MINUTES OF THE MEETING
PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

MONTANA STATE SENATE

February 9, 1981

The meeting of the Public Health, Welfare & Safety Committee was called to order by Chairman Tom Hager on Monday, February 9, 1981, in Room 410 of the State Capitol Building.

ROLL CALL: All members were present, however, Senator Norman arrived late. Kathleen Harrington, staff researcher was also present.

Many visitors were also in attendance. (See attachment)

CONSIDERATION OF SENATE BILL 351:

Senator Mark Etchart of Senate District 2, sponsor of Senate Bill 351, gave a brief resume. This bill is an act to remove motorcycles from the list of vehicles that are exempt from the provisions of the mandatory liability protection law governing owners of motor vehicles. Senator Etchart presented some facts and figures from Senator Himsl regarding motorcycle accidents. The average age in motorcycle accidents is a male, 25 years old. The average cost per case is $2,834.63 based on seven (7) recent cases. Liability insurance coverage is definitely needed.

Jerry Loendorf representing the Montana Medical Association stood in support of the bill. Mr. Loendorf urged support for the bill.

Dr. Jack Mc Mahon, representing the Montana Medical Association, as its legislative administrator, stood in support of the bill. Dr. McMahon stated that this was an oversight that it was not included in previous bills which includes other motor vehicles. Most motorcycle accidents are very serious and require much needed cosmetic surgery for corrections. Hospital costs are going up more all the time.

With no further proponents, Chairman Hager called on the opponents.

Stan Frasier representing himself stated that people should be insured not vehicles. The cost of insurance on motorcycles may be prohibitive for the short operating season. Motorcycles are not capable of inflicting the same kind of damage on persons or property that the much larger automobiles are.

With no further opponents Senator Etchart closed by asking for a favorable recommendation from the committee.

The meeting was opened to a question and answer period from the committee.

Senator Berg asked why were motorcycles not included previous to this session. He was told it was an oversight which had not been addressed yet.

Senator Olson asked what would be the probable cost of a $1,000 liability policy. Senator Etchart reported that it would probably be around $150.

Senator Berg asked how many motorcycles are registered in the state at this time. However, nobody could answer at this time.

CONSIDERATION OF SENATE BILL 348:

Senator Mike Anderson of Senate District 40, chief sponsor of SB 348, gave a brief resume of the bill. This is it:

An act to amend the law relating to the treatment and release of developmentally disabled and mentally ill persons; Amending Sections 53-20-101; 53-20-1-2; 53-20-148 and 53-21-162, MCA.

53-20-101: The purpose of the section of the developmentally disabled legislation is amended to state that the goal of community placement should be accomplished only when it is appropriate for the DD individual.

53-20-102: The definition section of DD legislation is amended to include a person certified by the superintendent of public instruction under the definition so that the standards of the joint commissions on accreditation of hospitals are involved only when applicable.

53-20-148: The educational provisions of habilitation will be included only when appropriate and training may replace education or be combined with it.

Also, it puts in the provision that habitation will occur in a least restrictive setting when it is considered beneficial to the resident. The date for discharge from the institution into a less restrictive setting will be dependent upon the fulfilment of the criteria for discharge and will not be a part of the habilitation plan. An individualized post institutionalized plan will be included in the habilitation plan only if it is an appropriate goal for that resident.

Robert L. Laumeyes, superintendent of the Boulder Public Schools, stated that it is not in anyone's best interest to require that all patients at Boulder River School and Hospital have a date of discharge and a post deinstitutionalization plan. Some of the people who are now at Boulder are in a state of deterioration. The best that medical services and training staff can hope for in these cases is to slow down the rate of deterioration. The present state law that requires the date of discharge would be changed by SB 348 to be a criteria for discharge. Mr. Laumeyes read parts of a letter from Mr. Gilbert Ronan from the Department of Education in Denver, Colorado. (See attachment.)

Judith Burkhartsmeyer, representing the Montana School Psychologists Association, states that she thoroughly supports SB 348 as is and happy it was introduced. The focus should be placed on each individual as such in determining whether or not that individual is ready for discharge.

With no further proponents, Chairman Hager called on the opponents.

Gary Pagnotta, a service provider from Bozeman and current president of the Association of Independent Disabilities Services stated the realities of serving the most severely handicapped in community based services is only limited by one's own attitudes, commitment and ingenuity to develop alternatives and not solely by the severity of handicapping conditions. Deinstitutionalization has worked in Montana and it can continue to work. This is first and foremost to the credit of the disabled who have displayed that they can function successfully in communities. (See attachment)

Ken Rohyans of Helena stated that he has been deeply and personally involved in the efforts to gain the best available habilitation, humanity and dignity for the developmentally disabled people of Montana and, therefore, asked the committee to continue to support the good of the developmentally disabled population of Montana and kill SB 348. Mr. Royhans turned in his testimony to the secretary. (See attachment)

Beth Richter, executive director of the developmental disabilities planning and advisory council, stated that her group opposes SB 348 because this measure would represent a backsliding of public policy affecting Montana's developmentally disabled citizens. The deinstitutionalization concept was long ago endorsed by the people of Montana through their state legislature. The council is convinced that developmentally disabled persons have benefited from the transfers from the institutions to the communities over the past few years and that community-based programs continue to offer the least restrictive settings for habilitation and training and to assist developmentally disabled person achieve the most normal life styles possible. It is always beneficial to an institutional resident to be moved from the institution to appropriate community services. The appropriateness of the community services to the needs of those residents who are transferred from the institution is of great importance.

Shirlee Rammer, representing the Cascade County Retarded Citizens group and herself as a parent stated that she has two children that this bill would afford Mrs. Rammer stated that SB 348 is nothing more than a smoke screen. Her children had no progress while they were institutionalized. However, since they were released, there is a big improvement.

Ann Mary Dussault, a representative from House District 95, representing herself and others from Missoula who could not attend the meeting because of weather stated there seems to be some confusion between the department and SRS as there have been some problems in the past. There was an interim study to look and address some of the problems. Ms. Dussault said she thought perhaps the bill is somewhat premature. She then asked the committee to study the bill carefully.

Joe Roberts, representing the Legal Action Council for Developmental Disabilities, handed out to the committee members a booklet entitled "The Community Imperative: A Refutation of all arguments in support of institutionalizing anybody because of mental retardation". Mr. Roberts stated that the community of Boulder realizes that they are fighting for survival. By setting realistic goals for developmentally disabled residents, one can tell how fast a person is progressing and if the right things are being done for that person. SB 348 is an attempt to make it harder for people to be released from Boulder. People will not make goals to develop mentally disabled if they are not forced to. This bill does not give the residents of Boulder a chance to become functional, useful, and happy citizens of Montana.

Senator Anderson closed by stating most times these residents can not tell you where they hurt when they are not feeling well. Senator Anderson commented that some of the Boulder residents are just not able to be released to group homes or the public and are better off in Boulder where they can receive many areas of help.

The meeting was opened to a question and answer period from the committee.

Senator Johnson asked if there are any group homes in Helena. Mr. Roberts replied that there are several group homes in Helena.

Senator Norman asked what is the cost of keeping a child at Boulder. Senator Anderson replied approximately $40 - 50 thousand per year.

CONSIDERATION OF HOUSE JOINT RESOLUTION 6: Representative Ann Mary Dussault of District 95, chief sponsor of HJR 6, gave a brief resume of the bill. This is a Joint Resolution of the Senate and the House of Representatives of the State of Montana urging the Department of Health and Environmental Sciences to caution mothers and retailers about the effect of certain drugs on unborn children.

The resolution strongly urges the Department of Health to assume the responsibility for printing or obtaining posters or notices warning of the potential dangers to pregnant women of prescription and non-prescription drugs, including alcohol.

The Department of Health is also urged to encourage retailers to post the notices and to supply the notices to retailers who are willing to post them.

Beth Richter of the Developmental Disabilities Planning and Advisory Council stated that her group support educational efforts directed toward prevention of birth defects. The incidence is continually growing of congenitally handicapping conditions which are suspected of being related to the ingestion of drugs and alcoholic beverages by the mother while pregnant. Many women are simply unaware of the dangers and would act responsibly if they were warned of the risks. Placing warning posters or notices in the locations where these items are sold would be an effective method of informing expectant mothers.

With no further proponents, Chairman Hager called on the opponents. Hearing none, the meeting was opened to a question and answer period from the committee.

Senator Olson asked why this was being already being done. He was told the Department of Health had not been directed to do so.

Senator Johnson asked what would the cost to the department be because of this. The posters are free and the only costs to be insured would be from mailing.

Senator Johnson asked how will the materials be distributed. Representative Dussault stated that this had not been decided as of yet.

Representative Dussault stated that primary prevention of birth defects, such as suggested by H.J.R. 6, is currently a neglected area in Montana. The adoption of H.J.R. 6 would give such an educational program the direction and importance it deserves. In 1981, the International Year of the Disabled, what better activity could there be than to attempt to prevent future disabling conditions. Representative Dussault then urged for support for H.J.R. 6.

Statement of Intent for Senate Bills 212, 228 and 241:

After receiving Statements of Intent for Senate Bills 212, 228, a motion was made by Senator Norman to adopt the Statements for all three bills.

DISPOSITION OF SENATE BILL 251: This bill is an act to allow certain controlled burning for training fire fighters. Senator Larry Tveit is the chief sponsor fo this bill.

A motion was made by Senator Berg that SB251 receive a recommendation of DO NOT PASS from the committee. Motion carried unanimously.

ANNOUNCEMENTS: The next meeting of the committee will be held on Wednesday, February 11 to consider Senate Bills 365 and 393 at 1:00 on Room 410 of the State Capitol Building.

ADJOURNMENT: With no further business the meeting was adjourned.

Tom Hager

CHAIRMAN TOM HAGER

eg

ROLL CALL

PUBLIC HEALTH, WELFARE & SAFETY COMMITTEE

47th LEGISLATIVE SESSION - - 1981 Date Feb. 9

NAME	PRESENT	ABSENT	EXCUSED
Tom Hager	✓		
Matt Himsl	✓		
S. A. Olson	✓		
Jan Johnson	✓		
Dr. Bill Norman	late		
Harry K. Berg	✓		
Michael Halligan	✓		

Each day attach to minutes.

STANDING COMMITTEE REPORT

February 9, 1981

MR. PRESIDENT:

We, your committee on Public Health

having had under consideration Statement of Intent, Senate Bill No. 228

Respectfully report as follows: That Statement of Intent, Senate Bill No. 228
be adopted.

STATEMENT OF INTENT RE: SB 228

A statement of intent is required for this bill because in addition to amending section 41-3-104, 41-3-501, 41-5-801, and 53-4-112, the bill creates rule-making authority for the Department of Social and Rehabilitation Services to administer a review of children in foster care under the department's supervision or for whom the department is making payment under section 41-3-104(2) or 41-5-801(2).

It is the intent of this bill to indicate the legislature's support of permanency planning for children in foster care and to direct the department to continue its efforts in this area. This bill is intended to encourage reduction of the numbers of children in foster care; to expediently return children to their natural homes when possible, or to free the children for alternate permanent placements; thereby assuring the appropriate utilization of public

D~~O PASS~~

(Continued)

....
Chairman.

STATE PUB. CO.
Helena, Mont.

funds and that the best interest of children in placement in Montana are being met by the department's program.

Rulemaking is primarily necessary to implement Section 2 and Section 1 paragraph 3 of the bill. These sections require that a foster care review committee be established by the department and the court to conduct reviews of children in foster care and provide written reports to the youth court and the department. Rules would identify which children are to be reviewed, and would list precisely what information is to be shared with the review committee, when the committees are to conduct business, what the geographic district will consist of, the general guidelines for the committees operation, the time limitations for conducting the reviews, and who may participate in the review. As for the information to be reported, the rules will ask for:

(1) Summary reports of the review to include the recommendations of the committee regarding the continuation or discontinuation of foster care and reasons; treatment needs of the child; and court action.

(2) Sufficient information to allow the tracking of the reviews; to facilitate: follow-up services, compliance with court orders, agency decisions, and response to committee recommendations; and to provide necessary reports on the departments foster care program.

First adopted by the Senate Public Health, Welfare, and Safety Committee on February 9, 1981

P.A.

TOM HAGER Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

FEBRUARY 4, 19 1981

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE & SAFETY

having had under consideration SENATE Bill No. 241

Respectfully report as follows: That SENATE Bill No. 241

DO PASS   Statement of Intent Attached

G.A.

SENATOR TOM HAGER   Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 9 19 81

MR. PRESIDENT

We, your committee on PUBLIC HEALTH

having had under consideration Statement of Intent, Senate Bill No. 241

Respectfully report as follows: That Statement of Intent, Senate Bill No. 241

be adopted.

STATEMENT OF INTENT RE: SB 241

This bill is adopted to enable the State of Montana to meet the requirements of Public Law 96-265, the Social Security Disability Amendments of 1980 (the Baucus Amendment). Public Law 96-265 establishes a program of federal certification of medicare supplemental insurance policies and provides that medicare supplemental policies issued in a state with an approved regulatory program shall be certified under the federal certification program. [In order to be approved, a state's medicare supplemental insurance policy regulatory program must provide for the application of standards with respect to such policies equal to or more stringent than the NAIC Model Regulation to Implement the Individual Accident and Sickness Insurance Minimum Standards Act, adopted by the National Association of Insurance Commissioners on June 6, 1979; include a requirement at least as stringent as the federal provision requiring that such policies return to policyholders in the form of aggregate benefits under the policy,

~~DO PASS~~

(continued)

jC
STATE PUB. CO.
Helena, Mont.

Chairman.

at least 75% of the aggregate amount of premiums collected in the case of group policies and at least 60% of the aggregate amount of premiums collected in the case of individual policies; and apply these standards and requirements to all medicare supplemental policies issued in the state.]

A statement of intent is required for this bill because it delegates rulemaking authority to the Commissioner of Insurance. This bill is intended to give the Commissioner of Insurance the authority to adopt rules establishing minimum standards for benefits, contents, and sale of medicare supplemental insurance policies in the State of Montana to insure the implementation of a regulatory program which meets the minimum standards of Public Law 96-265, the Social Security Disability Amendments of 1980.

It is contemplated that such rules should address the following:

(a) prohibited policy provisions including the kinds of coverage that may be excluded from coverage in a medicare supplemental policy;

(b) minimum standards for medicare supplement policy provisions and minimum benefit standards;

(c) required disclosure provisions such as provisions regarding renewal, continuation, and nonrenewal, definition and explanation of terms, pre-existing condition limitations, "free-look" provisions and forms for a buyer's guide and an outline of policy coverage; and

(d) replacement requirements, including a form for notice to an applicant regarding replacement of disability insurance.

First adopted by the Public Health Committee on the 9th day of February 1981.

Y/C.

TOM HAGER, Chairman.

STANDING COMMITTEE REPORT

FEBRUARY 9 19 81

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety

having had under consideration Senate Bill No. 251

Respectfully report as follows: That Senate Bill No. 251

~~DO PASS~~ DO NOT PASS

JC

STATE PUB. CO.
Helena, Mont.

Chairman.

SENATOR

STANDING COMMITTEE REPORT

February 9 19 81

MR. PRESIDENT

We, your committee on PUBLIC HEALTH

having had under consideration Statement of Intent, Senate Bill No. 212

Respectfully report as follows: That Statement of Intent, Senate Bill No. 212

be adopted.

STATEMENT OF INTENT RE: SB 212

A statement of intent is required for this bill because it delegates rulemaking and licensing authority to the Department of Health and Environmental Sciences. Senate Bill 212 is intended to separate from the existing Montana Solid Waste Management Act (Sects: 75-10-201, et seq., MCA) all references to the treatment, storage, disposal, generation and transportation of hazardous wastes and place the statutes regulating hazardous wastes into a separate part of the code. The specific objective and intent of the bill is to clarify and extend state rulemaking authority in order to be totally authorized by the Administrator of the Environmental Protection Agency (EPA) to operate a hazardous waste program in Montana which is equivalent to and in lieu of the federal hazardous waste program established by Subtitle C of the Resource Conservation and Recovery Act (RCRA) of 1976, P.L. 94-580, as amended.

XXXXXX
~~DO PASS~~

(continued)

Chairman.

STATE PUB. CO.
Helena, Mont.

The rules promulgated and permitting procedures adopted under this bill shall meet minimum standards under RCRA and shall not be more restrictive than those analogous provisions in which EPA has adopted regulations under RCRA. In the limited situations in which no federal regulations have been adopted or the drafting of regulations has been purposefully left to the states, the Department must be guided and constrained by the purpose set forth in Section 9, the powers of the Department noted in Section 11, the rulemaking guidelines of Section 12, and the minimum requirements of RCRA.

It should be noted that Montana has enacted regulatory provisions under existing Title 75, Chapter 10,-Part 2, the Solid Waste Management Act, and has sufficient coverage of hazardous waste responsibilities enabling the state to qualify for interim authorization from EPA to carry out a program in lieu of the federal RCRA hazardous waste program. This bill grants the Department authority to make additional adjustments, through rulemaking, which will bring its program affecting generators and transporters of hazardous wastes, the universe of hazardous waste, inspection and sampling, definitions, enforcement alternatives and penalties for hazardous wastes into equivalency and consistency with federal requirements.

Senate Bill 212 intends that the Department of Health and Environmental Sciences shall have authority to require by rule, in accordance with the Montana Administrative Procedure Act, that generators of hazardous wastes, prior to transporting hazardous wastes or offering them for transport off-site, must perform certain packaging, labeling, marking and placarding of the wastes in a manner equivalent to the provisions of federal regulations contained in 40 CFR 262.30 through 262.3 The Department shall have authority under the bill to adopt rules setting penalties or fines for generators of hazardous wastes that set upper limitations which are no less than the amount of $10,000 per day, as required for final authorization under the federal program. Furthermore, Senate Bill 212 allows additional rulemaking to clarify the Department's authority to make inspections of and take samples from generators of hazardous wastes in a manner equivalent to federal inspection authority provided in Section 3007 of RCRA and federal rules promulgated under RCRA.

Under existing law, the Department has promulgated rules which define a broad spectrum of hazardous wastes (the universe of hazardous wastes) by specific listing and by characteristics; which list exclusions from the definition of hazardous waste; which define terms necessary to implement the hazardous waste program; which establish manifest requirements specifying how a hazardous waste is documented from time of generation through transport to time of disposal by the operator of a treatment, storage or disposal facility; which set record keeping and emergency clean-up procedures for transporters of hazardous wastes; which establish licensure procedures and standards for operators of hazardous waste treatment storage and disposal systems; and which provide enforcement alternatives for treatment, storage and disposal facility licenses. All of the existing rules are equivalent to and

(continued)

February 9 1981

consistent with the federal program established by RCRA; in many instances, EPA rules have been incorporated by reference.

Under Senate Bill 212, the Department will have authority to amend and revise these rules, and to adopt new rules, in accordance with the Montana Administrative Procedure Act, which may be needed to meet changing minimum federal standards for a hazardous waste program authorized for state control under RCRA, as amended. Thus, Montana will be able to continue to maintain federal authorization for an independent hazardous waste program, equivalent to the federal program, but operated by the Department.

First adopted by the Senate Public Health Committee on the 9th day of February, 1981.

TOM HAGER, Chairman.

STATE PUB. CO.
Helena, Mont.

STANDING COMMITTEE REPORT

February 4 1981

MR. PRESIDENT:

We, your committee on PUBLIC HEALTH, WELFARE & SAFETY

having had under consideration Senate Bill No. 212

Respectfully report as follows: That Senate Bill No. 212

introduced bill be amended as follows:

1. Page 10, line 19.
Following: "(b)"
Strike: "Hazardous"
Insert: "except as provided in (c), hazardous"

2. Page 10.
Following: line 21.
Insert: "(c) Hazardous wastes do not include those substances governed by Title 82, chapter 4, part 2."

3. Page 14, line 6.
Following: "program"
Insert: ", except that the department may not adopt rules under (sections 8 through 28) that are more restrictive than those promulgated by the federal government under the Resource Conservation and Recovery Act of 1976, as amended"

~~DO PASS~~ 4. Page 25, lines 22 and 23.
Following: "fine"
Strike: "of not less than"
Insert: "not to exceed"

(Continued)
Chairman.

STATE PUB. CO.
Helena, Mont.

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PUBLIC HEALTH
PAGE TWO
SENATE BILL 212

5. Page 25, lines 23 and 24.
Following: "imprisonment"
Strike: "for no less than"
Insert: "not to exceed"

6. Page 25, line 24.
Following: "both"
Insert: "A person convicted for a violation of this section after a first conviction under this section is subject to a fine not to exceed $20,000 for each violation or imprisonment not to exceed 1 year, or both."

AND, AS AMENDED DO PASS

STATEMENT OF INTENT ATTACHED

SENATOR TOM HAGER Chairman.

STATE PUB. CO.
Helena, Mont.

JJC

DATE ____________________

COMMITTEE ON ____________________

VISITORS' REGISTER

NAME	REPRESENTING	BILL #	Check One	
			Support	Oppose
Robert L. Laumeyer	Self	348	X	
Kathy Kemp	LWV	348		
Joyce DeCunzo	DHES	HJR 6	x	
Roger McGlenn	IIAM	351	—	—
Judith A. Burkhartsmeyer	Mt. Sch. Bd. Assn.	348	X	
Stan Frasier	Self	351		X
JUDITH H CARLSON	SRS	348		
KEN ROHYANS	Self Consumer	348		X
Marty Elison	Mt Nurses Assoc.	348	—	—

Matt Hensel

Motorcycle accidents

Average age is (Male) 25.
Average cost per case $2,834.63 based on 7 recent cases.

#1	(so far)	11,033.09	
#2		1,470.30	
#3		1,882.25	(He only paid $60.00 on this case
#4		3,479.01	
#5, 6 & 7.		3,800.00	

He didn't have time to go back through many cases. The above were ones the elig. techs remembered.

Millie Lich, E.T.
D.O.H.

NAME: John W McMahon, MD DATE: 2/9/81

ADDRESS: 2225 11th Ave Helena

PHONE: 442-0671

REPRESENTING WHOM? MMA

APPEARING ON WHICH PROPOSAL: SB 351

DO YOU: SUPPORT? X AMEND? ____ OPPOSE? ____

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Stan FRASIER DATE: 2-9-81

ADDRESS: 417 N. WARREN Helena

PHONE: 442 2705

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: SB 351

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? ✓

COMMENTS: We should not insure vehicals, we should insure drivers.

2. The cost of insurance on motorcyles may be prohibitive for the short operating season.

3. Motor cycles are not capable of inflicting the same kind of damage on persons or property that the much larger automobile is.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Robert L. Laumeyer DATE: Feb 9, 1981

ADDRESS: Box 176 Boulder Mt. 59632

PHONE: 225 3836 or 225 3316

REPRESENTING WHOM? Self

APPEARING ON WHICH PROPOSAL: S. B. 348

DO YOU: SUPPORT? X AMEND? ____ OPPOSE? ____

COMMENTS: It is not in anyones best interest to require that _all_ patients at Boulder River School and Hosp. have a date of discharge and a post deinstitutionalization Plan.

Some of the people who are now at Boulder are in a state of deterioration.

The best that medical service and training staff can hope for in these cases is to slow down the rate of deterioration. The present state law that requires this date of discharge would be changed by SB 348 to be a criteria for discharge. This statement would be better for all patients at both Warm Springs and Boulder River School and Hospital.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

Boulder Public Schools

ROBERT L. LAUMEYER, Superintendent

Boulder, Montana 59632

JEFFERSON HIGH SCHOOL
Ron Fuller, Principal
Phone 225-3317

BOULDER ELEMENTARY SCHOOL
Barbara Konesky, Principal
Phone 225-3316

Clerk of Jefferson High an
Boulder Elementary School
Stella Upman
225-3740

Senate Bill 348

I strongly support SB 348 because the proposed changes protect the handicapped person. I also believe that the changes in wording more precisely defines the legislative intent of the original bill which was to provide the best possible service to the developmentally disabled and mentally ill persons.

1st change, line 18-20 page 1
by deleting "whenever possible" and replacing it with "whenever it is appropriate for the developmentally disabled person" the new law would mandate that the individuals needs be the main point of consideration. The old law makes this point in the preceding topic but does not clearly state it in topic 2.

2nd change, line 15 page 3
add "the superintendent of public instruction." When the old law was written, most of the people in the state that were trained in the field of developmental disabilities worked in the state institutions. This has now changed as we have greatly reduced the population of developmentally disabled in the state institutions and have greatly increased the number of developmentally disabled in the public schools. As these two populations changed, experts trained to serve this population shifted to the local school. This addition would update the bill to recognize the public school psychologist certified by the state superintendent as having the same duties to the developmentally disabled as the present law gives to the psychologist certified by the Department of Institutions or the Department of Social and Rehabilitation Services. Line 24 and 25 would add the word "appropriate" before education and would add "or training or both." The word education is not a very accurate description of the kinds of programs that a developmentally disabled person may need. Training is a better word to describe programs designed for a person to learn to dress himself, feed himself, develop toilet skills, etc. By adding the word appropriate before education, you would be requiring that the educational program be designed to meet the needs of the individual.

Line 10-13 page 5 by adding "whenever it is considered beneficial to the resident" and omitting the two words "make every" you are again bringing emphasis that the law requires this for the individual and you therefore protect the individual from being used to promote a particular philosophy of an agency when the individual's needs may not be compatible with that philosophy.

Line 25 page 6 " and lines 1 and 2 top of page 7. In line 25 of page 6" and a projected date of discharge" would be deleted and lines 1 and 2 of page 7 would be added. "The date of discharge is dependent upon fulfillment of the criteria for discharge." This change is a common sense approach to the actual conditions of some of the people in Boulder River School & Hospital. Whereas many of these people are able to benefit from training and education, some of them may well reach a criteria for discharge. But there are some people in Boulder River School & Hospital who are in a state of deterioration. The medical and physical programs for these people are to slow down the rate of deterioration. The present law that states this person is to "have a projected date of discharge" does not take into account this individual's needs. The new wording would be meaningful for all of these people.

Lines 5 and 6 on page 7 states "if deinstitutionalization is an appropriate goal for that resident" by adding this persons who, despite medical treatment and training, are in this condition of deterioration, you would no longer require a postinstitutionalization plan to be written. To write such a plan for a person who was committed to the institution on the basis that it would best meet his needs, and then find that his condition is such that deterioration is the only prognosis, certainly should not lead to a post-institutional plan for that person at that time.

Lines 10 and 11 would add " the date of discharge being dependent upon the fulfillment of the criteria for discharge" would insure the individual committed to Warmsprings the same guarantee that the previous wording guaranteed the resident of Boulder River School & Hospital, that his condition, not a calendar date, would determine when he were to be discharged.

In conclusion, I believe the sponsors of this bill are writing in clear precise language the original intent of this bill. Furthermore, I believe this clear precise language is needed to protect the individual. I do not believe that this law will bring about a radical change in the care and treatment of the developmentally disabled or mentally ill because many of the people in charge of working with these people are already think first of the individual. I think this is a strong argument for why these changes are imperative. I encourage you to adopt these word changes to not only protect the individual who is developmentally disabled or mentally ill but also to protect the worker who is caring for that patient and who has the individual's needs at heart. Remember, present law demands that, that person in charge of a mentally disabled person who may be in a constant state of deterioration, must report a projected date of discharge and a postinstitutionalization plan. It is rather hard to believe that as good a law as 53-20-148 is, that it could contain a requirement that so totally disregarded the individual. The changes requested in Mr. Anderson's Bill will make this law mean what the legislators that drafted and passed it wanted it to mean.

Robert L. Laumeyer

[illegible]

OCR found that Boulder Public Schools does not have programs or facilities to offer services to the mentally retarded. Thus, your district has not made available services to the mentally retarded at BRSH as required. 34 C.F.R. 104.33 requires that the provision of a free appropriate public education be in conformity with the requirements of 34 C.F.R. 104.34, 104.35 and 104.36. Under 34 C.F.R. 104.34, the burden is on the recipient to demonstrate, in the absence of placing handicapped students in the regular school population, that education with nonhandicapped students cannot be achieved satisfactorily. If no such demonstration has been made, the district is in violation of the requirements of that section. OCR found no such demonstration and, therefore, your district is in violation of 104.34, since procedures to insure that the resident mentally retarded at BRSH are given an opportunity to attend Boulder Public Schools have not been established; also, your district has not contacted BRSH concerning identification of children who are capable of receiving instruction in a less restricted setting, i.e., with nonhandicapped students; and finally, the district has failed to demonstrate that such education cannot be achieved satisfactorily.

Because Boulder Public Schools is a legally responsible entity, failure of any other entity or entities to assume financial or actual responsibility does not excuse Boulder Public Schools from any duty it has under applicable law. Other districts, based upon the domicile standard, may also bear a legal responsibility for the provision of a free appropriate public education to the children residing in BRSH.

Remedial Action

1. Boulder Public Schools must, in cooperation with other State agencies as may be necessary, develop a plan to ensure that Boulder Public Schools offers the program of instruction for the resident mentally retarded children at BRSH outside the hospital setting, as appropriate as designated in the IHPs of the individual children.

2. Boulder Public Schools must undertake to identify and locate every qualified handicapped person residing in its jurisdiction who is not receiving a free appropriate public education and take appropriate steps to notify handicapped persons and their parents or guardians of the district's duty under Subpart D of 34 C.F.R. Part 104. This notification includes notification of the parents and legal guardians of the resident mentally retarded at BRSH. ?

We wish to assure you that this Office is available to provide any assistance which may aid you in bringing your programs into compliance with Section 504 of the Rehabilitation Act of 1973.

NAME: Judith G. Burkhartsmeyer DATE: 2/9/81

ADDRESS: 161 Wedgewood Helena

PHONE: 443-0095 or 442-6410

REPRESENTING WHOM? Mt. School Bd. Association

APPEARING ON WHICH PROPOSAL: SB348

DO YOU: SUPPORT? ✓ AMEND? OPPOSE?

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Gary R. Pagnotta DATE: Feb 9, 1981

ADDRESS: 1602 Maple Ln., Bozeman, Mt

PHONE: 587-0212

REPRESENTING WHOM? The Association of Independent Disabilities Services

APPEARING ON WHICH PROPOSAL: SB. 348

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? X

COMMENTS: see prepared testimony

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

FEB. 9, 1981

TESTIMONEY PRESENTED TO
PUBLIC HEALTH COMMITTEE
RE: SB 348

MR. CHAIRMEN,- MEMBERS OF THE COMMITTEE:

MY NAME IS GARY PAGNOTTA AND I AM A SERVICE PROVIDER FROM BOZEMAN AND THE CURRENT PRESIDENT OF THE ASSOCIATION OF INDEPENDENT DISABILITIES SERVICES. WE HAVE 41 MEMBER/AGENCIES WHICH PROVIDES A VARIETY OF COMMUNITY BASED SERVICES TO THE DEVELOPMENTALLY DISABLED; MANY OF WHICH WERE PREVIOUSLY INSTITUTIONALIZED FOR MANY YEARS. I HAVE BEEN PROFESSIONALLY INVOLVED IN THE FIELD OF DEVELOPMENTAL DISABILITIES FOR OVER 8 YEARS;-THREE YEARS I WAS EMPLOYED AT THE BOULDER RIVER SCHOOL AND HOSPITAL.

OUR ASSOCIATION WISHES TO GO ON RECORD AS OPPOSING SB 348. I SHALL ADDRESS MY TESTIMONY SPECIFICALLY TO PROPOSED AMMENDMENTS TO THE LAW.

-SEC1; 7b PAR.(2)- STATES ~~DELEATE~~S THAT THE GOAL OF HABILITATION AND TREATMENT OF THE DEVELOPMENTALLY DISABLED SHOULD BE ACCOMPLISHED IN COMMUNITY BASED SERVICES (deleate) ~~WHENEVER POSSIBLE~~ AND ADDS WHENEVER IT IS <u>APPROPRIATE FOR THE DEVELOPMENTALLY DISABLED PERSON</u>.

RESPONSE: OUR QUESTION IS, WHAT IS APPROPRIATE, OR MORE IMPORTANTLY, WHEN MIGHT IT NOT BE DEEMED APPROPRIATE? PERHAPS WHEN THE INDIVIDUAL IS SO SEVERLEY HANDICAPPED THAT HE/SHE DOES NOT FIT INTO THE PRESENT SERVICE DELIVERY SYSTEM? DOES THIS MEAN THAT THE POSSIBILITIES TO SERVE THE SEVERLY HANDICAPPED IN THE COMMUNITY IS NEGATED; AND

THAT WE SHOULD NOT ~~ATTEMPT TO~~ Persue The DEVELOPment of COMMUNITY SERVICES FOR THE SEVERLY HANDICAPPED THAT ARE RESPONSIVE TO THEIR NEEDS AND COSTS EFFECTIVE? I RECALL A SHORT 8 TO 10 YEARS AGO MANY INDIVIDUALS WHO WERE MODERATELY RETARDED WERE THOUGHT TO BE UNABLE TO RECIEVE SERVICES IN THE COMMUNITY. YET THEY HAVE DEMONSTRATED TO EVERYONE THAT THEY CAN FUNCTION SUCCESSFULLY IN MONTANA COMMUNITIES ACCROSS THE STATE.

SEC. 3; P.5/PAR. (2).--READS- RESIDENTS SHALL HAVE A RIGHT TO THE LEAST RESTRICTIVE CONDITIONS NECESSARY TO ACHIEVE THE PURPOSES OF HABILITATION, TO THIS END (ADD) <u>WHENEVER IT IS CONSIDERED BENEFICIAL TO THE RESIDENT</u>.

RESPONSE: AGAIN, WHEN MIGHT IT NOT BE CONSIDERED BENEFICIAL? THE LEAST RESTRICITIVE CONDITIONS SIMPLY AFFORDS MENTALLY HANDICAPPED PERSONS THE RIGHT TO OPPORTUNITIES FOR GROWTH AND DEVELOPMENT IN A SETTING THAT WILL FACILITATE THEIR DEVELOPMENT. JUST AS YOU AND I HAD OPPORTUNITIES TO LEARN AND GROW IN SETTINGS AND UNDER CONDITIONS THAT FACILITATED OUR DEVELOPMENT, SHOULD NOT ALL MENTALLY HANDICAPPED PERSONS BE AFFORDED THAT SAME RIGHT? IF I WAS SEVERLY HANDICAPPED AND HAD LITTLE OR NO CONTROL OVER MY ENVIRONMENT, I WOULD HOPE THAT THE CONDITIONS AND ENVIRONMENT IN WHICH I FOUND MYSELF WOULD ENHANCE MY POSSIBILITIES TO LEARN AND DEVELOP.

WE ALSO NOTE THAT THE FACILITY SHALL NO LONGER ~~MAKE EVERY ATTEMPT~~ TO PROVIDE SERVICES UNDER THE LEAST RESTRICITIVE CONDITIONS, BUT SIMPLY <u>ATTEMPT</u> TO DO SO. IF YOU WERE MENTALLY HANDICAPPED AND YOU KNEW THAT YOUR ENVIRINMENT AND THE CONDITIONS IN WHICH YOU LIVED HAD A SIGNIFICIENT IMPACT ON YOUR CHANCES FOR LEARNING, WOULD YOU BE SATISIFIED THAT PERHAPS A SINGULAR OR HALF HEARTED ATTEMPT WILL BE MADE IN YOUR BEHALF?

SEC. 3; P.6, LINE23F-- CRITERIA FOR RELEASE TO LESS RESTRICITIVE SETTING FOR HABILITATION BASED ON RESIDENTS NEEDS, INCLUDING CRITERIA FOR DISCHARGE (DELEATE) AND ~~A PROJECTED DATE FOR DISCHARGE~~.(INSERT) THE DATE OF DISCHARGE IS DEPENDENT UPON FULLFILLMENT OF THE CRITERIA FOR DISCHARGE.

RESPONSE: WHAT SPECIFICALLY IS THE CRITERIA FOR DISCHARGE, AND WOULD THE CRITERIA FOR DISCHARGE BE INDIVIDUALIZED FOR THE SEVERLY HANDICAPPED? WOULD THE CRITERIA FOR DISCHARGE INCLUDE PLANNING SO THAT THE HANDICAPPED MAY RECIEVE SERVICES in THE COMMUNITY?

FINALLY, SEC.3; P7, PAR. (5)-- AS PART OF HIS HABILITATION PLAN, EACH RESIDENT SHALL HAVE AN INDIVIDUALIZED POST INSTITUTIONALIZATION PLAN. (ADD) IF DEINSTITUTIONALIZATION IS AN APPROPRIATE GOAL FOR THE RESIDENT.

RESPONSE: AN ASSUMPTION SEEMS TO BE MADE THAT FOR SOME RESIDENTS, DEINSTITITIONALIZATION IS NOT APPROPRIATE? TO WHICH GROUP OF HANDICAPPED PERSONS DOES THE AUTHOR ADDRESS HIMSELF AND WHY IS IT INAPPROPRIATE?

GENTLEMAN, THE REALITIES OF SERVING THE MOST SEVERLY HANDICAPPED IN COMMUNITY BASED SERVICES IS ONLY LIMITED BY OUR OWN ATTITUDES COMMITTMENT AND INGENUITY TO DEVELOP ALTERNATIVES AND NOT SOLEKY BY THE SEVERITY OF HANDICAPPING CONDITIONS. DEINSTITUTIONALIZATION HAS WORKED IN OUR STATE AND IT CAN CONTINUE TO WORK. THIS IS FIRST AND FORMOST TO THE CREDIT OF THE DISABLED WHO HAVE DISPLAYED THAT THEY CAN FUNCTION SUCESSFULLY IN COMMUNITIES;AND SECONDLY, TO THE CREDIT OF PERSONS LIKE YOURSELVES, LEGISLATORS WHO HAD THE INSIGHT

AND COMMITTMENT TO CREATE ALTERNATIVES AND OPPORTUNITIES THAT ARE RESPONSIVE TO HANDICAPPED NEEDS AND COST EFFECTIVE. LETS NOT NOW ALTER A GOOD PIECE OF LEGISLATION THAT HAS BEEN OPERRATIONALIZED EFFECTIVELY AND AMMEND IT IN ORDER TO KEEP MENTALLY HANDICAPPED PERSONS INSTITUTIONALIZED RATHER THAN ALLOWING OPPORTUNITIES FOR TREATMENT IN LESS RESTRICTIVE COMMUNITY BASED SETTINGS.

ON BEHALF OF THE ASSOCIATION , WE WISH TO THANK YOU FOR THIS OPPORTUNITY TO ADDRESS YOU. ARE THERE ANY QUESTIONS OR COMMENTS?

Testimony on Senate Bill 348

Kenneth A. Rohyans 801 Maynard Rd, Helena

For more than ten years, I have been deeply and personally involved in the efforts to gain the best available habilitation, humanity and dignity for the developmentally disabled people of Montana. As a part of those efforts, I have had the opportunity to observe closely the deliberations and actions of five Legislative Assemblies prior to this one. Most of these Legislative Assemblies have supported the developmentally disabled population and have endeavored to uphold the principles of Normalization as they were stated in HJR-11, 1973 and unanimously concurred in by both houses.

But in 1981, we have a two-pronged attack on these principles coming from Senator Mike Anderson and Representative Marks. Both of these gentlemen, oddly enough, represent Boulder. But definitely not the non-voting developmentally disabled personnel at Boulder River School and Hospital.

Representative Marks" HB-333 seeks to give us a soft definition of "Appropriate Public Education" acceptable only to the Superintendent of Public Instruction, the MEA and a few others, but bitterly opposed by we parents and those working for the best interests of the developmentally disabled population. It was no surprise, therefore, to see the term "appropriate education" appear on Page 4, lines 24 and 25 of this bill.

May I call your attention to Page 1, Section 1, Subsection (2) beginning on line 18. This refers to treatment and habilitation, "Accomplish this goal ~~whenever-possible~~ in a community-based setting whenever it is appropriate for the developmentally disabled person. Striking the good language, "whenever possible" is enough to make me angry. The added language is simply appalling. It carries three insupportable connotations. These are: 1. BRS&H may be as appropriate as community-based programs. Except for non-ambulatory

personnel and some few behavior problems, this is currently not true.
2. It also connotes that inappropriate placements have already been made. Some initial problems, yes. But most of these have been overcome through program resources or the help of the Regional Clinical Trainers.
3. And finally it connotes that the individual must be shaped or fitted for a specific program. False. Programs can, or should be able to, adapto fit the needs of almost any client. Come to Progress, Inc. here in Helena and see.

The attacks on the nationally accepted normalization principles continue throughout the bill. Please view the language on Page 5, Lines 12 and 13. The resident has a right, if somebody considers it to be beneficial. I submit that something granted under this type of license is no longer a right and again the developmentally disabled will make sacrifices to protect an agency. To see the extent of sacrifice, this wording must be viewed in the light of the definitions of "Least and Less Restrictive" contained in HB-333, which would become part of the same section of the law.

Finally, I ask you to question the wisdom of giving the power to appoint professional persons to a Superintendent of Public Instruction whose press statements during his campaign were completely against Special Education. Such appointees could effectively veto the progression of a minor from BRS&H on the ground that criteria for entry into a school system had not been met.

I beg you to continue to support the good of the developmentally disabled population of Montana and kill Senate Bill-348.

Thank you.

NAME: Seth Richter DATE: 2/6/91

ADDRESS: 1215 E. 6th Ave.

PHONE: 449-3878

REPRESENTING WHOM? State DD Advisory Council

APPEARING ON WHICH PROPOSAL: SB 348

DO YOU: SUPPORT? ______ AMEND? ______ OPPOSE? ✓

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DDPAC

GOVERNOR THOMAS L. JUDGE
CHAIRMAN A.A. ZODY

DEVELOPMENTAL DISABILITIES PLANNING & ADVISORY COUNCIL
1218 East Sixth Avenue, Suite 1, Helena, Montana 59601
406/449-3878

PRESENTATION TO THE SENATE PUBLIC HEALTH COMMITTEE ON SB 348, FEBRUARY 9, 1981:

The Montana State Developmental Disabilities Planning & Advisory Council opposes Senate Bill 348 because the Council feels this measure would represent a backsliding of public policy affecting Montana's developmentally disabled citizens. As you know, the deinstitutionalization concept was long ago endorsed by the people of Montana through their State Legislature.

The Council views most unfavorably any attempt to insert in the law an indication that institutional care is equally as preferable as community-based care. It appears that SB 348 is an attempt to do just that.

The Council is convinced that developmentally disabled persons have benefited, overall, from the transfers from the institutions to the communities over the past few years, and that community-based programs continue to offer the least restrictive settings for habilitation and training and to assist developmentally disabled persons achieve the most normal life styles possible.

In short, we believe that it is always beneficial to an institutional resident to be moved from the institution to appropriate community services. However, we do emphasize that the appropriateness of the community services to the needs of those residents who are transferred from the institutions is of great importance.

We urge you to oppose Senate Bill 348.

Beth Richter
Executive Director

NAME: Shirley Rammer DATE: Feb. 9, 1981

ADDRESS: 1109 19th Ave. S.W. GREAT FALLS

PHONE: 727-5221

REPRESENTING WHOM? Parent

APPEARING ON WHICH PROPOSAL: SB 348

DO YOU: SUPPORT? ____ AMEND? ____ OPPOSE? ✓

COMMENTS:

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

NAME: Joe Roberts DATE: 2/9/81

ADDRESS:

PHONE:

REPRESENTING WHOM? Leg. Action Com for Developmental Disabilities

APPEARING ON WHICH PROPOSAL: SB 348

DO YOU: SUPPORT? AMEND? OPPOSE? ✓

COMMENTS: jeopardizes our state's commitment to community services for D.D. people.

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

THE COMMUNITY IMPERATIVE:

A REFUTATION OF ALL ARGUMENTS IN SUPPORT OF INSTITUTIONALIZING ANYBODY BECAUSE OF MENTAL RETARDATION

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THE COMMUNITY IMPERATIVE: A REFUTATION OF ALL ARGUMENTS IN SUPPORT OF INSTITUTIONALIZING ANYBODY BECAUSE OF MENTAL RETARDATION

In the domain of Human Rights:

All people have fundamental moral and constitutional rights.

These rights must not be abrogated *merely* because a person has a mental or physical disability.

Among these fundamental rights is the right to community living.

In the domain of Educational Programming and Human Service:

All people, as human beings, are inherently valuable.

All people can grow and develop.

All people are entitled to conditions which foster their development.

Such conditions are optimally provided in community settings.

Therefore:

In fulfillment of fundamental human rights and

In securing optimum developmental opportunities,

All people, regardless of the severity of their disabilities, are entitled to community living.

A TIME TO TAKE SIDES

Every fundamental social change is accompanied by active, sometimes bitter debate and confrontation. The deinstitutionalization movement fits this mold. Some say deinstitutionalization is moving ahead too quickly. The data, they argue, do not warrant a wholesale abandonment of institutions for the retarded (Balla, 1978; Baumeister, 1978; Begab, 1978; Ellis et al., Memorandum, October 18, 1978, p. 16; Zigler, 1977, p. 52). Another professional research constituency has heralded community residences as morally and empirically preferable to the institutional model (Baker et al., 1977; Biklen, 1979; Blatt, 1973; Dybwad, 1979).

The ENCOR (Nebraska) and the Macomb/Oakland (Michigan) models of community services are two much heralded, notable examples of systems which have received government and community support. Like other efforts to establish community residences, these systems have experienced resistance, too. And in New York State and in the Washington, D.C. metropolitan area, prospective group homes have even been firebombed. But despite the occasional resistance, community residences are being established at a rapid rate.

In every time of profound social change people must take sides. Indecision, the failure to take sides, is tantamount to a political choice. On the institution question, or might we more accurately call it the community integration question, the time has long since come to take a stand.

THE CONTROVERSY

Pressures and justifications for continued institutionalization of retarded people abound. Despite recognition in most federal agencies that deinstitutionalization is a goal, social programs as frequently as not promote continued institutional services (Comptroller General, GAO, 1977). While the numbers of retarded persons institutionalized in mental retardation facilities have declined, the numbers of retarded people in nursing homes has increased in equal amounts (Conroy, 1977). Specialization of human services has been set forth repeatedly as justification for segregation. Virtually every state's education and developmental disabilities plan includes this reasoning. Institutions are being held out as appropriate placements for severely and profoundly retarded persons. Private and State economic interests make deinstitutionalization fiscally unprofitable, at least as long as there is an absence of conversion plans for the existing institutional facilities (Blatt et al, 1977), something no state has developed. Local zoning ordinances continue to pose threats, albeit less and less effectively, to group living arrangements for retarded people in residentially zoned neighborhoods (City of White Plains v. Ferraioli, 1974). Some experts have seen the future of institutions and institutional abuse as so permanent and unshakeable that they have proposed euthanasia for more severely retarded persons (Heiffetz and Mangel, 1975). This line of reasoning is strikingly like the United States Marine policy of fire bombing Vietnamese villages to save them. And some states have released retarded people from institutions into proprietary homes and onto the streets, without providing any community adjustment services. Such policies seem almost conspiratorial; predictably, in their anger and disillusionment, some local communities have perceived deinstitutionalization as "dumping."

Our own view is that the principal barriers to deinstitutionalization are not technical ones. Federal program incentives can be redirected. Conversion plans can be fashioned. Exclusionary zoning laws can be and are being reshaped in courts and legislatures. And community support services can put an end to the practice of "dumping." But no amount of tinkering with technical planning matters alone can bring about community integration. The real issue, the prerequisite for making any kind of determination about whether or not to support deinstitutionalization, concerns how people view other people and, more specifically, how people classified as retarded are perceived. Policies of forceably segregating groups of labeled people, whether for protection, punishment, or treatment, frequently reflect the possibility that the subject people have been devalued. In our culture, and in many others, institutions have provided the mechanism for large scale devaluation of certain identified groups, including the mentally retarded. As long as retarded people are socially, economically, and politically rejected, the institution will seem acceptable. But, forsake the devalued role and one must abandon a whole host of prejudicial and discriminatory treatments, the institutions among the most obvious of them.

By definition, institutions deny people community living experiences and limit the opportunities of nondisabled people to interact with their disabled peers. This fact exhibits quite clearly that the pivotal issues with respect of deinstituavailable on the institutional context as a determinant of staff behavior (Zimbardo, 1973; Goffman, 1961, Taylor, 1977).

Another belief frequently used to buttress the besieged institutions holds that underfinancing creates the circumstances for abusive institutional conditions. Yet, institutions have proven to be the most expensive form of "service" for retarded persons. As the Pennhurst, Plymouth and Willowbrook experiences attest, even those institutions where states are expending between $35,000 and $45,000 per resident annually and which have some of the most favorable staffing ratios do not adequately protect their residents from physical and psychological harm or provide even minimally adequate habilitation to clients (Gilhool, 1978; Ferleger, 1979, MARC et al v. Donald C. Smith, M.D. et al). Higher ratios of professional staff and centralized professional services do not seem to improve the quality of services either (McCormick, Zigler, and Balla, 1975).

What else do we know about institutions? We know that interaction between institutionalized clients and other people, either other clients or treatment staff, drops substantially in the institutional environment (Goffman, 1961; Provence and Lipton, 1962; and Giles, 1971). We know that institutions are more often than not unstimulating environments (Flint, 1966). We know that institutionalized residents are not likely to be cared for by a few "primary" caretakers, but by hundreds of different staff over a two or three year period (Hobbs, 1975). We know that institutionalized children frequently become apathetic and isolated (Hobbs, 1975) or overly anxious to gain recognition and attention (Yarrow, 1962). Within just a few hours of entering an institution, residents tend to become dramatically less normal, both in appearance and in interaction with others (Holland, 1971). We know that institutional life can promote perseveration behavior. We know that the people who seem to benefit most from institutions are those who came from what clinicians have regarded as the worst home situations (Zigler and Balla, 1976). In other words, the institution was a relatively positive experience only in relation to more miserable pre-institutional experiences. And we know that people who have been institutionalized for long periods of time become more imitative and more conforming (Zigler and Balla, 1977). We know too that institutions can help infants learn to be non-ambulatory (DeGrandpre, 1974). Ironically, some critics of total deinstitutionalization have themselves reported an inverse relationship between institutional size and quality of care. Institutions with smaller living units are superior to those with larger ones and most importantly, group home residences of 10 residents or less, in the community, tend to be more resident oriented (Zigler and Balla, 1976; and McCormick, Balla and Zigler, 1975). Furtner, a comparison of severely handicapped children in institutional and small community settings provides substantial evidence of greater skills development among clients in the small community settings (Kushlick, 1976; Tizard, 1969).

While an argument has been made that for severely and profoundly retarded persons the institution is a less expensive mode of service than community residences (Zigler, 1978), data have not been provided to substantiate that claim. In fact, available information indicates that if there is a difference, institutions are a more expensive though less effective mode of service (McCormick, Balla and Zigler, 1975). A study of the cost of services for 362 ex-residents of the Willowbrook Institution found a savings of at least 50% and 68% of the subjects were classified as severely and profoundly retarded (N.Y.S. Department of Mental Hygiene, N.D.). Similarly, Judge Broderick found that it cost $60 per day to keep people in disgraceful conditions at the Pennhurst institution and one third that amount to provide community living arrangements (Halderman v. Pennhurst, 1977). In each of the available studies, it is fair to conclude that there are no "economies of scale" in residential services (Piasecki, et al., 1978; O'Connor and Morris, 1978; Murphy and Datel, 1976; Jones and Jones, 1976 and Mayeda and Wai, 1975). If there are differences to be seen, those can best be described as an inverse economics of scale; smaller is less expensive.

Historically, it has been argued, institutions were developed in 19th century America as a response to the failure of communities to meet the needs of the retarded. This is only partially true. It is true that Dix, Howe, Wilbur, Seguin and others formulated the earliest institutions in response to community failure, but the failure was an absence of programs and services *and not a failure of actual community services.* Shortly thereafter, at the turn of the century, large institutions came into being, and not so much as products of benign motives. The latter institutions and the then emerging institutional model were largely a response to perceived social problems created by urbanization and immigration. Their purpose was to isolate the retarded from society. So there is no objective tionalization are moral – the society is richer, community life more rewarding when all people are valued, when people share in each others' lives – and legal – the constitution protects liberty – and not merely ones of differing treatment strategies. Thus, we do not make a case for community integration on the grounds that community living will always be more enriching or humane, in a clinical sense, than institutional settings, but rather on the grounds that integration is morally correct, that integration is basic to the constitutional notion of liberty, and that community programs inherently have far greater *potential* for success than do institutions.

It is probably fair to hypothesize that some people *believe,* simply as an article of faith, that retarded people should be segregated. That is, some people may hold this belief as a morally sound one, just as we hold the opposite view. Further, we can presume that the rationale for such a belief might be to protect the retarded, to protect "society," or both. At least these arguments have been raised historically, particularly during the eugenics era (Ellis, 1911). Today, arguments for institutional care are made largely on other grounds, mainly clinical ones.

Senior researchers, scholars, social planners, and decision makers have raised seven serious complaints against deinstitutionalization. Critics charge:

- that the allied concepts of deinstitutionalization, normalization, and educational mainstreaming are "little more than slogans . . . badly in need of an empirical base;"
- that some people have such profound retardation that they cannot benefit from educational programming at all and certainly not from community placement. They call for "enriched" custodial care in an institutional setting;
- that the community is not prepared to accept the profoundly and severely retarded and probably never will be;
- that there is no evidence that retarded persons develop more in non-institutional settings;
- that there can be good and bad institutions and good and bad community settings. They argue that neither form of service is inherently bad or good;
- that institutions are a more efficient and less expensive way to provide services, particularly to people with severe and profound retardation;
- that current public policy toward deinstitutionalization is part of a historical swinging pendulum. By this line of reasoning, institutions will become fashionable and favored again, after the community thrust has run its course and experienced failure.

Interestingly, when we move beyond the ideological, moral, and legal bases for community integration, that is when we examine the sociological, psychological, and economic research on institutions and community services we find that what we consider to be right is also best. The available research supports community integration.

Observational data on institutions have revealed shocking evidence of human abuse, in the form of retarded persons forced to live in isolation cells, showers, and barren dayrooms, people washed down with hoses like cattle in a slaughter house, people tied to benches and chairs and constrained in straight jackets, toilets without toilet seats and toilet paper, or stall walls, broken plumbing, cockroaches, unclothed people burned by floor detergent and overheated radiators, people intentionally burned by their supervisors' cigarettes, rooms crowded wall to wall with a sea of beds, children locked in so-called "therapeutic" cages, people forced to eat their meals at breakneck speeds, food provided in unappetizing form (often as mush), and people drugged into quiescence. Observational data repeatedly reveal these and a range of other equally abusive phenomena (Biklen, 1973; Blatt and Kaplan, 1966; Blatt, 1970, 1973; Blatt, McNally, and Ozolins, 1978; DeGrandpre, 1974; Giles, 1971; Holland, 1971; N.Y.A.R.C. et al. v. Rockefeller, 1972; Wooden, 1974; Halderman v. Pennhurst, 1977, and Wyatt v. Hardin, 1971; Taylor, 1977; and Wiseman, 1969). The recent parade of court cases involving issues of institutional life provides another unequivocal source of data devastating to institutional legitimacy (N.Y.A.R.C. et al. v. Rockefeller, 1972; Wyatt v. Hardin, 1971; Halderman v. Pennhurst, 1977).

Even the most modern institutions have fostered routinization and other forms of institutionalization of residents' lives (Blatt, McNally, and Ozolins, 1978). In fact, routinization, degradation, and human devaluation, though not always of a violent, cruel, or unusual nature, seem to be endemic to institutional environments (Goffman, 1961; Vail, 1966; Dybwad, 1970).

One argument frequently proposed in defense of institutions is that abuses result from insensitive and ill-trained or ineffectual staff. This hypothesis is overwhelmingly refuted by the breadth of data truth to the claim that we are witnessing the swing of a pendulum, back to a community service model which once, a century ago, failed us. We have never fully explored the potential of community services.

Another argument frequently used to justify institutions hinges on the claim that some people are so retarded that they cannot benefit from educational programming. This thesis has been used to justify "enriched" custodial care in institutions (Ellis et al, 1978). Yet, only if education is artificially limited to academic training can it be argued, as some have, that not all people will benefit from it. We know that all people can benefit from educational or habilitative programming. This conclusion has been drawn by major proponents of community integration (Blatt and Garfunkel, 1969; Dybwad and Dybwad, 1977; PARC v. Commonwealth of Pennsylvania, 1971), as well as by some who have advocated a continued institutional role (Baumeister, 1978; Zigler, 1978).

Critics and proponents of deinstitutionalization do agree that there are both "good" and "bad" institutions and "good" and "bad" community residences. That is, those on either side of the controversy can point to abusive institutions, relatively "good" institutions, bad community settings and good community settings. But, therein ends the agreement. As proponents of deinstitutionalization, we reject the view that good and bad settings will occur equally as frequently in communities as in institutions so long as state involvement remains relatively constant. We believe that institutions have a propensity to spawn abuse. We further believe that community settings have inherently greater potential to afford humane, individualized, and appropriate treatment.

Further, we believe that even so-called "good" institutions can be good only in a clinical sense. Residents may receive competent, even imaginative, educational/habilitative programming. But, the very existence of the institution must be viewed as a failure. Here we must refer to the earlier examination of moral and constitutional rights. Institutions, by definition, limit retarded people from interaction with non-disabled people and limit retarded people from community living. That is not to say that we, nor anyone else, can justify "dumping" retarded people into communities. Further, we expect and know that retarded people may have difficulties in adjusting to community life. To this our response should be not to eliminate the problem (by institutionalizing people) but to help people solve those problems.

Data on community programming support the view that whereas abuses in institutions are to be expected, abuses in community programs are more the exception than the rule. First hand accounts, for example, indicate that deinstitutionalized retarded persons generally are happy or happier about their lives in the community (Edgerton and Bercovici, 1977; Bogdan and Taylor, 1976; Gollay et al., 1978). Moreover, when given an option to stay in the community or return to the institution, well over 75% of those placed in foster homes, group homes, and adult homes would stay in the community (Scheerenberger and Felsenthal, 1976). Further, the data on community adjustment, by whatever standards are applied, yield a consistent pattern of moderate though unpredictable success (Baller, Charles, and Miller, 1966; Edgerton and Bercovici, 1976; Cobb, 1972; Bogdan and Taylor, 1976; Kennedy, 1976; Muelberger, 1972; O'Connor, 1976; and Gollay et al., 1978).

The complement to adjustment is acceptance. Is it fair to say that retarded people, particularly the more severely and profoundly retarded, will not be accepted in communities? No. Despite some instances of violence and other forms of resistance, the history of retarded people in the community is a history of acceptance. In fact, the majority of all retarded people, including the most disabled, have always lived in the community, with their own families and have found considerable acceptance (Saenger, 1957). And charges that the retarded are more likely than others to commit criminal acts are entirely without foundation (Biklen and Mlinarcik, 1978). Even the allegations that property values decline when group homes and other home-like living arrangements for the retarded are located in residential neighborhoods has been proven false (Thomas, 1973; N.Y. State Office of Mental Retardation and Developmental Disabilities, 1978). Finally, if some retarded people find resistance and hostility in the communities, the fair response is hardly to punish retarded persons (by institutionalizing them) for others' ignorance.

CONCLUSION

The data on institutions and community programming do not equivocate. Institutions have little with which to defend themselves. Community integration seems, in every respect, preferable. Indeed, we ask, when is it time to express one's moral beliefs? When is it time to enforce constitutional rights? And when is there enough data to support a fundamental social change? At what point must we cease to ask "does it work?" and instead ask "how can we help make it work?"

Even if the data were less clear, even if there were no data to support either side of the controversy, institution vs. community integration, we would support the latter. We make the determination on moral and constitutional grounds.

We believe that all people, however severe their disabilities, must be permitted opportunities to live among their non-disabled peers and vice versa. We believe that people who have been classified as retarded should have available to them the patterns and conditions which characterize the mainstream of society. Indeed, we believe that support services should be available to promote the fullest possible integration of people with disabilities into communities.

To allow for continued segregation of retarded persons into institutions and other forms of residential ghettos can only lend credence to the many fears of, and myths and prejudices against people with disabilities. And no amount of scientific language can mask the fact that segregation benefits no one. We find no reasons, either based in data or moral belief, to support the practice of isolating or segregating retarded persons from the mainstream of communities. If people need services, let them receive them in typical communities. Rational scientific inquiry and moral convictions can support no other conclusion.

The issue of institutionalization, like the issues of slavery and apartheid, strikes at the very core, the very essence of our common humanity. Just as the emergence of Jim Crowism, the Ku Klux Klan, and racist theories of black inferiority do not and cannot justify the conclusion that Black Americans were better off under slavery, neither can neighborhood resistance, exclusionary zoning codes, expert claims that some people cannot learn, or even firebombing of prospective homes combined to justify the conclusion that mentally retarded people are better off in institutions. What is at issue here is fundamental human rights and the quality of the lives of human beings. To claim that some people cannot learn, to place those same people in isolated institutions, and then to suppose that the dignity and well being of those people can be protected, let alone enhanced, is to deny history. And to suggest that some people cannot and should not live amongst their fellow human beings is to deny our shared humanness.

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NAME: Seth [illegible] DATE: 2/9/81

ADDRESS: 1215 E 6th Ave.

PHONE: 449-3875

REPRESENTING WHOM? State DD Advisory Council

APPEARING ON WHICH PROPOSAL: HJR 6

DO YOU: SUPPORT? X AMEND? ______ OPPOSE? ______

COMMENTS: See attached

PLEASE LEAVE ANY PREPARED STATEMENTS WITH THE COMMITTEE SECRETARY

DDPAC

Ted Schwinden
GOVERNOR ~~THOMAS L. JUDGE~~

CHAIRMAN A.A. ZODY

DEVELOPMENTAL DISABILITIES PLANNING & ADVISORY COUNCIL

1218 East Sixth Avenue, Suite 1, Helena, Montana 59601

406/449-3878

PRESENTATION TO THE SENATE PUBLIC HEALTH COMMITTEE ON HJR 6, FEBRUARY 9, 1981:

The State Developmental Disabilities Planning & Advisory Council supports educational efforts directed toward prevention of birth defects. House Joint Resolution 6 recommends educational activities at the very source of the problem.

The incidence is continually growing of congenitally handicapping conditions which are suspected of being related to the ingestion of drugs and alcoholic beverages by the mother while pregnant.

We believe that many women are simply unaware of these dangers and would act responsibly if they were warned of the risks. Placing warning posters or notices in the locations where these items are sold would be an effective method of informing expectant mothers.

Primary prevention of birth defects, such as that suggested by HJR 6, is currently a neglected area in Montana. Neglected, I believe, not because of lack of concern but because of lack of direction. The adoption of a joint legislative resolution would give such an educational program the direction and importance it deserves.

In 1981, the International Year of the Disabled, what better activity could there be than to attempt to prevent future disabling conditions?

We urge your support of HJR 6.

Beth Richter
Executive Director