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*Sen. J. J. ...* BILL NO. *388*  
*J. J. ...*

INTRODUCED BY \_\_\_\_\_

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE DEVELOPMENTALLY DISABLED; AMENDING SECTION 80-2312, R.C.M. 1947; AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND 80-2303 THROUGH 80-2309, R.C.M. 1947."

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

Section 1. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

INTRODUCED BILL

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Section 2. Definitions. As used in this act:

(1) "Board" means the mental disabilities board of visitors created by this act.

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

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

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping conditions closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and

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

4 (6) "Next of kin" includes but need not be limited to  
5 the spouse, parents, adult children, and adult brothers and  
6 sisters of a person.

7 (7) "Professional person" means:

8 (a) a medical doctor, or

9 (b) a person trained in the field of developmental  
10 disabilities and certified by the regional mental health  
11 director, if the director is a licensed physician, by a  
12 member of the regional developmental disabilities council or  
13 board of directors, if such member is a licensed physician,  
14 or by the superintendent of the Boulder River School and  
15 Hospital or of the Eastmont Training Center, if the  
16 superintendent is a licensed physician.

17 (8) "Resident" means a person admitted to a  
18 residential facility for a course of evaluation, treatment  
19 or habilitation.

20 (9) "Residential facility" or "facility" means any  
21 residential hospital or hospital and school which exists for  
22 the purpose of evaluating, treating and habilitating the  
23 developmentally disabled on an inpatient basis, including  
24 the Boulder River School and Hospital and the Eastmont  
25 Training Center. The term does not include a group home or

1 foster home or a halfway house. A correctional facility or  
2 a facility for the treatment of the mentally ill shall not  
3 be a "residential facility" within the meaning of this act.

4 (10) "Respondent" means a person alleged in a petition  
5 filed pursuant to this act to be developmentally disabled  
6 and in need of developmental disabilities services.

7 (11) "Responsible person" means any person willing and  
8 able to assume responsibility for a person who is  
9 developmentally disabled or alleged to be developmentally  
10 disabled. Whenever, in any proceeding under this act, the  
11 court believes that a conflict of interest may exist between  
12 a person who is developmentally disabled or alleged to be  
13 developmentally disabled and his parents or guardian, or  
14 that the parents or guardian are unable to protect the  
15 interests of such person, or whenever there is no parent or  
16 guardian, the court shall appoint a responsible person to  
17 protect the interests of the person who is developmentally  
18 disabled or alleged to be developmentally disabled. Only  
19 one person shall at any one time be the responsible person  
20 within the meaning of this act. In appointing a responsible  
21 person, the court shall consider the preference of the  
22 respondent or patient. The court may at any time, for good  
23 cause shown, change its designation of who is the  
24 responsible person.

25 (12) "Seriously developmentally disabled" means

1 developmentally disabled and functioning at more than three  
 2 standard deviations below the mean on a standardized  
 3 intelligence test such as the Stanford Binet Scale and on a  
 4 measure of adaptive behavior such as the American  
 5 Association on Mental Deficiency Adaptive Behavior Scale, or  
 6 because of some combination of developmental and physical  
 7 disability, unable to function in a community-based setting.

8 Section 3. (1) Any person subject to emergency  
 9 admittance to a residential facility, to examination or  
 10 evaluation by a professional person, or to any hearing held  
 11 pursuant to this act shall have all the rights accorded to a  
 12 person subject to involuntary commitment proceedings under  
 13 the laws of this state relating to involuntary commitment of  
 14 the seriously mentally ill.

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

18 (a) to be present at any hearings held pursuant to  
 19 this act;

20 (b) to be represented by counsel in any hearing;

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

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

1 is objected to by the respondent or by a responsible person  
 2 appointed by the court.

3 (3) A person may waive his procedural rights provided  
 4 that the waiver is knowingly and intentionally made. The  
 5 right to counsel in a hearing held pursuant to section 6 may  
 6 not be waived. The right to habilitation provided for in  
 7 this act may not be waived.

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

17 (5) In the case of a minor, the waiver of rights can  
 18 be knowingly and intentionally made:

19 (a) when the minor is under the age of twelve (12), by  
 20 the parents of the minor;

21 (b) when the minor is over the age of twelve (12), by  
 22 the minor and his parents;

23 (c) when the minor is over the age of twelve (12) and  
 24 the minor and his parents do not agree, the minor can make  
 25 an effective waiver of his rights only with the advice of

1 counsel.

2 If the court believes that there may be a conflict of  
3 interest between a minor and his parents or guardian, the  
4 court may appoint a responsible person or guardian ad litem  
5 for the minor.

6 Section 4. (1) The parents or guardian of any person  
7 alleged to be developmentally disabled or the person himself  
8 may at any time request the assistance of a professional  
9 person in determining whether the person is developmentally  
10 disabled, the extent of such disability, and the most  
11 appropriate course of treatment, habilitation and education  
12 for the person alleged to be developmentally disabled.

13 (2) Whenever the parents or guardian of a person  
14 alleged to be developmentally disabled or the person himself  
15 request a course of evaluation and treatment, they shall  
16 ascertain, with the professional person who undertakes the  
17 case, the least restrictive means of evaluating and treating  
18 the person alleged to be developmentally disabled.  
19 Evaluation and treatment in a residential facility shall  
20 take place only upon certification by the professional  
21 person in charge of the case that adequate community-based  
22 facilities are not available. Residential evaluation and  
23 treatment shall not be for more than thirty (30) days  
24 without subsequent proceedings before the court.

25 Section 5. (1) Any person who believes that there is

1 a person who is developmentally disabled and in need of  
2 developmental disability services may report the situation  
3 to a professional person. If the professional person  
4 believes from the facts given to him that the person may be  
5 developmentally disabled and in need of developmental  
6 disability services, he shall contact the parents or  
7 guardian of the person alleged to be developmentally  
8 disabled or the person himself. If any of the persons so  
9 contacted refuse to cooperate with the professional person  
10 and if the professional person believes from all the  
11 circumstances of the case that the person may be  
12 developmentally disabled and in need of developmental  
13 disabilities services he shall request the county attorney  
14 to file a petition alleging that there is a person in the  
15 county who is developmentally disabled and in need of  
16 developmental disabilities services.

17 (2) The petition shall contain the name and address  
18 of:

19 (a) the professional person and any other person  
20 requesting the petition, and their interest in the case;

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

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

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

3 (e) the name and address of any person whom the county  
4 attorney believes might be willing and able to be appointed  
5 responsible person; and

6 (f) a statement of the rights of the respondent and  
7 his parents or guardian which shall be in conspicuous print  
8 and identified by a suitable heading.

9 (3) Upon presentation to the court by the county  
10 attorney, the court shall immediately consider the petition  
11 with or without a hearing to determine if there is probable  
12 cause to believe that the respondent is developmentally  
13 disabled and in need of evaluation and treatment. If the  
14 court finds no such probable cause it shall dismiss the  
15 petition. If the court finds that probable cause does exist  
16 it shall direct a professional person to examine the  
17 respondent and to make an inquiry concerning the  
18 circumstances of the case. Such examination shall not  
19 exceed four (4) hours in length. If probable cause is found  
20 the court may appoint a responsible person other than the  
21 respondent's parents or guardian to protect the interests of  
22 the respondent. The responsible person shall be notified as  
23 soon as possible that a petition has been filed. Notice of  
24 the petition and the finding of probable cause shall be  
25 mailed or delivered to the respondent and to all other

1 persons named in the petition and to any person who would  
2 have been named in the petition had his name, address, and  
3 relationship to the respondent been known at the time.

4 (4) When the professional person first contacts the  
5 respondent, before he begins any examination, he shall give  
6 the respondent a copy of the petition and explain to the  
7 respondent the nature of the proceeding and his rights as  
8 set forth in the petition. If the respondent is incapable  
9 of understanding the explanation and proceeding, the  
10 professional person shall give the petition and make the  
11 explanation to the parents or guardian of the respondent.  
12 Before making any inquiry of the parents or guardian of the  
13 respondent, the professional person shall give them a copy  
14 of the petition, explain the nature of the proceeding and  
15 their rights as set forth in the petition.

16 Section 6. (1) If the professional person, based on  
17 his examination and inquiry determines that the respondent  
18 is not developmentally disabled or is not in need of  
19 developmental disability services, he shall report this  
20 finding in writing to the court and the petition shall be  
21 dismissed. If the professional person concludes that the  
22 respondent is developmentally disabled and in need of  
23 developmental disability services, he shall report this  
24 conclusion to the court in writing together with his  
25 recommendations for evaluation and treatment. The report

1 shall include an explanation of the basis on which the  
 2 professional person has reached his conclusion and shall  
 3 include a description of any tests or evaluation devices he  
 4 has employed. If the professional person's recommendation  
 5 is for further evaluation and treatment, notice of this  
 6 recommendation shall be sent to the respondent, his parents  
 7 or guardian, the next of kin, the responsible person  
 8 appointed by the court, if any, any attorney representing  
 9 the respondent or his parents or guardian. If no  
 10 responsible person has yet been appointed, the court may  
 11 appoint one at this time.

12 (2) If the respondent, his parents or guardian, the  
 13 responsible person, if any, or counsel for any party  
 14 requests a hearing on the recommendation, the court shall  
 15 set a time and place for hearing. The hearing shall be  
 16 before the court without a jury. The rules of civil  
 17 procedure shall apply.

18 (3) Prior to any hearing held pursuant to this  
 19 section, the court shall appoint counsel to represent the  
 20 respondent, if the respondent has not retained independent  
 21 counsel. The parents or guardian shall be informed of their  
 22 right to counsel and if they are indigent the court shall,  
 23 on their request, appoint counsel for them. In no case  
 24 shall the same attorney represent the respondent and his  
 25 parents or guardian.

1 (4) If the hearing is waived or if the court finds,  
 2 after hearing that the respondent is developmentally  
 3 disabled and in need of further evaluation and treatment,  
 4 the court shall order that the respondent undergo such  
 5 evaluation and treatment. Evaluation and treatment ordered  
 6 pursuant to this subsection shall be for no more than thirty  
 7 (30) days. It shall take place in the least restrictive  
 8 environment in which the necessary evaluation and treatment  
 9 can be accomplished. Evaluation and treatment in a  
 10 residential facility shall be ordered only if the necessary  
 11 evaluation and treatment cannot be accomplished through the  
 12 use of community-based facilities.

13 Section 7. (1) If as a result of the evaluation and  
 14 treatment ordered by the court, the professional person in  
 15 charge of the case recommends a course of habilitation and  
 16 treatment at the community level making use of community and  
 17 regional based services for the developmentally disabled, he  
 18 shall report his recommendation in writing to the court.  
 19 The recommendation shall be accompanied by a written report  
 20 indicating the factual basis for the recommendation and  
 21 describing any tests or evaluation devices which the  
 22 professional person has employed in evaluating the  
 23 respondent. If this course of treatment and habilitation is  
 24 agreed to by the parents, guardian, person evaluated,  
 25 responsible person, if any, and counsel for the person

1 evaluated, if any, then this community-based course of  
2 treatment shall be commenced as soon as practicable, and the  
3 petition shall be dismissed.

4 (2) If any of the parties listed in the preceding  
5 paragraph object to the community-based course of treatment,  
6 they may request the court to conduct a hearing on the  
7 matter. If a responsible person has not yet been appointed,  
8 the court may appoint a responsible person prior to the  
9 hearing. Notice of the time, date and place of the hearing  
10 shall be mailed or delivered to all of the parties listed in  
11 the preceding paragraph, and to the attorney for the  
12 parents or guardian, if any. The hearing shall be held  
13 before the court without a jury. The rules of civil  
14 procedure shall apply. If the court finds that the  
15 respondent is developmentally disabled and in need of  
16 community-based developmental disabilities services, it  
17 shall order that the respondent undertake a community-based  
18 course of treatment and habilitation.

19 Section 8. (1) If as a result of the evaluation and  
20 treatment either agreed to by the parents, guardian, or the  
21 person himself pursuant to section 4 or ordered by the  
22 court, the professional person in charge of the case  
23 concludes that the person evaluated is seriously  
24 developmentally disabled and recommends that treatment and  
25 habilitation be had in a residential facility on an extended

1 basis, the professional person shall file his written  
2 recommendation and report with the court and request that  
3 the court order the admission. The report shall include the  
4 factual basis for the recommendation, and shall describe any  
5 tests or evaluation devices which have been employed in  
6 evaluating the patient. If no responsible person has yet  
7 been appointed, the court may appoint one at this time. If  
8 there is no parent or guardian the court shall appoint a  
9 responsible person. At the request of the respondent, his  
10 parents or guardian or the responsible person, the court  
11 shall appoint counsel for the respondent. If the parents or  
12 guardian are indigent and if they request it, the court  
13 shall appoint counsel for the parents or guardian. Notice  
14 of the recommendation shall be mailed or delivered to the  
15 respondent, his parents or guardian, the responsible person,  
16 next of kin, if known, and the attorney for the respondent,  
17 if any, and for the parents or guardian, if any.

18 (2) The respondent, his parents or guardian, the  
19 responsible person, or the attorney for any party may  
20 request that a hearing be had on the recommendation. If a  
21 hearing is requested, the court shall mail or deliver notice  
22 of the date, time and place of the hearing to each of the  
23 parties listed at the beginning of this subsection. The  
24 hearing shall be to the court without jury. The rules of  
25 civil procedure shall apply.

1 (3) If the court finds that the respondent is  
 2 seriously developmentally disabled and that available  
 3 community-based services are not adequate, it shall order  
 4 the respondent admitted to a residential facility for an  
 5 extended course of treatment and habilitation. If the court  
 6 finds that the respondent is developmentally disabled, and  
 7 in need of developmental disabilities services but that  
 8 available community-based services are adequate, it shall  
 9 order the respondent to undertake a community-based course  
 10 of treatment and habilitation. If the court finds that the  
 11 respondent is not developmentally disabled or is not in need  
 12 of developmental disability services, it shall dismiss the  
 13 request.

14 (4) 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  
 19 to whether the order should be granted. The court may  
 20 refuse to authorize admission of a person to a residential  
 21 facility for an extended period of treatment and  
 22 habilitation if such admission is not in the best interests  
 23 of the person.

24 (5) If any person is admitted to a residential  
 25 facility for an extended course of habilitation without a

1 hearing, and if subsequent to such admission one of the  
 2 parties who could have requested a hearing learns that an  
 3 alternative course of treatment is available which is more  
 4 suitable to the needs of the resident, the party may request  
 5 the professional person in charge of the resident to release  
 6 the resident to the alternative, if it is a community-based  
 7 alternative, or transfer the resident to the alternative, if  
 8 it is a residential alternative. Any such transfer or  
 9 release shall comply with the requirements of section 9. If  
 10 the professional person in charge of the resident refuses to  
 11 authorize the release or transfer, then the party may  
 12 petition the court for a hearing to determine whether the  
 13 present residential alternative should be continued. The  
 14 hearing shall comply with the procedures set forth in  
 15 subsection 2 of this section.

16 Section 9. (1) No person shall be admitted to a  
 17 residential facility for longer than thirty (30) days except  
 18 on approval of the court. Whenever a person is admitted to  
 19 a residential facility for longer than thirty (30) days, the  
 20 court may appoint a person other than the parents or  
 21 guardian to act as responsible person for the resident. If  
 22 there is no parent or guardian, the court shall appoint a  
 23 responsible person.

24 (2) The court order approving the admission shall  
 25 specify the maximum period of time for which the person is



1 admitted to the residential facility. In no case shall this  
2 maximum period exceed one year.

3 (3) If at any time during the period for which a  
4 person is admitted to a residential facility for an extended  
5 period of habilitation and treatment, the professional  
6 person in charge of the resident decides that there exist  
7 sufficient community-based alternatives to provide adequate  
8 treatment and habilitation for the resident, or that it is  
9 in the best interests of the resident that he be transferred  
10 to another residential facility, then he may release the  
11 resident to such community-based alternative or transfer the  
12 resident to the other residential facility no less than  
13 fifteen (15) days after sending notice of the proposed  
14 release or transfer to the resident, his parents or  
15 guardian, the attorney who most recently represented the  
16 resident, if any, the responsible person appointed by the  
17 court, if any, and the court which ordered the admission.  
18 If any of the parties so notified objects to the release or  
19 transfer, they may petition the court for a hearing to  
20 determine whether the release or transfer should be allowed.  
21 The hearing shall comply with the procedures set forth in  
22 section 8. The court may on its own initiative inquire  
23 concerning the propriety of the release or transfer.  
24 Nothing in this subsection shall prevent the transfer of a  
25 resident to a hospital or other medical facility for

1 necessary medical treatment, or emergency transfer of a  
2 resident to a mental health facility, provided such  
3 emergency transfer complies with the statutory requirements  
4 for emergency detention of the mentally ill. Within  
5 twenty-four (24) hours of an emergency medical or  
6 psychiatric transfer, notice shall be given to the parents  
7 or guardian of the resident, the responsible person  
8 appointed by the court, if any, and the court.

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

23 (5) If any person so notified requests a hearing, the  
24 court shall set a time and place for the hearing and shall  
25 mail or deliver notice to all of the persons informed of the

1 recommendation. The hearing shall be conducted in the  
 2 manner set out in section 8. If the court finds that the  
 3 residential admission is still justified, it may order  
 4 continuation of the admission to that residential facility  
 5 or transfer of the resident to a different residential  
 6 facility. If the court finds that the resident is still in  
 7 need of developmental disabilities services but does not  
 8 require residential treatment, it shall order an appropriate  
 9 course of community-based habilitation, or, if all parties  
 10 are willing for the resident to participate in a  
 11 community-based program of habilitation, it shall dismiss  
 12 the petition. If the need for developmental disabilities  
 13 services no longer exists, the court shall dismiss the  
 14 petition. The court shall not order continuation of  
 15 admission to a residential facility which does not have an  
 16 individualized habilitation plan for the resident. In its  
 17 order, the court shall make findings of fact on which its  
 18 order is based. The court may on its own initiative inquire  
 19 concerning the suitability of continuing an admission to a  
 20 residential facility.

21 Section 10. Hearings held pursuant to this act shall  
 22 be held in the district court for the district where the  
 23 respondent resides. Except that at the request of any  
 24 party, or the professional person who must be present at the  
 25 hearing, a hearing may be held in the district court for the

1 district where the respondent is undergoing evaluation,  
 2 treatment or habilitation in a residential facility, or is  
 3 undergoing community-based evaluation, treatment or  
 4 habilitation. The cost of any hearing held pursuant to this  
 5 act shall be born by the county where the respondent  
 6 resides.

7 Section 11. Any order issued by a court after a  
 8 hearing held pursuant to any provision of this act may be  
 9 appealed to the Montana supreme court in the same manner as  
 10 for civil appeals generally.

11 Section 12. Whenever evaluation by a professional  
 12 person is ordered by a court pursuant to any provision of  
 13 this act, the person being evaluated, his parents or  
 14 guardian shall have a reasonable choice of a professional  
 15 person qualified to perform such service.

16 Section 13. In any hearing held pursuant to this act  
 17 which involves consideration of the recommendation and  
 18 report of a professional person, the professional person who  
 19 made the recommendation and report shall be present at the  
 20 hearing and subject to cross-examination.

21 Section 14. In any hearing held pursuant to this act  
 22 the court may request the county welfare department to  
 23 prepare a social summary of the respondent for use by the  
 24 court.

25 Section 15. No person who has reached the age of

1 majority shall be compelled against his will to undertake a  
2 course of treatment and habilitation solely because he is  
3 developmentally disabled, but only if such disability causes  
4 him to be unable to protect his life and health.

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

24 Section 17. (1) Unless specifically stated in an  
25 order by the court, a person admitted to a residential

1 facility for an extended course of habilitation shall not  
2 forfeit any legal right or suffer any legal disability by  
3 reason of the provisions of this act except insofar as it  
4 may be necessary to detain the person for habilitation,  
5 evaluation or care.

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

20 (3) Any person who has been admitted to a residential  
21 facility pursuant to this act shall be automatically  
22 restored upon the termination of the admission to all of his  
23 civil and legal rights which may have been lost when he was  
24 admitted. This subsection shall not affect, however, any  
25 guardianship or conservatorship created independently of the

1 admission proceedings, according to the provisions of  
 2 Montana law relating to the appointment of conservators and  
 3 guardians generally. Any person who leaves a residential  
 4 facility following a period of evaluation and habilitation  
 5 shall be given a written statement setting forth the  
 6 substance of this subsection.

7 (4) Any person admitted to a residential facility  
 8 prior to the effective date of this act shall enjoy all the  
 9 rights and privileges of a person admitted after the  
 10 effective date of this act.

11 Section 18. (1) If a person is admitted to a  
 12 residential facility under the provisions of this act and is  
 13 eligible for hospital care, treatment or habilitation by an  
 14 agency of the United States, and if a certificate of  
 15 notification from such agency showing that facilities are  
 16 available and that the person is eligible for care or  
 17 treatment therein is received, the court may order the  
 18 person to be placed in the custody of the agency for  
 19 hospitalization. The chief officer of any hospital or  
 20 residential facility operated by the agency and in which the  
 21 person is admitted shall, with respect to the person, be  
 22 vested with the same powers as the superintendent of the  
 23 Boulder River school and hospital with respect to detention,  
 24 custody, transfer and release of the person. Jurisdiction  
 25 shall be retained in the appropriate courts of this state to

1 inquire into the mental condition of persons so admitted,  
 2 and to determine the necessity for continuance of their  
 3 admission.

4 (2) Consistent with other provisions of this act, a  
 5 person admitted to a residential facility under this act for  
 6 a period more than thirty (30) days may be committed by the  
 7 court to the custody of friends or next of kin residing  
 8 outside the state or transferred to a residential facility  
 9 located outside the state, if the out-of-state facility  
 10 agrees to receive the person, provided, however that no such  
 11 commitment or transfer shall be for a longer period of time  
 12 than is permitted within the state. If the person is  
 13 indigent, the expense of supporting him in an out-of-state  
 14 facility and the expense of transportation shall be borne by  
 15 the state of Montana.

16 (3) The transfer of persons admitted to a residential  
 17 facility under the provisions of this act out of Montana or  
 18 under the laws of another jurisdiction into Montana shall be  
 19 governed by the provisions of the interstate compact on  
 20 mental health.

21 Section 19. No person admitted to or in a residential  
 22 facility shall be fingerprinted unless required by other  
 23 provisions of law.

24 Section 20. (1) A person admitted to a residential  
 25 facility may be photographed upon admission for

1 identification and the administrative purposes of the  
2 facility. Such photographs shall be confidential and shall  
3 not be released by the facility except pursuant to court  
4 order.

5 (2) No other nonmedical photographs shall be taken or  
6 used without consent of the resident's parents or guardian  
7 or the responsible person appointed by the court.

8 Section 21. Persons admitted to a residential facility  
9 for a period of habilitation shall enjoy the following  
10 rights:

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

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

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

1 except to the extent that a professional person responsible  
2 for formulation of a particular resident's habilitation plan  
3 writes an order imposing special restrictions and explains  
4 the reasons for any such restrictions. The written order  
5 must be renewed semiannually if any restrictions are to be  
6 continued.

7 (4) Residents shall have a right to receive suitable  
8 educational services regardless of chronological age, degree  
9 of retardation or accompanying disabilities or handicaps.

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

23 (6) Each resident shall have the right to keep and use  
24 his own personal possessions except insofar as such clothes  
25 or personal possessions may be determined to be dangerous,

1 either to himself or to others, by a professional person.

2 (7) A resident has a right to a humane physical  
3 environment within the residential facilities. These  
4 facilities shall be designed to make a positive contribution  
5 to the efficient attainment of the habilitation goals of the  
6 resident. To accomplish this purpose:

7 (a) Regular housekeeping and maintenance procedures  
8 which will ensure that the facility is maintained in a safe,  
9 clean and attractive condition shall be developed and  
10 implemented.

11 (b) Pursuant to an established routine maintenance and  
12 repair program, the physical plant shall be kept in a  
13 continuous state of good repair and operation so as to  
14 ensure the health, comfort, safety and well-being of the  
15 residents and so as not to impede in any manner the  
16 habilitation programs of the residents.

17 (c) The physical facilities must meet all fire and  
18 safety standards established by the state and locality. In  
19 addition, the facility shall meet such provisions of the  
20 life safety code of the national fire protection association  
21 as are applicable to it.

22 (d) There must be special facilities for nonambulatory  
23 residents to assure their safety and comfort, including  
24 special fittings on toilets and wheelchairs. Appropriate  
25 provision shall be made to permit nonambulatory residents to

1 communicate their needs to staff.

2 (8) Residents shall have a right to receive prompt and  
3 adequate medical treatment for any physical ailments and for  
4 the prevention of any illness or disability. Such medical  
5 treatment shall meet standards of medical practice in the  
6 community.

7 (9) Corporal punishment shall not be permitted.

8 (10) The opportunity for religious worship shall be  
9 accorded to each resident who desires such worship.  
10 Provisions for religious worship shall be made available to  
11 all residents on a nondiscriminatory basis. No individual  
12 shall be compelled to engage in any religious activities.

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

23 (12) Residents shall have a right to regular physical  
24 exercise several times a week. It shall be the duty of the  
25 facility to provide both indoor and outdoor facilities and

1 equipment for such exercise. Residents shall have a right  
2 to be outdoors daily in the absence of contrary medical  
3 considerations.

4 (13) Residents shall have a right, under appropriate  
5 supervision, to suitable opportunities for the interaction  
6 with members of the opposite sex, except where a  
7 professional person responsible for the formulation of a  
8 particular resident's habilitation plan writes an order to  
9 the contrary and explains the reasons therefor.

10 Section 22. (1) Persons admitted to residential  
11 facilities shall have a right to habilitation, including  
12 medical treatment, education and care, suited to their  
13 needs, regardless of age, degree of retardation or  
14 handicapping condition. Each resident has a right to a  
15 habilitation program which will maximize his human abilities  
16 and enhance his ability to cope with his environment. Every  
17 residential facility shall recognize that each resident,  
18 regardless of ability or status, is entitled to develop and  
19 realize his fullest potential. The facility shall implement  
20 the principle of normalization so that each resident may  
21 live as normally as possible.

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

- 1 (a) more to less structured living;
- 2 (b) larger to smaller facilities;
- 3 (c) larger to smaller living units;
- 4 (d) group to individual residence;
- 5 (e) segregated from the community to integrated into  
6 the community living;
- 7 (f) dependent to independent living.

8 (3) Within fourteen (14) days of his admission to a  
9 residential facility, each resident shall have an evaluation  
10 by appropriate specialists for programming purposes.

11 (4) Each resident shall have an individualized  
12 habilitation plan formulated by the facility. This plan  
13 shall be developed by appropriate professional persons and  
14 implemented as soon as possible but no later than fourteen  
15 (14) days after the resident's admission to the facility.  
16 An interim program of habilitation, based on the  
17 preadmission evaluation conducted pursuant to this act,  
18 shall commence promptly upon the resident's admission. Each  
19 individualized habilitation plan shall contain:

- 20 (a) a statement of the nature of the specific  
21 limitations and specific 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

1 of habilitation for achieving these intermediate and  
2 long-range 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 and  
7 other staff members who are responsible for the particular  
8 resident's attaining these habilitation goals;

9 (f) criteria for release to less restrictive settings  
10 for habilitation, including criteria for discharge and a  
11 projected date for discharge.

12 (5) As part of his habilitation plan, each resident  
13 shall have an individualized post-institutionalization plan.  
14 This plan shall be developed by a professional person who  
15 shall begin preparation of such plan upon the resident's  
16 admission to the institution and shall complete such plan as  
17 soon as practicable. The parents or guardian or next of kin  
18 of the resident, the responsible person appointed by the  
19 court, if any, and the resident, if able to give informed  
20 consent, shall be consulted in the development of such plan  
21 and shall be informed of the content of such plan.

22 (6) In the interests of continuity of care, one  
23 professional person shall whenever possible be responsible  
24 for supervising the implementation of the habilitation plan,  
25 integrating the various aspects of the habilitation program,

1 and recording the resident's progress as measured by  
2 objective indicators. This professional person shall also  
3 be responsible for ensuring that the resident is released  
4 when appropriate to a less restrictive habilitation setting.

5 (7) The habilitation plan shall be continuously  
6 reviewed by the professional person responsible for  
7 supervising the implementation of the plan and shall be  
8 modified if necessary. In addition, six months after  
9 admission and at least annually thereafter, each resident  
10 shall receive a comprehensive psychological, social,  
11 educational and medical diagnosis and evaluation, and his  
12 habilitation plan shall be reviewed by an interdisciplinary  
13 team of no less than two professional persons and such  
14 resident care workers as are directly involved in his  
15 habilitation and care.

16 (8) Each resident discharged to the community shall  
17 have a program of transitional habilitation assistance.

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



1 (10) The parents or guardian of each resident, or the  
 2 responsible person appointed by the court, shall promptly  
 3 upon resident's admission receive a written copy of all the  
 4 above standards for adequate habilitation. Each resident,  
 5 if the resident is able to comprehend, shall promptly upon  
 6 his admission be orally informed in clear language of the  
 7 above standards and, where appropriate, be provided with a  
 8 written copy.

9 Section 23. Complete records for each resident shall  
 10 be maintained and shall be readily available to professional  
 11 persons and to the resident care workers who are directly  
 12 involved with the particular resident and to the mental  
 13 disabilities board of visitors. All information contained  
 14 in a resident's records shall be considered privileged and  
 15 confidential. The parents or guardian, the responsible  
 16 person appointed by the court, and any person properly  
 17 authorized in writing by the resident, if such resident is  
 18 capable of giving informed consent, or by his parents or  
 19 guardian or the responsible person, shall be permitted  
 20 access to the resident's records. These records shall  
 21 include:

- 22 (1) identification data, including the resident's  
 23 legal status;  
 24 (2) the resident's history, including but not limited  
 25 to:

1 (a) family data, educational background, and  
 2 employment record;

3 (b) prior medical history, both physical and mental,  
 4 including prior institutionalization;

5 (3) The resident's grievances if any;

6 (4) An inventory of the resident's life skills;

7 (5) A record of each physical examination which  
 8 describes the results of the examination;

9 (6) A copy of the individual habilitation plan and any  
 10 modifications thereto and an appropriate summary which will  
 11 guide and assist the resident care workers in implementing  
 12 the resident's program;

13 (7) The findings made in periodic reviews of the  
 14 habilitation plan which findings shall include an analysis  
 15 of the successes and failures of the habilitation program  
 16 and shall direct whatever modifications are necessary;

17 (8) A copy of the post-institutionalization plan and  
 18 any modifications thereto, and a summary of the steps that  
 19 have been taken to implement that plan;

20 (9) A medication history and status;

21 (10) A summary of each significant contact by a  
 22 professional person with a resident;

23 (11) A summary of the resident's response to his  
 24 program, prepared by a professional person involved in the  
 25 resident's habilitation and recorded at least monthly. Such

1 response, wherever possible, shall be scientifically  
2 documented.

3 (12) A monthly summary of the extent and nature of the  
4 resident's work activities and the effect of such activity  
5 upon the resident's progress along the habilitation plan;

6 (13) A signed order by a professional person for any  
7 physical restraints;

8 (14) A description of any extraordinary incident or  
9 accident in the facility involving the resident, to be  
10 entered by a staff member noting personal knowledge of the  
11 incident or accident or other source of information,  
12 including any reports of investigations of residents  
13 mistreatment;

14 (15) A summary of family visits and contacts;

15 (16) A summary of attendance and leaves from the  
16 facility;

17 (17) A record of any seizures, illnesses, treatments  
18 thereof, and immunizations.

19 Section 24. Each professional person employed by a  
20 residential facility shall meet all licensing and  
21 certification requirements promulgated by the state of  
22 Montana for persons engaged in private practice of the same  
23 profession elsewhere in Montana. Other staff members shall  
24 meet the same licensing and certification requirements as  
25 persons who engage in private practice of their specialty

1 elsewhere in Montana. All resident care workers who have  
2 not had prior clinical experience in a residential facility  
3 for habilitation of the developmentally disabled shall have  
4 suitable orientation training. Staff members on all levels  
5 shall have suitable, regularly scheduled in-service  
6 training. Each resident care worker shall be under the  
7 direct professional supervision of a qualified staff member.

8 Section 25. Every residential facility shall prohibit  
9 mistreatment, neglect or abuse in any form of any resident.  
10 Alleged violations shall be reported immediately to the  
11 professional person in charge of the facility and there  
12 shall be a written record that:

13 (1) each alleged violation has been thoroughly  
14 investigated and findings stated;

15 (2) the results of such investigation are reported to  
16 the professional person in charge of the facility within  
17 twenty-four (24) hours of the report of the incident. Such  
18 reports shall also be made to the mental disabilities board  
19 of visitors monthly and to the developmental disabilities  
20 advisory council at its next scheduled public meeting. Each  
21 facility shall cause a written statement of this policy to  
22 be posted in each cottage and building and circulated to all  
23 staff members.

24 Section 26. (1) Residents of a residential facility  
25 shall have a right not to be subjected to any unusual or

1 hazardous treatment procedures without the express and  
 2 informed consent of the resident, if the resident is able to  
 3 give such consent, and of his parents or guardian or the  
 4 responsible person appointed by the court, after  
 5 opportunities for consultation with independent specialists  
 6 and legal counsel. Such proposed procedures shall first  
 7 have been reviewed and approved by the mental disabilities  
 8 board of visitors before such consent shall be sought.

9 (2) Physical restraint shall be employed only when  
 10 absolutely necessary to protect the resident from injury to  
 11 himself or to prevent injury to others. Restraint shall not  
 12 be employed as punishment, for the convenience of staff, or  
 13 as a substitute for a habilitation program. Restraint shall  
 14 be applied only if alternative techniques have failed and  
 15 only if such restraint imposes the least possible  
 16 restriction consistent with its purpose. Only a  
 17 professional person may authorize the use of restraints.  
 18 Orders for restraints by a professional person shall be in  
 19 writing and shall not be in force for longer than twelve  
 20 (12) hours. Whenever physical restraint is ordered suitable  
 21 provision shall be made for the comfort and physical needs  
 22 of the person restrained.

23 (3) Seclusion, defined as the placement of a resident  
 24 alone in a locked room, shall not be employed. Legitimate  
 25 "time out" procedures may be utilized under close and direct

1 professional supervision as a technique in behavior-shaping  
 2 programs.

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

15 (5) No resident shall be subjected to a behavior  
 16 modification program designed to eliminate a particular  
 17 pattern of behavior without prior certification by a  
 18 physician that he has examined the resident in regard to  
 19 behavior to be extinguished and finds that such behavior is  
 20 not caused by a physical condition which could be corrected  
 21 by appropriate medical procedures. No resident shall be  
 22 subjected to a behavior modification program which attempts  
 23 to extinguish socially appropriate behavior or to develop  
 24 new behavior patterns when such behavior modifications serve  
 25 only institutional convenience.

1 (6) Electric shock devices shall be considered a  
 2 research technique for the purpose of this act. Such  
 3 devices shall only be used in extraordinary circumstances to  
 4 prevent self-mutilation leading to repeated and possibly  
 5 permanent physical damage to the resident and only after  
 6 alternative techniques have failed. The use of such devices  
 7 shall be subject to the conditions prescribed by this act  
 8 for experimental research generally and shall be used only  
 9 under the direct and specific order of the professional  
 10 person in charge of the residential facility.

11 Section 27. Residents of a residential facility shall  
 12 have a right not to be subjected to experimental research  
 13 without the express and informed consent of the resident, if  
 14 the resident is able to give such consent, and of his  
 15 parents or guardian or the responsible person appointed by  
 16 the court after opportunities for consultation with  
 17 independent specialists and with legal counsel. Such  
 18 proposed research shall first have been reviewed and  
 19 approved by the mental disabilities board of visitors before  
 20 such consent shall be sought. Prior to such approval the  
 21 board shall determine that such research complies with the  
 22 principles of the statement on the use of human subjects for  
 23 research of the American association on mental deficiency  
 24 and with the principles for research involving human  
 25 subjects required by the United States department of health,

1 education and welfare for projects supported by that agency.

2 Section 28. The following rules shall govern resident  
 3 labor:

4 (1) No resident shall be required to perform labor  
 5 which involves the operation and maintenance of the facility  
 6 or for which the facility is under contract with an outside  
 7 organization. Privileges or release from the facility shall  
 8 not be conditioned upon the performance of labor covered by  
 9 this provision. Residents may voluntarily engage in such  
 10 labor if the labor is compensated in accordance with the  
 11 minimum wage laws of the Fair Labor Standards Act, 29 U.S.C.  
 12 sec. 206, as amended.

13 (2) No resident shall be involved in the care  
 14 (feeding, clothing, bathing), training or supervision of  
 15 other residents unless he:

16 (a) has volunteered;

17 (b) has been specifically trained in the necessary  
 18 skills;

19 (c) has the humane judgment required for such  
 20 activities;

21 (d) is adequately supervised; and

22 (e) is reimbursed in accordance with the minimum wage  
 23 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as  
 24 amended.

25 (3) Residents may be required to perform vocational

1 training tasks which do not involve the operation and  
 2 maintenance of the facility, subject to a presumption that  
 3 an assignment of longer than three months to any task is not  
 4 a training task, provided the specific task or any change in  
 5 task assignment is:

6 (a) an integrated part of the resident's habilitation  
 7 plan and approved as a habilitation activity by a  
 8 professional person responsible for supervising the  
 9 resident's habilitation;

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

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

16 (a) an integrated part of the resident's habilitation  
 17 plan and approved as a habilitation activity by a  
 18 professional person responsible for supervising the  
 19 resident's habilitation;

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

22 (c) compensated in accordance with the minimum wage  
 23 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as  
 24 amended.

25 (5) If any resident performs habilitative labor which

1 involves the operation and maintenance of a facility, but  
 2 due to physical or mental disability is unable to perform  
 3 the labor as efficiently as a person not so physically or  
 4 mentally disabled, then the patient may be compensated at a  
 5 rate which bears the same approximate relation to the  
 6 statutory minimum wage as his ability to perform that  
 7 particular job bears to the ability of a person not so  
 8 afflicted.

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

12 (7) Residents shall be allowed to use a reasonable  
 13 amount of the compensation received pursuant to this section  
 14 for personal and incidental purchases and expenses.

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

21 Section 29. Within one (1) year of the effective date  
 22 of this act, each resident governed by the provisions of  
 23 this act shall be evaluated as to his mental, emotional,  
 24 social, and physical condition. Such evaluation or  
 25 reevaluation shall be conducted by an interdisciplinary team

1 of professional persons who shall use professionally  
 2 recognized tests and examination procedures. Each  
 3 resident's parents or guardian, next of kin or legal  
 4 representative or the responsible person appointed by the  
 5 court shall be contacted and his readiness to make  
 6 provisions for the resident's care in the community shall be  
 7 ascertained. Each resident shall be returned to his family,  
 8 if adequately habilitated, or assigned to the least  
 9 restrictive habilitation setting. Where necessary, the  
 10 professional person in charge of the resident shall petition  
 11 the court to appoint a responsible person.

12 Section 30. No person shall be admitted to any  
 13 publicly supported residential institution caring for  
 14 developmentally disabled persons unless such institution  
 15 meets the standards prescribed by this act.

16 Section 31. (1) The governor shall appoint a mental  
 17 disabilities board of visitors. The board shall consist of  
 18 five (5) persons at least three (3) of whom shall not be  
 19 professional persons and at least one (1) of whom shall be a  
 20 representative of an organization concerned with the care  
 21 and welfare of the developmentally disabled. No one may be  
 22 a member of the board who is an agent or employee of the  
 23 department of institutions or of any residential facility  
 24 affected by this act. If a board of similar title and  
 25 structure is created in any act concerning the treatment of

1 the mentally ill, then one (1) board shall be created to  
 2 perform the functions set out in both acts and the board so  
 3 created shall include at least one (1) representative of an  
 4 organization concerned with the care and welfare of the  
 5 mentally ill and one representative of an organization  
 6 concerned with the care and welfare of the mentally retarded  
 7 or developmentally disabled.

8 (2) The mental disabilities board of visitors shall be  
 9 an independent board of inquiry and review to assure that  
 10 the treatment of all persons admitted to a residential  
 11 facility is humane and decent and meets the requirements set  
 12 forth in this act.

13 The board shall review all plans for experimental  
 14 research or hazardous treatment procedures involving persons  
 15 admitted to any residential facility to assure that the  
 16 research project is humane and not unduly hazardous and that  
 17 it complies with the principles of the statement on the use  
 18 of human subjects for research of the American association  
 19 on mental deficiency and with the principles for research  
 20 involving human subjects required by the United States  
 21 department of health, education and welfare. No  
 22 experimental research project involving persons admitted to  
 23 any residential facility affected by this act shall be  
 24 commenced unless it is approved by the mental disabilities  
 25 board of visitors. The board shall investigate all cases of

1 alleged mistreatment of a resident.

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

11 (4) The board shall inspect the file of each person  
12 admitted to a residential facility pursuant to this act to  
13 insure that a habilitation plan exists and is being  
14 implemented. The board shall inquire concerning all use of  
15 restraints, isolation or other extraordinary measures.

16 (5) The board may assist any patient at a residential  
17 facility in resolving any grievance he may have concerning  
18 his admission or his course of treatment and habilitation in  
19 the facility.

20 (6) If the board believes that any facility is failing  
21 to comply with the provisions of this act in regard to its  
22 physical facilities or its treatment of any resident, it  
23 shall report its findings at once to the parents or guardian  
24 of any patient involved, the next of kin, if known, the  
25 responsible person appointed by the court for any patient

1 involved, the professional person in charge of the facility,  
2 the director of the department of institutions and the  
3 district court which has jurisdiction over the facility.

4 (7) The mental disabilities board of visitors shall  
5 report annually to the governor and shall report to each  
6 session of the Montana legislature concerning the status of  
7 the residential facilities and habilitation programs which  
8 it has inspected.

9 (8) The mental disabilities board of visitors shall be  
10 attached to the governor for administrative purposes. It  
11 may employ staff for the purpose of carrying out its duties  
12 as set out in this act.

13 Section 32. If any person is a patient in a mental  
14 health facility and the professional person in charge of the  
15 patient determines that the patient is suffering from a  
16 developmental disability rather than mental illness and  
17 should more properly be admitted to a residential facility,  
18 then the professional person shall commence proceedings  
19 consistent with the procedures set forth in this act for  
20 admissions generally to effect such admission.

21 Section 33. If any provision of this act or the  
22 application thereof to any person or circumstances is held  
23 invalid, such invalidity shall not affect other provisions  
24 or applications of the act which can be given effect without  
25 the invalid provision or application, and to this end the

1 provisions of this act are declared to be severable.

2 Section 34. Section 80-2312, R.C.M. 1947, is amended  
3 to read as follows:

4 "80-2312. Supervision of Glendive center—transfers to  
5 Boulder river school and hospital. The department shall  
6 establish and direct the services to be provided at the  
7 center. The department shall provide for temporary transfers  
8 from the Eastmont training center to the Boulder river  
9 school and hospital for special medical, psychological,  
10 surgical, and other services consistent with the statutory  
11 requirements for transfer of a resident to a different  
12 residential facility."

13 Section 35. Sections 80-2303 through 80-2309, and  
14 38-301 through 38-303, R.C.M. 1947, are repealed.

-End-



Approved by Committee  
on Judiciary

SENATE BILL NO. 388

INTRODUCED BY TOWK

A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE DEVELOPMENTALLY DISABLED; ~~AMENDING SECTION 80-2312, R.C.M. 1947,~~ AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND 80-2303 THROUGH 80-2309, AND 80-2312, R.C.M. 1947."

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

Section 1. The purpose of this act is:

(1) to secure for each person who may be developmentally disabled such treatment and habilitation as will be suited to the needs of the person, and to assure that such treatment and habilitation are skillfully and humanely administered with full respect for the person's dignity and personal integrity;

(2) to accomplish this goal whenever possible in a community-based setting;

(3) to accomplish this goal in an institutionalized setting only when less restrictive alternatives are unavailable or inadequate and only when a person is so severely disabled as to require institutionalized care; and

(4) to assure that due process of law is accorded any person coming under the provisions of this act.

Section 2. Definitions. As used in this act:

(1) "board" means the mental disabilities board of visitors created by this act.

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

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

(4) "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism or any other neurologically handicapping ~~conditions~~ CONDITION closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals; which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.

(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to cope more effectively with the demands of his own person and

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

4 (6) "Next of kin" includes but need not be limited to  
5 the spouse, parents, adult children, and adult brothers and  
6 sisters of a person.

7 (7) "Professional person" means:

8 (a) a medical doctor, or

9 (b) a person trained in the field of developmental  
10 disabilities and certified by the ~~regional mental health~~  
11 ~~director, if the director is a licensed physician, by a~~  
12 ~~member of the regional developmental disabilities council or~~  
13 ~~board of directors, if such member is a licensed physician,~~  
14 ~~or by the superintendent of the Boulder River School and~~  
15 ~~Hospital or of the Eastmont Training Center, if the~~  
16 ~~superintendent is a licensed physician~~ DEPARTMENT OF  
17 INSTITUTIONS OR THE DEPARTMENT OF SOCIAL AND REHABILITATION  
18 SERVICES IN ACCORDANCE WITH STANDARDS OF PROFESSIONAL  
19 LICENSING BOARDS, FEDERAL REGULATIONS, AND THE JOINT  
20 COMMISSIONS ON ACCREDITATION OF HOSPITALS.

21 (8) "Resident" means a person admitted to a  
22 residential facility for a course of evaluation, treatment  
23 or habilitation.

24 (9) "Residential facility" or "facility" means any  
25 residential hospital or hospital and school which exists for

1 the purpose of evaluating, treating and habilitating the  
2 developmentally disabled on an inpatient basis, including  
3 the Boulder River School and Hospital and the Eastmont  
4 Training Center. The term does not include a group home or  
5 foster home or a halfway house. A correctional facility or  
6 a facility for the treatment of the mentally ill shall not  
7 be a "residential facility" within the meaning of this act.

8 (10) "Respondent" means a person alleged in a petition  
9 filed pursuant to this act to be developmentally disabled  
10 and in need of developmental disabilities services.

11 (11) "Responsible person" means any person willing and  
12 able to assume responsibility for a person who is  
13 developmentally disabled or alleged to be developmentally  
14 disabled. Whenever, in any proceeding under this act, the  
15 court believes that a conflict of interest may exist between  
16 a person who is developmentally disabled or alleged to be  
17 developmentally disabled and his parents or guardian, or  
18 that the parents or guardian are unable to protect the  
19 interests of such person, or whenever there is no parent or  
20 guardian, the court shall appoint a responsible person to  
21 protect the interests of the person who is developmentally  
22 disabled or alleged to be developmentally disabled. Only  
23 one person shall at any one time be the responsible person  
24 within the meaning of this act. In appointing a responsible  
25 person, the court shall consider the preference of the

1 respondent or patient. The court may at any time, for good  
2 cause shown, change its designation of who is the  
3 responsible person.

4 (1) "Seriously developmentally disabled" means  
5 developmentally disabled ~~and functioning at more than three~~  
6 ~~standard deviations below the mean on a standardized~~  
7 ~~intelligence test such as the Stanford Binet Scale and on a~~  
8 ~~measure of adaptive behavior such as the American~~  
9 ~~Association on Mental Deficiency Adaptive Behavior Scale, or~~  
10 ~~because of some combination of developmental and physical~~  
11 ~~disability, DUE TO DEVELOPMENTAL OR PHYSICAL DISABILITY OR A~~  
12 COMBINATION OF BOTH RENDERING A PERSON unable to function in  
13 a community-based setting.

14 Section 3. (1) Any person subject to emergency  
15 admittance to a residential facility, to examination or  
16 evaluation by a professional person, or to any hearing held  
17 pursuant to this act shall have all the rights accorded to a  
18 person subject to involuntary commitment proceedings under  
19 the laws of this state relating to involuntary commitment of  
20 the seriously mentally ill.

21 (2) In addition, the parents or guardian of any person  
22 alleged to be developmentally disabled and in need of  
23 developmental disabilities services have the right:

24 (a) to be present at any hearings held pursuant to  
25 this act;

1 (b) to be represented by counsel in any hearing;

2 (c) to offer evidence and cross-examine witnesses in  
3 any hearing; and

4 (d) to have the respondent be examined by a  
5 professional person of their choice when such professional  
6 person is reasonably available, unless the person so chosen  
7 is objected to by the respondent or by a responsible person  
8 appointed by the court.

9 (3) A person may waive his procedural rights provided  
10 that the waiver is knowingly and intentionally made. The  
11 right to counsel in a hearing held pursuant to section 6 may  
12 not be waived. The right to habilitation provided for in  
13 this act may not be waived.

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

23 (5) In the case of a minor, the waiver of rights can  
24 be knowingly and intentionally made:

25 (a) when the minor is under the age of twelve (12), by

1 the parents of the minor WITH THE CONCURRENCE OF THE  
 2 RESPONSIBLE PERSON, IF ANY;

3 (b) when the minor is over the age of twelve (12), by  
 4 the minor and his parents;

5 (c) when the minor is over the age of twelve (12) and  
 6 the minor and his parents do not agree, the minor can make  
 7 an effective waiver of his rights only with the advice of  
 8 counsel.

9 If the court believes that there may be a conflict of  
 10 interest between a minor and his parents or guardian, the  
 11 court may appoint a responsible person or guardian ad litem  
 12 for the minor.

13 Section 4. (1) The parents or guardian of any person  
 14 alleged to be developmentally disabled or the person himself  
 15 may at any time request the assistance of a professional  
 16 person in determining whether the person is developmentally  
 17 disabled, the extent of such disability, and the most  
 18 appropriate course of treatment, habilitation and education  
 19 for the person alleged to be developmentally disabled.

20 (2) Whenever the parents or guardian of a person  
 21 alleged to be developmentally disabled or the person himself  
 22 request a course of evaluation and treatment, they shall  
 23 ascertain, with the professional person who undertakes the  
 24 case, the least restrictive means of evaluating and treating  
 25 the person alleged to be developmentally disabled.

1 Evaluation and treatment in a residential facility shall  
 2 take place only upon certification by the professional  
 3 person in charge of the case that adequate community-based  
 4 facilities are not available REASONABLY NEAR THE PLACE OF  
 5 RESIDENCE OF THE PERSON ALLEGED TO BE DEVELOPMENTALLY  
 6 DISABLED. Residential evaluation and treatment shall not be  
 7 for more than thirty (30) days without subsequent  
 8 proceedings before the court.

9 Section 5. (1) Any person who believes that there is  
 10 a person who is developmentally disabled and in need of  
 11 developmental disability services may report the situation  
 12 to a professional person. If the professional person  
 13 believes from the facts given to him that the person may be  
 14 developmentally disabled and in need of developmental  
 15 disability services, he shall contact the parents or  
 16 guardian of the person alleged to be developmentally  
 17 disabled or the person himself. If any of the persons so  
 18 contacted refuse to cooperate with the professional person  
 19 and if the professional person believes from all the  
 20 circumstances of the case that the person may be  
 21 developmentally disabled and in need of developmental  
 22 disabilities services he shall request the county attorney  
 23 to file a petition alleging that there is a person in the  
 24 county who is developmentally disabled and in need of  
 25 developmental disabilities services.

1 (2) The petition shall contain the name and address  
2 of:

3 (a) the professional person and any other person  
4 requesting the petition, and their interest in the case;

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

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

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

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

15 (f) a statement of the rights of the respondent and  
16 his parents or guardian which shall be in conspicuous print  
17 and identified by a suitable heading.

18 (3) Upon presentation to the court by the county  
19 attorney, the court shall immediately consider the petition  
20 with or without a hearing to determine if there is probable  
21 cause to believe that the respondent is developmentally  
22 disabled and in need of evaluation and treatment. If the  
23 court finds no such probable cause it shall dismiss the  
24 petition. If the court finds that probable cause does exist  
25 it shall direct a professional person to examine the

1 respondent and to make an inquiry concerning the  
2 circumstances of the case. Such examination shall not  
3 exceed four (4) hours in length. If probable cause is found  
4 the court may appoint a responsible person other than the  
5 respondent's parents or guardian to protect the interests of  
6 the respondent. The responsible person shall be notified as  
7 soon as possible that a petition has been filed. Notice of  
8 the petition and the finding of probable cause shall be  
9 mailed or delivered to the respondent and to all other  
10 persons named in the petition and to any person who would  
11 have been named in the petition had his name, address, and  
12 relationship to the respondent been known at the time.

13 (4) When the professional person first contacts the  
14 respondent, before he begins any examination, he shall give  
15 the respondent a copy of the petition and explain to the  
16 respondent the nature of the proceeding and his rights as  
17 set forth in the petition. If the respondent is incapable  
18 of understanding the explanation and proceeding, the  
19 professional person shall give the petition and make the  
20 explanation to the parents or guardian of the respondent.  
21 Before making any inquiry of the parents or guardian of the  
22 respondent, the professional person shall give them a copy  
23 of the petition, explain the nature of the proceeding and  
24 their rights as set forth in the petition.

25 Section 6. (1) If the professional person, based on

1 his examination and inquiry determines that the respondent  
 2 is not developmentally disabled or is not in need of  
 3 developmental disability services, he shall report this  
 4 finding in writing to the court and the petition shall be  
 5 dismissed. If the professional person concludes that the  
 6 respondent is developmentally disabled and in need of  
 7 developmental disability services, he shall report this  
 8 conclusion to the court in writing together with his  
 9 recommendations for evaluation and treatment. The report  
 10 shall include an explanation of the basis on which the  
 11 professional person has reached his conclusion and shall  
 12 include a description of any tests or evaluation devices he  
 13 has employed. If the professional person's recommendation  
 14 is for further evaluation and treatment, notice of this  
 15 recommendation shall be sent to the respondent, his parents  
 16 or guardian, the next of kin, the responsible person  
 17 appointed by the court, if any, any attorney representing  
 18 the respondent or his parents or guardian. If no  
 19 responsible person has yet been appointed, the court may  
 20 appoint one at this time.

21 (2) If the respondent, his parents or guardian, the  
 22 responsible person, if any, or counsel for any party  
 23 requests a hearing on the recommendation, the court shall  
 24 set a time and place for hearing. The hearing shall be  
 25 before the court without a jury. The rules of civil

1 procedure shall apply.

2 (3) Prior to any hearing held pursuant to this  
 3 section, the court shall appoint counsel to represent the  
 4 respondent, if the respondent has not retained independent  
 5 counsel. The parents or guardian shall be informed of their  
 6 right to counsel and if they are indigent the court shall,  
 7 on their request, appoint counsel for them. In no case  
 8 shall the same attorney represent the respondent and his  
 9 parents or guardian.

10 (4) If the hearing is waived or if the court finds,  
 11 after hearing, that the respondent is developmentally  
 12 disabled and in need of further evaluation and treatment,  
 13 the court shall order that the respondent undergo such  
 14 evaluation and treatment. Evaluation and treatment ordered  
 15 pursuant to this subsection shall be for no more than thirty  
 16 (30) days. It shall take place in the least restrictive  
 17 environment in which the necessary evaluation and treatment  
 18 can be accomplished. Evaluation and treatment in a  
 19 residential facility shall be ordered only if the necessary  
 20 evaluation and treatment cannot be accomplished through the  
 21 use of community-based facilities.

22 Section 7. (1) If as a result of the evaluation and  
 23 treatment ordered by the court, the professional person in  
 24 charge of the case recommends a course of habilitation and  
 25 treatment at the community level making use of community and

1 regional based services for the developmentally disabled, he  
 2 shall report his recommendation in writing to the court.  
 3 The recommendation shall be accompanied by a written report  
 4 indicating the factual basis for the recommendation and  
 5 describing any tests or evaluation devices which the  
 6 professional person has employed in evaluating the  
 7 respondent. If this course of treatment and habilitation is  
 8 agreed to by the parents, guardian, person evaluated,  
 9 responsible person, if any, and counsel for the person  
 10 evaluated, if any, then this community-based course of  
 11 treatment shall be commenced as soon as practicable, and the  
 12 petition shall be dismissed.

13 (2) If any of the parties listed in the preceding  
 14 paragraph object to the community-based course of treatment,  
 15 they may request the court to conduct a hearing on the  
 16 matter. If a responsible person has not yet been appointed,  
 17 the court may appoint a responsible person prior to the  
 18 hearing. Notice of the time, date and place of the hearing  
 19 shall be mailed or delivered to all of the parties listed in  
 20 the preceding paragraph, and to the attorney for the  
 21 parents or guardian, if any. The hearing shall be held  
 22 before the court without a jury. The rules of civil  
 23 procedure shall apply. If the court finds that the  
 24 respondent is developmentally disabled and in need of  
 25 community-based developmental disabilities services, it

1 shall order that the respondent undertake a community-based  
 2 course of treatment and habilitation.

3 Section 8. (1) If as a result of the evaluation and  
 4 treatment either agreed to by the parents, guardian, or the  
 5 person himself pursuant to section 4 or ordered by the  
 6 court, the professional person in charge of the case  
 7 concludes that the person evaluated is seriously  
 8 developmentally disabled and recommends that treatment and  
 9 habilitation be had in a residential facility on an extended  
 10 basis, the professional person shall file his written  
 11 recommendation and report with the court and request that  
 12 the court order the admission. The report shall include the  
 13 factual basis for the recommendation, and shall describe any  
 14 tests or evaluation devices which have been employed in  
 15 evaluating the patient. If no responsible person has yet  
 16 been appointed, the court may appoint one at this time. If  
 17 there is no parent or guardian the court shall appoint a  
 18 responsible person. At the request of the respondent, his  
 19 parents or guardian or the responsible person, the court  
 20 shall appoint counsel for the respondent. If the parents or  
 21 guardian are indigent and if they request it, the court  
 22 shall appoint counsel for the parents or guardian. Notice  
 23 of the recommendation shall be mailed or delivered to the  
 24 respondent, his parents or guardian, the responsible person,  
 25 next of kin, if known, and the attorney for the respondent,

1 if any, and for the parents or guardian, if any.

2 (2) The respondent, his parents or guardian, the  
3 responsible person, or the attorney for any party may  
4 request that a hearing be had on the recommendation. If a  
5 hearing is requested, the court shall mail or deliver notice  
6 of the date, time and place of the hearing to each of the  
7 parties listed at the beginning of this subsection. The  
8 hearing shall be to the court without jury. The rules of  
9 civil procedure shall apply.

10 (3) If the court finds that the respondent is  
11 seriously developmentally disabled and that available  
12 community-based services are not adequate, it shall order  
13 the respondent admitted to a residential facility for an  
14 extended course of treatment and habilitation. If the court  
15 finds that the respondent is developmentally disabled, and  
16 in need of developmental disabilities services but that  
17 available community-based services are adequate, it shall  
18 order the respondent to undertake a community-based course  
19 of treatment and habilitation. If the court finds that the  
20 respondent is not developmentally disabled or is not in need  
21 of developmental disability services, it shall dismiss the  
22 request.

23 (4) 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  
3 to whether the order should be granted. The court may  
4 refuse to authorize admission of a person to a residential  
5 facility for an extended period of treatment and  
6 habilitation if such admission is not in the best interests  
7 of the person.

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

25 Section 9. (1) No person shall be admitted to a



1 residential facility for longer than thirty (30) days except  
 2 on approval of the court. Whenever a person is admitted to  
 3 a residential facility for longer than thirty (30) days, the  
 4 court may appoint a person other than the parents or  
 5 guardian to act as responsible person for the resident. If  
 6 there is no parent or guardian, the court shall appoint a  
 7 responsible person.

8 (2) The court order approving the admission shall  
 9 specify the maximum period of time for which the person is  
 10 admitted to the residential facility. In no case shall this  
 11 maximum period exceed one year.

12 (3) If at any time during the period for which a  
 13 person is admitted to a residential facility for an extended  
 14 period of habilitation and treatment, the professional  
 15 person in charge of the resident decides that there exist  
 16 sufficient community-based alternatives to provide adequate  
 17 treatment and habilitation for the resident, or that it is  
 18 in the best interests of the resident that he be transferred  
 19 to another residential facility, then he may release the  
 20 resident to such community-based alternative or transfer the  
 21 resident to the other residential facility no less than  
 22 fifteen (15) days after sending notice of the proposed  
 23 release or transfer to the resident, his parents or  
 24 guardian, the attorney who most recently represented the  
 25 resident, if any, the responsible person appointed by the

1 court, if any, and the court which ordered the admission.  
 2 If any of the parties so notified objects to the release or  
 3 transfer, they may petition the court for a hearing to  
 4 determine whether the release or transfer should be allowed.  
 5 The hearing shall comply with the procedures set forth in  
 6 section 8. The court may on its own initiative inquire  
 7 concerning the propriety of the release or transfer.  
 8 Nothing in this subsection shall prevent the transfer of a  
 9 resident to a hospital or other medical facility for  
 10 necessary medical treatment, or emergency transfer of a  
 11 resident to a mental health facility, provided such  
 12 emergency transfer complies with the statutory requirements  
 13 for emergency detention of the mentally ill. Within  
 14 twenty-four (24) hours of an emergency medical or  
 15 psychiatric transfer, notice shall be given to the parents  
 16 or guardian of the resident, the responsible person  
 17 appointed by the court, if any, and the court.

18 (4) If the professional person in charge of the  
 19 resident determines that the admission to the residential  
 20 facility should continue beyond the period specified in the  
 21 court order, he shall, at least fifteen (15) days before the  
 22 end of the period set out in the court order, send written  
 23 notice of his recommendation and request for renewal of the  
 24 order to the court which issued the order, the resident, his  
 25 parents or guardian, the next of kin, if known, the attorney

1 who most recently represented the resident, if any, and the  
 2 responsible person appointed by the court, if any. The  
 3 recommendation and request shall be accompanied by a written  
 4 report which shall describe the habilitation plan which has  
 5 been undertaken for the resident and the future habilitation  
 6 plan which is anticipated by the professional person.

7 (5) If any person so notified requests a hearing, the  
 8 court shall set a time and place for the hearing and shall  
 9 mail or deliver notice to all of the persons informed of the  
 10 recommendation. The hearing shall be conducted in the  
 11 manner set out in section 6. If the court finds that the  
 12 residential admission is still justified, it may order  
 13 continuation of the admission to that residential facility  
 14 or transfer of the resident to a different residential  
 15 facility. If the court finds that the resident is still in  
 16 need of developmental disabilities services but does not  
 17 require residential treatment, it shall order an appropriate  
 18 course of community-based habilitation, or, if all parties  
 19 are willing for the resident to participate in a  
 20 community-based program of habilitation, it shall dismiss  
 21 the petition. If the need for developmental disabilities  
 22 services no longer exists, the court shall dismiss the  
 23 petition. The court shall not order continuation of  
 24 admission to a residential facility which does not have an  
 25 individualized habilitation plan for the resident. In its

1 order, the court shall make findings of fact on which its  
 2 order is based. The court may on its own initiative inquire  
 3 concerning the suitability of continuing an admission to a  
 4 residential facility.

5 Section 10. Hearings held pursuant to this act shall  
 6 be held in the district court for the district where the  
 7 respondent resides. Except that at the request of any  
 8 party, or the professional person who must be present at the  
 9 hearing, a hearing may be held in the district court for the  
 10 district where the respondent is undergoing evaluation,  
 11 treatment or habilitation in a residential facility, or is  
 12 undergoing community-based evaluation, treatment or  
 13 habilitation. The cost of any hearing held pursuant to this  
 14 act shall be born by the county where the respondent  
 15 resides.

16 Section 11. Any order issued by a court after a  
 17 hearing held pursuant to any provision of this act may be  
 18 appealed to the Montana supreme court in the same manner as  
 19 for civil appeals generally.

20 Section 12. Whenever evaluation by a professional  
 21 person is ordered by a court pursuant to any provision of  
 22 this act, the person being evaluated, his parents or  
 23 guardian shall have a reasonable choice of a professional  
 24 person qualified to perform such service.

25 Section 13. In any hearing held pursuant to this act

1 which involves consideration of the recommendation and  
 2 report of a professional person, the professional person who  
 3 made the recommendation and report shall be present at the  
 4 hearing and subject to cross-examination.

5 Section 14. In any hearing held pursuant to this act  
 6 the court may request the county welfare department to  
 7 prepare a social summary of the respondent for use by the  
 8 court.

9 Section 15. No person who has reached the age of  
 10 majority shall be compelled against his will to undertake a  
 11 course of treatment and habilitation solely because he is  
 12 developmentally disabled, but only if such disability causes  
 13 him to be unable to protect his life and health.

14 Section 16. The parents, guardian, the person himself,  
 15 or a professional person may admit a person believed to be  
 16 developmentally disabled to a residential facility on an  
 17 emergency basis when necessary to protect the person from  
 18 death or serious bodily harm. However, if requested by the  
 19 parents, guardian or the person admitted on an emergency  
 20 basis, a petition as set out in section 5 shall be filed on  
 21 the next judicial day by the county attorney of the county  
 22 where the person resides. If a petition is filed, the  
 23 professional person assigned by the court to conduct the  
 24 examination and inquiry shall report back to the court on  
 25 the next judicial day following the filing of the petition.

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

8 Section 17. (1) Unless specifically stated in an  
 9 order by the court, a person admitted to a residential  
 10 facility for an extended course of habilitation shall not  
 11 forfeit any legal right or suffer any legal disability by  
 12 reason of the provisions of this act except insofar as it  
 13 may be necessary to detain the person for habilitation,  
 14 evaluation or care.

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

1 of the admission may not be created except according to the  
2 procedures set forth under Montana law for the appointment  
3 of conservators and guardians generally.

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

16 (4) Any person admitted to a residential facility  
17 prior to the effective date of this act shall enjoy all the  
18 rights and privileges of a person admitted after the  
19 effective date of this act.

20 Section 18. (1) If a person is admitted to a  
21 residential facility under the provisions of this act and is  
22 eligible for hospital care, treatment or habilitation by an  
23 agency of the United States, and if a certificate of  
24 notification from such agency showing that facilities are  
25 available and that the person is eligible for care or

1 treatment therein is received, the court may order the  
2 person to be placed in the custody of the agency for  
3 hospitalization. The chief officer of any hospital or  
4 residential facility operated by the agency and in which the  
5 person is admitted shall, with respect to the person, be  
6 vested with the same powers as the superintendent of the  
7 Boulder River school and hospital with respect to detention,  
8 custody, transfer and release of the person. Jurisdiction  
9 shall be retained in the appropriate courts of this state to  
10 inquire into the mental condition of persons so admitted,  
11 and to determine the necessity for continuance of their  
12 admission.

13 (2) Consistent with other provisions of this act, a  
14 person admitted to a residential facility under this act for  
15 a period more than thirty (30) days may be committed by the  
16 court to the custody of friends or next of kin residing  
17 outside the state or transferred to a residential facility  
18 located outside the state, if the out-of-state facility  
19 agrees to receive the person, provided, however that no such  
20 commitment or transfer shall be for a longer period of time  
21 than is permitted within the state. If the person is  
22 indigent, the expense of supporting him in an out-of-state  
23 facility and the expense of transportation shall be borne by  
24 the state of Montana.

25 (3) The transfer of persons admitted to a residential

1 facility under the provisions of this act out of Montana or  
2 under the laws of another jurisdiction into Montana shall be  
3 governed by the provisions of the interstate compact on  
4 mental health.

5 Section 19. No person admitted to or in a residential  
6 facility shall be fingerprinted unless required by other  
7 provisions of law.

8 Section 20. (1) A person admitted to a residential  
9 facility may be photographed upon admission for  
10 identification and the administrative purposes of the  
11 facility. Such photographs shall be confidential and shall  
12 not be released by the facility except pursuant to court  
13 order.

14 (2) No other nonmedical OR NON-HABILITATIVE  
15 photographs shall be taken or used without consent of the  
16 resident's parents or guardian or the responsible person  
17 appointed by the court.

18 Section 21. Persons admitted to a residential facility  
19 for a period of habilitation shall enjoy the following  
20 rights:

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

23 (2) Residents shall be entitled to send and receive  
24 sealed mail. Moreover, it shall be the duty of the facility  
25 to foster the exercise of this right by furnishing the

1 necessary materials and assistance.

2 (3) Residents shall have the same rights and access to  
3 private telephone communication as patients at any public  
4 hospital, except to the extent that a professional person  
5 responsible for formulation of a particular resident's  
6 habilitation plan writes an order imposing special  
7 restrictions and explains the reasons for any such  
8 restrictions. The written order must be renewed  
9 ~~semiannually~~ MONTHLY if any restrictions are to be  
10 continued. Residents shall have an unrestricted right to  
11 visitation, except to the extent that a professional person  
12 responsible for formulation of a particular resident's  
13 habilitation plan writes an order imposing special  
14 restrictions and explains the reasons for any such  
15 restrictions. The written order must be renewed  
16 ~~semiannually~~ MONTHLY if any restrictions are to be  
17 continued.

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

21 (5) Each resident shall have an adequate allowance of  
22 neat, clean, suitably fitting and seasonable clothing.  
23 Except when a particular kind of clothing is required  
24 because of a particular condition, residents shall have the  
25 opportunity to select from various types of neat, clean, and

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

9 (6) Each resident shall have the right to keep and use  
 10 his own personal possessions except insofar as such clothes  
 11 or personal possessions may be determined to be dangerous,  
 12 either to himself or to others, by a professional person.

13 (7) A resident has a right to a humane physical  
 14 environment within the residential facilities. These  
 15 facilities shall be designed to make a positive contribution  
 16 to the efficient attainment of the habilitation goals of the  
 17 resident. To accomplish this purpose:

18 (a) Regular housekeeping and maintenance procedures  
 19 which will ensure that the facility is maintained in a safe,  
 20 clean and attractive condition shall be developed and  
 21 implemented.

22 (b) Pursuant to an established routine maintenance and  
 23 repair program, the physical plant shall be kept in a  
 24 continuous state of good repair and operation so as to  
 25 ensure the health, comfort, safety and well-being of the

1 residents and so as not to impede in any manner the  
 2 habilitation programs of the residents.

3 (c) The physical facilities must meet all fire and  
 4 safety standards established by the state and locality. In  
 5 addition, the facility shall meet such provisions of the  
 6 life safety code of the national fire protection association  
 7 as are applicable to it.

8 (d) There must be special facilities for nonambulatory  
 9 residents to assure their safety and comfort, including  
 10 special fittings on toilets and wheelchairs. Appropriate  
 11 provision shall be made to permit nonambulatory residents to  
 12 communicate their needs to staff.

13 (8) Residents shall have a right to receive prompt and  
 14 adequate medical treatment for any physical ailments and for  
 15 the prevention of any illness or disability. Such medical  
 16 treatment shall meet standards of medical practice in the  
 17 community.

18 (9) Corporal punishment shall not be permitted.

19 (10) The opportunity for religious worship shall be  
 20 accorded to each resident who desires such worship.  
 21 Provisions for religious worship shall be made available to  
 22 all residents on a nondiscriminatory basis. No individual  
 23 shall be compelled to engage in any religious activities.

24 (11) Residents shall have a right to a nourishing,  
 25 well-balanced diet. The diet for residents shall provide at

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

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

15 (13) Residents shall have a right, under appropriate  
 16 supervision, to suitable opportunities for the interaction  
 17 with members of the opposite sex, except where a  
 18 professional person responsible for the formulation of a  
 19 particular resident's habilitation plan writes an order to  
 20 the contrary and explains the reasons therefor. THE ORDER  
 21 MUST BE RENEWED MONTHLY IF THE RESTRICTION IS TO BE  
 22 CONTINUED.

23 Section 22. (1) Persons admitted to residential  
 24 facilities shall have a right to habilitation, including  
 25 medical treatment, education and care, suited to their

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

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

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

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

25 (4) Each resident shall have an individualized

1 habilitation plan formulated by the facility. This plan  
2 shall be developed by appropriate professional persons and  
3 implemented as soon as possible but no later than fourteen  
4 (14) days after the resident's admission to the facility.

5 An interim program of habilitation, based on the  
6 preadmission evaluation conducted pursuant to this act,  
7 shall commence promptly upon the resident's admission. Each  
8 individualized habilitation plan shall contain:

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

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

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

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

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

23 (f) criteria for release to less restrictive settings  
24 for habilitation, including criteria for discharge and a  
25 projected date for discharge.

1 (5) As part of his habilitation plan, each resident  
2 shall have an individualized post-institutionalization plan.  
3 This plan shall be developed by a professional person who  
4 shall begin preparation of such plan upon the resident's  
5 admission to the institution and shall complete such plan as  
6 soon as practicable. The parents or guardian or next of kin  
7 of the resident, the responsible person appointed by the  
8 court, if any, and the resident, if able to give informed  
9 consent, shall be consulted in the development of such plan  
10 and shall be informed of the content of such plan.

11 (6) In the interests of continuity of care, one  
12 professional person shall whenever possible be responsible  
13 for supervising the implementation of the habilitation plan,  
14 integrating the various aspects of the habilitation program,  
15 and recording the resident's progress as measured by  
16 objective indicators. This professional person shall also  
17 be responsible for ensuring that the resident is released  
18 when appropriate to a less restrictive habilitation setting.

19 (7) The habilitation plan shall be continuously  
20 reviewed by the professional person responsible for  
21 supervising the implementation of the plan and shall be  
22 modified if necessary. In addition, six months after  
23 admission and at least annually thereafter, each resident  
24 shall receive a comprehensive psychological, social,  
25 educational and medical diagnosis and evaluation, and his



1 habilitation plan shall be reviewed by an interdisciplinary  
 2 team of no less than two professional persons and such  
 3 resident care workers as are directly involved in his  
 4 habilitation and care. A HABILITATION PLAN SHALL BE  
 5 REVIEWED MONTHLY.

6 (8) Each resident discharged to the community shall  
 7 have a program of transitional habilitation assistance.

8 (9) The professional person in charge of the  
 9 residential facility shall report in writing to the parents  
 10 or guardian of the resident, or the responsible person, at  
 11 least every six months on the resident's educational,  
 12 vocational and living skills progress and medical condition.  
 13 Such report shall also state any appropriate habilitation  
 14 program which has not been afforded to the resident because  
 15 of inadequate habilitation resources.

16 (10) The parents or guardian of each resident, or the  
 17 responsible person appointed by the court, shall promptly  
 18 upon resident's admission receive a written copy of all the  
 19 above standards for adequate habilitation. Each resident,  
 20 if the resident is able to comprehend, shall promptly upon  
 21 his admission be orally informed in clear language of the  
 22 above standards and, where appropriate, be provided with a  
 23 written copy.

24 Section 23. Complete records for each resident shall  
 25 be maintained and shall be readily available to professional

1 persons and to the resident care workers who are directly  
 2 involved with the particular resident and to the mental  
 3 disabilities board of visitors. All information contained  
 4 in a resident's records shall be considered privileged and  
 5 confidential. The parents or guardian, the responsible  
 6 person appointed by the court, and any person properly  
 7 authorized in writing by the resident, if such resident is  
 8 capable of giving informed consent, or by his parents or  
 9 guardian or the responsible person, shall be permitted  
 10 access to the resident's records. These records shall  
 11 include:

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

14 (2) the resident's history, including but not limited  
 15 to:

16 (a) family data, educational background, and  
 17 employment record;

18 (b) prior medical history, both physical and mental,  
 19 including prior institutionalization;

20 (3) The resident's grievances if any;

21 (4) An inventory of the resident's life skills;

22 (5) A record of each physical examination which  
 23 describes the results of the examination;

24 (6) A copy of the individual habilitation plan and any  
 25 modifications thereto and an appropriate summary which will

1 guide and assist the resident care workers in implementing  
2 the resident's program;

3 (7) The findings made in periodic reviews of the  
4 habilitation plan which findings shall include an analysis  
5 of the successes and failures of the habilitation program  
6 and shall direct whatever modifications are necessary;

7 (8) A copy of the post-institutionalization plan and  
8 any modifications thereto, and a summary of the steps that  
9 have been taken to implement that plan;

10 (9) A medication history and status;

11 (10) A summary of each significant contact by a  
12 professional person with a resident;

13 (11) A summary of the resident's response to his  
14 program, prepared by a professional person involved in the  
15 resident's habilitation and recorded at least monthly. Such  
16 response, wherever possible, shall be scientifically  
17 documented.

18 (12) A monthly summary of the extent and nature of the  
19 resident's work activities and the effect of such activity  
20 upon the resident's progress along the habilitation plan;

21 (13) A signed order by a professional person for any  
22 physical restraints;

23 (14) A description of any extraordinary incident or  
24 accident in the facility involving the resident, to be  
25 entered by a staff member noting personal knowledge of the

1 incident or accident or other source of information,  
2 including any reports of investigations of residents  
3 mistreatment;

4 (15) A summary of family visits and contacts;

5 (16) A summary of attendance and leaves from the  
6 facility;

7 (17) A record of any seizures, illnesses, treatments  
8 thereof, and immunizations.

9 ~~Section 24. Each professional person employed by a~~  
10 ~~residential facility shall meet all licensing and~~  
11 ~~certification requirements promulgated by the state of~~  
12 ~~Montana for persons engaged in private practice of the same~~  
13 ~~profession elsewhere in Montana. Other staff members shall~~  
14 ~~meet the same licensing and certification requirements as~~  
15 ~~persons who engage in private practice of their specialty~~  
16 ~~elsewhere in Montana.~~ All resident care workers who have not  
17 had prior clinical experience in a residential facility for  
18 habilitation of the developmentally disabled shall have  
19 suitable orientation training. Staff members on all levels  
20 shall have suitable, regularly scheduled in-service  
21 training. Each resident care worker shall be under the  
22 direct professional supervision of a ~~qualified staff member~~  
23 PROFESSIONAL PERSON.

24 Section 25. Every residential facility shall prohibit  
25 mistreatment, neglect or abuse in any form of any resident.

1 Alleged violations shall be reported immediately to the  
2 professional person in charge of the facility and there  
3 shall be a written record that:

4 (1) each alleged violation has been thoroughly  
5 investigated and findings stated;

6 (2) the results of such investigation are reported to  
7 the professional person in charge of the facility within  
8 twenty-four (24) hours of the report of the incident. Such  
9 reports shall also be made to the mental disabilities board  
10 of visitors monthly and to the developmental disabilities  
11 advisory council at its next scheduled public meeting. Each  
12 facility shall cause a written statement of this policy to  
13 be posted in each cottage and building and circulated to all  
14 staff members.

15 SECTION 26. MEDICATION FOR RESIDENTS. RESIDENTS HAVE  
16 A RIGHT TO BE FREE FROM UNNECESSARY OR EXCESSIVE MEDICATION.  
17 NO MEDICATION SHALL BE ADMINISTERED UNLESS AT THE WRITTEN  
18 ORDER OF A PHYSICIAN. THE PROFESSIONAL PERSON IN CHARGE OF  
19 THE FACILITY AND THE ATTENDING PHYSICIAN SHALL BE  
20 RESPONSIBLE FOR ALL MEDICATION GIVEN OR ADMINISTERED TO A  
21 RESIDENT. THE USE OF MEDICATION SHALL NOT EXCEED STANDARDS  
22 OF USE THAT ARE ADVOCATED BY THE UNITED STATES FOOD AND DRUG  
23 ADMINISTRATION. NOTATION OF EACH INDIVIDUAL'S MEDICATION  
24 SHALL BE KEPT IN HIS MEDICAL RECORDS. AT LEAST WEEKLY AN  
25 ATTENDING PHYSICIAN SHALL REVIEW THE DRUG REGIMEN OF EACH

1 PATIENT UNDER HIS CARE. ALL PRESCRIPTIONS SHALL BE WRITTEN  
2 WITH A TERMINATION DATE, WHICH SHALL NOT EXCEED THIRTY (30)  
3 DAYS. MEDICATIONS SHALL NOT BE USED AS PUNISHMENT, FOR THE  
4 CONVENIENCE OF STAFF, AS A SUBSTITUTE FOR PROGRAM, OR IN  
5 QUANTITIES THAT INTERFERE WITH THE RESIDENT'S TREATMENT  
6 PROGRAM.

7 Section 27. (1) Residents of a residential facility  
8 shall have a right not to be subjected to any unusual or  
9 hazardous treatment procedures without the express and  
10 informed consent of the resident, if the resident is able to  
11 give such consent, and of his parents or guardian or the  
12 responsible person appointed by the court, after  
13 opportunities for consultation with independent specialists  
14 and legal counsel. Such proposed procedures shall first  
15 have been reviewed and approved by the mental disabilities  
16 board of visitors before such consent shall be sought.

17 (2) Physical restraint shall be employed only when  
18 absolutely necessary to protect the resident from injury to  
19 himself or to prevent injury to others. Restraint shall not  
20 be employed as punishment, for the convenience of staff, or  
21 as a substitute for a habilitation program. Restraint shall  
22 be applied only if alternative techniques have failed and  
23 only if such restraint imposes the least possible  
24 restriction consistent with its purpose. Only a  
25 professional person may authorize the use of restraints.

1 Orders for restraints by a professional person shall be in  
2 writing and shall not be in force for longer than twelve  
3 (12) hours. Whenever physical restraint is ordered suitable  
4 provision shall be made for the comfort and physical needs  
5 of the person restrained.

6 (3) Seclusion, defined as the placement of a resident  
7 alone in a locked room FOR NON-THERAPEUTIC PURPOSES, shall  
8 not be employed. Legitimate "time out" procedures may be  
9 utilized under close and direct professional supervision as  
10 a technique in behavior-shaping programs.

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

23 ~~(5) No resident shall be subjected to a behavior~~  
24 ~~modification program designed to eliminate a particular~~  
25 ~~pattern of behavior without prior certification by a~~

1 ~~physician that he has examined the resident in regard to~~  
2 ~~behavior to be extinguished and finds that such behavior is~~  
3 ~~not caused by a physical condition which could be corrected~~  
4 ~~by appropriate medical procedures.~~ No resident shall be  
5 subjected to a behavior modification program which attempts  
6 to extinguish socially appropriate behavior or to develop  
7 new behavior patterns when such behavior modifications serve  
8 only institutional convenience.

9 (6) Electric shock devices shall be considered a  
10 research technique for the purpose of this act. Such  
11 devices shall only be used in extraordinary circumstances to  
12 prevent self-mutilation leading to repeated and possibly  
13 permanent physical damage to the resident and only after  
14 alternative techniques have failed. The use of such devices  
15 shall be subject to the conditions prescribed by this act  
16 for experimental research generally and shall be used only  
17 under the direct and specific order of the professional  
18 person in charge of the residential facility.

19 Section 28. Residents of a residential facility shall  
20 have a right not to be subjected to experimental research  
21 without the express and informed consent of the resident, if  
22 the resident is able to give such consent, and of his  
23 parents or guardian or the responsible person appointed by  
24 the court after opportunities for consultation with  
25 independent specialists and with legal counsel. Such

1 proposed research shall first have been reviewed and  
 2 approved by the mental disabilities board of visitors before  
 3 such consent shall be sought. Prior to such approval the  
 4 board shall determine that such research complies with the  
 5 principles of the statement on the use of human subjects for  
 6 research of the American association on mental deficiency  
 7 and with the principles for research involving human  
 8 subjects required by the United States department of health,  
 9 education and welfare for projects supported by that agency.

10 Section 29. The following rules shall govern resident  
 11 labor:

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

21 (2) No resident shall be involved in the care  
 22 (feeding, clothing, bathing), training or supervision of  
 23 other residents unless he:

24 (a) has volunteered;

25 (b) has been specifically trained in the necessary

1 skills;

2 (c) has the humane judgment required for such  
 3 activities;

4 (d) is adequately supervised; and

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

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

14 (a) an integrated part of the resident's habilitation  
 15 plan and approved as a habilitation activity by a  
 16 professional person responsible for supervising the  
 17 resident's habilitation;

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

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

24 (a) an integrated part of the resident's habilitation  
 25 plan and approved as a habilitation activity by a

1 professional person responsible for supervising the  
2 resident's habilitation;

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

5 (c) compensated in accordance with the minimum wage  
6 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as  
7 amended.

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

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

20 (7) ~~Residents shall be allowed to use DEDUCTIONS OR~~  
21 ~~PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A~~  
22 ~~RESIDENT~~ OP a reasonable amount of the compensation received  
23 pursuant to this section for personal and incidental  
24 purchases and expenses.

25 (8) Staffing shall be sufficient so that the facility

1 is not dependent upon the use of residents or volunteers for  
2 the care, maintenance or habilitation of other residents or  
3 for income-producing services. The facility shall formulate  
4 a written policy to protect the residents from exploitation  
5 when they are engaged in productive work.

6 Section 30. Within one (1) year of the effective date  
7 of this act, each resident governed by the provisions of  
8 this act shall be evaluated as to his mental, emotional,  
9 social, and physical condition. Such evaluation or  
10 reevaluation shall be conducted by an interdisciplinary team  
11 of professional persons who shall use professionally  
12 recognized tests and examination procedures. Each  
13 resident's parents or guardian, next of kin or legal  
14 representative or the responsible person appointed by the  
15 court shall be contacted and his readiness to make  
16 provisions for the resident's care in the community shall be  
17 ascertained. Each resident shall be returned to his family,  
18 if adequately habilitated, or assigned to the least  
19 restrictive habilitation setting. Where necessary, the  
20 professional person in charge of the resident shall petition  
21 the court to appoint a responsible person.

22 Section 31. No person shall be admitted to any  
23 publicly supported residential institution caring for  
24 developmentally disabled persons unless such institution  
25 meets the standards prescribed by this act.

1 Section 32. (1) The governor shall appoint a mental  
 2 disabilities board of visitors. The board shall consist of  
 3 five (5) persons at least three (3) of whom shall not be  
 4 professional persons and at least one (1) of whom shall be a  
 5 representative of an organization concerned with the care  
 6 and welfare of the developmentally disabled. No one may be  
 7 a member of the board who is an agent or employee of the  
 8 department of institutions or of any residential facility  
 9 affected by this act. If a board of similar title and  
 10 structure is created in any act concerning the treatment of  
 11 the mentally ill, then one (1) board shall be created to  
 12 perform the functions set out in both acts and the board so  
 13 created shall include at least one (1) representative of an  
 14 organization concerned with the care and welfare of the  
 15 mentally ill and one representative of an organization  
 16 concerned with the care and welfare of the mentally retarded  
 17 or developmentally disabled.

18 (2) The mental disabilities board of visitors shall be  
 19 an independent board of inquiry and review to assure that  
 20 the treatment of all persons admitted to a residential  
 21 facility is humane and decent and meets the requirements set  
 22 forth in this act.

23 The board shall review all plans for experimental  
 24 research or hazardous treatment procedures involving persons  
 25 admitted to any residential facility to assure that the

1 research project is humane and not unduly hazardous and that  
 2 it complies with the principles of the statement on the use  
 3 of human subjects for research of the American association  
 4 on mental deficiency and with the principles for research  
 5 involving human subjects required by the United States  
 6 department of health, education and welfare. No  
 7 experimental research project involving persons admitted to  
 8 any residential facility affected by this act shall be  
 9 commenced unless it is approved by the mental disabilities  
 10 board of visitors. The board shall investigate all cases of  
 11 alleged mistreatment of a resident.

12 (3) The board shall, at least annually, inspect every  
 13 residential facility which is providing a course of  
 14 residential habilitation and treatment to any person  
 15 pursuant to this act. The board shall inspect the physical  
 16 plant, including residential, recreational, dining, and  
 17 sanitary facilities. It shall visit all wards and treatment  
 18 or habilitation areas. The board shall inquire concerning  
 19 all habilitation programs being implemented by the  
 20 institution.

21 (4) The board shall inspect the file of each person  
 22 admitted to a residential facility pursuant to this act to  
 23 insure that a habilitation plan exists and is being  
 24 implemented. The board shall inquire concerning all use of  
 25 restraints, isolation or other extraordinary measures.

1 (5) The board may assist any patient at a residential  
2 facility in resolving any grievance he may have concerning  
3 his admission or his course of treatment and habilitation in  
4 the facility.

5 (6) If the board believes that any facility is failing  
6 to comply with the provisions of this act in regard to its  
7 physical facilities or its treatment of any resident, it  
8 shall report its findings at once to the parents or guardian  
9 of any patient involved, the next of kin, if known, the  
10 responsible person appointed by the court for any patient  
11 involved, the professional person in charge of the facility,  
12 the director of the department of institutions and the  
13 district court which has jurisdiction over the facility.

14 (7) The mental disabilities board of visitors shall  
15 report annually to the governor and shall report to each  
16 session of the Montana legislature concerning the status of  
17 the residential facilities and habilitation programs which  
18 it has inspected.

19 (8) The mental disabilities board of visitors shall be  
20 attached to the governor for administrative purposes. It  
21 may employ staff for the purpose of carrying out its duties  
22 as set out in this act.

23 Section 33. If any person is a patient in a mental  
24 health facility and the professional person in charge of the  
25 patient determines that the patient is suffering from a

1 developmental disability rather than mental illness and  
2 should more properly be admitted to a residential facility,  
3 then the professional person shall commence proceedings  
4 consistent with the procedures set forth in this act for  
5 admissions generally to effect such admission.

6 Section 34. If any provision of this act or the  
7 application thereof to any person or circumstances is held  
8 invalid, such invalidity shall not affect other provisions  
9 or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the  
11 provisions of this act are declared to be severable.

12 ~~Section 34. Section 80-2312, R.C.M. 1947, is amended~~  
13 ~~to read as follows:~~

14 ~~"80-2312. Supervision of Glendive center transfers~~  
15 ~~to Boulder river school and hospital. The department shall~~  
16 ~~establish and direct the services to be provided at the~~  
17 ~~center. The department shall provide for temporary transfers~~  
18 ~~from the Eastmont training center to the Boulder River~~  
19 ~~school and hospital for special medical, psychological,~~  
20 ~~surgical, and other services consistent with the statutory~~  
21 ~~requirements for transfer of a resident to a different~~  
22 ~~residential facility."~~

23 Section 35. Sections 80-2303 through 80-2309, AND  
24 80-2312, 38-301 through 38-303, R.C.M. 1947, are repealed.

-End-



1 SENATE BILL NO. 388

2 INTRODUCED BY TOWK

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
5 IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE  
6 DEVELOPMENTALLY DISABLED; ~~AMENDING SECTION 80-2312, R.C.M.~~  
7 ~~1947,~~ AND REPEALING SECTIONS 38-301 THROUGH 38-303, AND  
8 80-2303 THROUGH 80-2309, AND 80-2312, R.C.M. 1947."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. The purpose of this act is:

12 (1) to secure for each person who may be  
13 developmentally disabled such treatment and habilitation as  
14 will be suited to the needs of the person, and to assure  
15 that such treatment and habilitation are skillfully and  
16 humanely administered with full respect for the person's  
17 dignity and personal integrity;

18 (2) to accomplish this goal whenever possible in a  
19 community-based setting;

20 (3) to accomplish this goal in an institutionalized  
21 setting only when less restrictive alternatives are  
22 unavailable or inadequate and only when a person is so  
23 severely disabled as to require institutionalized care; and

24 (4) to assure that due process of law is accorded any  
25 person coming under the provisions of this act.

1 Section 2. Definitions. As used in this act:

2 (1) "board" means the mental disabilities board of  
3 visitors created by this act.

4 (2) "Community-based facilities" or "community-based  
5 services" include 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 the district court of the state of  
13 Montana.

14 (4) "Developmentally disabled" means suffering from  
15 disabilities attributable to mental retardation, cerebral  
16 palsy, epilepsy, autism or any other neurologically  
17 handicapping ~~conditions~~ CONDITION closely related to mental  
18 retardation and requiring treatment similar to that required  
19 by mentally retarded individuals; which condition has  
20 continued or can be expected to continue indefinitely and  
21 constitutes a substantial handicap of such individuals.

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

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

4 (6) "Next of kin" includes but need not be limited to  
5 the spouse, parents, adult children, and adult brothers and  
6 sisters of a person.

7 (7) "Professional person" means:

8 (a) a medical doctor, or

9 (b) a person trained in the field of developmental  
10 disabilities and certified by the regional mental health  
11 ~~directory, if the director is a licensed physician, by a~~  
12 ~~member of the regional developmental disabilities council or~~  
13 ~~board of directors, if such member is a licensed physician,~~  
14 ~~or by the superintendent of the Boulder River School and~~  
15 ~~Hospital or of the Eastmont Training Center, if the~~  
16 ~~superintendent is a licensed physician~~ DEPARTMENT OF  
17 INSTITUTIONS OR THE DEPARTMENT OF SOCIAL AND REHABILITATION  
18 SERVICES IN ACCORDANCE WITH STANDARDS OF PROFESSIONAL  
19 LICENSING BOARDS, FEDERAL REGULATIONS, AND THE JOINT  
20 COMMISSIONS ON ACCREDITATION OF HOSPITALS.

21 (8) "Resident" means a person admitted to a  
22 residential facility for a course of evaluation, treatment  
23 or habilitation.

24 (9) "Residential facility" or "facility" means any  
25 residential hospital or hospital and school which exists for

1 the purpose of evaluating, treating and habilitating the  
2 developmentally disabled on an inpatient basis, including  
3 the Boulder River School and Hospital and the Eastmont  
4 Training Center. The term does not include a group home or  
5 foster home or a halfway house. A correctional facility or  
6 a facility for the treatment of the mentally ill shall not  
7 be a "residential facility" within the meaning of this act.

8 (10) "Respondent" means a person alleged in a petition  
9 filed pursuant to this act to be developmentally disabled  
10 and in need of developmental disabilities services.

11 (11) "Responsible person" means any person willing and  
12 able to assume responsibility for a person who is  
13 developmentally disabled or alleged to be developmentally  
14 disabled. Whenever, in any proceeding under this act, the  
15 court believes that a conflict of interest may exist between  
16 a person who is developmentally disabled or alleged to be  
17 developmentally disabled and his parents or guardian, or  
18 that the parents or guardian are unable to protect the  
19 interests of such person, or whenever there is no parent or  
20 guardian, the court shall appoint a responsible person to  
21 protect the interests of the person who is developmentally  
22 disabled or alleged to be developmentally disabled. Only  
23 one person shall at any one time be the responsible person  
24 within the meaning of this act. In appointing a responsible  
25 person, the court shall consider the preference of the

1 respondent or patient. The court may at any time, for good  
2 cause shown, change its designation of who is the  
3 responsible person.

4 (12) "Seriously developmentally disabled" means  
5 developmentally disabled ~~and functioning at more than three~~  
6 ~~standard deviations below the mean on a standardized~~  
7 ~~intelligence test such as the Stanford Binet Scale and on a~~  
8 ~~measure of adaptive behavior such as the American~~  
9 ~~Association on Mental Deficiency Adaptive Behavior Scale, or~~  
10 ~~because of some combination of developmental and physical~~  
11 ~~disability, DUE TO DEVELOPMENTAL OR PHYSICAL DISABILITY OR A~~  
12 ~~COMBINATION OF BOTH RENDERING A PERSON unable to function in~~  
13 a community-based setting.

14 Section 3. (1) Any person subject to emergency  
15 admittance to a residential facility, to examination or  
16 evaluation by a professional person, or to any hearing held  
17 pursuant to this act shall have all the rights accorded to a  
18 person subject to involuntary commitment proceedings under  
19 the laws of this state relating to involuntary commitment of  
20 the seriously mentally ill.

21 (2) In addition, the parents or guardian of any person  
22 alleged to be developmentally disabled and in need of  
23 developmental disabilities services have the right:

24 (a) to be present at any hearings held pursuant to  
25 this act;

1 (b) to be represented by counsel in any hearing;

2 (c) to offer evidence and cross-examine witnesses in  
3 any hearing; and

4 (d) to have the respondent be examined by a  
5 professional person of their choice when such professional  
6 person is reasonably available, unless the person so chosen  
7 is objected to by the respondent or by a responsible person  
8 appointed by the court.

9 (3) A person may waive his procedural rights provided  
10 that the waiver is knowingly and intentionally made. The  
11 right to counsel in a hearing held pursuant to section 6 may  
12 not be waived. The right to habilitation provided for in  
13 this act may not be waived.

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

23 (5) In the case of a minor, the waiver of rights can  
24 be knowingly and intentionally made:

25 (a) when the minor is under the age of twelve (12), by

1 the parents of the minor WITH THE CONCURRENCE OF THE  
2 RESPONSIBLE PERSON, IF ANY:

3 (b) when the minor is over the age of twelve (12), by  
4 the minor and his parents;

5 (c) when the minor is over the age of twelve (12) and  
6 the minor and his parents do not agree, the minor can make  
7 an effective waiver of his rights only with the advice of  
8 counsel.

9 If the court believes that there may be a conflict of  
10 interest between a minor and his parents or guardian, the  
11 court may appoint a responsible person or guardian ad litem  
12 for the minor.

13 Section 4. (1) The parents or guardian of any person  
14 alleged to be developmentally disabled or the person himself  
15 may at any time request the assistance of a professional  
16 person in determining whether the person is developmentally  
17 disabled, the extent of such disability, and the most  
18 appropriate course of treatment, habilitation and education  
19 for the person alleged to be developmentally disabled.

20 (2) whenever the parents or guardian of a person  
21 alleged to be developmentally disabled or the person himself  
22 request a course of evaluation and treatment, they shall  
23 ascertain, with the professional person who undertakes the  
24 case, the least restrictive means of evaluating and treating  
25 the person alleged to be developmentally disabled.

1 Evaluation and treatment in a residential facility shall  
2 take place only upon certification by the professional  
3 person in charge of the case that adequate community-based  
4 facilities are not available REASONABLY NEAR THE PLACE OF  
5 RESIDENCE OF THE PERSON ALLEGED TO BE DEVELOPMENTALLY  
6 DISABLED. Residential evaluation and treatment shall not be  
7 for more than thirty (30) days without subsequent  
8 proceedings before the court.

9 Section 5. (1) Any person who believes that there is  
10 a person who is developmentally disabled and in need of  
11 developmental disability services may report the situation  
12 to a professional person. If the professional person  
13 believes from the facts given to him that the person may be  
14 developmentally disabled and in need of developmental  
15 disability services, he shall contact the parents or  
16 guardian of the person alleged to be developmentally  
17 disabled or the person himself. If any of the persons so  
18 contacted refuse to cooperate with the professional person  
19 and if the professional person believes from all the  
20 circumstances of the case that the person may be  
21 developmentally disabled and in need of developmental  
22 disabilities services he shall request the county attorney  
23 to file a petition alleging that there is a person in the  
24 county who is developmentally disabled and in need of  
25 developmental disabilities services.

1 (2) The petition shall contain the name and address  
2 of:

3 (a) the professional person and any other person  
4 requesting the petition, and their interest in the case;

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

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

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

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

15 (f) a statement of the rights of the respondent and  
16 his parents or guardian which shall be in conspicuous print  
17 and identified by a suitable heading.

18 (3) Upon presentation to the court by the county  
19 attorney, the court shall immediately consider the petition  
20 with or without a hearing to determine if there is probable  
21 cause to believe that the respondent is developmentally  
22 disabled and in need of evaluation and treatment. If the  
23 court finds no such probable cause it shall dismiss the  
24 petition. If the court finds that probable cause does exist  
25 it shall direct a professional person to examine the

1 respondent and to make an inquiry concerning the  
2 circumstances of the case. Such examination shall not  
3 exceed four (4) hours in length. If probable cause is found  
4 the court may appoint a responsible person other than the  
5 respondent's parents or guardian to protect the interests of  
6 the respondent. The responsible person shall be notified as  
7 soon as possible that a petition has been filed. Notice of  
8 the petition and the finding of probable cause shall be  
9 mailed or delivered to the respondent and to all other  
10 persons named in the petition and to any person who would  
11 have been named in the petition had his name, address, and  
12 relationship to the respondent been known at the time.

13 (4) When the professional person first contacts the  
14 respondent, before he begins any examination, he shall give  
15 the respondent a copy of the petition and explain to the  
16 respondent the nature of the proceeding and his rights as  
17 set forth in the petition. If the respondent is incapable  
18 of understanding the explanation and proceeding, the  
19 professional person shall give the petition and make the  
20 explanation to the parents or guardian of the respondent.  
21 Before making any inquiry of the parents or guardian of the  
22 respondent, the professional person shall give them a copy  
23 of the petition, explain the nature of the proceeding and  
24 their rights as set forth in the petition.

25 Section 6. (1) If the professional person, based on

1 his examination and inquiry determines that the respondent  
 2 is not developmentally disabled or is not in need of  
 3 developmental disability services, he shall report this  
 4 finding in writing to the court and the petition shall be  
 5 dismissed. If the professional person concludes that the  
 6 respondent is developmentally disabled and in need of  
 7 developmental disability services, he shall report this  
 8 conclusion to the court in writing together with his  
 9 recommendations for evaluation and treatment. The report  
 10 shall include an explanation of the basis on which the  
 11 professional person has reached his conclusion and shall  
 12 include a description of any tests or evaluation devices he  
 13 has employed. If the professional person's recommendation  
 14 is for further evaluation and treatment, notice of this  
 15 recommendation shall be sent to the respondent, his parents  
 16 or guardian, the next of kin, the responsible person  
 17 appointed by the court, if any, any attorney representing  
 18 the respondent or his parents or guardian. If no  
 19 responsible person has yet been appointed, the court may  
 20 appoint one at this time.

21 (2) If the respondent, his parents or guardian, the  
 22 responsible person, if any, or counsel for any party  
 23 requests a hearing on the recommendation, the court shall  
 24 set a time and place for hearing. The hearing shall be  
 25 before the court without a jury. The rules of civil

1 procedure shall apply.

2 (3) Prior to any hearing held pursuant to this  
 3 section, the court shall appoint counsel to represent the  
 4 respondent, if the respondent has not retained independent  
 5 counsel. The parents or guardian shall be informed of their  
 6 right to counsel and if they are indigent the court shall,  
 7 on their request, appoint counsel for them. In no case  
 8 shall the same attorney represent the respondent and his  
 9 parents or guardian.

10 (4) If the hearing is waived or if the court finds,  
 11 after hearing, that the respondent is developmentally  
 12 disabled and in need of further evaluation and treatment,  
 13 the court shall order that the respondent undergo such  
 14 evaluation and treatment. Evaluation and treatment ordered  
 15 pursuant to this subsection shall be for no more than thirty  
 16 (30) days. It shall take place in the least restrictive  
 17 environment in which the necessary evaluation and treatment  
 18 can be accomplished. Evaluation and treatment in a  
 19 residential facility shall be ordered only if the necessary  
 20 evaluation and treatment cannot be accomplished through the  
 21 use of community-based facilities.

22 Section 7. (1) If as a result of the evaluation and  
 23 treatment ordered by the court, the professional person in  
 24 charge of the case recommends a course of habilitation and  
 25 treatment at the community level making use of community and

1 regional based services for the developmentally disabled, he  
 2 shall report his recommendation in writing to the court.  
 3 The recommendation shall be accompanied by a written report  
 4 indicating the factual basis for the recommendation and  
 5 describing any tests or evaluation devices which the  
 6 professional person has employed in evaluating the  
 7 respondent. If this course of treatment and habilitation is  
 8 agreed to by the parents, guardian, person evaluated,  
 9 responsible person, if any, and counsel for the person  
 10 evaluated, if any, then this community-based course of  
 11 treatment shall be commenced as soon as practicable, and the  
 12 petition shall be dismissed.

13 (2) If any of the parties listed in the preceding  
 14 paragraph object to the community-based course of treatment,  
 15 they may request the court to conduct a hearing on the  
 16 matter. If a responsible person has not yet been appointed,  
 17 the court may appoint a responsible person prior to the  
 18 hearing. Notice of the time, date and place of the hearing  
 19 shall be mailed or delivered to all of the parties listed in  
 20 the preceding paragraph, and to the attorney for the  
 21 parents or guardian, if any. The hearing shall be held  
 22 before the court without a jury. The rules of civil  
 23 procedure shall apply. If the court finds that the  
 24 respondent is developmentally disabled and in need of  
 25 community-based developmental disabilities services, it

1 shall order that the respondent undertake a community-based  
 2 course of treatment and habilitation.

3 Section 8. (1) If as a result of the evaluation and  
 4 treatment either agreed to by the parents, guardian, or the  
 5 person himself pursuant to section 4 or ordered by the  
 6 court, the professional person in charge of the case  
 7 concludes that the person evaluated is seriously  
 8 developmentally disabled and recommends that treatment and  
 9 habilitation be had in a residential facility on an extended  
 10 basis, the professional person shall file his written  
 11 recommendation and report with the court and request that  
 12 the court order the admission. The report shall include the  
 13 factual basis for the recommendation, and shall describe any  
 14 tests or evaluation devices which have been employed in  
 15 evaluating the patient. If no responsible person has yet  
 16 been appointed, the court may appoint one at this time. If  
 17 there is no parent or guardian the court shall appoint a  
 18 responsible person. At the request of the respondent, his  
 19 parents or guardian or the responsible person, the court  
 20 shall appoint counsel for the respondent. If the parents or  
 21 guardian are indigent and if they request it, the court  
 22 shall appoint counsel for the parents or guardian. Notice  
 23 of the recommendation shall be mailed or delivered to the  
 24 respondent, his parents or guardian, the responsible person,  
 25 next of kin, if known, and the attorney for the respondent,

1 if any, and for the parents or guardian, if any.

2 (2) The respondent, his parents or guardian, the  
3 responsible person, or the attorney for any party may  
4 request that a hearing be had on the recommendation. If a  
5 hearing is requested, the court shall mail or deliver notice  
6 of the date, time and place of the hearing to each of the  
7 parties listed at the beginning of this subsection. The  
8 hearing shall be to the court without jury. The rules of  
9 civil procedure shall apply.

10 (3) If the court finds that the respondent is  
11 seriously developmentally disabled and that available  
12 community-based services are not adequate, it shall order  
13 the respondent admitted to a residential facility for an  
14 extended course of treatment and habilitation. If the court  
15 finds that the respondent is developmentally disabled, and  
16 in need of developmental disabilities services but that  
17 available community-based services are adequate, it shall  
18 order the respondent to undertake a community-based course  
19 of treatment and habilitation. If the court finds that the  
20 respondent is not developmentally disabled or is not in need  
21 of developmental disability services, it shall dismiss the  
22 request.

23 (4) 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  
3 to whether the order should be granted. The court may  
4 refuse to authorize admission of a person to a residential  
5 facility for an extended period of treatment and  
6 habilitation if such admission is not in the best interests  
7 of the person.

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

25 Section 9. (1) No person shall be admitted to a



1 residential facility for longer than thirty (30) days except  
 2 on approval of the court. Whenever a person is admitted to  
 3 a residential facility for longer than thirty (30) days, the  
 4 court may appoint a person other than the parents or  
 5 guardian to act as responsible person for the resident. If  
 6 there is no parent or guardian, the court shall appoint a  
 7 responsible person.

8 (2) The court order approving the admission shall  
 9 specify the maximum period of time for which the person is  
 10 admitted to the residential facility. In no case shall this  
 11 maximum period exceed one year.

12 (3) If at any time during the period for which a  
 13 person is admitted to a residential facility for an extended  
 14 period of habilitation and treatment, the professional  
 15 person in charge of the resident decides that there exist  
 16 sufficient community-based alternatives to provide adequate  
 17 treatment and habilitation for the resident, or that it is  
 18 in the best interests of the resident that he be transferred  
 19 to another residential facility, then he may release the  
 20 resident to such community-based alternative or transfer the  
 21 resident to the other residential facility no less than  
 22 fifteen (15) days after sending notice of the proposed  
 23 release or transfer to the resident, his parents or  
 24 guardian, the attorney who most recently represented the  
 25 resident, if any, the responsible person appointed by the

1 court, if any, and the court which ordered the admission.  
 2 If any of the parties so notified objects to the release or  
 3 transfer, they may petition the court for a hearing to  
 4 determine whether the release or transfer should be allowed.  
 5 The hearing shall comply with the procedures set forth in  
 6 section 8. The court may on its own initiative inquire  
 7 concerning the propriety of the release or transfer.  
 8 Nothing in this subsection shall prevent the transfer of a  
 9 resident to a hospital or other medical facility for  
 10 necessary medical treatment, or emergency transfer of a  
 11 resident to a mental health facility, provided such  
 12 emergency transfer complies with the statutory requirements  
 13 for emergency detention of the mentally ill. Within  
 14 twenty-four (24) hours of an emergency medical or  
 15 psychiatric transfer, notice shall be given to the parents  
 16 or guardian of the resident, the responsible person  
 17 appointed by the court, if any, and the court.

18 (4) If the professional person in charge of the  
 19 resident determines that the admission to the residential  
 20 facility should continue beyond the period specified in the  
 21 court order, he shall, at least fifteen (15) days before the  
 22 end of the period set out in the court order, send written  
 23 notice of his recommendation and request for renewal of the  
 24 order to the court which issued the order, the resident, his  
 25 parents or guardian, the next of kin, if known, the attorney

1 who most recently represented the resident, if any, and the  
 2 responsible person appointed by the court, if any. The  
 3 recommendation and request shall be accompanied by a written  
 4 report which shall describe the habilitation plan which has  
 5 been undertaken for the resident and the future habilitation  
 6 plan which is anticipated by the professional person.

7 (5) If any person so notified requests a hearing, the  
 8 court shall set a time and place for the hearing and shall  
 9 mail or deliver notice to all of the persons informed of the  
 10 recommendation. The hearing shall be conducted in the  
 11 manner set out in section 8. If the court finds that the  
 12 residential admission is still justified, it may order  
 13 continuation of the admission to that residential facility  
 14 or transfer of the resident to a different residential  
 15 facility. If the court finds that the resident is still in  
 16 need of developmental disabilities services but does not  
 17 require residential treatment, it shall order an appropriate  
 18 course of community-based habilitation, or, if all parties  
 19 are willing for the resident to participate in a  
 20 community-based program of habilitation, it shall dismiss  
 21 the petition. If the need for developmental disabilities  
 22 services no longer exists, the court shall dismiss the  
 23 petition. The court shall not order continuation of  
 24 admission to a residential facility which does not have an  
 25 individualized habilitation plan for the resident. In its

1 order, the court shall make findings of fact on which its  
 2 order is based. The court may on its own initiative inquire  
 3 concerning the suitability of continuing an admission to a  
 4 residential facility.

5 Section 10. Hearings held pursuant to this act shall  
 6 be held in the district court for the district where the  
 7 respondent resides. Except that at the request of any  
 8 party, or the professional person who must be present at the  
 9 hearing, a hearing may be held in the district court for the  
 10 district where the respondent is undergoing evaluation,  
 11 treatment or habilitation in a residential facility, or is  
 12 undergoing community-based evaluation, treatment or  
 13 habilitation. The cost of any hearing held pursuant to this  
 14 act shall be born by the county where the respondent  
 15 resides.

16 Section 11. Any order issued by a court after a  
 17 hearing held pursuant to any provision of this act may be  
 18 appealed to the Montana supreme court in the same manner as  
 19 for civil appeals generally.

20 Section 12. Whenever evaluation by a professional  
 21 person is ordered by a court pursuant to any provision of  
 22 this act, the person being evaluated, his parents or  
 23 guardian shall have a reasonable choice of a professional  
 24 person qualified to perform such service.

25 Section 13. In any hearing held pursuant to this act

1 which involves consideration of the recommendation and  
 2 report of a professional person, the professional person who  
 3 made the recommendation and report shall be present at the  
 4 hearing and subject to cross-examination.

5 Section 14. In any hearing held pursuant to this act  
 6 the court may request the county welfare department to  
 7 prepare a social summary of the respondent for use by the  
 8 court.

9 Section 15. No person who has reached the age of  
 10 majority shall be compelled against his will to undertake a  
 11 course of treatment and habilitation solely because he is  
 12 developmentally disabled, but only if such disability causes  
 13 him to be unable to protect his life and health.

14 Section 16. The parents, guardian, the person himself,  
 15 or a professional person may admit a person believed to be  
 16 developmentally disabled to a residential facility on an  
 17 emergency basis when necessary to protect the person from  
 18 death or serious bodily harm. However, if requested by the  
 19 parents, guardian or the person admitted on an emergency  
 20 basis, a petition as set out in section 5 shall be filed on  
 21 the next judicial day by the county attorney of the county  
 22 where the person resides. If a petition is filed, the  
 23 professional person assigned by the court to conduct the  
 24 examination and inquiry shall report back to the court on  
 25 the next judicial day following the filing of the petition.

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

8 Section 17. (1) Unless specifically stated in an  
 9 order by the court, a person admitted to a residential  
 10 facility for an extended course of habilitation shall not  
 11 forfeit any legal right or suffer any legal disability by  
 12 reason of the provisions of this act except insofar as it  
 13 may be necessary to detain the person for habilitation,  
 14 evaluation or care.

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

1 of the admission may not be created except according to the  
2 procedures set forth under Montana law for the appointment  
3 of conservators and guardians generally.

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

16 (4) Any person admitted to a residential facility  
17 prior to the effective date of this act shall enjoy all the  
18 rights and privileges of a person admitted after the  
19 effective date of this act.

20 Section 18. (1) If a person is admitted to a  
21 residential facility under the provisions of this act and is  
22 eligible for hospital care, treatment or habilitation by an  
23 agency of the United States, and if a certificate of  
24 notification from such agency showing that facilities are  
25 available and that the person is eligible for care or

1 treatment therein is received, the court may order the  
2 person to be placed in the custody of the agency for  
3 hospitalization. The chief officer of any hospital or  
4 residential facility operated by the agency and in which the  
5 person is admitted shall, with respect to the person, be  
6 vested with the same powers as the superintendent of the  
7 Boulder River school and hospital with respect to detention,  
8 custody, transfer and release of the person. Jurisdiction  
9 shall be retained in the appropriate courts of this state to  
10 inquire into the mental condition of persons so admitted,  
11 and to determine the necessity for continuance of their  
12 admission.

13 (2) Consistent with other provisions of this act, a  
14 person admitted to a residential facility under this act for  
15 a period more than thirty (30) days may be committed by the  
16 court to the custody of friends or next of kin residing  
17 outside the state or transferred to a residential facility  
18 located outside the state, if the out-of-state facility  
19 agrees to receive the person, provided, however that no such  
20 commitment or transfer shall be for a longer period of time  
21 than is permitted within the state. If the person is  
22 indigent, the expense of supporting him in an out-of-state  
23 facility and the expense of transportation shall be borne by  
24 the state of Montana.

25 (3) The transfer of persons admitted to a residential

1 facility under the provisions of this act out of Montana or  
2 under the laws of another jurisdiction into Montana shall be  
3 governed by the provisions of the interstate compact on  
4 mental health.

5 Section 19. No person admitted to or in a residential  
6 facility shall be fingerprinted unless required by other  
7 provisions of law.

8 Section 20. (1) A person admitted to a residential  
9 facility may be photographed upon admission for  
10 identification and the administrative purposes of the  
11 facility. Such photographs shall be confidential and shall  
12 not be released by the facility except pursuant to court  
13 order.

14 (2) No other nonmedical OR NON-HABILITATIVE  
15 photographs shall be taken or used without consent of the  
16 resident's parents or guardian or the responsible person  
17 appointed by the court.

18 Section 21. Persons admitted to a residential facility  
19 for a period of habilitation shall enjoy the following  
20 rights:

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

23 (2) Residents shall be entitled to send and receive  
24 sealed mail. Moreover, it shall be the duty of the facility  
25 to foster the exercise of this right by furnishing the

1 necessary materials and assistance.

2 (3) Residents shall have the same rights and access to  
3 private telephone communication as patients at any public  
4 hospital, except to the extent that a professional person  
5 responsible for formulation of a particular resident's  
6 habilitation plan writes an order imposing special  
7 restrictions and explains the reasons for any such  
8 restrictions. The written order must be renewed  
9 ~~semiannually~~ MONTHLY if any restrictions are to be  
10 continued. Residents shall have an unrestricted right to  
11 visitation, except to the extent that a professional person  
12 responsible for formulation of a particular resident's  
13 habilitation plan writes an order imposing special  
14 restrictions and explains the reasons for any such  
15 restrictions. The written order must be renewed  
16 ~~semiannually~~ MONTHLY if any restrictions are to be  
17 continued.

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

21 (5) Each resident shall have an adequate allowance of  
22 neat, clean, suitably fitting and reasonable clothing.  
23 Except when a particular kind of clothing is required  
24 because of a particular condition, residents shall have the  
25 opportunity to select from various types of neat, clean, and

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

9 (6) Each resident shall have the right to keep and use  
 10 his own personal possessions except insofar as such clothes  
 11 or personal possessions may be determined to be dangerous,  
 12 either to himself or to others, by a professional person.

13 (7) A resident has a right to a humane physical  
 14 environment within the residential facilities. These  
 15 facilities shall be designed to make a positive contribution  
 16 to the efficient attainment of the habilitation goals of the  
 17 resident. To accomplish this purpose:

18 (a) Regular housekeeping and maintenance procedures  
 19 which will ensure that the facility is maintained in a safe,  
 20 clean and attractive condition shall be developed and  
 21 implemented.

22 (b) Pursuant to an established routine maintenance and  
 23 repair program, the physical plant shall be kept in a  
 24 continuous state of good repair and operation so as to  
 25 ensure the health, comfort, safety and well-being of the

1 residents and so as not to impede in any manner the  
 2 habilitation programs of the residents.

3 (c) The physical facilities must meet all fire and  
 4 safety standards established by the state and locality. In  
 5 addition, the facility shall meet such provisions of the  
 6 life safety code of the national fire protection association  
 7 as are applicable to it.

8 (d) There must be special facilities for nonambulatory  
 9 residents to assure their safety and comfort, including  
 10 special fittings on toilets and wheelchairs. Appropriate  
 11 provision shall be made to permit nonambulatory residents to  
 12 communicate their needs to staff.

13 (8) Residents shall have a right to receive prompt and  
 14 adequate medical treatment for any physical ailments and for  
 15 the prevention of any illness or disability. Such medical  
 16 treatment shall meet standards of medical practice in the  
 17 community.

18 (9) Corporal punishment shall not be permitted.

19 (10) The opportunity for religious worship shall be  
 20 accorded to each resident who desires such worship.  
 21 Provisions for religious worship shall be made available to  
 22 all residents on a nondiscriminatory basis. No individual  
 23 shall be compelled to engage in any religious activities.

24 (11) Residents shall have a right to a nourishing,  
 25 well-balanced diet. The diet for residents shall provide at

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

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

15 (13) Residents shall have a right, under appropriate  
 16 supervision, to suitable opportunities for the interaction  
 17 with members of the opposite sex, except where a  
 18 professional person responsible for the formulation of a  
 19 particular resident's habilitation plan writes an order to  
 20 the contrary and explains the reasons therefor. THE ORDER  
 21 MUST BE RENEWED MONTHLY IF THE RESTRICTION IS TO BE  
 22 CONTINUED.

23 Section 22. (1) Persons admitted to residential  
 24 facilities shall have a right to habilitation, including  
 25 medical treatment, education and care, suited to their

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

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

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

21 (3) Within ~~fourteen~~ ~~(14)~~ THIRTY (30) days of his  
 22 admission to a residential facility, each resident shall  
 23 have an evaluation by appropriate specialists for  
 24 programming purposes.

25 (4) Each resident shall have an individualized

1 habilitation plan formulated by the facility. This plan  
2 shall be developed by appropriate professional persons and  
3 implemented as soon as possible but no later than fourteen  
4 (14) days after the resident's admission to the facility.

5 An interim program of habilitation, based on the  
6 preadmission evaluation conducted pursuant to this act,  
7 shall commence promptly upon the resident's admission. Each  
8 individualized habilitation plan shall contain:

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

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

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

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

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

23 (f) criteria for release to less restrictive settings  
24 for habilitation, including criteria for discharge and a  
25 projected date for discharge.

1 (5) As part of his habilitation plan, each resident  
2 shall have an individualized post-institutionalization plan.  
3 This plan shall be developed by a professional person who  
4 shall begin preparation of such plan upon the resident's  
5 admission to the institution and shall complete such plan as  
6 soon as practicable. The parents or guardian or next of kin  
7 of the resident, the responsible person appointed by the  
8 court, if any, and the resident, if able to give informed  
9 consent, shall be consulted in the development of such plan  
10 and shall be informed of the content of such plan.

11 (6) In the interests of continuity of care, one  
12 professional person shall whenever possible be responsible  
13 for supervising the implementation of the habilitation plan,  
14 integrating the various aspects of the habilitation program,  
15 and recording the resident's progress as measured by  
16 objective indicators. This professional person shall also  
17 be responsible for ensuring that the resident is released  
18 when appropriate to a less restrictive habilitation setting.

19 (7) The habilitation plan shall be continuously  
20 reviewed by the professional person responsible for  
21 supervising the implementation of the plan and shall be  
22 modified if necessary. In addition, six months after  
23 admission and at least annually thereafter, each resident  
24 shall receive a comprehensive psychological, social,  
25 educational and medical diagnosis and evaluation, and his



1 habilitation plan shall be reviewed by an interdisciplinary  
 2 team of no less than two professional persons and such  
 3 resident care workers as are directly involved in his  
 4 habilitation and care. A HABILITATION PLAN SHALL BE  
 5 REVIEWED MONTHLY.

6 (8) Each resident discharged to the community shall  
 7 have a program of transitional habilitation assistance.

8 (9) The professional person in charge of the  
 9 residential facility shall report in writing to the parents  
 10 or guardian of the resident, or the responsible person, at  
 11 least every six months on the resident's educational,  
 12 vocational and living skills progress and medical condition.  
 13 Such report shall also state any appropriate habilitation  
 14 program which has not been afforded to the resident because  
 15 of inadequate habilitation resources.

16 (10) The parents or guardian of each resident, or the  
 17 responsible person appointed by the court, shall promptly  
 18 upon resident's admission receive a written copy of all the  
 19 above standards for adequate habilitation. Each resident,  
 20 if the resident is able to comprehend, shall promptly upon  
 21 his admission be orally informed in clear language of the  
 22 above standards and, where appropriate, be provided with a  
 23 written copy.

24 Section 23. Complete records for each resident shall  
 25 be maintained and shall be readily available to professional

1 persons and to the resident care workers who are directly  
 2 involved with the particular resident and to the mental  
 3 disabilities board of visitors. All information contained  
 4 in a resident's records shall be considered privileged and  
 5 confidential. The parents or guardian, the responsible  
 6 person appointed by the court, and any person properly  
 7 authorized in writing by the resident, if such resident is  
 8 capable of giving informed consent, or by his parents or  
 9 guardian or the responsible person, shall be permitted  
 10 access to the resident's records. These records shall  
 11 include:

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

14 (2) the resident's history, including but not limited  
 15 to:

16 (a) family data, educational background, and  
 17 employment record;

18 (b) prior medical history, both physical and mental,  
 19 including prior institutionalization;

20 (3) The resident's grievances if any;

21 (4) An inventory of the resident's life skills;

22 (5) A record of each physical examination which  
 23 describes the results of the examination;

24 (6) A copy of the individual habilitation plan and any  
 25 modifications thereto and an appropriate summary which will

1 guide and assist the resident care workers in implementing  
2 the resident's program;

3 (7) The findings made in periodic reviews of the  
4 habilitation plan which findings shall include an analysis  
5 of the successes and failures of the habilitation program  
6 and shall direct whatever modifications are necessary;

7 (8) A copy of the post-institutionalization plan and  
8 any modifications thereto, and a summary of the steps that  
9 have been taken to implement that plan;

10 (9) A medication history and status;

11 (10) A summary of each significant contact by a  
12 professional person with a resident;

13 (11) A summary of the resident's response to his  
14 program, prepared by a professional person involved in the  
15 resident's habilitation and recorded at least monthly. Such  
16 response, wherever possible, shall be scientifically  
17 documented.

18 (12) A monthly summary of the extent and nature of the  
19 resident's work activities and the effect of such activity  
20 upon the resident's progress along the habilitation plan;

21 (13) A signed order by a professional person for any  
22 physical restraints;

23 (14) A description of any extraordinary incident or  
24 accident in the facility involving the resident, to be  
25 entered by a staff member noting personal knowledge of the

1 incident or accident or other source of information,  
2 including any reports of investigations of residents  
3 mistreatment;

4 (15) A summary of family visits and contacts;

5 (16) A summary of attendance and leaves from the  
6 facility;

7 (17) A record of any seizures, illnesses, treatments  
8 thereof, and immunizations.

9 ~~Section 24. Each professional person employed by a~~  
10 ~~residential facility shall meet all licensing and~~  
11 ~~certification requirements promulgated by the state of~~  
12 ~~Montana for persons engaged in private practice of the same~~  
13 ~~profession elsewhere in Montana. Other staff members shall~~  
14 ~~meet the same licensing and certification requirements as~~  
15 ~~persons who engage in private practice of their specialty~~  
16 ~~elsewhere in Montana. All resident care workers who have not~~  
17 ~~had prior clinical experience in a residential facility for~~  
18 ~~habilitation of the developmentally disabled shall have~~  
19 ~~suitable orientation training. Staff members on all levels~~  
20 ~~shall have suitable, regularly scheduled in-service~~  
21 ~~training. Each resident care worker shall be under the~~  
22 ~~direct professional supervision of a qualified staff member~~  
23 PROFESSIONAL PERSON.

24 Section 25. Every residential facility shall prohibit  
25 mistreatment, neglect or abuse in any form of any resident.

1 Alleged violations shall be reported immediately to the  
2 professional person in charge of the facility and there  
3 shall be a written record that:

4 (1) each alleged violation has been thoroughly  
5 investigated and findings stated;

6 (2) the results of such investigation are reported to  
7 the professional person in charge of the facility within  
8 twenty-four (24) hours of the report of the incident. Such  
9 reports shall also be made to the mental disabilities board  
10 of visitors monthly and to the developmental disabilities  
11 advisory council at its next scheduled public meeting. Each  
12 facility shall cause a written statement of this policy to  
13 be posted in each cottage and building and circulated to all  
14 staff members.

15 SECTION 26. MEDICATION FOR RESIDENTS. RESIDENTS HAVE  
16 A RIGHT TO BE FREE FROM UNNECESSARY OR EXCESSIVE MEDICATION.  
17 NO MEDICATION SHALL BE ADMINISTERED UNLESS AT THE WRITTEN  
18 ORDER OF A PHYSICIAN. THE PROFESSIONAL PERSON IN CHARGE OF  
19 THE FACILITY AND THE ATTENDING PHYSICIAN SHALL BE  
20 RESPONSIBLE FOR ALL MEDICATION GIVEN OR ADMINISTERED TO A  
21 RESIDENT. THE USE OF MEDICATION SHALL NOT EXCEED STANDARDS  
22 OF USE THAT ARE ADVOCATED BY THE UNITED STATES FOOD AND DRUG  
23 ADMINISTRATION. NOTATION OF EACH INDIVIDUAL'S MEDICATION  
24 SHALL BE KEPT IN HIS MEDICAL RECORDS. AT LEAST WEEKLY AN  
25 ATTENDING PHYSICIAN SHALL REVIEW THE DRUG REGIMEN OF EACH

1 PATIENT UNDER HIS CARE. ALL PRESCRIPTIONS SHALL BE WRITTEN  
2 WITH A TERMINATION DATE, WHICH SHALL NOT EXCEED THIRTY (30)  
3 DAYS. MEDICATIONS SHALL NOT BE USED AS PUNISHMENT, FOR THE  
4 CONVENIENCE OF STAFF, AS A SUBSTITUTE FOR PROGRAM, OR IN  
5 QUANTITIES THAT INTERFERE WITH THE RESIDENT'S TREATMENT  
6 PROGRAM.

7 Section 27. (1) Residents of a residential facility  
8 shall have a right not to be subjected to any unusual or  
9 hazardous treatment procedures without the express and  
10 informed consent of the resident, if the resident is able to  
11 give such consent, and of his parents or guardian or the  
12 responsible person appointed by the court, after  
13 opportunities for consultation with independent specialists  
14 and legal counsel. Such proposed procedures shall first  
15 have been reviewed and approved by the mental disabilities  
16 board of visitors before such consent shall be sought.

17 (2) Physical restraint shall be employed only when  
18 absolutely necessary to protect the resident from injury to  
19 himself or to prevent injury to others. Restraint shall not  
20 be employed as punishment, for the convenience of staff, or  
21 as a substitute for a habilitation program. Restraint shall  
22 be applied only if alternative techniques have failed and  
23 only if such restraint imposes the least possible  
24 restriction consistent with its purpose. Only a  
25 professional person may authorize the use of restraints.

1 Orders for restraints by a professional person shall be in  
 2 writing and shall not be in force for longer than twelve  
 3 (12) hours. Whenever physical restraint is ordered suitable  
 4 provision shall be made for the comfort and physical needs  
 5 of the person restrained.

6 (3) Seclusion, defined as the placement of a resident  
 7 alone in a locked room ~~FOR NON-THERAPEUTIC PURPOSES~~, shall  
 8 not be employed. Legitimate "time out" procedures may be  
 9 utilized under close and direct professional supervision as  
 10 a technique in behavior-shaping programs.

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

23 ~~(5) No resident shall be subjected to a behavior~~  
 24 ~~modification program designed to eliminate a particular~~  
 25 ~~pattern of behavior without prior certification by a~~

1 ~~physician that he has examined the resident in regard to~~  
 2 ~~behavior to be extinguished and finds that such behavior is~~  
 3 ~~not caused by a physical condition which could be corrected~~  
 4 ~~by appropriate medical procedures. No resident shall be~~  
 5 subjected to a behavior modification program which attempts  
 6 to extinguish socially appropriate behavior or to develop  
 7 new behavior patterns when such behavior modifications serve  
 8 only institutional convenience.

9 (6) Electric shock devices shall be considered a  
 10 research technique for the purpose of this act. Such  
 11 devices shall only be used in extraordinary circumstances to  
 12 prevent self-mutilation leading to repeated and possibly  
 13 permanent physical damage to the resident and only after  
 14 alternative techniques have failed. The use of such devices  
 15 shall be subject to the conditions prescribed by this act  
 16 for experimental research generally and shall be used only  
 17 under the direct and specific order of the professional  
 18 person in charge of the residential facility.

19 Section 28. Residents of a residential facility shall  
 20 have a right not to be subjected to experimental research  
 21 without the express and informed consent of the resident, if  
 22 the resident is able to give such consent, and of his  
 23 parents or guardian or the responsible person appointed by  
 24 the court after opportunities for consultation with  
 25 independent specialists and with legal counsel. Such

1 proposed research shall first have been reviewed and  
 2 approved by the mental disabilities board of visitors before  
 3 such consent shall be sought. Prior to such approval the  
 4 board shall determine that such research complies with the  
 5 principles of the statement on the use of human subjects for  
 6 research of the American association on mental deficiency  
 7 and with the principles for research involving human  
 8 subjects required by the United States department of health,  
 9 education and welfare for projects supported by that agency.

10 Section 29. The following rules shall govern resident  
 11 labor:

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

21 (2) No resident shall be involved in the care  
 22 (feeding, clothing, bathing), training or supervision of  
 23 other residents unless he:

24 (a) has volunteered;

25 (b) has been specifically trained in the necessary

1 skills;

2 (c) has the humane judgment required for such  
 3 activities;

4 (d) is adequately supervised; and

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

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

14 (a) an integrated part of the resident's habilitation  
 15 plan and approved as a habilitation activity by a  
 16 professional person responsible for supervising the  
 17 resident's habilitation;

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

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

24 (a) an integrated part of the resident's habilitation  
 25 plan and approved as a habilitation activity by a

1 professional person responsible for supervising the  
2 resident's habilitation;

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

5 (c) compensated in accordance with the minimum wage  
6 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as  
7 amended.

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

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

20 (7) ~~Residents shall be allowed to use~~ DEDUCTIONS OR  
21 PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A  
22 RESIDENT OF a reasonable amount of the compensation received  
23 pursuant to this section for personal and incidental  
24 purchases and expenses.

25 (8) Staffing shall be sufficient so that the facility

1 is not dependent upon the use of residents or volunteers for  
2 the care, maintenance or habilitation of other residents or  
3 for income-producing services. The facility shall formulate  
4 a written policy to protect the residents from exploitation  
5 when they are engaged in productive work.

6 Section 30. Within one (1) year of the effective date  
7 of this act, each resident governed by the provisions of  
8 this act shall be evaluated as to his mental, emotional,  
9 social, and physical condition. Such evaluation or  
10 reevaluation shall be conducted by an interdisciplinary team  
11 of professional persons who shall use professionally  
12 recognized tests and examination procedures. Each  
13 resident's parents or guardian, next of kin or legal  
14 representative or the responsible person appointed by the  
15 court shall be contacted and his readiness to make  
16 provisions for the resident's care in the community shall be  
17 ascertained. Each resident shall be returned to his family,  
18 if adequately habilitated, or assigned to the least  
19 restrictive habilitation setting. Where necessary, the  
20 professional person in charge of the resident shall petition  
21 the court to appoint a responsible person.

22 Section 31. No person shall be admitted to any  
23 publicly supported residential institution caring for  
24 developmentally disabled persons unless such institution  
25 meets the standards prescribed by this act.

1 Section 32. (1) The governor shall appoint a mental  
 2 disabilities board of visitors. The board shall consist of  
 3 five (5) persons at least three (3) of whom shall not be  
 4 professional persons and at least one (1) of whom shall be a  
 5 representative of an organization concerned with the care  
 6 and welfare of the developmentally disabled. No one may be  
 7 a member of the board who is an agent or employee of the  
 8 department of institutions or of any residential facility  
 9 affected by this act. If a board of similar title and  
 10 structure is created in any act concerning the treatment of  
 11 the mentally ill, then one (1) board shall be created to  
 12 perform the functions set out in both acts and the board so  
 13 created shall include at least one (1) representative of an  
 14 organization concerned with the care and welfare of the  
 15 mentally ill and one representative of an organization  
 16 concerned with the care and welfare of the mentally retarded  
 17 or developmentally disabled.

18 (2) The mental disabilities board of visitors shall be  
 19 an independent board of inquiry and review to assure that  
 20 the treatment of all persons admitted to a residential  
 21 facility is humane and decent and meets the requirements set  
 22 forth in this act.

23 The board shall review all plans for experimental  
 24 research or hazardous treatment procedures involving persons  
 25 admitted to any residential facility to assure that the

1 research project is humane and not unduly hazardous and that  
 2 it complies with the principles of the statement on the use  
 3 of human subjects for research of the American association  
 4 on mental deficiency and with the principles for research  
 5 involving human subjects required by the United States  
 6 department of health, education and welfare. No  
 7 experimental research project involving persons admitted to  
 8 any residential facility affected by this act shall be  
 9 commenced unless it is approved by the mental disabilities  
 10 board of visitors. The board shall investigate all cases of  
 11 alleged mistreatment of a resident.

12 (3) The board shall, at least annually, inspect every  
 13 residential facility which is providing a course of  
 14 residential habilitation and treatment to any person  
 15 pursuant to this act. The board shall inspect the physical  
 16 plant, including residential, recreational, dining, and  
 17 sanitary facilities. It shall visit all wards and treatment  
 18 or habilitation areas. The board shall inquire concerning  
 19 all habilitation programs being implemented by the  
 20 institution.

21 (4) The board shall inspect the file of each person  
 22 admitted to a residential facility pursuant to this act to  
 23 insure that a habilitation plan exists and is being  
 24 implemented. The board shall inquire concerning all use of  
 25 restraints, isolation or other extraordinary measures.

1 (5) The board may assist any patient at a residential  
2 facility in resolving any grievance he may have concerning  
3 his admission or his course of treatment and habilitation in  
4 the facility.

5 (6) If the board believes that any facility is failing  
6 to comply with the provisions of this act in regard to its  
7 physical facilities or its treatment of any resident, it  
8 shall report its findings at once to the parents or guardian  
9 of any patient involved, the next of kin, if known, the  
10 responsible person appointed by the court for any patient  
11 involved, the professional person in charge of the facility,  
12 the director of the department of institutions and the  
13 district court which has jurisdiction over the facility.

14 (7) The mental disabilities board of visitors shall  
15 report annually to the governor and shall report to each  
16 session of the Montana legislature concerning the status of  
17 the residential facilities and habilitation programs which  
18 it has inspected.

19 (8) The mental disabilities board of visitors shall be  
20 attached to the governor for administrative purposes. It  
21 may employ staff for the purpose of carrying out its duties  
22 as set out in this act.

23 Section 33. If any person is a patient in a mental  
24 health facility and the professional person in charge of the  
25 patient determines that the patient is suffering from a

1 developmental disability rather than mental illness and  
2 should more properly be admitted to a residential facility,  
3 then the professional person shall commence proceedings  
4 consistent with the procedures set forth in this act for  
5 admissions generally to effect such admission.

6 Section 34. If any provision of this act or the  
7 application thereof to any person or circumstances is held  
8 invalid, such invalidity shall not affect other provisions  
9 or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the  
11 provisions of this act are declared to be severable.

12 ~~Section 34. Section 80-2312, R.C.M. 1947, is amended~~  
13 ~~to read as follows:~~

14 ~~"80-2312. Supervision of Gladwin center transfers~~  
15 ~~to Boulder river school and hospital. The department shall~~  
16 ~~establish and direct the services to be provided at the~~  
17 ~~center. The department shall provide for temporary transfers~~  
18 ~~from the Eastmont training center to the Boulder river~~  
19 ~~school and hospital for special medical, psychological,~~  
20 ~~surgical, and other services consistent with the statutory~~  
21 ~~requirements for transfer of a resident to a different~~  
22 ~~residential facility."~~

23 Section 35. Sections 80-2303 through 80-2309, AND  
24 80-2312, 38-301 through 38-303, R.C.M. 1947, are repealed.

-End-

-48-



1 SENATE BILL NO. 388

2 INTRODUCED BY TONE

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PROVIDE FOR THE  
5 IDENTIFICATION, HABILITATION AND HUMAN RIGHTS OF THE  
6 DEVELOPMENTALLY DISABLED; ~~AMENDING SECTION 80-2312, R.C.M.~~  
7 ~~1947,~~ AND REPEALING SECTIONS 36-301 THROUGH 38-303, AND  
8 80-2303 THROUGH 80-2309, AND 80-2312, R.C.M. 1947."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11 Section 1. The purpose of this act is:

12 (1) to secure for each person who may be  
13 developmentally disabled such treatment and habilitation as  
14 will be suited to the needs of the person, and to assure  
15 that such treatment and habilitation are skillfully and  
16 humanely administered with full respect for the person's  
17 dignity and personal integrity;

18 (2) to accomplish this goal whenever possible in a  
19 community-based setting;

20 (3) to accomplish this goal in an institutionalized  
21 setting only when less restrictive alternatives are  
22 unavailable or inadequate and only when a person is so  
23 severely disabled as to require institutionalized care; and

24 (4) to assure that due process of law is accorded any  
25 person coming under the provisions of this act.

1 Section 2. Definitions. As used in this act:

2 (1) "Board" means the mental disabilities board of  
3 visitors created by this act.

4 (2) "Community-based facilities" or "community-based  
5 services" include 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 the district court of the state of  
13 Montana.

14 (4) "Developmentally disabled" means suffering from  
15 disabilities attributable to mental retardation, cerebral  
16 palsy, epilepsy, autism or any other neurologically  
17 handicapping ~~conditions~~ CONDITION closely related to mental  
18 retardation and requiring treatment similar to that required  
19 by mentally retarded individuals; which condition has  
20 continued or can be expected to continue indefinitely and  
21 constitutes a substantial handicap of such individuals.

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

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

4 (6) "Next of kin" includes but need not be limited to  
5 the spouse, parents, adult children, and adult brothers and  
6 sisters of a person.

7 (7) "Professional person" means:

8 (a) a medical doctor, or

9 (b) a person trained in the field of developmental  
10 disabilities and certified by the ~~regional mental health~~  
11 ~~director, if the director is a licensed physician, by a~~  
12 ~~member of the regional developmental disabilities council or~~  
13 ~~board of directors, if such member is a licensed physician,~~  
14 ~~or by the superintendent of the Boulder River School and~~  
15 ~~Hospital or of the Eastmont Training Center, if the~~  
16 ~~superintendent is a licensed physician~~ DEPARTMENT OF  
17 INSTITUTIONS OR THE DEPARTMENT OF SOCIAL AND REHABILITATION  
18 SERVICES IN ACCORDANCE WITH STANDARDS OF PROFESSIONAL  
19 LICENSING BOARDS, FEDERAL REGULATIONS, AND THE JOINT  
20 COMMISSIONS ON ACCREDITATION OF HOSPITALS.

21 (8) "Resident" means a person admitted to a  
22 residential facility for a course or evaluation, treatment  
23 or habilitation.

24 (9) "Residential facility" or "facility" means any  
25 residential hospital or hospital and school which exists for

1 the purpose of evaluating, treating and habilitating the  
2 developmentally disabled on an inpatient basis, including  
3 the Boulder River School and Hospital and the Eastmont  
4 Training Center. The term does not include a group home or  
5 foster home or a halfway house. A correctional facility or  
6 a facility for the treatment of the mentally ill shall not  
7 be a "residential facility" within the meaning of this act.

8 (10) "Respondent" means a person alleged in a petition  
9 filed pursuant to this act to be developmentally disabled  
10 and in need of developmental disabilities services.

11 (11) "Responsible person" means any person willing and  
12 able to assume responsibility for a person who is  
13 developmentally disabled or alleged to be developmentally  
14 disabled. Whenever, in any proceeding under this act, the  
15 court believes that a conflict of interest may exist between  
16 a person who is developmentally disabled or alleged to be  
17 developmentally disabled and his parents or guardian, or  
18 that the parents or guardian are unable to protect the  
19 interests of such person, or whenever there is no parent or  
20 guardian, the court shall appoint a responsible person to  
21 protect the interests of the person who is developmentally  
22 disabled or alleged to be developmentally disabled. Only  
23 one person shall at any one time be the responsible person  
24 within the meaning of this act. In appointing a responsible  
25 person, the court shall consider the preference of the

1 respondent or patient. The court may at any time, for good  
2 cause shown, change its designation of who is the  
3 responsible person.

4 (12) "Seriously developmentally disabled" means  
5 developmentally disabled ~~and functioning at more than three~~  
6 ~~standard deviations below the mean on a standardized~~  
7 ~~intelligence test such as the Stanford Binet Scale and on a~~  
8 ~~measure of adaptive behavior such as the American~~  
9 ~~Association on Mental Deficiency Adaptive Behavior Scale, or~~  
10 ~~because of some combination of developmental and physical~~  
11 ~~disability, DBE TO DEVELOPMENTAL OR PHYSICAL DISABILITY OR A~~  
12 ~~COMBINATION OF BOTH RENDERING A PERSON unable to function in~~  
13 a community-based setting.

14 Section 3. (1) Any person subject to emergency  
15 admittance to a residential facility, to examination or  
16 evaluation by a professional person, or to any hearing held  
17 pursuant to this act shall have all the rights accorded to a  
18 person subject to involuntary commitment proceedings under  
19 the laws of this state relating to involuntary commitment of  
20 the seriously mentally ill.

21 (2) In addition, the parents or guardian of any person  
22 alleged to be developmentally disabled and in need of  
23 developmental disabilities services have the right:

24 (a) to be present at any hearings held pursuant to  
25 this act;

1 (b) to be represented by counsel in any hearing;

2 (c) to offer evidence and cross-examine witnesses in  
3 any hearing; and

4 (d) to have the respondent be examined by a  
5 professional person of their choice when such professional  
6 person is reasonably available, unless the person so chosen  
7 is objected to by the respondent or by a responsible person  
8 appointed by the court.

9 (3) A person may waive his procedural rights provided  
10 that the waiver is knowingly and intentionally made. The  
11 right to counsel in a hearing held pursuant to section 6 may  
12 not be waived. The right to habilitation provided for in  
13 this act may not be waived.

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

23 (5) In the case of a minor, the waiver of rights can  
24 be knowingly and intentionally made:

25 (a) when the minor is under the age of twelve (12), by

1 the parents of the minor WITH THE CONCURRENCE OF THE  
2 RESPONSIBLE PERSON, IF ANY;

3 (b) when the minor is over the age of twelve (12), by  
4 the minor and his parents;

5 (c) when the minor is over the age of twelve (12) and  
6 the minor and his parents do not agree, the minor can make  
7 an effective waiver of his rights only with the advice of  
8 counsel.

9 If the court believes that there may be a conflict of  
10 interest between a minor and his parents or guardian, the  
11 court may appoint a responsible person or guardian ad litem  
12 for the minor.

13 Section 4. (1) The parents or guardian of any person  
14 alleged to be developmentally disabled or the person himself  
15 may at any time request the assistance of a professional  
16 person in determining whether the person is developmentally  
17 disabled, the extent of such disability, and the most  
18 appropriate course of treatment, habilitation and education  
19 for the person alleged to be developmentally disabled.

20 (2) whenever the parents or guardian of a person  
21 alleged to be developmentally disabled or the person himself  
22 request a course of evaluation and treatment, they shall  
23 ascertain, with the professional person who undertakes the  
24 case, the least restrictive means of evaluating and treating  
25 the person alleged to be developmentally disabled.

1 Evaluation and treatment in a residential facility shall  
2 take place only upon certification by the professional  
3 person in charge of the case that adequate community-based  
4 facilities are not available REASONABLY NEAR THE PLACE OF  
5 RESIDENCE OF THE PERSON ALLEGED TO BE DEVELOPMENTALLY  
6 DISABLED. Residential evaluation and treatment shall not be  
7 for more than thirty (30) days without subsequent  
8 proceedings before the court.

9 Section 5. (1) Any person who believes that there is  
10 a person who is developmentally disabled and in need of  
11 developmental disability services may report the situation  
12 to a professional person. If the professional person  
13 believes from the facts given to him that the person may be  
14 developmentally disabled and in need of developmental  
15 disability services, he shall contact the parents or  
16 guardian of the person alleged to be developmentally  
17 disabled or the person himself. If any of the persons so  
18 contacted refuse to cooperate with the professional person  
19 and if the professional person believes from all the  
20 circumstances of the case that the person may be  
21 developmentally disabled and in need of developmental  
22 disabilities services he shall request the county attorney  
23 to file a petition alleging that there is a person in the  
24 county who is developmentally disabled and in need of  
25 developmental disabilities services.

1 (2) The petition shall contain the name and address  
2 of:

3 (a) the professional person and any other person  
4 requesting the petition, and their interest in the case;

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

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

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

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

15 (f) a statement of the rights of the respondent and  
16 his parents or guardian which shall be in conspicuous print  
17 and identified by a suitable heading.

18 (3) Upon presentation to the court by the county  
19 attorney, the court shall immediately consider the petition  
20 with or without a hearing to determine if there is probable  
21 cause to believe that the respondent is developmentally  
22 disabled and in need of evaluation and treatment. If the  
23 court finds no such probable cause it shall dismiss the  
24 petition. If the court finds that probable cause does exist  
25 it shall direct a professional person to examine the

1 respondent and to make an inquiry concerning the  
2 circumstances of the case. Such examination shall not  
3 exceed four (4) hours in length. If probable cause is found  
4 the court may appoint a responsible person other than the  
5 respondent's parents or guardian to protect the interests of  
6 the respondent. The responsible person shall be notified as  
7 soon as possible that a petition has been filed. Notice of  
8 the petition and the finding of probable cause shall be  
9 mailed or delivered to the respondent and to all other  
10 persons named in the petition and to any person who would  
11 have been named in the petition had his name, address, and  
12 relationship to the respondent been known at the time.

13 (4) When the professional person first contacts the  
14 respondent, before he begins any examination, he shall give  
15 the respondent a copy of the petition and explain to the  
16 respondent the nature of the proceeding and his rights as  
17 set forth in the petition. If the respondent is incapable  
18 of understanding the explanation and proceeding, the  
19 professional person shall give the petition and make the  
20 explanation to the parents or guardian of the respondent.  
21 Before making any inquiry of the parents or guardian of the  
22 respondent, the professional person shall give them a copy  
23 of the petition, explain the nature of the proceeding and  
24 their rights as set forth in the petition.

25 Section 6. (1) If the professional person, based on

1 his examination and inquiry determines that the respondent  
 2 is not developmentally disabled or is not in need of  
 3 developmental disability services, he shall report this  
 4 finding in writing to the court and the petition shall be  
 5 dismissed. If the professional person concludes that the  
 6 respondent is developmentally disabled and in need of  
 7 developmental disability services, he shall report this  
 8 conclusion to the court in writing together with his  
 9 recommendations for evaluation and treatment. The report  
 10 shall include an explanation of the basis on which the  
 11 professional person has reached his conclusion and shall  
 12 include a description of any tests or evaluation devices he  
 13 has employed. If the professional person's recommendation  
 14 is for further evaluation and treatment, notice of this  
 15 recommendation shall be sent to the respondent, his parents  
 16 or guardian, the next of kin, the responsible person  
 17 appointed by the court, if any, any attorney representing  
 18 the respondent or his parents or guardian. If no  
 19 responsible person has yet been appointed, the court may  
 20 appoint one at this time.

21 (2) If the respondent, his parents or guardian, the  
 22 responsible person, if any, or counsel for any party  
 23 requests a hearing on the recommendation, the court shall  
 24 set a time and place for hearing. The hearing shall be  
 25 before the court without a jury. The rules of civil

1 procedure shall apply.

2 (3) Prior to any hearing held pursuant to this  
 3 section, the court shall appoint counsel to represent the  
 4 respondent, if the respondent has not retained independent  
 5 counsel. The parents or guardian shall be informed of their  
 6 right to counsel and if they are indigent the court shall,  
 7 on their request, appoint counsel for them. In no case  
 8 shall the same attorney represent the respondent and his  
 9 parents or guardian.

10 (4) If the hearing is waived or if the court finds,  
 11 after hearing, that the respondent is developmentally  
 12 disabled and in need of further evaluation and treatment,  
 13 the court shall order that the respondent undergo such  
 14 evaluation and treatment. Evaluation and treatment ordered  
 15 pursuant to this subsection shall be for no more than thirty  
 16 (30) days. It shall take place in the least restrictive  
 17 environment in which the necessary evaluation and treatment  
 18 can be accomplished. Evaluation and treatment in a  
 19 residential facility shall be ordered only if the necessary  
 20 evaluation and treatment cannot be accomplished through the  
 21 use of community-based facilities.

22 Section 7. (1) If as a result of the evaluation and  
 23 treatment ordered by the court, the professional person in  
 24 charge of the case recommends a course of habilitation and  
 25 treatment at the community level making use of community and

1 regional based services for the developmentally disabled, he  
 2 shall report his recommendation in writing to the court.  
 3 The recommendation shall be accompanied by a written report  
 4 indicating the factual basis for the recommendation and  
 5 describing any tests or evaluation devices which the  
 6 professional person has employed in evaluating the  
 7 respondent. If this course of treatment and habilitation is  
 8 agreed to by the parents, guardian, person evaluated,  
 9 responsible person, if any, and counsel for the person  
 10 evaluated, if any, then this community-based course of  
 11 treatment shall be commenced as soon as practicable, and the  
 12 petition shall be dismissed.

13 (2) If any of the parties listed in the preceding  
 14 paragraph object to the community-based course of treatment,  
 15 they may request the court to conduct a hearing on the  
 16 matter. If a responsible person has not yet been appointed,  
 17 the court may appoint a responsible person prior to the  
 18 hearing. Notice of the time, date and place of the hearing  
 19 shall be mailed or delivered to all of the parties listed in  
 20 the preceding paragraph, and to the attorney for the parents  
 21 or guardian, if any. The hearing shall be held before the  
 22 court without a jury. The rules of civil procedure shall  
 23 apply. If the court finds that the respondent is  
 24 developmentally disabled and in need of community-based  
 25 developmental disabilities services, it shall order that the

1 respondent undertake a community-based course of treatment  
 2 and habilitation.

3 Section 8. (1) If as a result of the evaluation and  
 4 treatment either agreed to by the parents, guardian, or the  
 5 person himself pursuant to section 4 or ordered by the  
 6 court, the professional person in charge of the case  
 7 concludes that the person evaluated is seriously  
 8 developmentally disabled and recommends that treatment and  
 9 habilitation be had in a residential facility on an extended  
 10 basis, the professional person shall file his written  
 11 recommendation and report with the court and request that  
 12 the court order the admission. The report shall include the  
 13 factual basis for the recommendation, and shall describe any  
 14 tests or evaluation devices which have been employed in  
 15 evaluating the patient. If no responsible person has yet  
 16 been appointed, the court may appoint one at this time. If  
 17 there is no parent or guardian the court shall appoint a  
 18 responsible person. At the request of the respondent, his  
 19 parents or guardian or the responsible person, the court  
 20 shall appoint counsel for the respondent. If the parents or  
 21 guardian are indigent and if they request it, the court  
 22 shall appoint counsel for the parents or guardian. Notice  
 23 of the recommendation shall be mailed or delivered to the  
 24 respondent, his parents or guardian, the responsible person,  
 25 next of kin, if known, and the attorney for the respondent,

1 if any, and for the parents or guardian, if any.

2 (2) The respondent, his parents or guardian, the  
3 responsible person, or the attorney for any party may  
4 request that a hearing be had on the recommendation. If a  
5 hearing is requested, the court shall mail or deliver notice  
6 of the date, time and place of the hearing to each of the  
7 parties listed at the beginning of this subsection. The  
8 hearing shall be to the court without jury. The rules of  
9 civil procedure shall apply.

10 (3) If the court finds that the respondent is  
11 seriously developmentally disabled and that available  
12 community-based services are not adequate, it shall order  
13 the respondent admitted to a residential facility for an  
14 extended course of treatment and habilitation. If the court  
15 finds that the respondent is developmentally disabled, and  
16 in need of developmental disabilities services but that  
17 available community-based services are adequate, it shall  
18 order the respondent to undertake a community-based course  
19 of treatment and habilitation. If the court finds that the  
20 respondent is not developmentally disabled or is not in need  
21 of developmental disability services, it shall dismiss the  
22 request.

23 (4) 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  
3 to whether the order should be granted. The court may  
4 refuse to authorize admission of a person to a residential  
5 facility for an extended period of treatment and  
6 habilitation if such admission is not in the best interests  
7 of the person.

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

25 Section 9. (1) No person shall be admitted to a



1 residential facility for longer than thirty (30) days except  
 2 on approval of the court. Whenever a person is admitted to  
 3 a residential facility for longer than thirty (30) days, the  
 4 court may appoint a person other than the parents or  
 5 guardian to act as responsible person for the resident. If  
 6 there is no parent or guardian, the court shall appoint a  
 7 responsible person.

8 (2) The court order approving the admission shall  
 9 specify the maximum period of time for which the person is  
 10 admitted to the residential facility. In no case shall this  
 11 maximum period exceed one year.

12 (3) If at any time during the period for which a  
 13 person is admitted to a residential facility for an extended  
 14 period of habilitation and treatment, the professional  
 15 person in charge of the resident decides that there exist  
 16 sufficient community-based alternatives to provide adequate  
 17 treatment and habilitation for the resident, or that it is  
 18 in the best interests of the resident that he be transferred  
 19 to another residential facility, then he may release the  
 20 resident to such community-based alternative or transfer the  
 21 resident to the other residential facility no less than  
 22 fifteen (15) days after sending notice of the proposed  
 23 release or transfer to the resident, his parents or  
 24 guardian, the attorney who most recently represented the  
 25 resident, if any, the responsible person appointed by the

1 court, if any, and the court which ordered the admission.  
 2 If any of the parties so notified objects to the release or  
 3 transfer, they may petition the court for a hearing to  
 4 determine whether the release or transfer should be allowed.  
 5 The hearing shall comply with the procedures set forth in  
 6 section 8. The court may on its own initiative inquire  
 7 concerning the propriety of the release or transfer.  
 8 Nothing in this subsection shall prevent the transfer of a  
 9 resident to a hospital or other medical facility for  
 10 necessary medical treatment, or emergency transfer of a  
 11 resident to a mental health facility, provided such  
 12 emergency transfer complies with the statutory requirements  
 13 for emergency detention of the mentally ill. Within  
 14 twenty-four (24) hours of an emergency medical or  
 15 psychiatric transfer, notice shall be given to the parents  
 16 or guardian of the resident, the responsible person  
 17 appointed by the court, if any, and the court.

18 (4) If the professional person in charge of the  
 19 resident determines that the admission to the residential  
 20 facility should continue beyond the period specified in the  
 21 court order, he shall, at least fifteen (15) days before the  
 22 end of the period set out in the court order, send written  
 23 notice of his recommendation and request for renewal of the  
 24 order to the court which issued the order, the resident, his  
 25 parents or guardian, the next of kin, if known, the attorney

1 who most recently represented the resident, if any, and the  
 2 responsible person appointed by the court, if any. The  
 3 recommendation and request shall be accompanied by a written  
 4 report which shall describe the habilitation plan which has  
 5 been undertaken for the resident and the future habilitation  
 6 plan which is anticipated by the professional person.

7 (5) If any person so notified requests a hearing, the  
 8 court shall set a time and place for the hearing and shall  
 9 mail or deliver notice to all of the persons informed of the  
 10 recommendation. The hearing shall be conducted in the  
 11 manner set out in section 8. If the court finds that the  
 12 residential admission is still justified, it may order  
 13 continuation of the admission to that residential facility  
 14 or transfer of the resident to a different residential  
 15 facility. If the court finds that the resident is still in  
 16 need of developmental disabilities services but does not  
 17 require residential treatment, it shall order an appropriate  
 18 course of community-based habilitation, or, if all parties  
 19 are willing for the resident to participate in a  
 20 community-based program of habilitation, it shall dismiss  
 21 the petition. If the need for developmental disabilities  
 22 services no longer exists, the court shall dismiss the  
 23 petition. The court shall not order continuation of  
 24 admission to a residential facility which does not have an  
 25 individualized habilitation plan for the resident. In its

1 order, the court shall make findings of fact on which its  
 2 order is based. The court may on its own initiative inquire  
 3 concerning the suitability of continuing an admission to a  
 4 residential facility.

5 Section 10. Hearings held pursuant to this act shall  
 6 be held in the district court for the district where the  
 7 respondent resides. Except that at the request of any  
 8 party, or the professional person who must be present at the  
 9 hearing, a hearing may be held in the district court for the  
 10 district where the respondent is undergoing evaluation,  
 11 treatment or habilitation in a residential facility, or is  
 12 undergoing community-based evaluation, treatment or  
 13 habilitation. The cost of any hearing held pursuant to this  
 14 act shall be born by the county where the respondent  
 15 resides.

16 Section 11. Any order issued by a court after a  
 17 hearing held pursuant to any provision of this act may be  
 18 appealed to the Montana supreme court in the same manner as  
 19 for civil appeals generally.

20 Section 12. Whenever evaluation by a professional  
 21 person is ordered by a court pursuant to any provision of  
 22 this act, the person being evaluated, his parents or  
 23 guardian shall have a reasonable choice of a professional  
 24 person qualified to perform such service.

25 Section 13. In any hearing held pursuant to this act

1 which involves consideration of the recommendation and  
 2 report of a professional person, the professional person who  
 3 made the recommendation and report shall be present at the  
 4 hearing and subject to cross-examination.

5 Section 14. In any hearing held pursuant to this act  
 6 the court may request the county welfare department to  
 7 prepare a social summary of the respondent for use by the  
 8 court.

9 Section 15. No person who has reached the age of  
 10 majority shall be compelled against his will to undertake a  
 11 course of treatment and habilitation solely because he is  
 12 developmentally disabled, but only if such disability causes  
 13 him to be unable to protect his life and health.

14 Section 16. The parents, guardian, the person himself,  
 15 or a professional person may admit a person believed to be  
 16 developmentally disabled to a residential facility on an  
 17 emergency basis when necessary to protect the person from  
 18 death or serious bodily harm. However, if requested by the  
 19 parents, guardian or the person admitted on an emergency  
 20 basis, a petition as set out in section 5 shall be filed on  
 21 the next judicial day by the county attorney of the county  
 22 where the person resides. If a petition is filed, the  
 23 professional person assigned by the court to conduct the  
 24 examination and inquiry shall report back to the court on  
 25 the next judicial day following the filing of the petition.

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

8 Section 17. (1) Unless specifically stated in an  
 9 order by the court, a person admitted to a residential  
 10 facility for an extended course of habilitation shall not  
 11 forfeit any legal right or suffer any legal disability by  
 12 reason of the provisions of this act except insofar as it  
 13 may be necessary to detain the person for habilitation,  
 14 evaluation or care.

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

1 of the admission may not be created except according to the  
2 procedures set forth under Montana law for the appointment  
3 of conservators and guardians generally.

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

16 (4) Any person admitted to a residential facility  
17 prior to the effective date of this act shall enjoy all the  
18 rights and privileges of a person admitted after the  
19 effective date of this act.

20 Section 18. (1) If a person is admitted to a  
21 residential facility under the provisions of this act and is  
22 eligible for hospital care, treatment or habilitation by an  
23 agency of the United States, and if a certificate of  
24 notification from such agency showing that facilities are  
25 available and that the person is eligible for care or

1 treatment therein is received, the court may order the  
2 person to be placed in the custody of the agency for  
3 hospitalization. The chief officer of any hospital or  
4 residential facility operated by the agency and in which the  
5 person is admitted shall, with respect to the person, be  
6 vested with the same powers as the superintendent of the  
7 Boulder River school and hospital with respect to detention,  
8 custody, transfer and release of the person. Jurisdiction  
9 shall be retained in the appropriate courts of this state to  
10 inquire into the mental condition of persons so admitted,  
11 and to determine the necessity for continuance of their  
12 admission.

13 (2) Consistent with other provisions of this act, a  
14 person admitted to a residential facility under this act for  
15 a period more than thirty (30) days may be committed by the  
16 court to the custody of friends or next of kin residing  
17 outside the state or transferred to a residential facility  
18 located outside the state, if the out-of-state facility  
19 agrees to receive the person, provided, however that no such  
20 commitment or transfer shall be for a longer period of time  
21 than is permitted within the state. If the person is  
22 indigent, the expense of supporting him in an out-of-state  
23 facility and the expense of transportation shall be borne by  
24 the state of Montana.

25 (3) The transfer of persons admitted to a residential

1 facility under the provisions of this act out of Montana or  
 2 under the laws of another jurisdiction into Montana shall be  
 3 governed by the provisions of the interstate compact on  
 4 mental health.

5 Section 19. No person admitted to or in a residential  
 6 facility shall be fingerprinted unless required by other  
 7 provisions of law.

8 Section 20. (1) A person admitted to a residential  
 9 facility may be photographed upon admission for  
 10 identification and the administrative purposes of the  
 11 facility. Such photographs shall be confidential and shall  
 12 not be released by the facility except pursuant to court  
 13 order.

14 (2) No other nonmedical ~~OR NONHABILITATIVE~~ photographs  
 15 shall be taken or used without consent of the resident's  
 16 parents or guardian or the responsible person appointed by  
 17 the court.

18 Section 21. Persons admitted to a residential facility  
 19 for a period of habilitation shall enjoy the following  
 20 rights:

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

23 (2) Residents shall be entitled to send and receive  
 24 sealed mail. Moreover, it shall be the duty of the facility  
 25 to foster the exercise of this right by furnishing the

1 necessary materials and assistance.

2 (3) Residents shall have the same rights and access to  
 3 private telephone communication as patients at any public  
 4 hospital, except to the extent that a professional person  
 5 responsible for formulation of a particular resident's  
 6 habilitation plan writes an order imposing special  
 7 restrictions and explains the reasons for any such  
 8 restrictions. The written order must be renewed  
 9 ~~semiannually~~ MONTHLY if any restrictions are to be  
 10 continued. Residents shall have an unrestricted right to  
 11 visitation, except to the extent that a professional person  
 12 responsible for formulation of a particular resident's  
 13 habilitation plan writes an order imposing special  
 14 restrictions and explains the reasons for any such  
 15 restrictions. The written order must be renewed  
 16 ~~semiannually~~ MONTHLY if any restrictions are to be  
 17 continued.

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

21 (5) Each resident shall have an adequate allowance of  
 22 neat, clean, suitably fitting and seasonable clothing.  
 23 Except when a particular kind of clothing is required  
 24 because of a particular condition, residents shall have the  
 25 opportunity to select from various types of neat, clean, and

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

9 (6) Each resident shall have the right to keep and use  
 10 his own personal possessions except insofar as such clothes  
 11 or personal possessions may be determined to be dangerous,  
 12 either to himself or to others, by a professional person.

13 (7) A resident has a right to a humane physical  
 14 environment within the residential facilities. These  
 15 facilities shall be designed to make a positive contribution  
 16 to the efficient attainment of the habilitation goals of the  
 17 resident. To accomplish this purpose:

18 (a) Regular housekeeping and maintenance procedures  
 19 which will ensure that the facility is maintained in a safe,  
 20 clean and attractive condition shall be developed and  
 21 implemented.

22 (b) Pursuant to an established routine maintenance and  
 23 repair program, the physical plant shall be kept in a  
 24 continuous state of good repair and operation so as to  
 25 ensure the health, comfort, safety and well-being of the

1 residents and so as not to impede in any manner the  
 2 habilitation programs of the residents.

3 (c) The physical facilities must meet all fire and  
 4 safety standards established by the state and locality. In  
 5 addition, the facility shall meet such provisions of the  
 6 life safety code of the national fire protection association  
 7 as are applicable to it.

8 (d) There must be special facilities for nonambulatory  
 9 residents to assure their safety and comfort, including  
 10 special fittings on toilets and wheelchairs. Appropriate  
 11 provision shall be made to permit nonambulatory residents to  
 12 communicate their needs to staff.

13 (8) Residents shall have a right to receive prompt and  
 14 adequate medical treatment for any physical ailments and for  
 15 the prevention of any illness or disability. Such medical  
 16 treatment shall meet standards of medical practice in the  
 17 community.

18 (9) Corporal punishment shall not be permitted.

19 (10) The opportunity for religious worship shall be  
 20 accorded to each resident who desires such worship.  
 21 Provisions for religious worship shall be made available to  
 22 all residents on a nondiscriminatory basis. No individual  
 23 shall be compelled to engage in any religious activities.

24 (11) Residents shall have a right to a nourishing,  
 25 well-balanced diet. The diet for residents shall provide at

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

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

15 (13) Residents shall have a right, under appropriate  
 16 supervision, to suitable opportunities for the interaction  
 17 with members of the opposite sex, except where a  
 18 professional person responsible for the formulation of a  
 19 particular resident's habilitation plan writes an order to  
 20 the contrary and explains the reasons therefor. THE ORDER  
 21 MUST BE RENEWED MONTHLY IF THE RESTRICTION IS TO BE  
 22 CONTINUED.

23 Section 22. (1) Persons admitted to residential  
 24 facilities shall have a right to habilitation, including  
 25 medical treatment, education and care, suited to their

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

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

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

21 (3) Within ~~fourteen~~ (14) THIRTY (30) days of his  
 22 admission to a residential facility, each resident shall  
 23 have an evaluation by appropriate specialists for  
 24 programming purposes.

25 (4) Each resident shall have an individualized

1 habilitation plan formulated by the facility. This plan  
 2 shall be developed by appropriate professional persons and  
 3 implemented as soon as possible but no later than fourteen  
 4 (14) days after the resident's admission to the facility.

5 An interim program of habilitation, based on the  
 6 preadmission evaluation conducted pursuant to this act,  
 7 shall commence promptly upon the resident's admission. Each  
 8 individualized habilitation plan shall contain:

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

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

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

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

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

23 (f) criteria for release to less restrictive settings  
 24 for habilitation, including criteria for discharge and a  
 25 projected date for discharge.

1 (5) As part of his habilitation plan, each resident  
 2 shall have an individualized post-institutionalization plan.  
 3 This plan shall be developed by a professional person who  
 4 shall begin preparation of such plan upon the resident's  
 5 admission to the institution and shall complete such plan as  
 6 soon as practicable. The parents or guardian or next of kin  
 7 of the resident, the responsible person appointed by the  
 8 court, if any, and the resident, if able to give informed  
 9 consent, shall be consulted in the development of such plan  
 10 and shall be informed of the content of such plan.

11 (6) In the interests of continuity of care, one  
 12 professional person shall whenever possible be responsible  
 13 for supervising the implementation of the habilitation plan,  
 14 integrating the various aspects of the habilitation program,  
 15 and recording the resident's progress as measured by  
 16 objective indicators. This professional person shall also  
 17 be responsible for ensuring that the resident is released  
 18 when appropriate to a less restrictive habilitation setting.

19 (7) The habilitation plan shall be continuously  
 20 reviewed by the professional person responsible for  
 21 supervising the implementation of the plan and shall be  
 22 modified if necessary. In addition, six months after  
 23 admission and at least annually thereafter, each resident  
 24 shall receive a comprehensive psychological, social,  
 25 educational and medical diagnosis and evaluation, and his



1 habilitation plan shall be reviewed by an interdisciplinary  
 2 team of no less than two (2) professional persons and such  
 3 resident care workers as are directly involved in his  
 4 habilitation and care. A HABILITATION PLAN SHALL BE  
 5 REVIEWED MONTHLY.

6 (8) Each resident discharged to the community shall  
 7 have a program of transitional habilitation assistance.

8 (9) The professional person in charge of the  
 9 residential facility shall report in writing to the parents  
 10 or guardian of the resident, or the responsible person, at  
 11 least every six (6) months on the resident's educational,  
 12 vocational and living skills progress and medical condition.  
 13 Such report shall also state any appropriate habilitation  
 14 program which has not been afforded to the resident because  
 15 of inadequate habilitation resources.

16 (10) The parents or guardian of each resident, or the  
 17 responsible person appointed by the court, shall promptly  
 18 upon resident's admission receive a written copy of all the  
 19 above standards for adequate habilitation. Each resident,  
 20 if the resident is able to comprehend, shall promptly upon  
 21 his admission be orally informed in clear language of the  
 22 above standards and, where appropriate, be provided with a  
 23 written copy.

24 Section 23. Complete records for each resident shall  
 25 be maintained and shall be readily available to professional

1 persons and to the resident care workers who are directly  
 2 involved with the particular resident and to the mental  
 3 disabilities board of visitors. All information contained  
 4 in a resident's records shall be considered privileged and  
 5 confidential. The parents or guardian, the responsible  
 6 person appointed by the court, and any person properly  
 7 authorized in writing by the resident, if such resident is  
 8 capable of giving informed consent, or by his parents or  
 9 guardian or the responsible person, shall be permitted  
 10 access to the resident's records. These records shall  
 11 include:

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

14 (2) the resident's history, including but not limited  
 15 to:

16 (a) family data, educational background, and  
 17 employment record;

18 (b) prior medical history, both physical and mental,  
 19 including prior institutionalization;

20 (3) the resident's grievances if any;

21 (4) an inventory of the resident's life skills;

22 (5) a record of each physical examination which  
 23 describes the results of the examination;

24 (6) a copy of the individual habilitation plan and any  
 25 modifications thereto and an appropriate summary which will

1 guide and assist the resident care workers in implementing  
2 the resident's program;

3 (7) the findings made in periodic reviews of the  
4 habilitation plan which findings shall include an analysis  
5 of the successes and failures of the habilitation program  
6 and shall direct whatever modifications are necessary;

7 (8) a copy of the post-institutionalization plan and  
8 any modifications thereto, and a summary of the steps that  
9 have been taken to implement that plan;

10 (9) a medication history and status;

11 (10) a summary of each significant contact by a  
12 professional person with a resident;

13 (11) a summary of the resident's response to his  
14 program, prepared by a professional person involved in the  
15 resident's habilitation and recorded at least monthly. Such  
16 response, wherever possible, shall be scientifically  
17 documented.

18 (12) a monthly summary of the extent and nature of the  
19 resident's work activities and the effect of such activity  
20 upon the resident's progress along the habilitation plan;

21 (13) a signed order by a professional person for any  
22 physical restraints;

23 (14) a description of any extraordinary incident or  
24 accident in the facility involving the resident, to be  
25 entered by a staff member noting personal knowledge of the

1 incident or accident or other source of information,  
2 including any reports of investigations of resident's  
3 mistreatment;

4 (15) a summary of family visits and contacts;

5 (16) a summary of attendance and leaves from the  
6 facility;

7 (17) a record of any seizures, illnesses, treatments  
8 thereof, and immunizations.

9 ~~Section 24. Each professional person employed by a  
10 residential facility shall meet all licensing and  
11 certification requirements promulgated by the state of  
12 Montana for persons engaged in private practice of the same  
13 profession elsewhere in Montana. Other staff members shall  
14 meet the same licensing and certification requirements as  
15 persons who engage in private practice of their specialty  
16 elsewhere in Montana. All resident care workers who have not  
17 had prior clinical experience in a residential facility for  
18 habilitation of the developmentally disabled shall have  
19 suitable orientation training. Staff members on all levels  
20 shall have suitable, regularly scheduled in-service  
21 training. Each resident care worker shall be under the  
22 direct professional supervision of a qualified staff member  
23 PROFESSIONAL PERSON.~~

24 Section 25. Every residential facility shall prohibit  
25 mistreatment, neglect or abuse in any form of any resident.

1 Alleged violations shall be reported immediately to the  
2 professional person in charge of the facility and there  
3 shall be a written record that:

4 (1) each alleged violation has been thoroughly  
5 investigated and findings stated;

6 (2) the results of such investigation are reported to  
7 the professional person in charge of the facility within  
8 twenty-four (24) hours of the report of the incident. Such  
9 reports shall also be made to the mental disabilities board  
10 of visitors monthly and to the developmental disabilities  
11 advisory council at its next scheduled public meeting. Each  
12 facility shall cause a written statement of this policy to  
13 be posted in each cottage and building and circulated to all  
14 staff members.

15 SECTION 26. MEDICATION FOR RESIDENTS. RESIDENTS HAVE  
16 A RIGHT TO BE FREE FROM UNNECESSARY OR EXCESSIVE MEDICATION.  
17 NO MEDICATION SHALL BE ADMINISTERED UNLESS AT THE WRITTEN  
18 ORDER OF A PHYSICIAN. THE PROFESSIONAL PERSON IN CHARGE OF  
19 THE FACILITY AND THE ATTENDING PHYSICIAN SHALL BE  
20 RESPONSIBLE FOR ALL MEDICATION GIVEN OR ADMINISTERED TO A  
21 RESIDENT. THE USE OF MEDICATION SHALL NOT EXCEED STANDARDS  
22 OF USE THAT ARE ADVOCATED BY THE UNITED STATES FOOD AND DRUG  
23 ADMINISTRATION. NOTATION OF EACH INDIVIDUAL'S MEDICATION  
24 SHALL BE KEPT IN HIS MEDICAL RECORDS. AT LEAST WEEKLY AN  
25 ATTENDING PHYSICIAN SHALL REVIEW THE DRUG REGIMEN OF EACH

1 PATIENT UNDER HIS CARE. ALL PRESCRIPTIONS SHALL BE WRITTEN  
2 WITH A TERMINATION DATE, WHICH SHALL NOT EXCEED THIRTY (30)  
3 DAYS. MEDICATIONS SHALL NOT BE USED AS PUNISHMENT, FOR THE  
4 CONVENIENCE OF STAFF, AS A SUBSTITUTE FOR PROGRAM, OR IN  
5 QUANTITIES THAT INTERFERE WITH THE RESIDENT'S TREATMENT  
6 PROGRAM.

7 Section 27. (1) Residents of a residential facility  
8 shall have a right not to be subjected to any unusual or  
9 hazardous treatment procedures without the express and  
10 informed consent of the resident, if the resident is able to  
11 give such consent, and of his parents or guardian or the  
12 responsible person appointed by the court, after  
13 opportunities for consultation with independent specialists  
14 and legal counsel. Such proposed procedures shall first  
15 have been reviewed and approved by the mental disabilities  
16 board of visitors before such consent shall be sought.

17 (2) Physical restraint shall be employed only when  
18 absolutely necessary to protect the resident from injury to  
19 himself or to prevent injury to others. Restraint shall not  
20 be employed as punishment, for the convenience of staff, or  
21 as a substitute for a habilitation program. Restraint shall  
22 be applied only if alternative techniques have failed and  
23 only if such restraint imposes the least possible  
24 restriction consistent with its purpose. Only a  
25 professional person may authorize the use of restraints.

1 Orders for restraints by a professional person shall be in  
2 writing and shall not be in force for longer than twelve  
3 (12) hours. Whenever physical restraint is ordered suitable  
4 provision shall be made for the comfort and physical needs  
5 of the person restrained.

6 (3) Seclusion, defined as the placement of a resident  
7 alone in a locked room ~~FOR NON-THERAPEUTIC PURPOSES~~, shall  
8 not be employed. Legitimate "time out" procedures may be  
9 utilized under close and direct professional supervision as  
10 a technique in behavior-shaping programs.

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

23 ~~(5) No resident shall be subjected to a behavior~~  
24 ~~modification program designed to eliminate a particular~~  
25 ~~pattern of behavior without prior certification by a~~

1 ~~physician that he has examined the resident in regard to~~  
2 ~~behavior to be extinguished and finds that such behavior is~~  
3 ~~not caused by a physical condition which could be corrected~~  
4 ~~by appropriate medical procedures.~~ No resident shall be  
5 subjected to a behavior modification program which attempts  
6 to extinguish socially appropriate behavior or to develop  
7 new behavior patterns when such behavior modifications serve  
8 only institutional convenience.

9 (6) Electric shock devices shall be considered a  
10 research technique for the purpose of this act. Such  
11 devices shall only be used in extraordinary circumstances to  
12 prevent self-mutilation leading to repeated and possibly  
13 permanent physical damage to the resident and only after  
14 alternative techniques have failed. The use of such devices  
15 shall be subject to the conditions prescribed by this act  
16 for experimental research generally and shall be used only  
17 under the direct and specific order of the professional  
18 person in charge of the residential facility.

19 Section 28. Residents of a residential facility shall  
20 have a right not to be subjected to experimental research  
21 without the express and informed consent of the resident, if  
22 the resident is able to give such consent, and of his  
23 parents or guardian or the responsible person appointed by  
24 the court after opportunities for consultation with  
25 independent specialists and with legal counsel. Such

1 proposed research shall first have been reviewed and  
 2 approved by the mental disabilities board of visitors before  
 3 such consent shall be sought. Prior to such approval the  
 4 board shall determine that such research complies with the  
 5 principles of the statement on the use of human subjects for  
 6 research of the American association on mental deficiency  
 7 and with the principles for research involving human  
 8 subjects required by the United States department of health,  
 9 education and welfare for projects supported by that agency.

10 Section 29. The following rules shall govern resident  
 11 labor:

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

21 (2) No resident shall be involved in the care  
 22 (feeding, clothing, bathing), training or supervision of  
 23 other residents unless he:

- 24 (a) has volunteered;  
 25 (b) has been specifically trained in the necessary

1 skills;

2 (c) has the humane judgment required for such  
 3 activities;

4 (d) is adequately supervised; and

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

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

14 (a) an integrated part of the resident's habilitation  
 15 plan and approved as a habilitation activity by a  
 16 professional person responsible for supervising the  
 17 resident's habilitation;

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

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

24 (a) an integrated part of the resident's habilitation  
 25 plan and approved as a habilitation activity by a

1 professional person responsible for supervising the  
2 resident's habilitation;

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

5 (c) compensated in accordance with the minimum wage  
6 laws of the Fair Labor Standards Act, 29 U.S.C. sec. 206, as  
7 amended.

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

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

20 (7) ~~Residents shall be allowed to use~~ DEDUCTIONS OR  
21 PAYMENTS FOR CARE AND OTHER CHARGES SHALL NOT DEPRIVE A  
22 RESIDENT OF a reasonable amount of the compensation received  
23 pursuant to this section for personal and incidental  
24 purchases and expenses.

25 (8) Staffing shall be sufficient so that the facility

1 is not dependent upon the use of residents or volunteers for  
2 the care, maintenance or habilitation of other residents or  
3 for income-producing services. The facility shall formulate  
4 a written policy to protect the residents from exploitation  
5 when they are engaged in productive work.

6 Section 30. Within one (1) year of the effective date  
7 of this act, each resident governed by the provisions of  
8 this act shall be evaluated as to his mental, emotional,  
9 social, and physical condition. Such evaluation or  
10 reevaluation shall be conducted by an interdisciplinary team  
11 of professional persons who shall use professionally  
12 recognized tests and examination procedures. Each  
13 resident's parents or guardian, next of kin or legal  
14 representative or the responsible person appointed by the  
15 court shall be contacted and his readiness to make  
16 provisions for the resident's care in the community shall be  
17 ascertained. Each resident shall be returned to his family,  
18 if adequately habilitated, or assigned to the least  
19 restrictive habilitation setting. Where necessary, the  
20 professional person in charge of the resident shall petition  
21 the court to appoint a responsible person.

22 Section 31. No person shall be admitted to any  
23 publicly supported residential institution caring for  
24 developmentally disabled persons unless such institution  
25 meets the standards prescribed by this act.

1 Section 32. (1) The governor shall appoint a mental  
 2 disabilities board of visitors. The board shall consist of  
 3 five (5) persons at least three (3) of whom shall not be  
 4 professional persons and at least one (1) of whom shall be a  
 5 representative of an organization concerned with the care  
 6 and welfare of the developmentally disabled. No one may be  
 7 a member of the board who is an agent or employee of the  
 8 department of institutions or of any residential facility  
 9 affected by this act. If a board of similar title and  
 10 structure is created in any act concerning the treatment of  
 11 the mentally ill, then one (1) board shall be created to  
 12 perform the functions set out in both acts and the board so  
 13 created shall include at least one (1) representative of an  
 14 organization concerned with the care and welfare of the  
 15 mentally ill and one representative of an organization  
 16 concerned with the care and welfare of the mentally retarded  
 17 or developmentally disabled.

18 (2) The mental disabilities board of visitors shall be  
 19 an independent board of inquiry and review to assure that  
 20 the treatment of all persons admitted to a residential  
 21 facility is humane and decent and meets the requirements set  
 22 forth in this act.

23 The board shall review all plans for experimental  
 24 research or hazardous treatment procedures involving persons  
 25 admitted to any residential facility to assure that the

1 research project is humane and not unduly hazardous and that  
 2 it complies with the principles of the statement on the use  
 3 of human subjects for research of the American association  
 4 on mental deficiency and with the principles for research  
 5 involving human subjects required by the United States  
 6 department of health, education and welfare. No  
 7 experimental research project involving persons admitted to  
 8 any residential facility affected by this act shall be  
 9 commenced unless it is approved by the mental disabilities  
 10 board of visitors. The board shall investigate all cases of  
 11 alleged mistreatment of a resident.

12 (3) The board shall, at least annually, inspect every  
 13 residential facility which is providing a course of  
 14 residential habilitation and treatment to any person  
 15 pursuant to this act. The board shall inspect the physical  
 16 plant, including residential, recreational, dining, and  
 17 sanitary facilities. It shall visit all wards and treatment  
 18 or habilitation areas. The board shall inquire concerning  
 19 all habilitation programs being implemented by the  
 20 institution.

21 (4) The board shall inspect the file of each person  
 22 admitted to a residential facility pursuant to this act to  
 23 insure that a habilitation plan exists and is being  
 24 implemented. The board shall inquire concerning all use of  
 25 restraints, isolation or other extraordinary measures.

1 (5) The board may assist any patient at a residential  
2 facility in resolving any grievance he may have concerning  
3 his admission or his course of treatment and habilitation in  
4 the facility.

5 (6) If the board believes that any facility is failing  
6 to comply with the provisions of this act in regard to its  
7 physical facilities or its treatment of any resident, it  
8 shall report its findings at once to the parents or guardian  
9 of any patient involved, the next of kin, if known, the  
10 responsible person appointed by the court for any patient  
11 involved, the professional person in charge of the facility,  
12 the director of the department of institutions and the  
13 district court which has jurisdiction over the facility.

14 (7) The mental disabilities board of visitors shall  
15 report annually to the governor and shall report to each  
16 session of the Montana legislature concerning the status of  
17 the residential facilities and habilitation programs which  
18 it has inspected.

19 (8) The mental disabilities board of visitors shall be  
20 attached to the governor for administrative purposes. It  
21 may employ staff for the purpose of carrying out its duties  
22 as set out in this act.

23 Section 33. If any person is a patient in a mental  
24 health facility and the professional person in charge of the  
25 patient determines that the patient is suffering from a

1 developmental disability rather than mental illness and  
2 should more properly be admitted to a residential facility,  
3 then the professional person shall commence proceedings  
4 consistent with the procedures set forth in this act for  
5 admissions generally to effect such admission.

6 Section 34. If any provision of this act or the  
7 application thereof to any person or circumstances is held  
8 invalid, such invalidity shall not affect other provisions  
9 or applications of the act which can be given effect without  
10 the invalid provision or application, and to this end the  
11 provisions of this act are declared to be severable.

12 ~~Section 34, Section 80-2312, R.C.M. 1947, is amended~~  
13 ~~to read as follows:~~

14 ~~"80-2312. Supervision of Glendive center transfers~~  
15 ~~to Boulder river school and hospital. The department shall~~  
16 ~~establish and direct the services to be provided at the~~  
17 ~~center. The department shall provide for temporary transfers~~  
18 ~~from the Eastmont training center to the Boulder river~~  
19 ~~school and hospital for special medical, psychological,~~  
20 ~~surgical, and other services consistent with the statutory~~  
21 ~~requirements for transfer of a resident to a different~~  
22 ~~residential facility."~~

23 Section 35. Sections 80-2303 through 80-2309, 80-2312,  
24 AND 38-301 through 38-303, R.C.M. 1947, are repealed.