitment, consistent with the procedures set forth in this part for commitments generally."  
 6

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

8 **"53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When  
 9 the district court receives a petition under this part ~~for commitment to a residential facility or~~ for imposition of a  
 10 community treatment plan or commitment to the custody of the department of public health and human services  
 11 for placement in a residential facility ~~under this part~~, the court, prior to proceeding, shall refer the respondent to  
 12 the residential facility screening team for screening to determine whether commitment to ~~a residential facility~~ the  
 13 custody of the department or imposition of a community treatment plan is appropriate for the respondent.

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

18 (3) The residential facility screening team may not determine that commitment to ~~a residential facility~~ the  
 19 custody of the department or imposition of a community treatment plan is appropriate on an extended basis  
 20 unless the residential facility screening team determines that the respondent is seriously developmentally  
 21 disabled.

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

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

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

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

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



1 (5) For purposes of this part, the department of public health and human services shall adopt rules  
2 providing for the membership and terms of the members of the residential facility screening team and setting forth  
3 the criteria and procedures to govern the determinations made by the residential facility screening team."  
4

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

6 **"53-20-134. Court records to be kept separate -- sealed -- names omitted.** Records and papers in  
7 proceedings under this part must be maintained separately by each clerk of court. Five days prior to the release  
8 of a respondent or resident committed to the custody of the department of public health and human services for  
9 placement in a residential facility, the facility shall notify the appropriate clerk of court, and the clerk shall  
10 immediately seal the record in the case and omit the name of the respondent or resident from the index or  
11 indexes of cases in the court unless the court orders the record opened for good cause shown."  
12

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

14 **"53-20-140. Amendment to commitment order or treatment plan -- emergency amendment.** (1) A  
15 community treatment plan ordered pursuant to 53-20-125 or 53-20-128 may be amended with the consensus of  
16 the respondent's individual treatment planning team, including the respondent, without further order of the court.  
17 The amended plan must meet the conditions set forth in 53-20-133(4).

18 (2) An order of commitment to the custody of the department of public health and human services for  
19 placement in a residential facility may be amended to an order imposing a community treatment plan with the  
20 consensus of the respondent's individual treatment planning team, including the respondent, and the court shall  
21 issue an order imposing the agreed-upon community treatment plan. The community treatment plan must meet  
22 the conditions set forth in 53-20-133(4).

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

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

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

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

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

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

9 (6) If the court finds probable cause to believe that the respondent or others are in imminent risk of death  
10 or serious bodily injury, as defined in 45-2-101, the court may order a temporary amendment to a community  
11 treatment plan, for a period of up to 7 calendar days, without notice to the respondent. A hearing must be  
12 scheduled within the 7-day period of the temporary amendment. Any temporarily amended community treatment  
13 plan must meet the conditions set forth in 53-20-133(4). The court may not amend a community treatment plan  
14 for an extended period unless the residential facility screening team certifies that all services in the proposed  
15 amended plan meet the conditions of 53-20-133(4)(c) and (4)(d). The court may not order emergency  
16 commitment to the custody of the department of public health and human services for placement in a residential  
17 facility except through the process set forth in 53-20-129."  
18

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

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

25 (2) Whenever a person is admitted to a residential facility or a community treatment plan is imposed for  
26 the person for a period of more than 30 days, the court ordering the commitment or imposing the community  
27 treatment plan may make an order stating specifically any legal rights that are denied and any legal disabilities  
28 that are imposed on the respondent. As part of its order, the court may appoint a person to act as conservator  
29 of the respondent's property. Any conservatorship created pursuant to this section terminates upon the conclusion  
30 of the commitment or expiration of the order imposing the community treatment plan if not previously terminated

1 by the court. A conservatorship or guardianship extending beyond the period of the commitment or order  
2 imposing a community treatment plan may not be created except according to the procedures set forth under  
3 Montana law for the appointment of conservators and guardians generally.

4 (3) A person who has been committed to the custody of the department of public health and human  
5 services for placement in a residential facility or for whom a community treatment plan has been imposed  
6 pursuant to this part is, upon the termination of the commitment or expiration of the order imposing the community  
7 treatment plan, automatically restored to all of the person's civil and legal rights that may have been lost when  
8 the person was committed or the community treatment plan was imposed. However, this subsection does not  
9 affect any guardianship or conservatorship created independently of the proceedings according to the provisions  
10 of Montana law relating to the appointment of conservators and guardians generally. Upon termination of any  
11 commitment or order imposing a community treatment plan under this part, the qualified mental retardation  
12 professional or case manager in charge of the person's care shall give the person a written statement setting forth  
13 the substance of this subsection."  
14

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

16 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a residential  
17 facility have a right not to be subjected to unusual or hazardous treatment procedures without the express and  
18 informed consent of the resident, if the resident is able to give consent, and of the resident's parents or guardian  
19 or the responsible person appointed by the court after opportunities for consultation with independent specialists  
20 and legal counsel. Proposed procedures must first have been reviewed and approved by the mental disabilities  
21 board of visitors before consent is sought.

22 (2) Physical restraint may be employed only when absolutely necessary to protect the resident from  
23 injury or to prevent injury to others. Mechanical supports used to achieve proper body position and balance that  
24 are ordered by a physician are not considered a physical restraint. Restraint may not be employed as  
25 punishment, for the convenience of staff, or as a substitute for a habilitation program. Restraint may be applied  
26 only if alternative techniques have failed and only if the restraint imposes the least possible restriction consistent  
27 with its purpose. Use of restraints may be authorized by a physician, a developmental disabilities professional,  
28 or a qualified mental retardation professional. Orders for restraints must be in writing and may not be in force for  
29 longer than 12 hours. Whenever physical restraint is ordered, suitable provision must be made for the comfort  
30 and physical needs of the resident restrained.

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

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

10 (5) A resident may not be subjected to a behavior modification program that attempts to extinguish  
11 socially appropriate behavior or to develop new behavior patterns when the behavior modifications serve only  
12 institutional convenience.

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

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

22 **"53-20-148. Right to habilitation.** (1) Persons admitted to residential facilities have a right to habilitation,  
23 including medical treatment, education, and care suited to their needs, regardless of age, degree of retardation,  
24 or disabling condition. Each resident has a right to a habilitation program that will maximize the resident's human  
25 abilities and enhance the resident's ability to cope with the environment. Every residential facility shall recognize  
26 that each resident, regardless of ability or status, is entitled to develop and realize the resident's fullest potential.  
27 The facility shall implement the principle of normalization so that each resident may live as normally as possible.  
28 The department of public health and human services shall ensure that residents who can be safely and  
29 appropriately served in community-based services are promptly referred for community placement and that  
30 sufficient staff resources are available to diligently pursue placement options, to assist providers in the

1 development of service proposals, and to ensure a positive transition for the resident.

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

4 (a) more to less structured living;

5 (b) larger to smaller facilities;

6 (c) larger to smaller living units;

7 (d) group to individual residences;

8 (e) segregated from the community to integrated into the community living;

9 (f) dependent to independent living.

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

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

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

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

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

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

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

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

28 (5) As part of the habilitation plan, each resident must have an individualized postinstitutionalization plan  
29 that includes an identification of services needed to make a satisfactory community placement possible. This plan  
30 must be developed by the individual treatment planning team that shall begin preparation of the plan upon the

1 resident's admission to the facility and shall complete the plan ~~as soon as practicable~~ within 14 days of admission  
 2 to the residential facility. The parents or guardian or next of kin of the resident, the responsible person appointed  
 3 by the court, if any, and the resident, if able to give informed consent, must be consulted in the development of  
 4 the plan and must be informed of the content of the plan. Within 30 days of admission to the residential facility,  
 5 each resident must have a comprehensive postinstitutionalization plan in place.

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

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

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

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

22 (10) Each resident, the parents or guardian of each resident, and the responsible person appointed by  
 23 the court must promptly upon the resident's admission receive a written copy of and be orally informed of all the  
 24 above standards for adequate habilitation, the rights accorded by 53-20-142, and other information concerning  
 25 the care and habilitation of the resident that may be available to assist them in understanding the situation of the  
 26 resident and the rights of the resident in the facility."  
 27

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

29 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained and  
 30 must be readily available to persons who are directly involved with the particular resident and to the mental

1 disabilities board of visitors. All information contained in a resident's records must be considered privileged and  
 2 confidential. The parents or guardian, the responsible person appointed by the court, and any person properly  
 3 authorized in writing by the resident, if the resident is capable of giving informed consent, or by the resident's  
 4 parents or guardian or the responsible person must be permitted access to the resident's records. Information  
 5 may not be released from the records of a resident or former resident of the residential facility unless the release  
 6 of the information has been properly authorized in writing by:

7 (a) the court;

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

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

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

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

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

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

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

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

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

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

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

29 (2) Information may not be released by a ~~superintendent or the superintendent's designee as set forth~~  
 30 ~~in residential facility under subsection (1)(f), (1)(g), or (1)(h)~~ less than 15 days after sending notice of the

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

11 (3) These records must include:

12 (a) identification data, including the resident's legal status;

13 (b) the resident's history, including but not limited to:

14 (i) family data, educational background, and employment record;

15 (ii) prior medical history, both physical and mental, including prior institutionalization;

16 (c) the resident's grievances, if any;

17 (d) an inventory of the resident's life skills, including mode of communication;

18 (e) a record of each physical examination that describes the results of the examination;

19 (f) a copy of the individual habilitation plan and any modifications to the plan and an appropriate  
 20 summary to guide and assist the resident care workers in implementing the resident's habilitation plan;

21 (g) the findings made in monthly reviews of the habilitation plan, including an analysis of the successes  
 22 and failures of the habilitation program and whatever modifications are necessary;

23 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the  
 24 community and any modifications to the postinstitutionalization plan and a summary of the steps that have been  
 25 taken to implement that plan;

26 (i) a medication history and status;

27 (j) a summary of each significant contact by a qualified mental retardation professional with a resident;

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



- 1 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of the  
 2 activity upon the resident's progress in the habilitation plan;
- 3 (m) a signed order by a qualified mental retardation professional or physician for any physical restraints;
- 4 (n) a description of any extraordinary incident or accident in the facility involving the resident, to be  
 5 entered by a staff member noting personal knowledge of the incident or accident or other source of information,  
 6 including any reports of investigations of the resident's mistreatment;
- 7 (o) a summary of family visits and contacts;
- 8 (p) a summary of attendance and leaves from the facility;
- 9 (q) a record of any seizures; illnesses; injuries; treatments of seizures, illnesses, and injuries; and  
 10 immunizations."

11

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

13 **"53-20-163. Abuse of residents prohibited.** (1) Every residential facility shall prohibit mistreatment,  
 14 neglect, or abuse in any form of any resident. Alleged violations must be reported immediately to the  
 15 superintendent of the facility department of public health and human services and to a representative of the  
 16 residential facility as designated by the department by rule, and there must be a written record that:

- 17 (a) each alleged violation has been thoroughly investigated and findings stated; and
- 18 (b) the investigation into the alleged violation was initiated within 24 hours of the report of the incident  
 19 and the results were reported to the director of the department of public health and human services.
- 20 (2) The reports must also be made monthly to the mental disabilities board of visitors ~~monthly~~. Each  
 21 facility shall cause a written statement of this policy to be posted in each cottage and building and circulated to  
 22 all staff members."

23

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

25 **"53-20-214. Certain transfers of funds authorized.** Funds appropriated to the Montana state hospital  
 26 or Montana developmental center may be ~~transferred by budget amendment as provided in appropriation acts~~  
 27 ~~and with the approval of the governor to the department of public health and human services~~ used for  
 28 comprehensive developmental disability systems if:

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

1           (2) a transfer of appropriations between programs is:

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

3           (b) approved by the governor."

4

5           **Section 32.** Section 90-7-220, MCA, is amended to read:

6           **"90-7-220. Montana developmental center loan.** (1) The department of public health and human  
7 services may enter into a loan agreement with the Montana facility finance authority for the purpose of financing  
8 the costs of acquiring, constructing, and equipping facilities for persons with developmental disabilities at the  
9 Montana developmental center in Boulder, including the establishment of reserves and the payment of costs of  
10 the financing. The maximum principal amount of the loan may not exceed \$10.5 million for construction and  
11 related costs, plus the necessary amounts for capitalized interest, debt service reserves, and financing costs, and  
12 the loan must be payable over a term not to exceed 30 years and must bear interest and contain other terms and  
13 provisions with respect to prepayment or otherwise as are not inconsistent with this section and as the  
14 department approves. Investment earnings on the authority's bonds or on funds held for the bonds must be used  
15 to pay the principal and interest on the loan as provided in the loan agreement.

16           (2) The loan may be secured by a mortgage on the Montana developmental center facility, including the  
17 land on which it is located. The loan constitutes a special limited obligation of the department, and the principal  
18 and interest payments required by that agreement are payable solely from the facility revenue obtained by the  
19 department from the ownership and operation of and the provision of services at the Montana developmental  
20 center, including payments or reimbursements from private users, insurers, and the federal government. All  
21 facility revenue obtained from services provided by the Montana developmental center must be deposited in a  
22 special revenue fund and must be applied to the payment of the principal and interest payments as due under  
23 the loan agreement. Whenever facility revenue exceeds the amount and terms specified and required to repay  
24 the loan and maintain required reserves, the excess must be ~~deposited to the general fund~~ used to pay the  
25 remainder of the principal and interest of the loan. As long as the loan remains outstanding and the department  
26 provides services for persons with developmental disabilities, the department shall use the Montana  
27 developmental center for those purposes or for other purposes as permitted by the loan agreement and state law,  
28 except when foreclosure occurs under the agreement or the mortgage. Notwithstanding 77-2-302(1) and upon  
29 foreclosure of a mortgage given to secure the loan agreement, there must be paid to the board of land  
30 commissioners as a first and prior claim against the mortgaged land an amount equal to the full market value of

1 the land as determined by the board prior to the execution of the mortgage and after appraisal by a qualified land  
2 appraiser. The loan agreement may contain other provisions or agreements that the department determines are  
3 necessary and that are not inconsistent with the provisions of this chapter.

4 (3) The obligations of the department under the agreement are special limited obligations payable solely  
5 from the facility revenue and do not constitute a debt of the state or obligate the state to appropriate or apply any  
6 funds or revenue of the state, except the facility revenue as provided in this section."

7  
8 COORDINATION SECTION. **Section 33. Coordination instruction.** If both House Bill No. 2 and [this  
9 act] are passed and approved and House Bill No. 2 contains an appropriation for the Disability Services Division  
10 of the Department of Public Health and Human Services, then House Bill No. 2 is amended to include the  
11 following language for the Disability Services Division appropriation: "The appropriation for the Disability Services  
12 Division may be used to fund additional community-based facilities and services to accommodate individuals who  
13 are at or would otherwise be placed at the Montana developmental center."

14  
15 NEW SECTION. **Section 34. Effective date.** [This act] is effective on passage and approval.

16 - END -