

## 1 HOUSE BILL NO. 411

2 INTRODUCED BY DUSSAULT, MELOY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE COURT TO  
5 PROVIDE FOR TREATMENT OF DEVELOPMENTALLY DISABLED PERSONS  
6 WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE UNDER  
7 THE PROCEDURE FOR TREATMENT OF DEVELOPMENTALLY DISABLED OR  
8 THE SERIOUSLY MENTALLY ILL; AMENDING SECTION 95-506, R.C.M.  
9 1947."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:12 Section 1. Section 95-506, R.C.M. 1947, is amended to  
13 read as follows:

14 \*95-506. Determination of fitness to proceed -- effect  
15 of finding of unfitness -- proceedings if fitness is  
16 regained. (1) When the defendant's fitness to proceed is  
17 drawn in question, the issue shall be determined by the  
18 court. If neither the county attorney nor counsel for the  
19 defendant contests the finding of the report filed under  
20 section 95-505, the court may make the determination on the  
21 basis of the report. If the finding is contested, the court  
22 shall hold a hearing on the issue. If the report is received  
23 in evidence upon the hearing, the parties have the right to  
24 summon and cross-examine the psychiatrists who joined in the  
25 report and to offer evidence upon the issue.

1 (2) If the court determines that the defendant lacks  
2 fitness to proceed, the proceeding against him shall be  
3 suspended, except as provided in subsection ~~(3)~~ (4) of this  
4 section, and the court shall commit him to the custody of  
5 the superintendent of Warm Springs state hospital, to be  
6 placed in an appropriate institution of the department of  
7 institutions for so long as the unfitness endures. When the  
8 court, on its own motion or upon the application of the  
9 superintendent of Warm Springs state hospital, or the county  
10 attorney, or the defendant or his legal representative,  
11 determines, after a hearing if a hearing is requested, that  
12 the defendant has regained fitness to proceed, the  
13 proceeding shall be resumed. If, however, the court is of  
14 the view that so much time has elapsed since the commitment  
15 of the defendant that it would be unjust to resume the  
16 criminal proceedings, the court may dismiss the charge and  
17 may order the defendant to be discharged, or, subject to the  
18 law governing the civil commitment of persons suffering from  
19 mental disease or defect, order the defendant committed to  
20 an appropriate institution of the department of  
21 institutions.

22 ~~(3) If the court determines that the defendant lacks~~  
23 ~~fitness to proceed due to the fact that the person is~~  
24 ~~developmentally disabled as defined by 38-1202, the~~  
25 ~~proceeding against him shall be suspended, except as~~

1 provided in subsection (4) of this section, and the court  
' shall proceed to secure treatment as provided in Title 38,  
3 chapter 12, or Title 38, chapter 13.

4 ~~(3)~~(4) The fact that the defendant is unfit to proceed  
5 does not preclude any legal objection to the prosecution  
6 which is susceptible to fair determination prior to trial  
7 and without the personal participation of the defendant.

8 ~~(4)~~(5) The expenses of sending the defendant to the  
9 custody of the superintendent of the Montana state hospital,  
10 to be placed in an appropriate institution of the state  
11 department of institutions, of keeping him there, and of  
12 bringing him back, are in the first instance chargeable to  
13 the county in which the indictment was found, or the  
14 information filed; but the county may recover them from the  
15 estate of the defendant, if he has any, or from a town, city  
16 or county bound to provide for and maintain him elsewhere."

-End-

STATE OF MONTANA

REQUEST NO. 513-77

FISCAL NOTE

Form BD-15

In compliance with a written request received February 14, 19 77, there is hereby submitted a Fiscal Note on House Bill 411 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly. Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

An act to permit the court to provide for treatment of developmentally disabled persons who lack fitness to be tried for a criminal offense under the procedure for treatment of developmentally disabled or the seriously mentally ill.

FISCAL IMPACT:

Minimal. The defendant would become a resident of an existing facility for the developmentally disabled. There is no estimate of the number of people who would fall under this bill. There are no persons presently in the prison who would meet the definition of developmentally disabled.

*Richard L. Langford*  
BUDGET DIRECTOR

Office of Budget and Program Planning

Date: Feb. 18, 1977

Approved by Committee  
on Judiciary

HOUSE BILL NO. 411

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A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE COURT TO PROVIDE FOR TREATMENT OF DEVELOPMENTALLY DISABLED PERSONS WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE UNDER THE PROCEDURE FOR TREATMENT OF DEVELOPMENTALLY DISABLED OR THE SERIOUSLY MENTALLY ILL; AMENDING SECTION 95-506, R.C.M. 1947."

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Section 1. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. Determination of fitness to proceed -- effect of finding of unfitness -- proceedings if fitness is regained. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under section 95-505, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection (3) (4) of this section, and the court shall commit him to the custody of the superintendent of Warm Springs state hospital, to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. When the court, on its own motion or upon the application of the superintendent of Warm Springs state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

~~(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled as defined by 38-1202, the proceeding against him shall be suspended, except as~~

SECOND READING

1 provided in subsection (4) of this section, and the court  
2 shall proceed to secure treatment as provided in Title 38,  
3 chapter 12, or Title 38, chapter 13.

4 ~~(3)(4)~~ The fact that the defendant is unfit to proceed  
5 does not preclude any legal objection to the prosecution  
6 which is susceptible to fair determination prior to trial  
7 and without the personal participation of the defendant.

8 ~~(4)(5)~~ The expenses of sending the defendant to the  
9 custody of the superintendent of the Montana state hospital,  
10 to be placed in an appropriate institution of the state  
11 department of institutions, of keeping him there, and of  
12 bringing him back, are in the first instance chargeable to  
13 the county in which the indictment was found, or the  
14 information filed; but the county may recover them from the  
15 estate of the defendant, if he has any, or from a town, city  
16 or county bound to provide for and maintain him elsewhere."

-End-

## HOUSE BILL NO. 411

INTRODUCED BY DUSSAULT, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE COURT TO PROVIDE FOR TREATMENT OF DEVELOPMENTALLY DISABLED PERSONS WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE UNDER THE PROCEDURE FOR TREATMENT OF DEVELOPMENTALLY DISABLED OR THE SERIOUSLY MENTALLY ILL; AMENDING SECTION 95-506, R.C.M. 1947."

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Section 1. Section 95-506, R.C.M. 1947, is amended to read as follows:

"95-506. Determination of fitness to proceed -- effect of finding of unfitness -- proceedings if fitness is regained. (1) When the defendant's fitness to proceed is drawn in question, the issue shall be determined by the court. If neither the county attorney nor counsel for the defendant contests the finding of the report filed under section 95-505, the court may make the determination on the basis of the report. If the finding is contested, the court shall hold a hearing on the issue. If the report is received in evidence upon the hearing, the parties have the right to summon and cross-examine the psychiatrists who joined in the report and to offer evidence upon the issue.

(2) If the court determines that the defendant lacks fitness to proceed, the proceeding against him shall be suspended, except as provided in subsection ~~(3)~~ (4) of this section, and the court shall commit him to the custody of the superintendent of Warm Springs state hospital, to be placed in an appropriate institution of the department of institutions for so long as the unfitness endures. When the court, on its own motion or upon the application of the superintendent of Warm Springs state hospital, or the county attorney, or the defendant or his legal representative, determines, after a hearing if a hearing is requested, that the defendant has regained fitness to proceed, the proceeding shall be resumed. If, however, the court is of the view that so much time has elapsed since the commitment of the defendant that it would be unjust to resume the criminal proceedings, the court may dismiss the charge and may order the defendant to be discharged, or, subject to the law governing the civil commitment of persons suffering from mental disease or defect, order the defendant committed to an appropriate institution of the department of institutions.

~~(3) If the court determines that the defendant lacks fitness to proceed due to the fact that the person is developmentally disabled as defined by 38-1202, the proceeding against him shall be suspended, except as~~

1 ~~provided in subsection (4) of this section, and the court~~  
2 ~~shall proceed to secure treatment as provided in Title 38,~~  
3 ~~chapter 12, or Title 38, chapter 13.~~

4 (3)(4) The fact that the defendant is unfit to proceed  
5 does not preclude any legal objection to the prosecution  
6 which is susceptible to fair determination prior to ~~trial~~  
7 ~~TRIAL~~ and without the personal participation of the  
8 defendant.

9 (4)(5) The expenses of sending the defendant to the  
10 custody of the superintendent of the Montana state hospital,  
11 to be placed in an appropriate institution of the state  
12 department of institutions, of keeping him there, and of  
13 bringing him back, are in the first instance chargeable to  
14 the county in which the indictment was found, or the  
15 information filed; but the county may recover them from the  
16 estate of the defendant, if he has any, or from a town, city  
17 or county bound to provide for and maintain him elsewhere."

-End-

March 25, 1977

STANDING COMMITTEE REPORT  
Senate Committee on Judiciary

That House Bill No. 411 be amended as follows:

1. Amend title, line 5.  
Following: "OF"  
Strike: "DEVELOPMENTALLY DISABLED"
2. Amend title, lines 6 through 8.  
Following: "OFFENSE"  
Strike: "UNDER THE PROCEDURE FOR TREATMENT OF DEVELOPMENTALLY DISABLED  
OR THE SERIOUSLY MENTALLY ILL"  
Insert: "IN AN INSTITUTION TO BE SELECTED BY THE DEPARTMENT OF INSTITUTIONS"
3. Amend page 2, section 1, line 3.  
Following: "~~3~~"  
Strike: "(4)"  
Insert: "(3)"
4. Amend page 2, section 1, line 5.  
Following: "the"  
Strike: "superintendent of Warm Springs state hospital"  
Insert: "director of the department of institutions"
5. Amend page 2, section 1, line 9.  
Following: line 8  
Strike: "superintendent of Warm Springs state hospital"  
Insert: "director of the department of institutions"
6. Amend page 2, section 1, line 22 through line 3 on page 3.  
Following: line 21  
Strike: subsection (3) in its entirety  
Re-number: all subsequent subsections
7. Amend page 3, section 1, line 10.  
Following: "the"  
Strike: "superintendent of the Montana state hospital"  
Insert: "director of the department of institutions"



March 31, 1977

SENATE  
COMMITTEE OF THE WHOLE

That House Bill No. 411 be amended as follows:

1. Amend title, line 8,

Following: "Amending"

Strike: "SECTION"

Insert: "SECTIONS 38-1202, 38-1208, 38-1209, 38-1215, 38-1216, and"

2. Amend page 1, section 1, line 12.

Following: line 11

Insert: "Section 1. Section 38-1202, R.C.M. 1947, is amended to read as follows:

"38-1202. Definitions. As used in this ~~act~~ chapter:

(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 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 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 demand of his own person and environment and to raise the level of his physical, mental and social efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

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

(7) "Professional person" means:

(a) a medical doctor, or

(b) a person trained in the field of developmental disabilities and certified by the department of institutions or the department of social and rehabilitation services in accordance with standards of professional licensing boards, federal regulations, and the joint commissions on accreditation of hospitals.

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

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

treatment of the mentally ill shall not be a "residential facility" within the meaning of this act.

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

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

(12) "Seriously developmentally disabled" means developmentally disabled due to developmental ~~or physical~~ disability ~~or a combination of both rendering a person unable to function in a community-based setting~~ which has resulted in self-inflicted injury or injury to others, or the imminent threat thereof; or which has deprived the person afflicted of the ability to protect his life or health."

Section 2. Section 38-1208, R.C.M. 1947, is amended to read as follows:

"38-1208. Recommendation to residential facility.

(1) If as a result of the evaluation and treatment either agreed to by the parents, guardian, or the person himself pursuant to section 38-1204 or ordered by the court, the professional person in charge of the case concludes that the person evaluated is seriously developmentally disabled and recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional person shall file his written recommendation and report with the court and request that the court order the admission. The report shall include the factual basis for the recommendation, and shall describe any tests or evaluation devices which have been employed in evaluating the patient. If no responsible person has yet been appointed, the court may appoint one at this time. If there is no parent or guardian the court shall appoint a responsible person. At the request of the respondent, his parents or guardian or the responsible person, the court shall appoint counsel for the respondent. If the parents or guardian are indigent and if they request it, the court shall appoint counsel for the parents or guardian. Notice of the recommendation shall be mailed or delivered to the respondent, his parents or guardian, the responsible person, next of kin, if known, and the attorney for the respondent, if any, and for the parents or guardian, if any.

(2) The respondent, his parents or guardian, the responsible person, or the attorney for any party may request that a hearing be had on the recommendation. If a hearing is requested, the court shall mail or deliver notice of the date, time and place of the hearing to each of the

parties listed at the beginning of this subsection. The hearing shall be to the court without jury. The rules of civil procedure shall apply.

(3) If the court finds that the respondent is seriously developmentally disabled and that available community-based resources are not adequate to protect the life and physical safety of the person and others or to provide appropriate treatment and habilitation, it shall order the respondent admitted to a residential facility for an extended course of treatment and habilitation. If the court finds that the respondent is developmentally disabled, and in need of developmental disabilities services but that available community-based services are adequate to protect the life and physical safety of the person and others and to provide appropriate treatment and habilitation, it shall order the respondent to undertake a community-based course of treatment and habilitation. If the court finds that the respondent is not developmentally disabled or is not in need of developmental disability services, it shall dismiss the request.

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

(5) If any person is admitted to a residential facility for an extended course of habilitation without a hearing, and if subsequent to such admission one of the parties who could have requested a hearing learns that an alternative course of treatment is available which is more suitable to the needs of the resident, the party may request the professional person in charge of the resident to release the resident to the alternative, if it is a community-based alternative, or transfer the resident to the alternative, if it is a residential alternative. Any such transfer or release shall comply with the requirements of section 38-1209. If the professional person in charge of the resident refuses to authorize the release or transfer, then the party may petition the court for a hearing to determine whether the present residential alternative should be continued. The hearing shall comply with the procedures set forth in subsection (2) of this section."

Section 3. Section 38-1209, R.C.M. 1947, is amended to read as follows:

"38-1209. Admission to residential facility. (1) No person shall be admitted to a residential facility for longer than thirty (30) days except on approval of the court. Whenever a person is admitted to a residential facility for longer than thirty (30) days, the court may appoint a person other than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian, the court shall appoint a responsible person.

(2) The court order approving the admission shall specify the maximum period of time for which the person is admitted to the residential facility. In no case shall this maximum period exceed one (1) year.

(3) If at any time during the period for which a person is admitted to a residential facility for an extended period of habilitation and

treatment, the professional person in charge of the resident decides that there exist sufficient community-based alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the life and physical safety of the resident and others, or that it is in the best interest of the resident that he be transferred to another residential facility, then he may release the resident to such community-based alternative or transfer the resident to the other residential facility no less than fifteen (15) days after sending notice of the proposed release or transfer to the resident, his parent or guardian, the attorney who most recently represented the resident, if any, the responsible person appointed by the court, if any, and the court which ordered the admission. If the resident has been found unfit to proceed to trial notice shall be sent to the court which found the resident unfit to proceed to trial and to the county attorney and the attorney who represented the resident at the time the resident was found unfit to proceed to trial. If any of the parties so notified objects to the release or transfer, they may petition the court for a hearing to determine whether the release or transfer should be allowed. The hearing shall comply with the procedures set forth in section 38-1208. The court may on its own initiative inquire concerning the propriety of the release or transfer. Nothing in this subsection shall prevent the transfer of a resident to a hospital or other medical facility for necessary medical treatment, or emergency transfer of a resident to a mental health facility, provided such emergency transfer complies with the statutory requirements for emergency detention of the mentally ill. Within twenty-four (24) hours of an emergency medical or psychiatric transfer, notice shall be given to the parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

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

(5) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner set out in section 38-1208. If the court finds that the residential admission is still justified, it may order continuation of the admission to that residential facility or transfer of the resident to a different residential facility. If the court finds that the resident is still in need of developmental disabilities services but does not require residential treatment, it shall order an appropriate course of community-based habilitation, or, if all parties are willing for the resident to participate in a community-based program of habilitation, it shall dismiss the petition. If the need for developmental disabilities services no longer exists, the court shall dismiss the petition. The court shall not order continuation of admission to a

residential facility which does not have an individualized habilitation plan for the resident. In its order, the court shall make findings of fact on which its order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a residential facility."

Section 4. Section 38-1215, R.C.M. 1947, is amended to read as follows:

"38-1215. Limitation on who takes treatment. No person who has reached the age of majority shall be compelled against his will to undertake a course of treatment and habilitation solely because he is developmentally disabled, but only if such disability causes him to be unable to protect his life or health or to protect the life or safety of others."

Section 5. Section 38-1216, R.C.M. 1947, is amended to read as follows:

"38-1216. Emergency admission. The parents, guardian, the person himself, or a professional person may admit a person believed to be developmentally disabled to a residential facility on an emergency basis when necessary to protect the person or others from death or serious bodily harm. However, if requested by the parents, guardian, or the person admitted on an emergency basis, a petition as set out in section 38-1205 shall be filed on the next judicial day by the county attorney of the county where the person resides. If a petition is filed, the professional person assigned by the court to conduct the examination and inquiry shall report back to the court on the next judicial day following the filing of the petition. Once a petition is filed, continued detention in the residential facility shall be allowed only on order of the court when necessary to protect the respondent or others from death or serious bodily harm. In no case shall an emergency admission to a residential facility continue for longer than thirty (30) days without subsequent proceedings before the court."

Renumber: Subsequent section.

1 HOUSE BILL NO. 411

2 INTRODUCED BY DUSSAULT, MELOY

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE COURT TO  
5 PROVIDE FOR TREATMENT OF DEVELOPMENTALLY-DISABLED PERSONS  
6 WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE UNDER  
7 ~~THE PROCEEDURE FOR TREATMENT OF DEVELOPMENTALLY-DISABLED OR~~  
8 ~~THE SERIOUSLY-MENTALLY-ILL IN AN INSTITUTION TO BE SELECTED~~  
9 BY THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTION SECTIONS  
10 38-1202, 38-1208, 38-1209, 38-1215, 38-1216, AND 95-506,  
11 R.C.M. 1947."

12  
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 SECTION 1. SECTION 38-1202, R.C.M. 1947, IS AMENDED TO  
15 READ AS FOLLOWS:

16 "38-1202. Definitions. As used in this act chapter:

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

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

1 services and facilities.

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

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

12 (5) "Habilitation" means the process by which a person  
13 who is developmentally disabled is assisted to acquire and  
14 maintain those life skills which enable him to cope more  
15 effectively with the demands of his own person and  
16 environment and to raise the level of his physical, mental  
17 and social efficiency. Habilitation includes but is not  
18 limited to formal, structured education and treatment.

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

22 (7) "Professional person" means:

23 (a) a medical doctor, or

24 (b) a person trained in the field of developmental  
25 disabilities and certified by the department of institutions

1 or the department of social and rehabilitation services in  
 2 accordance with standards of professional licensing boards,  
 3 federal regulations, and the joint commissions on  
 4 accreditation of hospitals.

5 (8) "Resident" means a person admitted to a  
 6 residential facility for a course of evaluation, treatment  
 7 or habilitation.

8 (9) "Residential facility" or "facility" means any  
 9 residential hospital or hospital and school which exists for  
 10 the purpose of evaluating, treating and habilitating the  
 11 developmentally disabled on an inpatient basis, including  
 12 the Boulder River School and Hospital and the Eastmont  
 13 Training Center. The term does not include a group home or  
 14 foster home or a halfway house. A correctional facility or  
 15 a facility for the treatment of the mentally ill shall not  
 16 be a "residential facility" within the meaning of this act.

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

20 (11) "Responsible person" means any person willing and  
 21 able to assume responsibility for a person who is  
 22 developmentally disabled or alleged to be developmentally  
 23 disabled. Whenever, in any proceeding under this act, the  
 24 court believes that a conflict of interest may exist between  
 25 a person who is developmentally disabled or alleged to be

1 developmentally disabled and his parents or guardian, or  
 2 that the parents or guardian are unable to protect the  
 3 interests of such person, or whenever there is no parent or  
 4 guardian, the court shall appoint a responsible person to  
 5 protect the interests of the person who is developmentally  
 6 disabled or alleged to be developmentally disabled. Only  
 7 one person shall at any one time be the responsible person  
 8 within the meaning of this act. In appointing a responsible  
 9 person, the court shall consider the preference of the  
 10 respondent or patient. The court may at any time, for good  
 11 cause shown, change its designation of who is the  
 12 responsible person.

13 (12) "Seriously developmentally disabled" means  
 14 developmentally disabled due to developmental or ~~physical~~  
 15 disability or ~~a combination of both~~ rendering a person  
 16 ~~unable to function in a community based setting~~ which has  
 17 resulted in self-inflicted injury or injury to others, or  
 18 the imminent threat thereof; or which has deprived the  
 19 person afflicted of the ability to protect his life or  
 20 health."

21 SECTION 2. SECTION 38-1208, R.C.M., 1947, IS AMENDED TO  
 22 READ AS FOLLOWS:

23 "38-1208. Recommendation to residential facility. (1)  
 24 If as a result of the evaluation and treatment either agreed  
 25 to by the parents, guardian, or the person himself pursuant

1 to section 38-1204 or ordered by the court, the professional  
 2 person in charge of the case concludes that the person  
 3 evaluated is seriously developmentally disabled and  
 4 recommends that treatment and habilitation be had in a  
 5 residential facility on an extended basis, the professional  
 6 person shall file his written recommendation and report  
 7 with the court and request that the court order the  
 8 admission. The report shall include the factual basis for  
 9 the recommendation, and shall describe any tests or  
 10 evaluation devices which have been employed in evaluating  
 11 the patient. If no responsible person has yet been  
 12 appointed, the court may appoint one at this time. If there  
 13 is no parent or guardian the court shall appoint a  
 14 responsible person. At the request of the respondent, his  
 15 parents or guardian or the responsible person, the court  
 16 shall appoint counsel for the respondent. If the parents or  
 17 guardian are indigent and if they request it, the court  
 18 shall appoint counsel for the parents or guardian. Notice  
 19 of the recommendation shall be mailed or delivered to the  
 20 respondent, his parents or guardian, the responsible person,  
 21 next of kin, if known, and the attorney for the respondent,  
 22 if any, and for the parents or guardian, if any.

23 (2) The respondent, his parents or guardian, the  
 24 responsible person, or the attorney for any party may  
 25 request that a hearing be had on the recommendation. If a

1 hearing is requested, the court shall mail or deliver notice  
 2 of the date, time and place of the hearing to each of the  
 3 parties listed at the beginning of this subsection. The  
 4 hearing shall be to the court without jury. The rules of  
 5 civil procedure shall apply.

6 (3) If the court finds that the respondent is  
 7 seriously developmentally disabled and that available  
 8 community-based services are not adequate ~~to protect the~~  
 9 ~~life and physical safety of the person and others or to~~  
 10 ~~provide appropriate treatment and habilitation,~~ it shall  
 11 order the respondent admitted to a residential facility for  
 12 an extended course of treatment and habilitation. If the  
 13 court finds that the respondent is developmentally disabled,  
 14 and in need of developmental disabilities services but that  
 15 available community-based services are adequate ~~to protect~~  
 16 ~~the life and physical safety of the person and others and to~~  
 17 ~~provide appropriate treatment and habilitation,~~ 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  
 19 38-1209. If the professional person in charge of the  
 20 resident refuses to authorize the release or transfer, then  
 21 the party may petition the court for a hearing to determine  
 22 whether the present residential alternative should be  
 23 continued. The hearing shall comply with the procedures set  
 24 forth in subsection (2) of this section."

25 SECTION 3. SECTION 38-1209, R.C.M., 1947, IS AMENDED TO

1 READ AS FOLLOWS:

2 "38-1209. Admission to residential facility. (1) No  
 3 person shall be admitted to a residential facility for  
 4 longer than thirty (30) days except on approval of the  
 5 court. Whenever a person is admitted to a residential  
 6 facility for longer than thirty (30) days, the court may  
 7 appoint a person other than the parents or guardian to act  
 8 as responsible person for the resident. If there is no  
 9 parent or guardian, the court shall appoint a responsible  
 10 person.

11 (2) The court order approving the admission shall  
 12 specify the maximum period of time for which the person is  
 13 admitted to the residential facility. In no case shall this  
 14 maximum period exceed one (1) year.

15 (3) If at any time during the period for which a  
 16 person is admitted to a residential facility for an extended  
 17 period of habilitation and treatment, the professional  
 18 person in charge of the resident decides that there exist  
 19 sufficient community-based alternatives to provide adequate  
 20 treatment and habilitation for the resident and adequate  
 21 protection of the life and physical safety of the resident  
 22 and others, or that it is in the best interests of the  
 23 resident that he be transferred to another residential  
 24 facility, then he may release the resident to such  
 25 community-based alternative or transfer the resident to the

1 other residential facility no less than fifteen (15) days  
 2 after sending notice of the proposed release or transfer to  
 3 the resident, his parents or guardian, the attorney who most  
 4 recently represented the resident, if any, the responsible  
 5 person appointed by the court, if any, and the court which  
 6 ordered the admission. If the resident has been found unfit  
 7 to proceed to trial notice shall be sent to the court which  
 8 found the resident unfit to proceed to trial and to the  
 9 county attorney and the attorney who represented the  
 10 resident at the time the resident was found unfit to proceed  
 11 to trial. If any of the parties so notified objects to the  
 12 release or transfer, they may petition the court for a  
 13 hearing to determine whether the release or transfer should  
 14 be allowed. The hearing shall comply with the procedures  
 15 set forth in section 38-1208. The court may on its own  
 16 initiative inquire concerning the propriety of the release  
 17 or transfer. Nothing in this subsection shall prevent the  
 18 transfer of a resident to a hospital or other medical  
 19 facility for necessary medical treatment, or emergency  
 20 transfer of a resident to a mental health facility, provided  
 21 such emergency transfer complies with the statutory  
 22 requirements for emergency detention of the mentally ill.  
 23 Within twenty-four (24) hours of an emergency medical or  
 24 psychiatric transfer, notice shall be given to the parents  
 25 or guardian of the resident, the responsible person

1 appointed by the court, if any, and the court.

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

17 (5) If any person so notified requests a hearing, the  
 18 court shall set a time and place for the hearing and shall  
 19 mail or deliver notice to all of the persons informed of the  
 20 recommendation. The hearing shall be conducted in the  
 21 manner set out in section 38-1208. If the court finds that  
 22 the residential admission is still justified, it may order  
 23 continuation of the admission to that residential facility  
 24 or transfer of the resident to a different residential  
 25 facility. If the court finds that the resident is still in

1 need of developmental disabilities services but does not  
 2 require residential treatment, it shall order an appropriate  
 3 course of community-based habilitation, or, if all parties  
 4 are willing for the resident to participate in a  
 5 community-based program of habilitation, it shall dismiss  
 6 the petition. If the need for developmental disabilities  
 7 services no longer exists, the court shall dismiss the  
 8 petition. The court shall not order continuation of  
 9 admission to a residential facility which does not have an  
 10 individualized habilitation plan for the resident. In its  
 11 order, the court shall make findings of fact on which its  
 12 order is based. The court may on its own initiative inquire  
 13 concerning the suitability of continuing an admission to a  
 14 residential facility."

15 SECTION 4. SECTION 38-1215, R.C.M. 1947, IS AMENDED TO  
 16 READ AS FOLLOWS:

17 "38-1215. Limitation on who takes treatment. No person  
 18 who has reached the age of majority shall be compelled  
 19 against his will to undertake a course of treatment and  
 20 habilitation solely because he is developmentally disabled,  
 21 but only if such disability causes him to be unable to  
 22 protect his life and health or to protect the life or safety  
 23 of others."

24 SECTION 5. SECTION 38-1216, R.C.M. 1947, IS AMENDED TO  
 25 READ AS FOLLOWS:

1 "38-1216. Emergency admission. The parents, guardian,  
 2 the person himself, or a professional person may admit a  
 3 person believed to be developmentally disabled to a  
 4 residential facility on an emergency basis when necessary to  
 5 protect the person or others from death or serious bodily  
 6 harm. However, if requested by the parents, guardian or the  
 7 person admitted on an emergency basis, a petition as set out  
 8 in section 38-1205 shall be filed on the next judicial day  
 9 by the county attorney of the county where the person  
 10 resides. If a petition is filed, the professional person  
 11 assigned by the court to conduct the examination and inquiry  
 12 shall report back to the court on the next judicial day  
 13 following the filing of the petition. Once a petition is  
 14 filed, continued detention in the residential facility shall  
 15 be allowed only on order of the court when necessary to  
 16 protect the respondent or other from death or serious  
 17 bodily harm. In no case shall an emergency admission to a  
 18 residential facility continue for longer than thirty (30)  
 19 days without subsequent proceedings before the court."

20 Section 6. Section 95-506, R.C.M. 1947, is amended to  
 21 read as follows:

22 "95-506. Determination of fitness to proceed -- effect  
 23 of finding of unfitness -- proceedings if fitness is  
 24 regained. (1) When the defendant's fitness to proceed is  
 25 drawn in question, the issue shall be determined by the

1 court. If neither the county attorney nor counsel for the  
 2 defendant contests the finding of the report filed under  
 3 section 95-505, the court may make the determination on the  
 4 basis of the report. If the finding is contested, the court  
 5 shall hold a hearing on the issue. If the report is received  
 6 in evidence upon the hearing, the parties have the right to  
 7 summon and cross-examine the psychiatrists who joined in the  
 8 report and to offer evidence upon the issue.

9 (2) If the court determines that the defendant lacks  
 10 fitness to proceed, the proceeding against him shall be  
 11 suspended, except as provided in subsection ~~{3}~~ ~~{4}~~ {3} of  
 12 this section, and the court shall commit him to the custody  
 13 of the ~~superintendent of Warm Springs state hospital~~  
 14 DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS, to be placed in  
 15 an appropriate institution of the department of institutions  
 16 for so long as the unfitness endures. When the court, on its  
 17 own motion or upon the application of the ~~superintendent of~~  
 18 ~~Warm Springs state hospital~~ DIRECTOR OF THE DEPARTMENT OF  
 19 INSTITUTIONS, or the county attorney, or the defendant or  
 20 his legal representative, determines, after a hearing if a  
 21 hearing is requested, that the defendant has regained  
 22 fitness to proceed, the proceeding shall be resumed. If,  
 23 however, the court is of the view that so much time has  
 24 elapsed since the commitment of the defendant that it would  
 25 be unjust to resume the criminal proceedings, the court may

1 dismiss the charge and may order the defendant to be  
 2 discharged, or, subject to the law governing the civil  
 3 commitment of persons suffering from mental disease or  
 4 defect, order the defendant committed to an appropriate  
 5 institution of the department of institutions.

6 ~~{3} if the court determines that the defendant lacks~~  
 7 ~~fitness to proceed due to the fact that the person is~~  
 8 ~~developmentally disabled as defined by 38-1202, the~~  
 9 ~~proceeding against him shall be suspended, except as~~  
 10 ~~provided in subsection {4} of this section, and the court~~  
 11 ~~shall proceed to secure treatment as provided in Title 38,~~  
 12 ~~chapter 12, or Title 38, chapter 13.~~

13 ~~{3}{4}{3}~~ The fact that the defendant is unfit to  
 14 proceed does not preclude any legal objection to the  
 15 prosecution which is susceptible to fair determination prior  
 16 to ~~trial~~ TRIAL and without the personal participation of the  
 17 defendant.

18 ~~{4}{5}{4}~~ The expenses of sending the defendant to the  
 19 custody of the ~~superintendent of the Montana state hospital~~  
 20 DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS, to be placed in  
 21 an appropriate institution of the state department of  
 22 institutions, or keeping him there, and of bringing him  
 23 back, are in the first instance chargeable to the county in  
 24 which the indictment was found, or the information filed;  
 25 but the county may recover them from the estate of the

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1 defendant, if he has any, or from a town, city or county  
2 bound to provide for and maintain him elsewhere."\*

-End-

HOUSE BILL NO. 411

INTRODUCED BY DUSSAULT, MELOY

A BILL FOR AN ACT ENTITLED: "AN ACT TO PERMIT THE COURT TO PROVIDE FOR TREATMENT OF DEVELOPMENTALLY-DISABLED PERSONS WHO LACK FITNESS TO BE TRIED FOR A CRIMINAL OFFENSE UNDER THE--PROCEDURE--FOR-TREATMENT-OF-DEVELOPMENTALLY-DISABLED-OR THE-SERIOUSLY-MENTALLY-ILL IN AN INSTITUTION TO BE SELECTED BY THE DEPARTMENT OF INSTITUTIONS; AMENDING SECTION SECTIONS 38-1202, 38-1208, 38-1209, 38-1215, 38-1216, AND 95-506, R.C.M. 1947."

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

SECTION 1. SECTION 38-1202, R.C.M. 1947, IS AMENDED TO READ AS FOLLOWS:

"38-1202. Definitions. As used in this act chapter:

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

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

(7) "Professional person" means:

- (a) a medical doctor, or
(b) a person trained in the field of developmental disabilities and certified by the department of institutions

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ADOPTED BY HOUSE OF REPRESENTATIVES AND SENATE

1 or the department of social and rehabilitation services in  
2 accordance with standards of professional licensing boards,  
3 federal regulations, and the joint commissions on  
4 accreditation of hospitals.

5 (8) "Resident" means a person admitted to a  
6 residential facility for a course of evaluation, treatment  
7 or habilitation.

8 (9) "Residential facility" or "facility" means any  
9 residential hospital or hospital and school which exists for  
10 the purpose of evaluating, treating and habilitating the  
11 developmentally disabled on an inpatient basis, including  
12 the Boulder River School and Hospital and the Eastmont  
13 Training Center. The term does not include a group home or  
14 foster home or a halfway house. A correctional facility or  
15 a facility for the treatment of the mentally ill shall not  
16 be a "residential facility" within the meaning of this act.

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

20 (11) "Responsible person" means any person willing and  
21 able to assume responsibility for a person who is  
22 developmentally disabled or alleged to be developmentally  
23 disabled. Whenever, in any proceeding under this act, the  
24 court believes that a conflict of interest may exist between  
25 a person who is developmentally disabled or alleged to be

1 developmentally disabled and his parents or guardian, or  
2 that the parents or guardian are unable to protect the  
3 interests of such person, or whenever there is no parent or  
4 guardian, the court shall appoint a responsible person to  
5 protect the interests of the person who is developmentally  
6 disabled or alleged to be developmentally disabled. Only  
7 one person shall at any one time be the responsible person  
8 within the meaning of this act. In appointing a responsible  
9 person, the court shall consider the preference of the  
10 respondent or patient. The court may at any time, for good  
11 cause shown, change its designation of who is the  
12 responsible person.

13 ~~(12) "Seriously---developmentally---disabled"---means~~  
14 ~~developmentally-disabled-due-to--developmental--or--physical~~  
15 ~~disability--or--a-combination-of--both--rendering-a-person~~  
16 ~~unable-to-function-in-a-community-based--setting which--has~~  
17 ~~resulted--in--self-inflicted--injury-or-injury-to-others; or~~  
18 ~~the-imminent-threat--thereof--or--which--has--deprived--the~~  
19 ~~person--afflicted--of--the--ability--to--protect-his-life-or~~  
20 ~~health. (12) "SERIOUSLY DEVELOPMENTALLY DISABLED" MEANS~~  
21 ~~DEVELOPMENTALLY DISABLED DUE TO DEVELOPMENTAL OR PHYSICAL~~  
22 ~~DISABILITY OR A COMBINATION OF BOTH RENDERING A PERSON~~  
23 ~~UNABLE TO FUNCTION IN A COMMUNITY-BASED SETTING AND WHICH~~  
24 ~~HAS RESULTED IN SELF-INFLECTED INJURY OR INJURY TO OTHERS,~~  
25 ~~OR THE IMMINENT THREAT THEREOF; OR WHICH HAS DEPRIVED THE~~

1 ~~PERSON AFFLICTED OF THE ABILITY TO PROTECT HIS LIFE OR~~  
2 ~~HEALTH."~~

3 ~~SECTION 2. SECTION 38-1208, R.C.M. 1947, IS AMENDED TO~~  
4 ~~READ AS FOLLOWS:~~

5 "38-1208. Recommendation to residential facility. (1)  
6 If as a result of the evaluation and treatment either agreed  
7 to by the parents, guardian, or the person himself pursuant  
8 to section 38-1204 or ordered by the court, the professional  
9 person in charge of the case concludes that the person  
10 evaluated is seriously developmentally disabled and  
11 recommends that treatment and habilitation be had in a  
12 residential facility on an extended basis, the professional  
13 person shall file his written recommendation and report  
14 with the court and request that the court order the  
15 admission. The report shall include the factual basis for  
16 the recommendation, and shall describe any tests or  
17 evaluation devices which have been employed in evaluating  
18 the patient. If no responsible person has yet been  
19 appointed, the court may appoint one at this time. If there  
20 is no parent or guardian the court shall appoint a  
21 responsible person. At the request of the respondent, his  
22 parents or guardian or the responsible person, the court  
23 shall appoint counsel for the respondent. If the parents or  
24 guardian are indigent and if they request it, the court  
25 shall appoint counsel for the parents or guardian. Notice

1 of the recommendation shall be mailed or delivered to the  
2 respondent, his parents or guardian, the responsible person,  
3 next of kin, if known, and the attorney for the respondent,  
4 if any, and for the parents or guardian, if any.

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

13 (3) If the court finds that the respondent is  
14 seriously developmentally disabled and that available  
15 community-based services are not adequate to protect the  
16 life and physical safety of the person and others or to  
17 provide appropriate treatment and habilitation, it shall  
18 order the respondent admitted to a residential facility for  
19 an extended course of treatment and habilitation. If the  
20 court finds that the respondent is developmentally disabled,  
21 and in need of developmental disabilities services but that  
22 available community-based services are adequate to protect  
23 the life and physical safety of the person and others and to  
24 provide appropriate treatment and habilitation, it shall  
25 order the respondent to undertake a community-based course



1 of treatment and habilitation. If the court finds that the  
2 respondent is not developmentally disabled or is not in need  
3 of developmental disability services, it shall dismiss the  
4 request.

5 (4) If none of the parties notified of the  
6 recommendation request a hearing, the court may issue an  
7 order authorizing the person to be admitted to the  
8 residential facility for an extended period of treatment and  
9 habilitation, or the court may initiate its own inquiry as  
10 to whether the order should be granted. The court may  
11 refuse to authorize admission of a person to a residential  
12 facility for an extended period of treatment and  
13 habilitation if such admission is not in the best interests  
14 of the person.

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

1 38-1209. If the professional person in charge of the  
2 resident refuses to authorize the release or transfer, then  
3 the party may petition the court for a hearing to determine  
4 whether the present residential alternative should be  
5 continued. The hearing shall comply with the procedures set  
6 forth in subsection (2) of this section.\*

7 SECTION 3. SECTION 38-1209, R.C.M. 1947, IS AMENDED TO  
8 READ AS FOLLOWS:

9 \*38-1209. Admission to residential facility. (1) No  
10 person shall be admitted to a residential facility for  
11 longer than thirty (30) days except on approval of the  
12 court. Whenever a person is admitted to a residential  
13 facility for longer than thirty (30) days, the court may  
14 appoint a person other than the parents or guardian to act  
15 as responsible person for the resident. If there is no  
16 parent or guardian, the court shall appoint a responsible  
17 person.

18 (2) The court order approving the admission shall  
19 specify the maximum period of time for which the person is  
20 admitted to the residential facility. In no case shall this  
21 maximum period exceed one (1) year.

22 (3) If at any time during the period for which a  
23 person is admitted to a residential facility for an extended  
24 period of habilitation and treatment, the professional  
25 person in charge of the resident decides that there exist

1 sufficient community-based alternatives to provide adequate  
 2 treatment and habilitation for the resident and adequate  
 3 protection of the life and physical safety of the resident  
 4 and others, or that it is in the best interests of the  
 5 resident that he be transferred to another residential  
 6 facility, then he may release the resident to such  
 7 community-based alternative or transfer the resident to the  
 8 other residential facility no less than fifteen (15) days  
 9 after sending notice of the proposed release or transfer to  
 10 the resident, his parents or guardian, the attorney who most  
 11 recently represented the resident, if any, the responsible  
 12 person appointed by the court, if any, and the court which  
 13 ordered the admission. If the resident has been found unfit  
 14 to proceed to trial notice shall be sent to the court which  
 15 found the resident unfit to proceed to trial and to the  
 16 county attorney and the attorney who represented the  
 17 resident at the time the resident was found unfit to proceed  
 18 to trial. If any of the parties so notified objects to the  
 19 release or transfer, they may petition the court for a  
 20 hearing to determine whether the release or transfer should  
 21 be allowed. The hearing shall comply with the procedures  
 22 set forth in section 38-1208. The court may on its own  
 23 initiative inquire concerning the propriety of the release  
 24 or transfer. Nothing in this subsection shall prevent the  
 25 transfer of a resident to a hospital or other medical

1 facility for necessary medical treatment, or emergency  
 2 transfer of a resident to a mental health facility, provided  
 3 such emergency transfer complies with the statutory  
 4 requirements for emergency detention of the mentally ill.  
 5 Within 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,  
 16 his parents or guardian, the next of kin, if known, the  
 17 attorney who most recently represented the resident, if any,  
 18 and the responsible person appointed by the court, if any.  
 19 The recommendation and request shall be accompanied by a  
 20 written report which shall describe the habilitation plan  
 21 which has been undertaken for the resident and the future  
 22 habilitation plan which is anticipated by the professional  
 23 person.

24 (5) If any person so notified requests a hearing, the  
 25 court shall set a time and place for the hearing and shall

1 mail or deliver notice to all of the persons informed of the  
 2 recommendation. The hearing shall be conducted in the  
 3 manner set out in section 38-1208. If the court finds that  
 4 the residential admission is still justified, it may order  
 5 continuation of the admission to that residential facility  
 6 or transfer of the resident to a different residential  
 7 facility. If the court finds that the resident is still in  
 8 need of developmental disabilities services but does not  
 9 require residential treatment, it shall order an appropriate  
 10 course of community-based habilitation, or, if all parties  
 11 are willing for the resident to participate in a  
 12 community-based program of habilitation, it shall dismiss  
 13 the petition. If the need for developmental disabilities  
 14 services no longer exists, the court shall dismiss the  
 15 petition. The court shall not order continuation of  
 16 admission to a residential facility which does not have an  
 17 individualized habilitation plan for the resident. In its  
 18 order, the court shall make findings of fact on which its  
 19 order is based. The court may on its own initiative inquire  
 20 concerning the suitability of continuing an admission to a  
 21 residential facility."

22 SECTION 4. SECTION 38-1215, R.C.M., 1947, IS AMENDED TO  
 23 READ AS FOLLOWS:

24 "38-1215. Limitation on who takes treatment. No person  
 25 who has reached the age of majority shall be compelled

1 against his will to undertake a course of treatment and  
 2 habilitation solely because he is developmentally disabled,  
 3 but only if such disability causes him to be unable to  
 4 protect his life and health or to protect the life or safety  
 5 of others."

6 SECTION 5. SECTION 38-1216, R.C.M., 1947, IS AMENDED TO  
 7 READ AS FOLLOWS:

8 "38-1216. Emergency admission. The parents, guardian,  
 9 the person himself, or a professional person may admit a  
 10 person believed to be developmentally disabled to a  
 11 residential facility on an emergency basis when necessary to  
 12 protect the person or others from death or serious bodily  
 13 harm. However, if requested by the parents, guardian or the  
 14 person admitted on an emergency basis, a petition as set out  
 15 in section 38-1205 shall be filed on the next judicial day  
 16 by the county attorney of the county where the person  
 17 resides. If a petition is filed, the professional person  
 18 assigned by the court to conduct the examination and inquiry  
 19 shall report back to the court on the next judicial day  
 20 following the filing of the petition. Once a petition is  
 21 filed, continued detention in the residential facility shall  
 22 be allowed only on order of the court when necessary to  
 23 protect the respondent or others from death or serious  
 24 bodily harm. In no case shall an emergency admission to a  
 25 residential facility continue for longer than thirty (30)

1 days without subsequent proceedings before the court."

2 Section 6. Section 95-506, R.C.M. 1947, is amended to  
3 read as follows:

4 "95-506. Determination of fitness to proceed -- effect  
5 of finding of unfitness -- proceedings if fitness is  
6 regained. (1) When the defendant's fitness to proceed is  
7 drawn in question, the issue shall be determined by the  
8 court. If neither the county attorney nor counsel for the  
9 defendant contests the finding of the report filed under  
10 section 95-505, the court may make the determination on the  
11 basis of the report. If the finding is contested, the court  
12 shall hold a hearing on the issue. If the report is received  
13 in evidence upon the hearing, the parties have the right to  
14 summon and cross-examine the psychiatrists who joined in the  
15 report and to offer evidence upon the issue.

16 (2) If the court determines that the defendant lacks  
17 fitness to proceed, the proceeding against him shall be  
18 suspended, except as provided in subsection ~~(3)~~ ~~(4)~~ (3) of  
19 this section, and the court shall commit him to the custody  
20 of the ~~superintendent of Warm Springs state hospital~~  
21 DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS, to be placed in  
22 an appropriate institution of the department of institutions  
23 for so long as the unfitness endures. When the court, on its  
24 own motion or upon the application of the ~~superintendent of~~  
25 ~~Warm Springs state hospital~~ DIRECTOR OF THE DEPARTMENT OF

1 INSTITUTIONS, or the county attorney, or the defendant or  
2 his legal representative, determines, after a hearing if a  
3 hearing is requested, that the defendant has regained  
4 fitness to proceed, the proceeding shall be resumed. If,  
5 however, the court is of the view that so much time has  
6 elapsed since the commitment of the defendant that it would  
7 be unjust to resume the criminal proceedings, the court may  
8 dismiss the charge and may order the defendant to be  
9 discharged, or, subject to the law governing the civil  
10 commitment of persons suffering from mental disease or  
11 defect, order the defendant committed to an appropriate  
12 institution of the department of institutions.

13 ~~(2) If the court determines that the defendant lacks~~  
14 ~~fitness to proceed due to the fact that the person is~~  
15 ~~developmentally disabled as defined by 38-1202, the~~  
16 ~~proceeding against him shall be suspended, except as~~  
17 ~~provided in subsection (4) of this section, and the court~~  
18 ~~shall proceed to secure treatment as provided in Title 38,~~  
19 ~~chapter 12, or Title 38, chapter 13. (3) IF THE COURT~~  
20 ~~DETERMINES THAT THE DEFENDANT LACKS FITNESS TO PROCEED DUE~~  
21 ~~TO THE FACT THAT THE PERSON IS DEVELOPMENTALLY DISABLED AS~~  
22 ~~DEFINED BY 38-1202, THE PROCEEDING AGAINST HIM SHALL BE~~  
23 ~~SUSPENDED, EXCEPT AS PROVIDED IN SUBSECTION (4) OF THIS~~  
24 ~~SECTION, AND THE COURT SHALL PROCEED TO SECURE TREATMENT AS~~  
25 ~~PROVIDED IN TITLE 38, CHAPTER 12, OR TITLE 38, CHAPTER 13.~~

1       ~~(3)(4)(5)~~ The fact that the defendant is unfit to  
2 proceed does not preclude any legal objection to the  
3 prosecution which is susceptible to fair determination prior  
4 to ~~trial~~ TRIAL and without the personal participation of the  
5 defendant.

6       ~~(4)(5)(4)(5)~~ The expenses of sending the defendant to  
7 the custody of the ~~superintendent--of--the--Montano--state~~  
8 ~~hospital~~ DIRECTOR OF THE DEPARTMENT OF INSTITUTIONS, to be  
9 placed in an appropriate institution of the state department  
10 of institutions, of keeping him there, and of bringing him  
11 back, are in the first instance chargeable to the county in  
12 which the indictment was found, or the information filed;  
13 but the county may recover them from the estate of the  
14 defendant, if he has any, or from a town, city or county  
15 bound to provide for and maintain him elsewhere."

-End-