

SENATE BILL NO. 250

INTRODUCED BY KEATING, MAZUREK, GAGE, SWYSGOOD,
J. RICE, T. BECK, CRIPPEN, GRINDE, GRADY,
HARDING, STRIZICH, BOHARSKI, DARKO, STICKNEY,
J. JOHNSON, VAUGHN, BRADLEY
BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

FEBRUARY 1, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

FEBRUARY 2, 1991 FIRST READING.

FEBRUARY 16, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 18, 1991 PRINTING REPORT.

 SECOND READING, DO PASS.

FEBRUARY 19, 1991 ENGROSSING REPORT.

 THIRD READING, PASSED.
AYES, 50; NOES, 0.

 TRANSMITTED TO HOUSE.

IN THE HOUSE

MARCH 4, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON JUDICIARY.

 FIRST READING.

MARCH 15, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 18, 1991 SECOND READING, CONCURRED IN.

MARCH 19, 1991 THIRD READING, CONCURRED IN.
AYES, 95; NOES, 4.

 RETURNED TO SENATE WITH AMENDMENTS.

IN THE SENATE

MARCH 23, 1991 RECEIVED FROM HOUSE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 25, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 *Senate* BILL NO. *250*
 2 INTRODUCED BY *Senator* *Gregory* *Harold* *Bradley*
 3 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS *Harold*
 4 AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES *Bradley*
 5 *Wm. ...* *Harold ...*

6 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
 7 RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY
 8 DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS
 9 PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A
 10 NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED;
 11 AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106,
 12 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121,
 13 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131,
 14 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146,
 15 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164,
 16 MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120,
 17 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A
 18 TERMINATION DATE."
 19

STATEMENT OF INTENT

20
 21 This bill provides a new definition of seriously
 22 developmentally disabled and establishes a new
 23 administrative process as part of the commitment of
 24 seriously developmentally disabled persons to residential
 25 facilities of the state of Montana. These changes are

1 necessary to provide a commitment standard and process that
 2 will meet the new mission that has been developed for the
 3 state-operated residential facilities.

4 The new definition of seriously developmentally disabled
 5 incorporates behavioral language to cover endangered and
 6 dangerous persons as well as self-help deficit language to
 7 cover current residents. The incorporation into the
 8 commitment process of an administrative screening team
 9 ensures that persons who are to be placed in a residential
 10 facility are thoroughly considered for placement in
 11 community services before a commitment may be made.

12 Rules are necessary to implement the administrative
 13 screening process. Rules necessary for the screening process
 14 must provide for the membership, terms, and various
 15 responsibilities of the team and the standards and
 16 procedures used by the team in making placement
 17 determinations. New rules are to be adopted to implement the
 18 changes in the definition of professional person.

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

20 NEW SECTION. **Section 1.** Residential facility screening
 21 team -- referral by court -- membership -- rules. (1) When
 22 the district court considers a person for commitment to a
 23 residential facility under this part, the court shall refer
 24 the person to the residential facility screening team for
 25



1 screening to determine whether placement and habilitation in
2 a residential facility are appropriate for the person.

3 (2) A court may not commit a person to a residential
4 facility under 53-20-125 unless the residential facility
5 screening team determines that placement and habilitation in
6 a residential facility are appropriate for the person.

7 (3) The residential facility screening team may not
8 determine that placement and habilitation in a residential
9 facility are appropriate unless the residential facility
10 screening team determines that the person is seriously
11 developmentally disabled.

12 (4) The residential facility screening team shall
13 provide the court with the social and placement information
14 relied upon by the residential facility screening team in
15 making its determination.

16 (5) For purposes of this part, the department of social
17 and rehabilitation services and the department of
18 institutions shall adopt rules providing for the membership
19 and terms of the members of the residential facility
20 screening team and setting forth the criteria and procedures
21 to govern the determinations made by the residential
22 facility screening team.

23 **Section 2.** Section 53-20-102, MCA, is amended to read:

24 "53-20-102. Definitions. As used in this part, the
25 following definitions apply:

1 (1) "Board" or "mental disabilities board of visitors"
2 means the mental disabilities board of visitors created by
3 2-15-211.

4 (2) "Community-based facilities" or "community-based
5 services" includes those services and facilities which are
6 available for the evaluation, treatment, and habilitation of
7 the developmentally disabled in a community setting,
8 including but not limited to outpatient facilities, special
9 education services, group homes, foster homes, day-care
10 facilities, sheltered workshops, and other community-based
11 services and facilities.

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

14 (4) "Developmentally disabled" means suffering from a
15 disability attributable to mental retardation, cerebral
16 palsy, epilepsy, autism, or any other neurologically
17 handicapping condition closely related to mental retardation
18 and requiring treatment similar to that required by mentally
19 retarded individuals if the disability originated before the
20 individual attained age 18, has continued or can be expected
21 to continue indefinitely, and constitutes a substantial
22 handicap of such individual.

23 (5) "Habilitation" means the process by which a person
24 who is developmentally disabled is assisted to acquire and
25 maintain those life skills which enable him to cope more

1 effectively with the demands of his own person and
 2 environment and to raise the level of his physical, mental,
 3 and social efficiency. Habilitation includes but is not
 4 limited to formal, structured education and treatment.

5 (6) "Individual treatment planning team" means the
 6 interdisciplinary team of persons involved in and
 7 responsible for the habilitation of a person committed to a
 8 residential facility. The committed person is a member of
 9 the team.

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

13 (8) "Professional person" means:

14 (a) a licensed medical doctor; or

15 (b) a person who has been psychologist, licensed
 16 psychiatrist, or a person with a master's degree in
 17 psychology, who:

18 (i) has training and experience in psychometric testing
 19 and evaluation;

20 (ii) has experience in the field of developmental
 21 disabilities; and

22 (iii) is certified as provided for in 53-20-106 by the
 23 department of social and rehabilitation services and the
 24 department of institutions.

25 (9) "Qualified mental retardation professional" means a

1 person who has at least 1 year of experience working
 2 directly with persons with mental retardation or other
 3 developmental disabilities and who is:

4 (a) a licensed physician or osteopath;

5 (b) a registered nurse; or

6 (c) a professional program staff person for the
 7 residential facility who the department of institutions
 8 determines meets the professional requirements necessary for
 9 federal certification of the facility.

10 (10) "Resident" means a person admitted to a
 11 residential facility for a course of evaluation, treatment,
 12 or habilitation.

13 (11) "Residential facility" or "facility" means any
 14 residential-hospital-or-hospital-and-school-which-exists-for
 15 the-purpose-of-evaluating,-treating,-and-habilitating-the
 16 developmentally-disabled-on-an-inpatient-basis,-including
 17 the Montana developmental center and the Eastmont human
 18 services center. The-term-does-not-include-a-group-home,
 19 foster-home,-or-halfway-house.-A-correctional-facility-or-a
 20 facility-for-the-treatment-of-the-mentally-ill-shall-not-be
 21 a-"residential-facility"-within-the-meaning-of-this-part.

22 (12) "Residential facility screening team" means a team
 23 of persons appointed as provided in [section 1].

24 (13) "Respondent" means a person alleged in a
 25 petition filed pursuant to this part to be developmentally

1 disabled and in need of developmental disability services.

2 ~~{11}~~(14) "Responsible person" means any person willing
3 and able to assume responsibility for a person who is
4 developmentally disabled or alleged to be developmentally
5 disabled.

6 ~~{12}~~(15) "Seriously developmentally disabled" means
7 ~~developmentally-disabled-due-to--developmental--or--physical~~
8 ~~disability--or--a--combination--of--both--rendering-a-person~~
9 ~~unable-to-function-in-a-community-based--setting--and--which~~
10 ~~has-resulted-in-self-inflicted-injury-or-injury-to-others-or~~
11 ~~the-imminent-threat-thereof-or-which-has-deprived-the-person~~
12 ~~afflicted--of--the--ability-to-protect-his-life-or-health- a~~
13 person who:

14 (a) is developmentally disabled;

15 (b) is impaired in cognitive functioning; and

16 (c) has behaviors that pose an imminent risk of serious
17 harm to self or others or self-help deficits so severe as to
18 require total care or near total care and because of those
19 behaviors or deficits, cannot be safely and effectively
20 habilitated in community-based services."

21 **Section 3.** Section 53-20-104, MCA, is amended to read:

22 **"53-20-104. Powers and duties of mental disabilities**
23 **board of visitors. (1) The board shall be is an independent**
24 **board of inquiry and review to assure ensure that the**
25 **treatment of all persons admitted to a residential facility**

1 is humane and decent and meets the requirements set forth in
2 this part.

3 (2) The board shall review all plans for experimental
4 research or hazardous treatment procedures involving persons
5 admitted to any a residential facility to ~~assure~~ ensure that
6 the research project is humane and not unduly hazardous and
7 that it complies with the principles of the statement on the
8 use of human subjects for research of the American
9 association on mental deficiency and with the principles for
10 research involving human subjects required by the United
11 States department of health, ~~education,~~ and ~~welfare~~ human
12 services. No An experimental research project involving
13 persons admitted to any a residential facility affected by
14 this part may not be commenced unless it is approved by the
15 mental disabilities board of visitors.

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

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

1 ~~institution facility.~~

2 (5) The board shall inspect the file of each person
3 admitted to a residential facility pursuant to this part to
4 ~~insure~~ ensure that a habilitation plan exists and is being
5 implemented. The board shall inquire concerning all use of
6 restraints, isolation, or other extraordinary measures.

7 (6) The board may assist ~~any a~~ a resident at a
8 residential facility in resolving any grievance he may have
9 concerning his admission or his course of treatment and
10 habilitation in the facility.

11 (7) If the board believes that ~~any a~~ a facility is
12 failing to comply with the provisions of this part in regard
13 to its physical facilities or its treatment of any resident,
14 it shall report its findings at once to the ~~professional~~
15 ~~person--in--charge~~ superintendent of the facility and the
16 director of the department of institutions. If appropriate,
17 after waiting a reasonable time for a response from such
18 ~~professional-person~~ the superintendent or the director, the
19 board may notify the parents or guardian of ~~any the~~ the resident
20 involved, the next of kin, if known, the responsible person
21 appointed by the court for ~~any the~~ the resident involved, and
22 the district court ~~which that~~ that has jurisdiction over the
23 facility.

24 (8) The board shall report annually to the governor and
25 shall report to each session of the legislature concerning

1 the status of the residential facilities and habilitation
2 programs ~~which that~~ that it has inspected."

3 **Section 4.** Section 53-20-106, MCA, is amended to read:

4 "53-20-106. Certification of professional persons. (1)
5 The department of social and rehabilitation services and the
6 department of institutions shall certify professional
7 persons for purposes of this part.

8 (2) The department of social and rehabilitation
9 services and the department of institutions shall adopt
10 rules governing the certification of professional persons.
11 The rules must establish the appropriate combination of
12 education, skills, and experience necessary for
13 certification and set forth qualifications developed by
14 reference to recognized national standards in the field of
15 developmental disabilities, ~~such as standards published by~~
16 ~~the accreditation council for services for mentally retarded~~
17 ~~and other developmentally disabled persons (ACMRDB),~~
18 ~~standards published in Title XIX of the Social Security Act,~~
19 ~~and other similar standards."~~

20 **Section 5.** Section 53-20-111, MCA, is amended to read:

21 "53-20-111. Limitation on who compelled to undertake
22 treatment. No A person who has reached the age of majority
23 shall may be compelled against his will to undertake a
24 course of treatment and habilitation ~~solely because he in a~~
25 residential facility only if the person is seriously

1 developmentally disabled, ~~but only if such disability causes~~
 2 ~~him to be unable to protect his life and health or to~~
 3 ~~protect the life or safety of others."~~

4 **Section 6.** Section 53-20-112, MCA, is amended to read:

5 "53-20-112. Procedural rights. (1) Any A person subject
 6 to emergency admittance to a residential facility, ~~to~~
 7 ~~examination or evaluation by a professional person,~~ or to
 8 any hearing held pursuant to this part ~~shall have~~ has all
 9 the rights accorded to a person subject to involuntary
 10 commitment proceedings under the laws of this state relating
 11 to involuntary commitment of the seriously mentally ill, as
 12 provided in 53-21-115 through 53-21-118.

13 (2) In addition, the parents or guardian of any a
 14 person alleged to be seriously developmentally disabled and
 15 in need of developmental disabilities services have the
 16 right to:

17 (a) be present at any hearing held pursuant to this
 18 part;

19 (b) be represented by counsel in any hearing;

20 (c) offer evidence and cross-examine witnesses in any
 21 hearing; and

22 (d) have the respondent examined by a professional
 23 person of their choice when such professional person is
 24 reasonably available, unless the person so chosen is
 25 objected to by the respondent or by a responsible person

1 appointed by the court."

2 **Section 7.** Section 53-20-113, MCA, is amended to read:

3 "53-20-113. Waiver of rights. (1) A person may waive
 4 his procedural rights provided that the waiver is knowingly
 5 and intentionally made. The right to counsel in a hearing
 6 held pursuant to 53-20-123 ~~53-20-125~~ may not be waived. The
 7 right to habilitation provided for in this part may not be
 8 waived.

9 ~~{2} In the case of a person who has been admitted to a~~
 10 ~~residential facility for up to 30 days of evaluation and~~
 11 ~~treatment or who, pursuant to the recommendation of a~~
 12 ~~professional person, may be admitted to a residential~~
 13 ~~facility for an extended course of habilitation, a waiver of~~
 14 ~~rights can be knowingly and intentionally made only with the~~
 15 ~~concurrence of the person's counsel, if any, his parents or~~
 16 ~~guardian, and the responsible person appointed by the court,~~
 17 ~~if any.~~

18 ~~{3}~~ (2) (a) In the case of a minor, the waiver of rights
 19 can may be knowingly and intentionally made:

20 (i) when the minor is under the age of 12, by the
 21 parents of the minor with the concurrence of the responsible
 22 person, if any;

23 (ii) when the minor is over the age of 12, by the minor
 24 and his parents;

25 (iii) when the minor is over the age of 12 and the minor

1 and his parents do not agree, the minor ~~can~~ may make an
2 effective waiver of his rights only with the advice of
3 counsel.

4 (b) If the court believes that there may be a conflict
5 of interest between a minor and his parents or guardian, the
6 court may appoint a responsible person or guardian ad litem
7 for the minor."

8 **Section 8.** Section 53-20-116, MCA, is amended to read:

9 "53-20-116. Professional person to attend hearing. In
10 any hearing held pursuant to this part ~~which--involves~~
11 ~~consideration---of---the--recommendation--and--report--of--a~~
12 ~~professional-person, a member of the residential facility~~
13 ~~screening team or the professional person who made the~~
14 ~~recommendation-and-report-shall~~ evaluated the person must be
15 present at the hearing and subject to cross-examination."

16 **Section 9.** Section 53-20-121, MCA, is amended to read:

17 "53-20-121. Petition for involuntary treatment --
18 contents of. (1) Any person who believes that there is a
19 person who is seriously developmentally disabled and in need
20 of ~~developmental--disability--services~~ placement in a
21 residential facility may ~~report--the--situation--to--a~~
22 ~~professional-person;--if--the--professional--person--believes~~
23 ~~from--the--facts--given--to--him--that--the--person--may--be~~
24 ~~developmentally---disabled--and--in--need--of--developmental~~
25 ~~disability--services;--he--shall--contact--the--parents---or~~

1 guardian---of--the--person---alleged--to--be--developmentally
2 disabled-or-the-person-himself--if-any--of--the--persons---so
3 contacted--refuse--to-cooperate-with-the-professional-person
4 and--if--the--professional--person--believes--from--all--the
5 circumstances--of--the--case--that---the---person---may---be
6 developmentally---disabled--and--in--need--of--developmental
7 disability-services;--he-shall request the county attorney to
8 file a petition alleging that ~~there-is-a~~ the person in--the
9 county who is seriously developmentally disabled and in need
10 of ~~developmental---disability---services~~ placement in a
11 residential facility.

12 (2) The petition shall must contain:

13 (a) the name and address of the ~~professional~~ person and
14 ~~any-other-person~~ requesting the petition and their interest
15 in the case;

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

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

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

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

1 (f) a statement of the rights of the respondent and his
2 parents or guardian ~~which shall~~ that must be in conspicuous
3 print and identified by a suitable heading."

4 **Section 10.** Section 53-20-125, MCA, is amended to read:

5 "~~53-20-125. Outcome of evaluation---and---treatment~~
6 screening -- recommendation for treatment at residential
7 facility -- hearing. (1) If as a result of the evaluation
8 ~~and treatment, either agreed to by the parents, guardian, or~~
9 ~~the person himself pursuant to 53-20-120 or ordered by the~~
10 ~~court, the professional person in charge of the case~~
11 screening required by [section 1] the residential facility
12 screening team concludes that the person evaluated is
13 seriously developmentally disabled and recommends that
14 treatment and habilitation ~~be had~~ in a residential facility
15 on an extended basis, the ~~professional person~~ team shall
16 file his its written recommendation and report with the
17 court and request that the court order the admission. The
18 report shall include the factual basis for the
19 recommendation and shall describe any tests or evaluation
20 devices which that have been employed in evaluating the
21 patient.

22 (2) If no responsible person has yet been appointed,
23 the court may appoint one at this time. If there is no
24 parent or guardian, the court shall appoint a responsible
25 person.

1 (3) At the request of the respondent, his parents or
2 guardian, or the responsible person, the court shall appoint
3 counsel for the respondent. If the parents (or guardian) are
4 indigent and if they request it, the court shall appoint
5 counsel for the parents or guardian.

6 (4) Notice of the recommendation ~~shall~~ must be mailed
7 or delivered to the respondent, his parents or guardian, the
8 responsible person, next of kin, if known, and the attorney
9 for the respondent, if any, and for the parents or guardian,
10 if any.

11 (2)(5) The respondent, his parents or guardian, the
12 responsible person, or the attorney for any party may
13 request that a hearing be had held on the recommendation. If
14 a hearing is requested, the court shall mail or deliver
15 notice of the date, time, and place of the hearing to each
16 of the parties listed at the beginning of this subsection.
17 The hearing ~~shall~~ must be to held before the court without
18 jury. The rules of civil procedure ~~shall~~ must apply.

19 (3)(5) If the court finds that the respondent is
20 seriously developmentally disabled ~~and---that---available~~
21 ~~community-based services are not adequate to protect the~~
22 ~~life and physical safety of the person and others or to~~
23 ~~provide appropriate treatment and habilitation,~~ it shall
24 order the respondent admitted to a residential facility for
25 an extended course of treatment and habilitation. If the

1 court finds that the respondent is developmentally disabled
 2 but not seriously developmentally disabled, in--need-of
 3 developmental--disability--services,---and---eligible---for
 4 placement--in--community-based--services--and-that-available
 5 community-based-services-are-adequate-to--protect--the--life
 6 and--physical-safety-of-the-person-and-others-and-to-provide
 7 appropriate-treatment-and-habilitation, it shall dismiss the
 8 petition and refer the respondent to the department of
 9 social and rehabilitation services to be considered for
 10 placement in community-based services according to
 11 53-20-209. If the court finds that the respondent is not
 12 developmentally disabled or is not in need of developmental
 13 disability services, it shall dismiss the petition.

14 ~~(4)~~(7) If none of the parties notified of the
 15 recommendation request a hearing, the court may issue an
 16 order authorizing the person to be admitted to the
 17 residential facility for an extended period of treatment and
 18 habilitation or the court may initiate its own inquiry as to
 19 whether the order should be granted. The court may refuse to
 20 authorize admission of a person to a residential facility
 21 for an extended period of treatment and habilitation if such
 22 admission is not in the best interests of the person."

23 **Section 11.** Section 53-20-127, MCA, is amended to read:

24 "53-20-127. Transfer to another residential facility --
 25 release to community-based alternative -- hearing. (1) If,

1 at any time during the period for which a person is admitted
 2 to a residential facility for an extended period of
 3 habilitation and treatment, the qualified mental retardation
 4 professional person in charge of the resident decides that
 5 the person no longer requires placement in a residential
 6 facility and that there exist sufficient community-based
 7 alternatives to provide adequate treatment and habilitation
 8 for the resident and adequate protection of the life and
 9 physical safety of the resident and others or that it is in
 10 the best interests of the resident that he be transferred to
 11 another residential facility, then he may release the
 12 resident to such the community-based alternative or transfer
 13 the resident to the other residential facility no less than
 14 15 days after sending notice of the proposed release or
 15 transfer to the resident, his parents or guardian, the
 16 attorney who most recently represented the resident, if any,
 17 the responsible person appointed by the court, if any, and
 18 the court which that ordered the admission. If the resident
 19 has been found unfit to proceed to trial, notice ~~shall~~ must
 20 be sent to the court which that found the resident unfit to
 21 proceed to trial and to the county attorney and the attorney
 22 who represented the resident at the time the resident was
 23 found unfit to proceed to trial.

24 (a) If any of the parties so notified objects to the
 25 release or transfer, they may petition the court for a

1 hearing to determine whether the release or transfer should
 2 be allowed. The hearing ~~shall~~ must comply with the
 3 procedures set forth in 53-20-125. The court may on its own
 4 initiative inquire concerning the propriety of the release
 5 or transfer.

6 (b) Nothing in this subsection ~~shall--prevent~~ (1)
 7 prevents the transfer of a resident to a hospital or other
 8 medical facility for necessary medical treatment or
 9 emergency transfer of a resident to a mental health facility
 10 provided such the emergency transfer complies with the
 11 statutory requirements for emergency detention of the
 12 mentally ill. Within 24 hours of an emergency medical or
 13 psychiatric transfer, notice ~~shall~~ must be given to the
 14 parents or guardian of the resident, the responsible person
 15 appointed by the court, if any, and the court.

16 (2) If any a person is admitted to a residential
 17 facility for an extended course of habilitation without a
 18 hearing and if subsequent to such admission one of the
 19 parties who could have requested a hearing learns that an
 20 alternative course of treatment is available which that is
 21 more suitable to the needs of the resident, the party may
 22 request the qualified mental retardation professional person
 23 in charge of the resident to release the resident to the
 24 alternative if it is a community-based alternative or
 25 transfer the resident to the alternative if it is a

1 residential alternative. Any such transfer or release ~~shall~~
 2 must comply with the requirements of subsection (1) ~~of--this~~
 3 section. If the qualified mental retardation professional
 4 person in charge of the resident refuses to authorize the
 5 release or transfer, then the party may petition the court
 6 for a hearing to determine whether the present residential
 7 alternative should be continued. The hearing ~~shall~~ must
 8 comply with the procedures set forth in 53-20-125."

9 **Section 12.** Section 53-20-128, MCA, is amended to read:

10 "53-20-128. Extension of admission period -- hearing.
 11 (1) If the qualified mental retardation professional person
 12 in charge of the resident determines that the admission to
 13 the residential facility should continue beyond the period
 14 specified in the court order, he shall, at least 15 days
 15 before the end of the period set out in the court order,
 16 send written notice of his recommendation and request for
 17 renewal of the order to the court which that issued the
 18 order, the resident, his parents or guardian, the next of
 19 kin, if known, the attorney who most recently represented
 20 the resident, if any, and the responsible person appointed
 21 by the court, if any. The recommendation and request ~~shall~~
 22 must be accompanied by a written report which-shall-describe
 23 describing the habilitation plan which that has been
 24 undertaken for the resident and the future habilitation plan
 25 which that is anticipated by the qualified mental

1 retardation professional person.

2 (2) If any person so notified requests a hearing, the
3 court shall set a time and place for the hearing and shall
4 mail or deliver notice to all of the persons informed of the
5 recommendation. The hearing ~~shall~~ must be conducted in the
6 manner set ~~out~~ forth in 53-20-125. If the court finds that
7 the residential admission is still justified, it may order
8 continuation of the admission to that residential facility
9 or transfer of the resident to a different residential
10 facility. If the court finds that the resident is still in
11 need of developmental disabilities services but does not
12 require ~~residential~~ treatment in a residential facility or
13 if all parties are willing for the resident to participate
14 in a community-based program of habilitation, it shall refer
15 the respondent to the department of social and
16 rehabilitation services to be considered for placement in
17 community-based services according to 53-20-209. If the
18 person is placed in community-based services or if the need
19 for developmental disabilities services no longer exists,
20 the court shall dismiss the petition. The court ~~shall~~ may
21 not order continuation of admission to a residential
22 facility ~~which~~ that does not have an individualized
23 habilitation plan for the resident. In its order, the court
24 shall make findings of fact on which its order is based. The
25 court may on its own initiative inquire concerning the

1 suitability of continuing an admission to a residential
2 facility."

3 **Section 13.** Section 53-20-129, MCA, is amended to read:

4 "53-20-129. Emergency admission. ~~The parents, guardian,~~
5 ~~the--person--himself,--or--a~~ A professional person may admit a
6 person believed to be seriously developmentally disabled to
7 a residential facility on an emergency basis when necessary
8 to protect the person or others from death or serious bodily
9 harm. ~~if requested by the parents, guardian, or--the--person~~
10 ~~admitted--on--an-emergency-basis,--a~~ A petition as set out in
11 53-20-121 and ~~53-20-122 shall~~ 53-20-125 must be filed on the
12 next judicial day by the county attorney of the county where
13 the person resides. If a petition is filed, the ~~professional~~
14 ~~person--assigned--by--the--court--to--conduct--the--examination--and~~
15 ~~inquiry~~ residential facility screening team shall report
16 back to the court on the next fifth judicial day following
17 the filing of the petition. Once a petition is filed,
18 continued detention in the residential facility ~~shall~~ may
19 allowed only on order of the court when necessary to protect
20 the respondent or others from death or serious bodily harm.
21 In no case ~~shall~~ may an emergency admission to a residential
22 facility continue for longer than 30 days without subsequent
23 proceedings before the court."

24 **Section 14.** Section 53-20-131, MCA, is amended to read:

25 "53-20-131. Placement in nonstate facility. ~~{1}-if-a~~

1 ~~person is admitted to a residential facility under the~~
 2 ~~provisions of this part and is eligible for hospital care,~~
 3 ~~treatment or habilitation by an agency of the United States~~
 4 ~~and if a certificate of notification from such agency~~
 5 ~~showing that facilities are available and that the person is~~
 6 ~~eligible for care or treatment therein is received, the~~
 7 ~~court may order the person to be placed in the custody of~~
 8 ~~the agency for hospitalization. The chief officer of any~~
 9 ~~hospital or residential facility operated by the agency and~~
 10 ~~in which the person is admitted shall, with respect to the~~
 11 ~~person, be vested with the same powers as the superintendent~~
 12 ~~of the Montana developmental center with respect to~~
 13 ~~detention, custody, transfer, and release of the person.~~
 14 ~~Jurisdiction shall be retained in the appropriate courts of~~
 15 ~~this state to inquire into the mental condition of persons~~
 16 ~~so admitted and to determine the necessity for continuance~~
 17 ~~of their admission.~~

18 {2}(1) Consistent with other provisions of this part, a
 19 person admitted to a residential facility under this part
 20 for a period of more than 30 days may be committed by the
 21 court to the custody of friends or next of kin residing
 22 outside the state or transferred to a residential an
 23 out-of-state facility located ~~outside the state~~ for the
 24 habilitation of persons who are developmentally disabled if
 25 the out-of-state facility agrees to receive the person. No

1 such Such a commitment or transfer ~~shall~~ may not be for a
 2 longer period of time than is permitted within the ~~state~~
 3 Montana. If the person is indigent, the expense of
 4 supporting him in an out-of-state facility and the expense
 5 of transportation ~~shall~~ must be borne by the state of
 6 Montana.

7 {3}(2) The transfer of persons admitted to a
 8 residential facility out of Montana under the provisions of
 9 this part or into Montana under the laws of another
 10 jurisdiction ~~shall~~ must be governed by the provisions of the
 11 Interstate Compact on Mental Health."

12 **Section 15.** Section 53-20-132, MCA, is amended to read:

13 "53-20-132. Court-ordered placement in community-based
 14 services prohibited. Nothing in this part may be construed
 15 as authorizing the placement of and delivery of services to
 16 developmentally disabled persons in community-based services
 17 by court order ~~except as provided in 53-20-123(4)~~. Placement
 18 of persons in community-based services is governed by
 19 53-20-209."

20 **Section 16.** Section 53-20-141, MCA, is amended to read:

21 "53-20-141. Denial of legal rights. (1) Unless
 22 specifically stated in an order by the court, a person
 23 admitted to a residential facility for an extended course of
 24 habilitation ~~shall~~ does not forfeit any legal right or
 25 suffer any legal disability by reason of the provisions of

1 this part, except insofar as it may be necessary to detain
2 the person for habilitation, evaluation, or care.

3 (2) Whenever any a person is admitted to a residential
4 facility for a period of more than 30 days for an extended
5 course of habilitation, the court ordering the admission may
6 make an order stating specifically any legal rights which
7 that are denied the respondent and any legal disabilities
8 which that are imposed on him. As part of its order, the
9 court may appoint a person to act as conservator of the
10 respondent's property. Any conservatorship created pursuant
11 to this section ~~shall--terminate~~ terminates upon the
12 conclusion of the admission if not sooner terminated by the
13 court. A conservatorship or guardianship extending beyond
14 the period of the admission may not be created except
15 according to the procedures set forth under Montana law for
16 the appointment of conservators and guardians generally.

17 (3) Any A person who has been admitted to a residential
18 facility pursuant to this part ~~shall~~ must, upon the
19 termination of the admission, be automatically restored to
20 all of his civil and legal rights which that may have been
21 lost when he was admitted. However, this subsection ~~shall~~
22 does not affect any guardianship or conservatorship created
23 independently of the admission proceedings according to the
24 provisions of Montana law relating to the appointment of
25 conservators and guardians generally. Any A person who

1 leaves a residential facility following a period of
2 evaluation and habilitation ~~shall~~ must be given a written
3 statement setting forth the substance of this subsection.

4 ~~(4)--Any-person-admitted-to-a-residential-facility-prior~~
5 ~~to-July-17-1975,-shall-enjoy-all-the-rights--and--privileges~~
6 ~~of-a-person-admitted-after-July-17-1975,-"~~

7 **Section 17.** Section 53-20-142, MCA, is amended to read:
8 **"53-20-142. Rights while in a residential facility.**
9 Persons admitted to a residential facility for a period of
10 habilitation shall enjoy the following rights:

11 (1) Residents ~~shall~~ have a right to dignity, privacy,
12 and humane care.

13 (2) Residents ~~shall-be~~ are entitled to send and receive
14 sealed mail. Moreover, it ~~shall--be~~ is the duty of the
15 facility to foster the exercise of this right by furnishing
16 the necessary materials and assistance.

17 (3) Residents ~~shall~~ must have the same rights and
18 access to private telephone communication as patients at any
19 public hospital except to the extent that a the individual
20 treatment planning team or the qualified mental retardation
21 professional person responsible for formulation of a
22 particular resident's habilitation plan writes an order
23 imposing special restrictions and explains the reasons for
24 ~~any-such~~ the restrictions. The written order must be renewed
25 monthly if any restrictions are to be continued.

1 (4) Residents ~~shall~~ have an unrestricted right to
 2 visitation except to the extent that ~~a~~ the individual
 3 treatment planning team or the qualified mental retardation
 4 professional person responsible for formulation of a
 5 particular resident's habilitation plan writes an order
 6 imposing special restrictions and explains the reasons for
 7 ~~any-such~~ the restrictions. The written order must be renewed
 8 monthly if ~~any~~ restrictions are to be continued.

9 (5) Residents ~~shall~~ have a right to receive suitable
 10 educational and habilitation services regardless of
 11 chronological age, degree of retardation, or accompanying
 12 disabilities or handicaps.

13 (6) Each resident ~~shall~~ must have an adequate allowance
 14 of neat, clean, suitably fitting, and seasonable clothing.
 15 Except when a particular kind of clothing is required
 16 because of a particular condition, residents ~~shall~~ must have
 17 the opportunity to select from various types of neat, clean,
 18 and seasonable clothing. ~~Such~~ The clothing ~~shall~~ must be
 19 considered the resident's throughout his stay in the
 20 institution facility. Clothing, both in amount and type,
 21 ~~shall~~ must make it possible for residents to go out of doors
 22 in inclement weather, to go for trips or visits
 23 appropriately dressed, and to make a normal appearance in
 24 the community. The facility shall make provision for the
 25 adequate and regular laundering of the residents' clothing.

1 (7) Each resident ~~shall-have~~ has the right to keep and
 2 use his own personal possessions except insofar as such
 3 clothes or personal possessions may be determined by ~~a~~ the
 4 individual treatment planning team or the qualified mental
 5 retardation professional person to be dangerous either to
 6 himself or to others.

7 (8) A Each resident has a right to a humane physical
 8 environment within the residential ~~facilities~~ facility.
 9 ~~These-facilities-shall~~ The facility must be designed to make
 10 a positive contribution to the efficient attainment of the
 11 habilitation goals of the resident. To accomplish this
 12 purpose:

13 (a) regular housekeeping and maintenance procedures
 14 ~~which that~~ will ensure that the facility is maintained in a
 15 safe, clean, and attractive condition ~~shall~~ must be
 16 developed and implemented;

17 (b) pursuant to an established routine maintenance and
 18 repair program, the physical plant ~~shall~~ must be kept in a
 19 continuous state of good repair and operation so as to
 20 ensure the health, comfort, safety, and well-being of the
 21 residents and so as not to impede in any manner the
 22 habilitation programs of the residents;

23 (c) the physical facilities must meet all fire and
 24 safety standards established by the state and locality. In
 25 addition, the facility ~~shall~~ must meet ~~such~~ the provisions

1 of the life safety code of the national fire protection
2 association ~~as that~~ are applicable to it.

3 (d) there must be special facilities for nonambulatory
4 residents to ~~assure~~ ensure their safety and comfort,
5 including special fittings on toilets and wheelchairs.
6 Appropriate provision ~~shall~~ must be made to permit
7 nonambulatory residents to communicate their needs to staff.

8 (9) Residents ~~shall~~ have a right to receive prompt and
9 adequate medical treatment for any physical or mental
10 ailments or injuries or physical disabilities and for the
11 prevention of any illness or disability. Such medical
12 treatment ~~shall~~ must meet standards of medical practice in
13 the community. However, nothing in this subsection may be
14 interpreted to impair other rights of ~~any a~~ resident in
15 regard to involuntary commitment for mental illness, use of
16 psychotropic medication, use of hazardous, aversive, or
17 experimental procedures, or the refusal of such treatment.

18 (10) Corporal punishment ~~shall~~ is not be permitted.

19 (11) The opportunity for religious worship ~~shall~~ must be
20 accorded to each resident who desires such worship.
21 Provisions for religious worship ~~shall~~ must be made
22 available to all residents on a nondiscriminatory basis. ~~No~~
23 An individual ~~shall~~ may not be compelled to engage in any
24 religious activities.

25 (12) Residents ~~shall~~ have a right to a nourishing,

1 well-balanced diet. The diet for residents ~~shall~~ must
2 provide at a minimum the recommended daily dietary allowance
3 as developed by the national academy of sciences. Provisions
4 ~~shall~~ must be made for special therapeutic diets and for
5 substitutes at the request of the resident, his parents,
6 guardian, or next of kin, or the responsible person
7 appointed by the court in accordance with the religious
8 requirements of any resident's faith. Denial of a
9 nutritionally adequate diet ~~shall~~ may not be used as
10 punishment.

11 (13) Residents ~~shall~~ have a right to regular physical
12 exercise several times a week. It ~~shall-be~~ is the duty of
13 the facility to provide both indoor and outdoor facilities
14 and equipment for such exercise. Residents ~~shall~~ have a
15 right to be outdoors daily in the absence of contrary
16 medical considerations.

17 (14) Residents ~~shall~~ have a right, under appropriate
18 supervision, to suitable opportunities for the interaction
19 with members of the opposite sex ~~except where a the~~
20 individual treatment planning team or the qualified mental
21 retardation professional person responsible for the
22 formulation of a particular resident's habilitation plan
23 writes an order to the contrary and explains the reasons
24 therefor for the order. The order must be renewed monthly if
25 the restriction is to be continued."

1 **Section 18.** Section 53-20-145, MCA, is amended to read:
 2 "53-20-145. Right to be free from unnecessary or
 3 excessive medication. Residents have a right to be free from
 4 unnecessary or excessive medication. ~~No medication shall~~
 5 Medication may not be administered unless at the written
 6 order of a physician. The ~~professional person in charge of~~
 7 ~~the facility individual treatment planning team~~ and the
 8 attending physician ~~shall be~~ are responsible for all
 9 medication given or administered to a resident. The use of
 10 medication ~~shall~~ may not exceed standards of use that are
 11 advocated by the United States food and drug administration.
 12 Notation of each individual's medication ~~shall~~ must be kept
 13 in his medical records. A pharmacist or a registered nurse
 14 shall review monthly the record of each resident on
 15 medication for potential adverse reactions, allergies,
 16 interactions, contraindications, rationality, and laboratory
 17 test modifications and shall advise the physician of any
 18 problems. Medications ~~shall~~ must be reviewed quarterly by
 19 the attending or staff physician. At least monthly, an
 20 attending physician shall review the drug regimen of each
 21 patient on psychotropic medication. All prescriptions ~~shall~~
 22 must be written with a termination date that may not exceed
 23 90 days. Medication for newly admitted residents ~~shall~~ must
 24 be reviewed and reordered as necessary upon admission and
 25 then every 30 days for the first 90 days. Medications ~~shall~~

1 ~~may~~ not be used as punishment, for the convenience of staff,
 2 as a substitute for a habilitation program, or in quantities
 3 that interfere with the resident's treatment program.
 4 Nothing in this section may be interpreted to relieve ~~any a~~
 5 physician or other professional or medical staff person from
 6 any obligation to adequately monitor the medication of ~~any a~~
 7 resident, with due consideration to the nature of the
 8 medication, the purpose for which it is given, and the
 9 condition of the resident."

10 **Section 19.** Section 53-20-146, MCA, is amended to read:
 11 "53-20-146. Right not to be subjected to certain
 12 treatment procedures. (1) Residents of a residential
 13 facility ~~shall~~ have a right not to be subjected to any
 14 unusual or hazardous treatment procedures without the
 15 express and informed consent of the resident, if the
 16 resident is able to give ~~such~~ consent, and of his parents or
 17 guardian or the responsible person appointed by the court
 18 after opportunities for consultation with independent
 19 specialists and legal counsel. Such proposed procedures
 20 ~~shall~~ must first have been reviewed and approved by the
 21 mental disabilities board of visitors before ~~such~~ consent
 22 ~~shall be~~ is sought.
 23 (2) Physical restraint ~~shall~~ may be employed only when
 24 absolutely necessary to protect the resident from injury to
 25 himself or to prevent injury to others. Mechanical supports

1 used to achieve proper body position and balance ~~which that~~
 2 are ordered by a physician are not considered a physical
 3 restraint. Restraint ~~shall~~ may not be employed as
 4 punishment, for the convenience of staff, or as a substitute
 5 for a habilitation program. Restraint ~~shall~~ may be applied
 6 only if alternative techniques have failed and only if ~~such~~
 7 the restraint imposes the least possible restriction
 8 consistent with its purpose. ~~Only a professional person may~~
 9 ~~authorize the use~~ Use of restraints may be authorized by a
 10 physician, professional person, or qualified mental
 11 retardation professional. Orders for restraints ~~by a~~
 12 ~~professional person shall~~ must be in writing and ~~shall~~ may
 13 not be in force for longer than 12 hours. Whenever physical
 14 restraint is ordered, suitable provision ~~shall~~ must be made
 15 for the comfort and physical needs of the person restrained.

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

21 (4) Behavior modification programs involving the use of
 22 noxious or aversive stimuli ~~shall~~ must be reviewed and
 23 approved by the mental disabilities board of visitors and
 24 ~~shall~~ may be conducted only with the express and informed
 25 consent of the affected resident, if the resident is able to

1 give ~~such~~ consent, and of his parents or guardian or the
 2 responsible person appointed by the court after
 3 opportunities for consultation with independent specialists
 4 and with legal counsel. Such behavior modification programs
 5 ~~shall~~ may be conducted only under the supervision of and in
 6 the presence of a qualified mental retardation professional
 7 person who has had proper training in such techniques.

8 (5) ~~No A~~ resident ~~shall~~ may not be subjected to a
 9 behavior modification program ~~which that~~ attempts to
 10 extinguish socially appropriate behavior or to develop new
 11 behavior patterns when such behavior modifications serve
 12 only institutional convenience.

13 (6) Electric shock devices ~~shall be~~ are considered a
 14 research technique for the purpose of this part. Such
 15 devices ~~shall~~ may be used only in extraordinary
 16 circumstances to prevent self-mutilation leading to repeated
 17 and possibly permanent physical damage to the resident and
 18 only after alternative techniques have failed. The use of
 19 such devices ~~shall be~~ is subject to the conditions
 20 prescribed by this part for experimental research generally
 21 and ~~shall~~ may be used only under the direct and specific
 22 order of ~~the professional person in charge~~ a physician and
 23 the superintendent of the residential facility."

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

25 "53-20-148. Right to habilitation. (1) Persons admitted

1 to residential facilities shall have a right to
 2 habilitation, including medical treatment, education, and
 3 care suited to their needs, regardless of age, degree of
 4 retardation, or handicapping condition. Each resident has a
 5 right to a habilitation program ~~which~~ that will maximize his
 6 human abilities and enhance his ability to cope with his
 7 environment. Every residential facility shall recognize that
 8 each resident, regardless of ability or status, is entitled
 9 to develop and realize his fullest potential. The facility
 10 shall implement the principle of normalization so that each
 11 resident may live as normally as possible.

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

- 16 (a) more to less structured living;
- 17 (b) larger to smaller facilities;
- 18 (c) larger to smaller living units;
- 19 (d) group to individual ~~residence~~ residences;
- 20 (e) segregated from the community to integrated into
 21 the community living;
- 22 (f) dependent to independent living.

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

1 (4) Each resident ~~shall~~ must have an individualized
 2 habilitation plan formulated by ~~the facility~~ an individual
 3 treatment planning team. This plan ~~shall~~ must be developed
 4 ~~by appropriate professional persons and~~ implemented as soon
 5 as possible, but no later than 30 days after the resident's
 6 admission to the facility. An interim program of
 7 habilitation, based on the preadmission evaluation conducted
 8 pursuant to this part, ~~shall~~ must commence promptly upon the
 9 resident's admission. Each individualized habilitation plan
 10 ~~shall~~ must contain:

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

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

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

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

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

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

4 (5) As part of his habilitation plan, each resident
5 ~~shall~~ must have an individualized postinstitutionalization
6 plan that includes an identification of services needed to
7 make a satisfactory community placement possible. This plan
8 ~~shall~~ must be developed by ~~a professional person who the~~
9 individual treatment planning team that shall begin
10 preparation of such the plan upon the resident's admission
11 to the institution facility and shall complete such the plan
12 as soon as practicable. The parents or guardian or next of
13 kin of the resident, the responsible person appointed by the
14 court, if any, and the resident, if able to give informed
15 consent, ~~shall~~ must be consulted in the development of such
16 the plan and ~~shall~~ must be informed of the content of such
17 the plan.

18 (6) In the interests of continuity of care, one
19 qualified mental retardation professional person shall
20 whenever possible be responsible for supervising the
21 implementation of the habilitation plan, integrating the
22 various aspects of the habilitation program, and recording
23 the resident's progress as measured by objective indicators.
24 ~~This~~ The qualified mental retardation professional person
25 shall also be responsible for ensuring that the resident is

1 released when appropriate to a less restrictive habilitation
2 setting.

3 (7) The habilitation plan ~~shall~~ must be reviewed
4 monthly by the qualified mental retardation professional
5 person responsible for supervising the implementation of the
6 plan and ~~shall~~ must be modified if necessary. In addition, 6
7 months after admission and at least annually thereafter,
8 each resident ~~shall~~ must receive a comprehensive
9 psychological, social, habilitative, and medical diagnosis
10 and evaluation and his habilitation plan ~~shall~~ must be
11 reviewed ~~by an interdisciplinary team of no less than two~~
12 ~~professional persons and such resident care workers as are~~
13 ~~directly involved in his habilitation and care~~ and revised
14 accordingly by the individual treatment planning team. A
15 habilitation plan ~~shall~~ must be reviewed monthly.

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

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

1 (10) ~~The Each resident,~~ the parents or guardian of each
 2 resident, ~~or and~~ the responsible person appointed by the
 3 court ~~shall must~~ promptly upon the resident's admission
 4 receive a written copy of ~~and be orally informed of~~ all the
 5 above standards for adequate habilitation. ~~Each resident, if~~
 6 ~~the resident is able to comprehend, shall promptly upon his~~
 7 ~~admission be orally informed in clear language of the above~~
 8 ~~standards and, where appropriate, be provided with a written~~
 9 ~~copy. In addition, the parents, guardian, responsible~~
 10 ~~person, and where able to comprehend, the resident shall~~
 11 ~~receive such, the rights accorded by 53-20-142, and other~~
 12 information concerning the care and habilitation of the
 13 resident ~~as that~~ may be available to assist them in
 14 understanding the situation of the resident and the rights
 15 of the resident in the institution facility."

16 **Section 21.** Section 53-20-161, MCA, is amended to read:

17 "53-20-161. Maintenance of records. (1) Complete
 18 records for each resident ~~shall must~~ be maintained and ~~shall~~
 19 ~~must~~ be readily available to ~~professional persons, to the~~
 20 ~~resident care workers~~ who are directly involved with the
 21 particular resident, and to the mental disabilities board of
 22 visitors. All information contained in a resident's records
 23 ~~shall must~~ be considered privileged and confidential. The
 24 parents or guardian, the responsible person appointed by the
 25 court, and any person properly authorized in writing by the

1 resident, if ~~such the~~ resident is capable of giving informed
 2 consent, or by his parents or guardian or the responsible
 3 person ~~shall must~~ be permitted access to the resident's
 4 records. ~~No information~~ Information may ~~not~~ be released from
 5 the records of a resident or former resident of the
 6 residential facility unless the release of ~~such the~~
 7 information has been properly authorized in writing by:

- 8 (a) the court;
- 9 (b) the resident or former resident if he is over the
 10 age of majority and is capable of giving informed consent;
- 11 (c) the parents or guardian in charge of a resident
 12 under the age of 12;
- 13 (d) the parents or guardian in charge of a resident
 14 over the age of 12 but under the age of majority and the
 15 resident if the resident is capable of giving informed
 16 consent;
- 17 (e) the guardian of a resident over the age of majority
 18 who is incapable of giving informed consent;
- 19 (f) the superintendent of the residential facility or
 20 his designee as custodian of a resident over the age of
 21 majority who is incapable of giving informed consent and for
 22 whom no legal guardian has been appointed;
- 23 (g) the superintendent of the residential facility or
 24 his designee as custodian of a resident under the age of
 25 majority for whom there is no parent or legal guardian; or

1 (h) the superintendent of the residential facility or
 2 his designee as custodian of a resident of that facility
 3 whenever release is required by federal or state law or
 4 department of social and rehabilitation services rules.

5 (2) Information may not be released by a superintendent
 6 or his designee as set forth in subsection (1)(f), (1)(g),
 7 or (1)(h) less than 15 days after sending notice of the
 8 proposed release of information to the resident, his parents
 9 or guardian, the attorney who most recently represented the
 10 resident, if any, the responsible person appointed by the
 11 court, if any, and the court ~~which~~ that ordered the
 12 admission. If any of the parties so notified objects to the
 13 release of information, they may petition the court for a
 14 hearing to determine whether the release of information
 15 should be allowed. ~~No--information~~ Information may not be
 16 released pursuant to subsection (1)(f), (1)(g), or (1)(h)
 17 unless it is released to further some legitimate need of the
 18 resident or to accomplish a legitimate purpose of the
 19 institution facility which that is not inconsistent with the
 20 needs and rights of the resident. ~~No-information~~ Information
 21 may not be released pursuant to these subsections except in
 22 accordance with written policies consistent with the
 23 requirements of this part adopted by the institution
 24 facility. Persons receiving notice of a proposed release of
 25 information shall also receive a copy of the written policy

1 of the institution facility governing release of
 2 information.

3 (3) These records ~~shall~~ must include:

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

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

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

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

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

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

15 (e) a record of each physical examination ~~which~~ that
 16 describes the results of the examination;

17 (f) a copy of the individual habilitation plan and any
 18 modifications thereto and an appropriate summary ~~which~~ that
 19 will guide and assist the resident care workers in
 20 implementing the resident's program;

21 (g) the findings made in monthly reviews of the
 22 habilitation plan, which findings ~~shall~~ must include an
 23 analysis of the successes and failures of the habilitation
 24 program and ~~shall~~ direct whatever modifications are
 25 necessary;

1 (h) a copy of the postinstitutionalization plan that
2 includes a statement of services needed in the community and
3 any modifications thereto and a summary of the steps that
4 have been taken to implement that plan;

5 (i) a medication history and status;

6 (j) a summary of each significant contact by a
7 professional person with a resident;

8 (k) a summary of the resident's response to his
9 habilitation plan, prepared by a qualified mental
10 retardation professional person involved in the resident's
11 habilitation and recorded at least monthly. Wherever
12 possible, such response ~~shall~~ must be scientifically
13 documented.

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

18 (m) a signed order by a qualified mental retardation
19 professional, professional person, or physician for any
20 physical restraints;

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

1 mistreatment;

2 (o) a summary of family visits and contacts;

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

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

7 **Section 22.** Section 53-20-162, MCA, is amended to read:

8 "53-20-162. Training for resident care workers. All
9 resident care workers who have not had prior clinical
10 experience in a residential facility for habilitation of the
11 developmentally disabled ~~shall have~~ must be given suitable
12 orientation training. Staff members on all levels ~~shall have~~
13 must be given suitable, regularly scheduled in-service
14 training. Each resident care worker shall ~~be under the~~
15 ~~direct professional supervision of a professional person~~
16 receive supervision that emphasizes the protection of
17 residents and their rights."

18 **Section 23.** Section 53-20-163, MCA, is amended to read:

19 "53-20-163. Abuse of residents prohibited. (1) Every
20 residential facility shall prohibit mistreatment, neglect,
21 or abuse in any form of any resident. Alleged violations
22 ~~shall~~ must be reported immediately to the ~~professional~~
23 ~~person-in-charge~~ superintendent of the facility, and there
24 ~~shall~~ must be a written record that:

25 (a) each alleged violation has been thoroughly

1 investigated and findings stated;

2 (b) the results of such the preliminary investigation
3 are reported to the ~~professional--person--in--charge~~
4 superintendent of the facility within 24 hours of the report
5 of the incident.

6 (2) ~~Such~~ The reports ~~shall~~ must also be made to the
7 mental disabilities board of visitors monthly ~~and-to-the~~
8 ~~developmental-disabilities--advisory--council--at--its--next~~
9 ~~scheduled--public--meeting~~. Each facility shall cause a
10 written statement of this policy to be posted in each
11 cottage and building and circulated to all staff members."

12 **Section 24.** Section 53-20-164, MCA, is amended to read:

13 **"53-20-164. Resident labor.** The following rules ~~shall~~
14 govern resident labor:

15 (1) ~~No~~ A resident ~~shall~~ may not be required to perform
16 labor ~~which~~ that involves the operation and maintenance of
17 the facility or for which the facility is under contract
18 with an outside organization. Privileges or release from the
19 facility ~~shall~~ may not be conditioned upon the performance
20 of labor covered by this provision. Residents may
21 voluntarily engage in such labor if the labor is compensated
22 in accordance with the minimum wage laws of the Fair Labor
23 Standards Act, 29 U.S.C. ~~7--sec-~~ 206, as amended.

24 (2) ~~No~~ A resident ~~shall~~ may not be involved in the care
25 (feeding, clothing, bathing), training, or supervision of

1 other residents unless he:

2 (a) has volunteered;

3 (b) has been specifically trained in the necessary
4 skills;

5 (c) has the humane judgment required for such
6 activities;

7 (d) is adequately supervised; and

8 (e) is reimbursed in accordance with the minimum wage
9 laws of the Fair Labor Standards Act, 29 U.S.C. ~~7--sec-~~ 206,
10 as amended.

11 (3) Residents may be required to perform vocational
12 training tasks ~~which~~ that do not involve the operation and
13 maintenance of the facility, subject to a presumption that
14 an assignment of longer than 3 months to any task is not a
15 training task, provided the specific task or any change in
16 task assignment is:

17 (a) an integrated part of the resident's habilitation
18 plan and approved as a habilitation activity by ~~a~~ the
19 qualified mental retardation professional person and the
20 individual treatment planning team responsible for
21 supervising the resident's habilitation; and

22 (b) supervised by a staff member to oversee the
23 habilitation aspects of the activity.

24 (4) Residents may voluntarily engage in habilitative
25 labor at nonprogram hours for which the facility would

1 otherwise have to pay an employee, provided the specific
2 labor or any change in labor is:

3 (a) an integrated part of the resident's habilitation
4 plan and approved as a habilitation activity by a the
5 qualified mental retardation professional person and the
6 individual treatment planning team responsible for
7 supervising the resident's habilitation;

8 (b) supervised by a staff member to oversee the
9 habilitation aspects of the activity; and

10 (c) compensated in accordance with the minimum wage
11 laws of the Fair Labor Standards Act, 29 U.S.C. ~~sec~~ 206,
12 as amended.

13 (5) If any a resident performs habilitative labor which
14 that involves the operation and maintenance of a facility
15 but due to physical or mental disability is unable to
16 perform the labor as efficiently as a person not so
17 physically or mentally disabled, then such the resident may
18 be compensated at a rate which that bears the same
19 approximate relation to the statutory minimum wage as his
20 ability to perform that particular job bears to the ability
21 of a person not so afflicted.

22 (6) Residents may be required to perform tasks of a
23 personal housekeeping nature, such as the making of one's
24 own bed.

25 (7) Deductions or payments for care and other charges

1 ~~shall~~ may not deprive a resident of a reasonable amount of
2 the compensation received pursuant to this section for
3 personal and incidental purchases and expenses.

4 (B) Staffing ~~shall~~ must be sufficient so that the
5 facility is not dependent upon the use of residents or
6 volunteers for the care, maintenance, or habilitation of
7 other residents or for income-producing services. The
8 facility shall formulate a written policy to protect the
9 residents from exploitation when they are engaged in
10 productive work."

11 NEW SECTION. Section 25. Repealer. Sections 53-20-115,
12 53-20-117, 53-20-120, 53-20-122, 53-20-123, and 53-20-124,
13 MCA, are repealed.

14 NEW SECTION. Section 26. Codification instruction.
15 [Section 1] is intended to be codified as an integral part
16 of Title 53, chapter 20, part 1, and the provisions of Title
17 53, chapter 20, part 1, apply to [section 1].

18 NEW SECTION. Section 27. Termination. The amendment to
19 the definition of "seriously developmentally disabled" in
20 53-20-102(15) terminates September 30, 1993.

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0250, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:


A bill for an act entitled: "An act amending the laws relating to commitment of persons who are developmentally disabled; providing an administrative screening process prior to commitment; clarifying terminology; providing for a new definition of seriously developmentally disabled; amending sections; and providing a termination date."

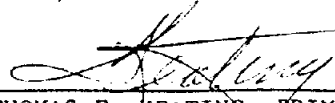
ASSUMPTIONS:

1. SB0250 rewrites current Developmentally Disabled (DD) commitment laws and has a programmatic impact on the Department of Institutions (DOI) because as it changes the DD commitment laws to Montana Developmental Center (MDC) and Eastmont Human Services Center (EHSC).
2. SB0250 is needed to carry out the Montana Developmental Disabilities Service System (MDDSS) action plan and reduce MDC to 100-110 residents.
3. A four member screening team will be created to evaluate, review, and make recommendations to the courts.
4. The team will consist of one staff member each from the DOI, Department of Social and Rehabilitation Services (SRS), and a corporation currently serving adults with developmental disabilities. The fourth member will be a consumer-oriented person. The team will rely on "professional persons" to assist with this process.
5. An evaluation by the team will occur for each individual seeking commitment or recommitment to MDC or EHSC.
6. The number of commitment requests is estimated at less than 12 per year.
7. The number of recommitments will be approximately 160 after Phase IV of the MDDSS action plan has been completed.
8. The team will have six two-day meetings to review recommitments and make recommendations.
9. The team will have twelve one-day meetings to review commitments and determine the team recommendation to the court.
10. The required professional persons will be staff at DOI and SRS or private consultants.
11. The medicaid administrative match rate of 50/50 will be applied to all expenses relating to medicaid-eligible individuals.

FISCAL IMPACT:

	FY 92			FY 93		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Expenditures:</u>						
Operating	0	16,602	16,602	0	22,136	22,136
Equipment	0	2,725	2,725	0	0	0
Total	0	19,327	19,327	0	22,136	22,136
<u>Funding:</u>						
General Fund	0	10,630	10,630	0	12,175	12,175
Federal Funds	0	8,697	8,697	0	9,961	9,961
Total	0	19,327	19,327	0	22,136	22,136


 ROD SUNDSTED, BUDGET DIRECTOR DATE 2/5/91
 Office of Budget and Program Planning


 THOMAS F. KEATING, PRIMARY SPONSOR DATE 2/4/91

Fiscal Note Request, SB0250, as introduced
Form BD-15
Page 2

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:
None

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

The legislation should prevent inappropriate placement of persons in residential facilities, which have the highest per-day service costs. Placement of persons in other services will require funding in community-based services.

APPROVED BY COMMITTEE
ON JUDICIARY

1 SENATE BILL NO. 250
2 INTRODUCED BY KEATING, MAZUREK, GAGE, SWYSGOOD,
3 J. RICE, T. BECK, CRIPPEN, GRINDE, GRADY,
4 HARDING, STRIZICH, BOHARSKI, DARKO, STICKNEY,
5 J. JOHNSON, VAUGHN, BRADLEY
6 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
7 AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
8
9 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
10 RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY
11 DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS
12 PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A
13 NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED;
14 AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106,
15 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121,
16 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131,
17 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146,
18 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164,
19 MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120,
20 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A
21 TERMINATION DATE."

The only change on this bill is on
line 23, page 48 (below). Please
refer to introduced copy (white)
for complete text.

21 NEW SECTION. **Section 27.** Termination. The amendment to
22 the definition of "seriously developmentally disabled" in
23 53-20-102(15) terminates September 30, ~~1993~~ 1995.

-End-

22 STATEMENT OF INTENT
23
24 This bill provides a new definition of seriously
25 developmentally disabled and establishes a new



SECOND READING

1 SENATE BILL NO. 250

2 INTRODUCED BY KEATING, MAJUREK, GAGE, SWYSGOOD,

3 J. RICE, T. BECK, CRIPPEN, GRINDE, GRADY,

4 HARDING, STRIZICH, BOHARSKI, DARKO, STICKNEY,

5 J. JOHNSON, VAUGHN, BRADLEY

6 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS

7 AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES

8

9 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
10 RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY
11 DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS
12 PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A
13 NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED;
14 AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106,
15 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121,
16 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131,
17 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146,
18 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164,
19 MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120,
20 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A
21 TERMINATION DATE."

22 STATEMENT OF INTENT

23 This bill provides a new definition of seriously
24 developmentally disabled and establishes a new
25

The only change on this bill is on line 23, page 48 (below). Please refer to introduced copy (white) for complete text.

21 NEW SECTION. Section 27. Termination. The amendment to
22 the definition of "seriously developmentally disabled" in
23 53-20-102(15) terminates September 30, 1993 1995.

-End-

THIRD READING



HOUSE STANDING COMMITTEE REPORT

March 15, 1991

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that Senate Bill 250 (third reading copy -- blue) be concurred in as amended .

Signed:



Bill Strizich, Chairman

Carried by: Rep. Messmore

And, that such amendments read:

1. Page 12.

Following: line 20

Insert: "(2) A person admitted to a residential facility for evaluation and treatment or for an extended course of habilitation may knowingly and intentionally waive his rights only with the concurrence of the person's counsel, if any, or, if he has no counsel, his parents, guardian, or other responsible person appointed by the court."

Renumber: subsequent subsection

HOUSE

SB 250

561401SC.HSF

1 SENATE BILL NO. 250
2 INTRODUCED BY KEATING, MAZUREK, GAGE, SWYSGOOD,
3 J. RICE, T. BECK, CRIPPEN, GRINDE, GRADY,
4 HARDING, STRIZICH, BOHARSKI, DARKO, STICKNEY,
5 J. JOHNSON, VAUGHN, BRADLEY
6 BY REQUEST OF THE DEPARTMENT OF INSTITUTIONS
7 AND THE DEPARTMENT OF SOCIAL AND REHABILITATION SERVICES
8
9 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE LAWS
10 RELATING TO COMMITMENT OF PERSONS WHO ARE DEVELOPMENTALLY
11 DISABLED; PROVIDING AN ADMINISTRATIVE SCREENING PROCESS
12 PRIOR TO COMMITMENT; CLARIFYING TERMINOLOGY; PROVIDING FOR A
13 NEW DEFINITION OF SERIOUSLY DEVELOPMENTALLY DISABLED;
14 AMENDING SECTIONS 53-20-102, 53-20-104, 53-20-106,
15 53-20-111, 53-20-112, 53-20-113, 53-20-116, 53-20-121,
16 53-20-125, 53-20-127, 53-20-128, 53-20-129, 53-20-131,
17 53-20-132, 53-20-141, 53-20-142, 53-20-145, 53-20-146,
18 53-20-148, 53-20-161, 53-20-162, 53-20-163, AND 53-20-164,
19 MCA; REPEALING SECTIONS 53-20-115, 53-20-117, 53-20-120,
20 53-20-122, 53-20-123, AND 53-20-124, MCA; AND PROVIDING A
21 TERMINATION DATE."

22
23 STATEMENT OF INTENT
24 This bill provides a new definition of seriously
25 developmentally disabled and establishes a new

1 administrative process as part of the commitment of
2 seriously developmentally disabled persons to residential
3 facilities of the state of Montana. These changes are
4 necessary to provide a commitment standard and process that
5 will meet the new mission that has been developed for the
6 state-operated residential facilities.

7 The new definition of seriously developmentally disabled
8 incorporates behavioral language to cover endangered and
9 dangerous persons as well as self-help deficit language to
10 cover current residents. The incorporation into the
11 commitment process of an administrative screening team
12 ensures that persons who are to be placed in a residential
13 facility are thoroughly considered for placement in
14 community services before a commitment may be made.

15 Rules are necessary to implement the administrative
16 screening process. Rules necessary for the screening process
17 must provide for the membership, terms, and various
18 responsibilities of the team and the standards and
19 procedures used by the team in making placement
20 determinations. New rules are to be adopted to implement the
21 changes in the definition of professional person.

22
23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
24 NEW SECTION. **Section 1.** Residential facility screening
25 team -- referral by court -- membership -- rules. (1) When



1 the district court considers a person for commitment to a
 2 residential facility under this part, the court shall refer
 3 the person to the residential facility screening team for
 4 screening to determine whether placement and habilitation in
 5 a residential facility are appropriate for the person.

6 (2) A court may not commit a person to a residential
 7 facility under 53-20-125 unless the residential facility
 8 screening team determines that placement and habilitation in
 9 a residential facility are appropriate for the person.

10 (3) The residential facility screening team may not
 11 determine that placement and habilitation in a residential
 12 facility are appropriate unless the residential facility
 13 screening team determines that the person is seriously
 14 developmentally disabled.

15 (4) The residential facility screening team shall
 16 provide the court with the social and placement information
 17 relied upon by the residential facility screening team in
 18 making its determination.

19 (5) For purposes of this part, the department of social
 20 and rehabilitation services and the department of
 21 institutions shall adopt rules providing for the membership
 22 and terms of the members of the residential facility
 23 screening team and setting forth the criteria and procedures
 24 to govern the determinations made by the residential
 25 facility screening team.

1 **Section 2.** Section 53-20-102, MCA, is amended to read:

2 **"53-20-102. Definitions.** As used in this part, the
 3 following definitions apply:

4 (1) "Board" or "mental disabilities board of visitors"
 5 means the mental disabilities board of visitors created by
 6 2-15-211.

7 (2) "Community-based facilities" or "community-based
 8 services" includes those services and facilities which are
 9 available for the evaluation, treatment, and habilitation of
 10 the developmentally disabled in a community setting,
 11 including but not limited to outpatient facilities, special
 12 education services, group homes, foster homes, day-care
 13 facilities, sheltered workshops, and other community-based
 14 services and facilities.

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

17 (4) "Developmentally disabled" means suffering from a
 18 disability attributable to mental retardation, cerebral
 19 palsy, epilepsy, autism, or any other neurologically
 20 handicapping condition closely related to mental retardation
 21 and requiring treatment similar to that required by mentally
 22 retarded individuals if the disability originated before the
 23 individual attained age 18, has continued or can be expected
 24 to continue indefinitely, and constitutes a substantial
 25 handicap of such individual.

1 (5) "Habilitation" means the process by which a person
 2 who is developmentally disabled is assisted to acquire and
 3 maintain those life skills which enable him to cope more
 4 effectively with the demands of his own person and
 5 environment and to raise the level of his physical, mental,
 6 and social efficiency. Habilitation includes but is not
 7 limited to formal, structured education and treatment.

8 (6) "Individual treatment planning team" means the
 9 interdisciplinary team of persons involved in and
 10 responsible for the habilitation of a person committed to a
 11 residential facility. The committed person is a member of
 12 the team.

13 ~~(7)~~(7) "Next of kin" includes but need not be limited
 14 to the spouse, parents, adult children, and adult brothers
 15 and sisters of a person.

16 ~~(7)~~(8) "Professional person" means:

17 (a) a licensed medical doctor; or

18 ~~(b) a person who has been~~ psychologist, licensed
 19 psychiatrist, or a person with a master's degree in
 20 psychology, who:

21 (i) has training and experience in psychometric testing
 22 and evaluation;

23 (ii) has experience in the field of developmental
 24 disabilities; and

25 (iii) is certified as provided for in 53-20-106 by the

1 department of social and rehabilitation services and the
 2 department of institutions.

3 (9) "Qualified mental retardation professional" means a
 4 person who has at least 1 year of experience working
 5 directly with persons with mental retardation or other
 6 developmental disabilities and who is:

7 (a) a licensed physician or osteopath;

8 (b) a registered nurse; or

9 (c) a professional program staff person for the
 10 residential facility who the department of institutions
 11 determines meets the professional requirements necessary for
 12 federal certification of the facility.

13 ~~(8)~~(10) "Resident" means a person admitted to a
 14 residential facility for a course of evaluation, treatment,
 15 or habilitation.

16 ~~(9)~~(11) "Residential facility" or "facility" means any
 17 residential hospital or hospital and school which exists for
 18 the purpose of evaluating, treating, and habilitating the
 19 developmentally disabled on an inpatient basis, including
 20 the Montana developmental center and the Eastmont human
 21 services center. ~~The term does not include a group home,~~
 22 ~~foster home, or halfway house. A correctional facility or a~~
 23 ~~facility for the treatment of the mentally ill shall not be~~
 24 ~~a "residential facility" within the meaning of this part.~~

25 (12) "Residential facility screening team" means a team

1 of persons appointed as provided in [section 1].

2 ~~{10}~~(13) "Respondent" means a person alleged in a
3 petition filed pursuant to this part to be developmentally
4 disabled and in need of developmental disability services.

5 ~~{11}~~(14) "Responsible person" means any person willing
6 and able to assume responsibility for a person who is
7 developmentally disabled or alleged to be developmentally
8 disabled.

9 ~~{12}~~(15) "Seriously developmentally disabled" means
10 ~~developmentally-disabled-due-to--developmental--or--physical~~
11 ~~disability--or--a--combination--of--both--rendering-a-person~~
12 ~~unable-to-function-in-a-community-based--setting--and--which~~
13 ~~has-resulted-in-self-inflicted-injury-or-injury-to-others-or~~
14 ~~the-imminent-threat-thereof-or-which-has-deprived-the-person~~
15 ~~afflicted--of--the--ability-to-protect-his-life-or-health--a~~
16 person who:

17 (a) is developmentally disabled;

18 (b) is impaired in cognitive functioning; and

19 (c) has behaviors that pose an imminent risk of serious
20 harm to self or others or self-help deficits so severe as to
21 require total care or near total care and because of those
22 behaviors or deficits, cannot be safely and effectively
23 habilitated in community-based services."

24 **Section 3.** Section 53-20-104, MCA, is amended to read:

25 "53-20-104. Powers and duties of mental disabilities

1 board of visitors. (1) The board ~~shall-be~~ is an independent
2 board of inquiry and review to ~~assure~~ ensure that the
3 treatment of all persons admitted to a residential facility
4 is humane and decent and meets the requirements set forth in
5 this part.

6 (2) The board shall review all plans for experimental
7 research or hazardous treatment procedures involving persons
8 admitted to ~~any a~~ residential facility to ~~assure~~ ensure that
9 the research project is humane and not unduly hazardous and
10 that it complies with the principles of the statement on the
11 use of human subjects for research of the American
12 association on mental deficiency and with the principles for
13 research involving human subjects required by the United
14 States department of health, ~~education,~~ and ~~welfare~~ human
15 services. No An experimental research project involving
16 persons admitted to ~~any a~~ residential facility affected by
17 this part may not be commenced unless it is approved by the
18 mental disabilities board of visitors.

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

21 (4) The board shall at least annually inspect every
22 residential facility ~~which~~ that is providing a course of
23 residential habilitation and treatment to any person
24 pursuant to this part. The board shall inspect the physical
25 plant, including residential, recreational, dining, and

1 sanitary facilities. It shall visit all wards and treatment
2 or habilitation areas. The board shall inquire concerning
3 all habilitation programs being implemented by the
4 institution facility.

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

10 (6) The board may assist ~~any~~ a resident at a
11 residential facility in resolving any grievance he may have
12 concerning his admission or his course of treatment and
13 habilitation in the facility.

14 (7) If the board believes that ~~any~~ a facility is
15 failing to comply with the provisions of this part in regard
16 to its physical facilities or its treatment of any resident,
17 it shall report its findings at once to the ~~professional~~
18 ~~person--in--charge~~ superintendent of the facility and the
19 director of the department of institutions. If appropriate,
20 after waiting a reasonable time for a response from ~~such~~
21 ~~professional-person~~ the superintendent or the director, the
22 board may notify the parents or guardian of ~~any~~ the resident
23 involved, the next of kin, if known, the responsible person
24 appointed by the court for ~~any~~ the resident involved, and
25 the district court ~~whicn~~ that has jurisdiction over the

1 facility.

2 (8) The board shall report annually to the governor and
3 shall report to each session of the legislature concerning
4 the status of the residential facilities and habilitation
5 programs ~~which~~ that it has inspected."

6 **Section 4.** Section 53-20-106, MCA, is amended to read:

7 **"53-20-106. Certification of professional persons.** (1)
8 The department of social and rehabilitation services and the
9 department of institutions shall certify professional
10 persons for purposes of this part.

11 (2) The department of social and rehabilitation
12 services and the department of institutions shall adopt
13 rules governing the certification of professional persons.
14 The rules must establish the appropriate combination of
15 education, skills, and experience necessary for
16 certification and set forth qualifications developed by
17 reference to recognized national standards in the field of
18 developmental disabilities, ~~such as standards published by~~
19 ~~the accreditation council for services for mentally retarded~~
20 ~~and other developmentally disabled persons (ACMRBB),~~
21 ~~standards published in Title XIX of the Social Security Act,~~
22 ~~and other similar standards."~~

23 **Section 5.** Section 53-20-111, MCA, is amended to read:

24 "53-20-111. Limitation on who compelled to undertake
25 treatment. No A person who has reached the age of majority

1 ~~shall~~ may be compelled against his will to undertake a
 2 course of treatment and habilitation ~~society-because-he in a~~
 3 residential facility only if the person is seriously
 4 ~~developmentally disabled,-but-only-if-such-disability-causes~~
 5 ~~him-to-be-unable-to-protect-his-life-and-health-or-to~~
 6 ~~protect-the-life-or-safety-of-others."~~

7 **Section 6.** Section 53-20-112, MCA, is amended to read:

8 "53-20-112. **Procedural rights.** (1) ~~Any~~ A person subject
 9 to emergency admittance to a residential facility, ~~to~~
 10 ~~examination-or-evaluation-by-a-professional-person,~~ or to
 11 any hearing held pursuant to this part ~~shall--have~~ has all
 12 the rights accorded to a person subject to involuntary
 13 commitment proceedings under the laws of this state relating
 14 to involuntary commitment of the seriously mentally ill, as
 15 provided in 53-21-115 through 53-21-118.

16 (2) In addition, the parents or guardian of any a
 17 person alleged to be seriously developmentally disabled and
 18 in need of developmental disabilities services have the
 19 right to:

20 (a) be present at any hearing held pursuant to this
 21 part;

22 (b) be represented by counsel in any hearing;

23 (c) offer evidence and cross-examine witnesses in any
 24 hearing; and

25 (d) have the respondent examined by a professional

1 person of their choice when such professional person is
 2 reasonably available, unless the person so chosen is
 3 objected to by the respondent or by a responsible person
 4 appointed by the court."

5 **Section 7.** Section 53-20-113, MCA, is amended to read:

6 "53-20-113. **Waiver of rights.** (1) A person may waive
 7 his procedural rights provided that the waiver is knowingly
 8 and intentionally made. The right to counsel in a hearing
 9 held pursuant to ~~53-20-123~~ 53-20-125 may not be waived. The
 10 right to habilitation provided for in this part may not be
 11 waived.

12 ~~(2) In the case of a person who has been admitted to a~~
 13 ~~residential facility for up to 30 days of evaluation and~~
 14 ~~treatment or who, pursuant to the recommendation of a~~
 15 ~~professional person, may be admitted to a residential~~
 16 ~~facility for an extended course of habilitation, a waiver of~~
 17 ~~rights can be knowingly and intentionally made only with the~~
 18 ~~concurrence of the person's counsel, if any, his parents or~~
 19 ~~guardian, and the responsible person appointed by the court,~~
 20 ~~if any.~~

21 (2) A PERSON ADMITTED TO A RESIDENTIAL FACILITY FOR
 22 EVALUATION AND TREATMENT OR FOR AN EXTENDED COURSE OF
 23 HABILITATION MAY KNOWINGLY AND INTENTIONALLY WAIVE HIS
 24 RIGHTS ONLY WITH THE CONCURRENCE OF THE PERSON'S COUNSEL, IF
 25 ANY, OR, IF HE HAS NO COUNSEL, HIS PARENTS, GUARDIAN, OR

1 OTHER RESPONSIBLE PERSON APPOINTED BY THE COURT.

2 ~~(3)~~~~(2)~~(3) (a) In the case of a minor, the waiver of
3 rights ~~can~~ may be knowingly and intentionally made:

4 (i) when the minor is under the age of 12, by the
5 parents of the minor with the concurrence of the responsible
6 person, if any;

7 (ii) when the minor is over the age of 12, by the minor
8 and his parents;

9 (iii) when the minor is over the age of 12 and the minor
10 and his parents do not agree, the minor ~~can~~ may make an
11 effective waiver of his rights only with the advice of
12 counsel.

13 (b) If the court believes that there may be a conflict
14 of interest between a minor and his parents or guardian, the
15 court may appoint a responsible person or guardian ad litem
16 for the minor."

17 **Section 8.** Section 53-20-116, MCA, is amended to read:

18 "53-20-116. Professional person to attend hearing. In
19 any hearing held pursuant to this part ~~which--involves~~
20 ~~consideration--of--the--recommendation--and--report--of--a~~
21 ~~professional-person, a member of the residential facility~~
22 ~~screening team or the professional person who made the~~
23 ~~recommendation-and-report-shall~~ evaluated the person must be
24 present at the hearing and subject to cross-examination."

25 **Section 9.** Section 53-20-121, MCA, is amended to read:

1 "53-20-121. Petition for involuntary treatment --
2 contents of. (1) Any person who believes that there is a
3 person who is seriously developmentally disabled and in need
4 of ~~developmental--disability--services~~ placement in a
5 residential facility may ~~report--the--situation--to--a~~
6 ~~professional-person; if--the--professional--person--believes~~
7 ~~from--the--facts--given--to--him--that--the--person--may--be~~
8 ~~developmentally--disabled--and--in--need--of--developmental~~
9 ~~disability--services; he--shall--contact--the--parents--or~~
10 ~~guardian--of--the--person--alleged--to--be--developmentally~~
11 ~~disabled--or--the--person--himself--if--any--of--the--persons--so~~
12 ~~contacted--refuse--to--cooperate--with--the--professional--person~~
13 ~~and--if--the--professional--person--believes--from--all--the~~
14 ~~circumstances--of--the--case--that--the--person--may--be~~
15 ~~developmentally--disabled--and--in--need--of--developmental~~
16 ~~disability-services; he--shall~~ request the county attorney to
17 file a petition alleging that ~~there-is-a~~ the person in--the
18 county who is seriously developmentally disabled and in need
19 of ~~developmental--disability--services~~ placement in a
20 residential facility.

21 (2) The petition shall must contain:

22 (a) the name and address of the ~~professional~~ person and
23 ~~any-other-person~~ requesting the petition and their interest
24 in the case;

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

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

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

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

10 (f) a statement of the rights of the respondent and his
11 parents or guardian ~~which shall~~ that must be in conspicuous
12 print and identified by a suitable heading."

13 **Section 10.** Section 53-20-125, MCA, is amended to read:

14 "53-20-125. Outcome of ~~evaluation---and---treatment~~
15 screening -- recommendation for treatment at residential
16 facility -- hearing. (1) If as a result of the evaluation
17 ~~and-treatment, either agreed to by the parents, guardian, or~~
18 ~~the person himself pursuant to 53-20-120 or ordered by the~~
19 ~~court, the professional person in charge of the case~~
20 screening required by [section 1] the residential facility
21 screening team concludes that the person evaluated is
22 seriously developmentally disabled and recommends ~~that~~
23 treatment and habilitation ~~be had~~ in a residential facility
24 on an extended basis, the ~~professional person~~ team shall
25 file his its written recommendation and report with the

1 court and request that the court order the admission. The
2 report shall include the factual basis for the
3 recommendation and shall describe any tests or evaluation
4 devices ~~which~~ that have been employed in evaluating the
5 patient.

6 (2) If no responsible person has yet been appointed,
7 the court may appoint one at this time. If there is no
8 parent or guardian, the court shall appoint a responsible
9 person.

10 (3) At the request of the respondent, his parents or
11 guardian, or the responsible person, the court shall appoint
12 counsel for the respondent. If the parents (or guardian) are
13 indigent and if they request it, the court shall appoint
14 counsel for the parents or guardian.

15 (4) Notice of the recommendation ~~shall~~ must be mailed
16 or delivered to the respondent, his parents or guardian, the
17 responsible person, next of kin, if known, and the attorney
18 for the respondent, if any, and for the parents or guardian,
19 if any.

20 (2)(5) The respondent, his parents or guardian, the
21 responsible person, or the attorney for any party may
22 request that a hearing be had held on the recommendation. If
23 a hearing is requested, the court shall mail or deliver
24 notice of the date, time, and place of the hearing to each
25 of the parties listed at the beginning of this subsection.

1 The hearing shall must be to held before the court without
2 jury. The rules of civil procedure shall must apply.

3 ~~{3}(6)~~ If the court finds that the respondent is
4 seriously developmentally disabled ~~and---that---available~~
5 ~~community-based--services--are--not--adequate-to-protect-the~~
6 ~~life-and-physical-safety-of-the--person--and--others--or--to~~
7 ~~provide--appropriate--treatment--and--habilitation,~~ it shall
8 order the respondent admitted to a residential facility for
9 an extended course of treatment and habilitation. If the
10 court finds that the respondent is developmentally disabled
11 but not seriously developmentally disabled, in--need-of
12 ~~developmental--disability--services,---and---eligible---for~~
13 ~~placement--in--community-based--services--and--that--available~~
14 ~~community-based-services-are-adequate-to--protect--the--life~~
15 ~~and--physical-safety-of-the-person-and-others-and-to-provide~~
16 ~~appropriate-treatment-and-habilitation,~~ it shall dismiss the
17 petition and refer the respondent to the department of
18 social and rehabilitation services to be considered for
19 placement in community-based services according to
20 53-20-209. If the court finds that the respondent is not
21 developmentally disabled or is not in need of developmental
22 disability services, it shall dismiss the petition.

23 ~~{4}(7)~~ If none of the parties notified of the
24 recommendation request a hearing, the court may issue an
25 order authorizing the person to be admitted to the

1 residential facility for an extended period of treatment and
2 habilitation or the court may initiate its own inquiry as to
3 whether the order should be granted. The court may refuse to
4 authorize admission of a person to a residential facility
5 for an extended period of treatment and habilitation if such
6 admission is not in the best interests of the person."

7 **Section 11.** Section 53-20-127, MCA, is amended to read:

8 "53-20-127. Transfer to another residential facility --
9 release to community-based alternative -- hearing. (1) If,
10 at any time during the period for which a person is admitted
11 to a residential facility for an extended period of
12 habilitation and treatment, the qualified mental retardation
13 professional person in charge of the resident decides that
14 the person no longer requires placement in a residential
15 facility and that there exist sufficient community-based
16 alternatives to provide adequate treatment and habilitation
17 for the resident and adequate protection of the life and
18 physical safety of the resident and others or that it is in
19 the best interests of the resident that he be transferred to
20 another residential facility, then he may release the
21 resident to such the community-based alternative or transfer
22 the resident to the other residential facility no less than
23 15 days after sending notice of the proposed release or
24 transfer to the resident, his parents or guardian, the
25 attorney who most recently represented the resident, if any,

1 the responsible person appointed by the court, if any, and
 2 the court ~~which~~ that ordered the admission. If the resident
 3 has been found unfit to proceed to trial, notice ~~shall~~ must
 4 be sent to the court ~~which~~ that found the resident unfit to
 5 proceed to trial and to the county attorney and the attorney
 6 who represented the resident at the time the resident was
 7 found unfit to proceed to trial.

8 (a) If any of the parties so notified objects to the
 9 release or transfer, they may petition the court for a
 10 hearing to determine whether the release or transfer should
 11 be allowed. The hearing ~~shall~~ must comply with the
 12 procedures set forth in 53-20-125. The court may on its own
 13 initiative inquire concerning the propriety of the release
 14 or transfer.

15 (b) Nothing in this subsection ~~shall--prevent~~ (1)
 16 prevents the transfer of a resident to a hospital or other
 17 medical facility for necessary medical treatment or
 18 emergency transfer of a resident to a mental health facility
 19 provided ~~such~~ the emergency transfer complies with the
 20 statutory requirements for emergency detention of the
 21 mentally ill. Within 24 hours of an emergency medical or
 22 psychiatric transfer, notice ~~shall~~ must be given to the
 23 parents or guardian of the resident, the responsible person
 24 appointed by the court, if any, and the court.

25 (2) If any a person is admitted to a residential

1 facility for an extended course of habilitation without a
 2 hearing and if subsequent to ~~such~~ admission one of the
 3 parties who could have requested a hearing learns that an
 4 alternative course of treatment is available ~~which~~ that is
 5 more suitable to the needs of the resident, the party may
 6 request the qualified mental retardation professional person
 7 in charge of the resident to release the resident to the
 8 alternative if it is a community-based alternative or
 9 transfer the resident to the alternative if it is a
 10 residential alternative. Any ~~such~~ transfer or release ~~shall~~
 11 must comply with the requirements of subsection (1) ~~of--this~~
 12 section. If the qualified mental retardation professional
 13 person in charge of the resident refuses to authorize the
 14 release or transfer, then the party may petition the court
 15 for a hearing to determine whether the present residential
 16 alternative should be continued. The hearing ~~shall~~ must
 17 comply with the procedures set forth in 53-20-125."

18 **Section 12.** Section 53-20-128, MCA, is amended to read:

19 "53-20-128. Extension of admission period -- hearing.

20 (1) If the qualified mental retardation professional person
 21 in charge of the resident determines that the admission to
 22 the residential facility should continue beyond the period
 23 specified in the court order, he shall, at least 15 days
 24 before the end of the period set out in the court order,
 25 send written notice of his recommendation and request for

1 renewal of the order to the court which that issued the
 2 order, the resident, his parents or guardian, the next of
 3 kin, if known, the attorney who most recently represented
 4 the resident, if any, and the responsible person appointed
 5 by the court, if any. The recommendation and request ~~shall~~
 6 must be accompanied by a written report ~~which shall describe~~
 7 describing the habilitation plan ~~which that~~ has been
 8 undertaken for the resident and the future habilitation plan
 9 ~~which that~~ is anticipated by the qualified mental
 10 retardation professional person.

11 (2) If any person so notified requests a hearing, the
 12 court shall set a time and place for the hearing and shall
 13 mail or deliver notice to all of the persons informed of the
 14 recommendation. The hearing ~~shall~~ must be conducted in the
 15 manner set ~~out~~ forth in 53-20-125. If the court finds that
 16 the residential admission is still justified, it may order
 17 continuation of the admission to that residential facility
 18 or transfer of the resident to a different residential
 19 facility. If the court finds that the resident is still in
 20 need of developmental disabilities services but does not
 21 require ~~residential~~ treatment in a residential facility or
 22 if all parties are willing for the resident to participate
 23 in a community-based program of habilitation, it shall refer
 24 the respondent to the department of social and
 25 rehabilitation services to be considered for placement in

1 community-based services according to 53-20-209. If the
 2 person is placed in community-based services or if the need
 3 for developmental disabilities services no longer exists,
 4 the court shall dismiss the petition. The court ~~shall~~ may
 5 not order continuation of admission to a residential
 6 facility ~~which that~~ does not have an individualized
 7 habilitation plan for the resident. In its order, the court
 8 shall make findings of fact on which its order is based. The
 9 court may on its own initiative inquire concerning the
 10 suitability of continuing an admission to a residential
 11 facility."

12 **Section 13.** Section 53-20-129, MCA, is amended to read:
 13 **"53-20-129. Emergency admission.** ~~The parents, guardian,~~
 14 ~~the person himself, or a~~ A professional person may admit a
 15 person believed to be seriously developmentally disabled to
 16 a residential facility on an emergency basis when necessary
 17 to protect the person or others from death or serious bodily
 18 harm. ~~if requested by the parents, guardian, or the person~~
 19 ~~admitted on an emergency basis,~~ a petition as set out in
 20 53-20-121 and ~~53-20-122 shall~~ 53-20-125 must be filed on the
 21 next judicial day by the county attorney of the county where
 22 the person resides. If a petition is filed, the ~~professional~~
 23 ~~person assigned by the court to conduct the examination and~~
 24 inquiry residential facility screening team shall report
 25 back to the court on the next fifth judicial day following

1 the filing of the petition. Once a petition is filed,
 2 continued detention in the residential facility ~~shall~~ may be
 3 allowed only on order of the court when necessary to protect
 4 the respondent or others from death or serious bodily harm.
 5 In no case ~~shall~~ may an emergency admission to a residential
 6 facility continue for longer than 30 days without subsequent
 7 proceedings before the court."

8 **Section 14.** Section 53-20-131, MCA, is amended to read:

9 "53-20-131. Placement in nonstate facility. ~~{1} If a~~
 10 ~~person is admitted to a residential facility under the~~
 11 ~~provisions of this part and is eligible for hospital care,~~
 12 ~~treatment, or habilitation by an agency of the United States~~
 13 ~~and if a certificate of notification from such agency~~
 14 ~~showing that facilities are available and that the person is~~
 15 ~~eligible for care or treatment therein is received, the~~
 16 ~~court may order the person to be placed in the custody of~~
 17 ~~the agency for hospitalization. The chief officer of any~~
 18 ~~hospital or residential facility operated by the agency and~~
 19 ~~in which the person is admitted shall, with respect to the~~
 20 ~~person, be vested with the same powers as the superintendent~~
 21 ~~of the Montana developmental center with respect to~~
 22 ~~detention, custody, transfer, and release of the person.~~
 23 ~~Jurisdiction shall be retained in the appropriate courts of~~
 24 ~~this state to inquire into the mental condition of persons~~
 25 ~~so admitted and to determine the necessity for continuance~~

1 ~~of their admission.~~

2 ~~{2}(1)~~ Consistent with other provisions of this part, a
 3 person admitted to a residential facility under this part
 4 for a period of more than 30 days may be committed by the
 5 court to the custody of friends or next of kin residing
 6 outside the state or transferred to ~~a residential~~ an
 7 out-of-state facility located outside the state for the
 8 habilitation of persons who are developmentally disabled if
 9 the out-of-state facility agrees to receive the person. No
 10 such Such a commitment or transfer ~~shall~~ may not be for a
 11 longer period of time than is permitted within ~~the state~~
 12 Montana. If the person is indigent, the expense of
 13 supporting him in an out-of-state facility and the expense
 14 of transportation ~~shall~~ must be borne by the state of
 15 Montana.

16 ~~{3}(2)~~ The transfer of persons admitted to a
 17 residential facility out of Montana under the provisions of
 18 this part or into Montana under the laws of another
 19 jurisdiction ~~shall~~ must be governed by the provisions of the
 20 Interstate Compact on Mental Health."

21 **Section 15.** Section 53-20-132, MCA, is amended to read:

22 "53-20-132. Court-ordered placement in community-based
 23 services prohibited. Nothing in this part may be construed
 24 as authorizing the placement of and delivery of services to
 25 developmentally disabled persons in community-based services

1 by court order ~~except as provided in 53-20-123(4)~~. Placement
 2 of persons in community-based services is governed by
 3 53-20-209."

4 **Section 16.** Section 53-20-141, MCA, is amended to read:

5 "53-20-141. Denial of legal rights. (1) Unless
 6 specifically stated in an order by the court, a person
 7 admitted to a residential facility for an extended course of
 8 habilitation ~~shall~~ does not forfeit any legal right or
 9 suffer any legal disability by reason of the provisions of
 10 this part, except insofar as it may be necessary to detain
 11 the person for habilitation, evaluation, or care.

12 (2) Whenever any a person is admitted to a residential
 13 facility for a period of more than 30 days for an extended
 14 course of habilitation, the court ordering the admission may
 15 make an order stating specifically any legal rights which
 16 that are denied the respondent and any legal disabilities
 17 which that are imposed on him. As part of its order, the
 18 court may appoint a person to act as conservator of the
 19 respondent's property. Any conservatorship created pursuant
 20 to this section ~~shall--terminate~~ terminates upon the
 21 conclusion of the admission if not sooner terminated by the
 22 court. A conservatorship or guardianship extending beyond
 23 the period of the admission may not be created except
 24 according to the procedures set forth under Montana law for
 25 the appointment of conservators and guardians generally.

1 (3) Any A person who has been admitted to a residential
 2 facility pursuant to this part ~~shall~~ must, upon the
 3 termination of the admission, be automatically restored to
 4 all of his civil and legal rights which that may have been
 5 lost when he was admitted. However, this subsection ~~shall~~
 6 does not affect any guardianship or conservatorship created
 7 independently of the admission proceedings according to the
 8 provisions of Montana law relating to the appointment of
 9 conservators and guardians generally. Any A person who
 10 leaves a residential facility following a period of
 11 evaluation and habilitation ~~shall~~ must be given a written
 12 statement setting forth the substance of this subsection.

13 ~~(4)--Any-person-admitted-to-a-residential-facility-prior
 14 to-July-17-1975,--shall-enjoy-all-the-rights--and--privileges
 15 of-a-person-admitted-after-July-17-1975--"~~

16 **Section 17.** Section 53-20-142, MCA, is amended to read:

17 "53-20-142. Rights while in a residential facility.
 18 Persons admitted to a residential facility for a period of
 19 habilitation shall enjoy the following rights:

20 (1) Residents ~~shall~~ have a right to dignity, privacy,
 21 and humane care.

22 (2) Residents ~~shall-be~~ are entitled to send and receive
 23 sealed mail. Moreover, it ~~shall--be~~ is the duty of the
 24 facility to foster the exercise of this right by furnishing
 25 the necessary materials and assistance.

1 (3) Residents ~~shall~~ must have the same rights and
 2 access to private telephone communication as patients at any
 3 public hospital except to the extent that a the individual
 4 treatment planning team or the qualified mental retardation
 5 professional person responsible for formulation of a
 6 particular resident's habilitation plan writes an order
 7 imposing special restrictions and explains the reasons for
 8 ~~any-such~~ the restrictions. The written order must be renewed
 9 monthly if any restrictions are to be continued.

10 (4) Residents ~~shall~~ have an unrestricted right to
 11 visitation except to the extent that a the individual
 12 treatment planning team or the qualified mental retardation
 13 professional person responsible for formulation of a
 14 particular resident's habilitation plan writes an order
 15 imposing special restrictions and explains the reasons for
 16 ~~any-such~~ the restrictions. The written order must be renewed
 17 monthly if any restrictions are to be continued.

18 (5) Residents ~~shall~~ have a right to receive suitable
 19 educational and habilitation services regardless of
 20 chronological age, degree of retardation, or accompanying
 21 disabilities or handicaps.

22 (6) Each resident ~~shall~~ must have an adequate allowance
 23 of neat, clean, suitably fitting, and seasonable clothing.
 24 Except when a particular kind of clothing is required
 25 because of a particular condition, residents ~~shall~~ must have

1 the opportunity to select from various types of neat, clean,
 2 and seasonable clothing. ~~Such~~ The clothing ~~shall~~ must be
 3 considered the resident's throughout his stay in the
 4 institution facility. Clothing, both in amount and type,
 5 ~~shall~~ must make it possible for residents to go out of doors
 6 in inclement weather, to go for trips or visits
 7 appropriately dressed, and to make a normal appearance in
 8 the community. The facility shall make provision for the
 9 adequate and regular laundering of the residents' clothing.

10 (7) Each resident ~~shall-have~~ has the right to keep and
 11 use his own personal possessions except insofar as such
 12 clothes or personal possessions may be determined by a the
 13 individual treatment planning team or the qualified mental
 14 retardation professional person to be dangerous either to
 15 himself or to others.

16 (8) A Each resident has a right to a humane physical
 17 environment within the residential facilities facility.
 18 ~~These facilities shall~~ The facility must be designed to make
 19 a positive contribution to the efficient attainment of the
 20 habilitation goals of the resident. To accomplish this
 21 purpose:

22 (a) regular housekeeping and maintenance procedures
 23 which that will ensure that the facility is maintained in a
 24 safe, clean, and attractive condition ~~shall~~ must be
 25 developed and implemented;

1 (b) pursuant to an established routine maintenance and
 2 repair program, the physical plant ~~shall~~ must be kept in a
 3 continuous state of good repair and operation so as to
 4 ensure the health, comfort, safety, and well-being of the
 5 residents and so as not to impede in any manner the
 6 habilitation programs of the residents;

7 (c) the physical facilities must meet all fire and
 8 safety standards established by the state and locality. In
 9 addition, the facility ~~shall~~ must meet such the provisions
 10 of the life safety code of the national fire protection
 11 association ~~as that~~ are applicable to it.

12 (d) there must be special facilities for nonambulatory
 13 residents to ~~assure~~ ensure their safety and comfort,
 14 including special fittings on toilets and wheelchairs.
 15 Appropriate provision ~~shall~~ must be made to permit
 16 nonambulatory residents to communicate their needs to staff.

17 (9) Residents ~~shall~~ have a right to receive prompt and
 18 adequate medical treatment for any physical or mental
 19 ailments or injuries or physical disabilities and for the
 20 prevention of any illness or disability. Such medical
 21 treatment ~~shall~~ must meet standards of medical practice in
 22 the community. However, nothing in this subsection may be
 23 interpreted to impair other rights of ~~any a~~ resident in
 24 regard to involuntary commitment for mental illness, use of
 25 psychotropic medication, use of hazardous, aversive, or

1 experimental procedures, or the refusal of such treatment.

2 (10) Corporal punishment ~~shall~~ is not be permitted.

3 (11) The opportunity for religious worship ~~shall~~ must be
 4 accorded to each resident who desires such worship.
 5 Provisions for religious worship ~~shall~~ must be made
 6 available to all residents on a nondiscriminatory basis. No
 7 An individual shall may not be compelled to engage in any
 8 religious activities.

9 (12) Residents ~~shall~~ have a right to a nourishing,
 10 well-balanced diet. The diet for residents ~~shall~~ must
 11 provide at a minimum the recommended daily dietary allowance
 12 as developed by the national academy of sciences. Provisions
 13 ~~shall~~ must be made for special therapeutic diets and for
 14 substitutes at the request of the resident, his parents,
 15 guardian, or next of kin, or the responsible person
 16 appointed by the court in accordance with the religious
 17 requirements of any resident's faith. Denial of a
 18 nutritionally adequate diet ~~shall~~ may not be used as
 19 punishment.

20 (13) Residents ~~shall~~ have a right to regular physical
 21 exercise several times a week. It ~~shall-be is~~ the duty of
 22 the facility to provide both indoor and outdoor facilities
 23 and equipment for such exercise. Residents ~~shall~~ have a
 24 right to be outdoors daily in the absence of contrary
 25 medical considerations.

1 (14) Residents ~~shall~~ have a right, under appropriate
 2 supervision, to suitable opportunities for the interaction
 3 with members of the opposite sex except where ~~a~~ the
 4 individual treatment planning team or the qualified mental
 5 retardation professional person responsible for the
 6 formulation of a particular resident's habilitation plan
 7 writes an order to the contrary and explains the reasons
 8 therefor for the order. The order must be renewed monthly if
 9 the restriction is to be continued."

10 **Section 18.** Section 53-20-145, MCA, is amended to read:

11 "53-20-145. Right to be free from unnecessary or
 12 excessive medication. Residents have a right to be free from
 13 unnecessary or excessive medication. ~~No-medication-shall~~
 14 Medication may not be administered unless at the written
 15 order of a physician. ~~The professional-person-in-charge-of~~
 16 the-facility individual treatment planning team and the
 17 attending physician ~~shall--be~~ are responsible for all
 18 medication given or administered to a resident. The use of
 19 medication ~~shall~~ may not exceed standards of use that are
 20 advocated by the United States food and drug administration.
 21 Notation of each individual's medication ~~shall~~ must be kept
 22 in his medical records. A pharmacist or a registered nurse
 23 shall review monthly the record of each resident on
 24 medication for potential adverse reactions, allergies,
 25 interactions, contraindications, rationality, and laboratory

1 test modifications and shall advise the physician of any
 2 problems. Medications ~~shall~~ must be reviewed quarterly by
 3 the attending or staff physician. At least monthly, an
 4 attending physician shall review the drug regimen of each
 5 patient on psychotropic medication. All prescriptions ~~shall~~
 6 must be written with a termination date that may not exceed
 7 90 days. Medication for newly admitted residents ~~shall~~ must
 8 be reviewed and reordered as necessary upon admission and
 9 then every 30 days for the first 90 days. Medications ~~shall~~
 10 may not be used as punishment, for the convenience of staff,
 11 as a substitute for a habilitation program, or in quantities
 12 that interfere with the resident's treatment program.
 13 Nothing in this section may be interpreted to relieve any a
 14 physician or other professional or medical staff person from
 15 any obligation to adequately monitor the medication of any a
 16 resident, with due consideration to the nature of the
 17 medication, the purpose for which it is given, and the
 18 condition of the resident."

19 **Section 19.** Section 53-20-146, MCA, is amended to read:

20 "53-20-146. Right not to be subjected to certain
 21 treatment procedures. (1) Residents of a residential
 22 facility ~~shall~~ have a right not to be subjected to any
 23 unusual or hazardous treatment procedures without the
 24 express and informed consent of the resident, if the
 25 resident is able to give ~~such~~ consent, and of his parents or

1 guardian or the responsible person appointed by the court
 2 after opportunities for consultation with independent
 3 specialists and legal counsel. Such proposed procedures
 4 ~~shall~~ must first have been reviewed and approved by the
 5 mental disabilities board of visitors before such consent
 6 ~~shall-be is~~ sought.

7 (2) Physical restraint ~~shall~~ may be employed only when
 8 absolutely necessary to protect the resident from injury to
 9 himself or to prevent injury to others. Mechanical supports
 10 used to achieve proper body position and balance ~~which that~~
 11 are ordered by a physician are not considered a physical
 12 restraint. Restraint ~~shall~~ may not be employed as
 13 punishment, for the convenience of staff, or as a substitute
 14 for a habilitation program. Restraint ~~shall~~ may be applied
 15 only if alternative techniques have failed and only if ~~such~~
 16 the restraint imposes the least possible restriction
 17 consistent with its purpose. ~~Only-a-professional-person-may~~
 18 ~~authorize-the-use~~ Use of restraints may be authorized by a
 19 physician, professional person, or qualified mental
 20 retardation professional. Orders for restraints ~~by---a~~
 21 ~~professional--person--shall~~ must be in writing and ~~shall~~ may
 22 not be in force for longer than 12 hours. Whenever physical
 23 restraint is ordered, suitable provision ~~shall~~ must be made
 24 for the comfort and physical needs of the person restrained.

25 (3) Seclusion, defined as the placement of a resident

1 alone in a locked room for nontherapeutic purposes, ~~shall~~
 2 may not be employed. Legitimate "time out" procedures may be
 3 utilized under close and direct professional supervision as
 4 a technique in behavior-shaping programs.

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

17 (5) ~~No A~~ resident ~~shall~~ may not be subjected to a
 18 behavior modification program ~~which that~~ attempts to
 19 extinguish socially appropriate behavior or to develop new
 20 behavior patterns when such behavior modifications serve
 21 only institutional convenience.

22 (6) Electric shock devices ~~shall-be~~ are considered a
 23 research technique for the purpose of this part. Such
 24 devices ~~shall~~ may be used only in extraordinary
 25 circumstances to prevent self-mutilation leading to repeated

1 and possibly permanent physical damage to the resident and
 2 only after alternative techniques have failed. The use of
 3 such devices ~~shall--be~~ is subject to the conditions
 4 prescribed by this part for experimental research generally
 5 and ~~shall~~ may be used only under the direct and specific
 6 order of ~~the-professional-person-in-charge~~ a physician and
 7 the superintendent of the residential facility."

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

9 "53-20-148. **Right to habilitation.** (1) Persons admitted
 10 to residential facilities shall have a right to
 11 habilitation, including medical treatment, education, and
 12 care suited to their needs, regardless of age, degree of
 13 retardation, or handicapping condition. Each resident has a
 14 right to a habilitation program which that will maximize his
 15 human abilities and enhance his ability to cope with his
 16 environment. Every residential facility shall recognize that
 17 each resident, regardless of ability or status, is entitled
 18 to develop and realize his fullest potential. The facility
 19 shall implement the principle of normalization so that each
 20 resident may live as normally as possible.

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

25 (a) more to less structured living;

- 1 (b) larger to smaller facilities;
 2 (c) larger to smaller living units;
 3 (d) group to individual ~~residence~~ residences;
 4 (e) segregated from the community to integrated into
 5 the community living;
 6 (f) dependent to independent living.
 7 (3) Within 30 days of his admission to a residential
 8 facility, each resident ~~shall~~ must have an evaluation by
 9 appropriate specialists for programming purposes.
 10 (4) Each resident ~~shall~~ must have an individualized
 11 habilitation plan formulated by ~~the-facility~~ an individual
 12 treatment planning team. This plan ~~shall~~ must be developed
 13 ~~by-appropriate-professional-persons-and~~ implemented as soon
 14 as possible, but no later than 30 days after the resident's
 15 admission to the facility. An interim program of
 16 habilitation, based on the preadmission evaluation conducted
 17 pursuant to this part, ~~shall~~ must commence promptly upon the
 18 resident's admission. Each individualized habilitation plan
 19 ~~shall~~ must contain:
 20 (a) a statement of the nature of the specific
 21 limitations and the needs of the resident;
 22 (b) a description of intermediate and long-range
 23 habilitation goals with a projected timetable for their
 24 attainment;
 25 (c) a statement of and an explanation for the plan of

1 habilitation for achieving these intermediate and long-range
2 goals;

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

6 (e) a specification of the ~~professional~~---persons
7 professionals and other staff members who are responsible
8 for the particular resident's attaining these habilitation
9 goals;

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

13 (5) As part of his habilitation plan, each resident
14 ~~shall~~ must have an individualized postinstitutionalization
15 plan that includes an identification of services needed to
16 make a satisfactory community placement possible. This plan
17 ~~shall~~ must be developed by ~~a-professional-person-who~~ the
18 individual treatment planning team that shall begin
19 preparation of such the plan upon the resident's admission
20 to the institution facility and shall complete such the plan
21 as soon as practicable. The parents or guardian or next of
22 kin of the resident, the responsible person appointed by the
23 court, if any, and the resident, if able to give informed
24 consent, ~~shall~~ must be consulted in the development of such
25 the plan and ~~shall~~ must be informed of the content of such

1 the plan.

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

12 (7) The habilitation plan ~~shall~~ must be reviewed
13 monthly by the qualified mental retardation professional
14 person responsible for supervising the implementation of the
15 plan and ~~shall~~ must be modified if necessary. In addition, 6
16 months after admission and at least annually thereafter,
17 each resident ~~shall~~ must receive a comprehensive
18 psychological, social, habilitative, and medical diagnosis
19 and evaluation and his habilitation plan ~~shall~~ must be
20 reviewed by ~~an-interdisciplinary-team-of-no-less-than-two~~
21 ~~professional-persons--and-such-resident-care-workers-as-are~~
22 ~~directly-involved-in-his-habilitation-and-care~~ and revised
23 accordingly by the individual treatment planning team. A
24 habilitation plan ~~shall~~ must be reviewed monthly.

25 (8) Each resident placed in the community ~~shall~~ must

1 receive transitional habilitation assistance.

2 (9) The ~~professional-person-in-charge~~ superintendent of
3 the residential facility, or his designee, shall report in
4 writing to the parents or guardian of the resident or the
5 responsible person at least every 6 months on the resident's
6 habilitation and medical condition. ~~Such~~ The report ~~shall~~
7 must also state any appropriate habilitation program ~~which~~
8 that has not been afforded to the resident because of
9 inadequate habilitation resources.

10 (10) ~~The~~ Each resident, the parents or guardian of each
11 resident, or and the responsible person appointed by the
12 court ~~shall~~ must promptly upon the resident's admission
13 receive a written copy of and be orally informed of all the
14 above standards for adequate habilitation. ~~Each resident, if~~
15 ~~the resident is able to comprehend, shall promptly upon his~~
16 ~~admission be orally informed in clear language of the above~~
17 ~~standards and, where appropriate, be provided with a written~~
18 ~~copy. In addition, the parents, guardian, or responsible~~
19 ~~person, and where able to comprehend, the resident shall~~
20 ~~receive such, the rights accorded by 53-20-142, and other~~
21 information concerning the care and habilitation of the
22 resident as that may be available to assist them in
23 understanding the situation of the resident and the rights
24 of the resident in the institution facility."

25 **Section 21.** Section 53-20-161, MCA, is amended to read:

1 *53-20-161. Maintenance of records. (1) Complete
2 records for each resident ~~shall~~ must be maintained and ~~shall~~
3 must be readily available to ~~professional persons, to the~~
4 ~~resident-care workers~~ who are directly involved with the
5 particular resident, and to the mental disabilities board of
6 visitors. All information contained in a resident's records
7 ~~shall~~ must be considered privileged and confidential. The
8 parents or guardian, the responsible person appointed by the
9 court, and any person properly authorized in writing by the
10 resident, if ~~such~~ the resident is capable of giving informed
11 consent, or by his parents or guardian or the responsible
12 person ~~shall~~ must be permitted access to the resident's
13 records. ~~No information~~ Information may ~~not~~ be released from
14 the records of a resident or former resident of the
15 residential facility unless the release of ~~such~~ the
16 information has been properly authorized in writing by:

17 (a) the court;

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

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

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

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

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

7 (g) the superintendent of the residential facility or
8 his designee as custodian of a resident under the age of
9 majority for whom there is no parent or legal guardian; or

10 (h) the superintendent of the residential facility or
11 his designee as custodian of a resident of that facility
12 whenever release is required by federal or state law or
13 department of social and rehabilitation services rules.

14 (2) Information may not be released by a superintendent
15 or his designee as set forth in subsection (1)(f), (1)(g),
16 or (1)(h) less than 15 days after sending notice of the
17 proposed release of information to the resident, his parents
18 or guardian, the attorney who most recently represented the
19 resident, if any, the responsible person appointed by the
20 court, if any, and the court which that ordered the
21 admission. If any of the parties so notified objects to the
22 release of information, they may petition the court for a
23 hearing to determine whether the release of information
24 should be allowed. ~~Ne--information~~ Information may not be
25 released pursuant to subsection (1)(f), (1)(g), or (1)(h)

1 unless it is released to further some legitimate need of the
2 resident or to accomplish a legitimate purpose of the
3 institution facility which that is not inconsistent with the
4 needs and rights of the resident. ~~Ne-information~~ Information
5 may not be released pursuant to these subsections except in
6 accordance with written policies consistent with the
7 requirements of this part adopted by the institution
8 facility. Persons receiving notice of a proposed release of
9 information shall also receive a copy of the written policy
10 of the institution facility governing release of
11 information.

12 (3) These records ~~shall~~ must include:

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

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

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

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

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

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

24 (e) a record of each physical examination which that
25 describes the results of the examination;

1 (f) a copy of the individual habilitation plan and any
2 modifications thereto and an appropriate summary which that
3 will guide and assist the resident care workers in
4 implementing the resident's program;

5 (g) the findings made in monthly reviews of the
6 habilitation plan, which findings ~~shall~~ must include an
7 analysis of the successes and failures of the habilitation
8 program and ~~shall~~ direct whatever modifications are
9 necessary;

10 (h) a copy of the postinstitutionalization plan that
11 includes a statement of services needed in the community and
12 any modifications thereto and a summary of the steps that
13 have been taken to implement that plan;

14 (i) a medication history and status;

15 (j) a summary of each significant contact by a
16 professional person with a resident;

17 (k) a summary of the resident's response to his
18 habilitation plan, prepared by a qualified mental
19 retardation professional person involved in the resident's
20 habilitation and recorded at least monthly. Wherever
21 possible, such response ~~shall~~ must be scientifically
22 documented.

23 (l) a monthly summary of the extent and nature of the
24 resident's work activities and the effect of such the
25 activity upon the resident's progress along in the

1 habilitation plan;

2 (m) a signed order by a qualified mental retardation
3 professional, professional person, or physician for any
4 physical restraints;

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

11 (o) a summary of family visits and contacts;

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

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

16 **Section 22.** Section 53-20-162, MCA, is amended to read:

17 "53-20-162. Training for resident care workers. All
18 resident care workers who have not had prior clinical
19 experience in a residential facility for habilitation of the
20 developmentally disabled ~~shall have~~ must be given suitable
21 orientation training. Staff members on all levels ~~shall have~~
22 must be given suitable, regularly scheduled in-service
23 training. Each resident care worker shall ~~be under the~~
24 ~~direct professional supervision of a professional person~~
25 receive supervision that emphasizes the protection of

1 residents and their rights."

2 **Section 23.** Section 53-20-163, MCA, is amended to read:

3 **"53-20-163. Abuse of residents prohibited.** (1) Every
4 residential facility shall prohibit mistreatment, neglect,
5 or abuse in any form of any resident. Alleged violations
6 ~~shall~~ must be reported immediately to the ~~professional~~
7 ~~person-in-charge~~ superintendent of the facility, and there
8 ~~shall~~ must be a written record that:

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

11 (b) the results of such the preliminary investigation
12 are reported to the ~~professional--person--in--charge~~
13 superintendent of the facility within 24 hours of the report
14 of the incident.

15 (2) ~~Such~~ The reports ~~shall~~ must also be made to the
16 mental disabilities board of visitors monthly ~~and-to-the~~
17 ~~developmental-disabilities--advisory--council--at--its--next~~
18 ~~scheduled--public--meeting~~. Each facility shall cause a
19 written statement of this policy to be posted in each
20 cottage and building and circulated to all staff members."

21 **Section 24.** Section 53-20-164, MCA, is amended to read:

22 **"53-20-164. Resident labor.** The following rules ~~shall~~
23 govern resident labor:

24 (1) No A resident ~~shall~~ may not be required to perform
25 labor ~~which~~ that involves the operation and maintenance of

1 the facility or for which the facility is under contract
2 with an outside organization. Privileges or release from the
3 facility ~~shall~~ may not be conditioned upon the performance
4 of labor covered by this provision. Residents may
5 voluntarily engage in such labor if the labor is compensated
6 in accordance with the minimum wage laws of the Fair Labor
7 Standards Act, 29 U.S.C. ~~7--sec~~ 206, as amended.

8 (2) No A resident ~~shall~~ may not be involved in the care
9 (feeding, clothing, bathing), training, or supervision of
10 other residents unless he:

11 (a) has volunteered;

12 (b) has been specifically trained in the necessary
13 skills;

14 (c) has the humane judgment required for such
15 activities:

16 (d) is adequately supervised; and

17 (e) is reimbursed in accordance with the minimum wage
18 laws of the Fair Labor Standards Act, 29 U.S.C. ~~7--sec~~ 206,
19 as amended.

20 (3) Residents may be required to perform vocational
21 training tasks ~~which~~ that do not involve the operation and
22 maintenance of the facility, subject to a presumption that
23 an assignment of longer than 3 months to any task is not a
24 training task, provided the specific task or any change in
25 task assignment is:

1 (a) an integrated part of the resident's habilitation
 2 plan and approved as a habilitation activity by a the
 3 qualified mental retardation professional person and the
 4 individual treatment planning team responsible for
 5 supervising the resident's habilitation; and

6 (b) supervised by a staff member to oversee the
 7 habilitation aspects of the activity.

8 (4) Residents may voluntarily engage in habilitative
 9 labor at nonprogram hours for which the facility would
 10 otherwise have to pay an employee, provided the specific
 11 labor or any change in labor is:

12 (a) an integrated part of the resident's habilitation
 13 plan and approved as a habilitation activity by a the
 14 qualified mental retardation professional person and the
 15 individual treatment planning team responsible for
 16 supervising the resident's habilitation;

17 (b) supervised by a staff member to oversee the
 18 habilitation aspects of the activity; and

19 (c) compensated in accordance with the minimum wage
 20 laws of the Fair Labor Standards Act, 29 U.S.C.--~~sec~~ 206,
 21 as amended.

22 (5) If any a resident performs habilitative labor which
 23 that involves the operation and maintenance of a facility
 24 but due to physical or mental disability is unable to
 25 perform the labor as efficiently as a person not so

1 physically or mentally disabled, then ~~such~~ the resident may
 2 be compensated at a rate ~~which~~ that bears the same
 3 approximate relation to the statutory minimum wage as his
 4 ability to perform that particular job bears to the ability
 5 of a person not so afflicted.

6 (6) Residents may be required to perform tasks of a
 7 personal housekeeping nature, such as the making of one's
 8 own bed.

9 (7) Deductions or payments for care and other charges
 10 ~~shall~~ may not deprive a resident of a reasonable amount of
 11 the compensation received pursuant to this section for
 12 personal and incidental purchases and expenses.

13 (8) Staffing ~~shall~~ must be sufficient so that the
 14 facility is not dependent upon the use of residents or
 15 volunteers for the care, maintenance, or habilitation of
 16 other residents or for income-producing services. The
 17 facility shall formulate a written policy to protect the
 18 residents from exploitation when they are engaged in
 19 productive work."

20 NEW SECTION. Section 25. Repealer. Sections 53-20-115,
 21 53-20-117, 53-20-120, 53-20-122, 53-20-123, and 53-20-124,
 22 MCA, are repealed.

23 NEW SECTION. Section 26. Codification instruction.
 24 [Section 1] is intended to be codified as an integral part
 25 of Title 53, chapter 20, part 1, and the provisions of Title

SB 0250/03

1 53, chapter 20, part 1, apply to [section 1].

2 NEW SECTION. **Section 27.** Termination. The amendment to
3 the definition of "seriously developmentally disabled" in
4 53-20-102(15) terminates September 30, ~~1993~~ 1995.

-End-