

CHAPTER NO. 485

HOUSE BILL NO. 487

INTRODUCED BY BENGTON, TOWE

IN THE HOUSE

January 31, 1979	Introduced and referred to Committee on Human Services.
February 20, 1979	Committee recommend bill do pass. Report adopted.
February 21, 1979	Second reading, do pass as amended.
February 22, 1979	Correctly engrossed. Third reading, passed. Transmitted to second house.

IN THE SENATE

February 23, 1979	Introduced and referred to Committee on Judiciary.
March 13, 1979	Committee recommend bill be concurred in as amended. Report adopted.
March 15, 1979	Second reading, concurred in.
March 17, 1979	Third reading, concurred in as amended.

IN THE HOUSE

March 19, 1979	Returned from second house. Concurred in as amended.
March 20, 1979	On motion, consideration passed until the 71st Legislative Day.
March 29, 1979	Second reading, amendments adopted.
March 30, 1979	Third reading, amendments adopted. Sent to enrolling. Reported correctly enrolled.

1 HOUSE BILL NO. 487
 2 INTRODUCED BY Bongton Sen.

3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES
 5 TO ALLOW A SERIOUSLY DEVELOPMENTALLY DISABLED PERSON,
 6 INCLUDING A MINOR, TO VOLUNTARILY ADMIT HIMSELF TO A
 7 RESIDENTIAL FACILITY; PROVIDING FOR THE COST OF ADMISSION;
 8 REQUIRING PERIODIC PHARMACEUTICAL OR MEDICAL REVIEWS OF
 9 RESIDENT MEDICATIONS; ESTABLISHING STIPULATIONS FOR THE
 10 RELEASE OF RECORDS; AND GENERALLY REVISING AND CLARIFYING
 11 THE LAWS RELATING TO THE DEVELOPMENTALLY DISABLED; AMENDING
 12 SECTIONS 53-20-104, 53-20-114, 53-20-123, 53-20-130,
 13 53-20-142, 53-20-144 THROUGH 53-20-146, 53-20-148,
 14 53-20-161, AND 53-21-187, MCA."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 17 NEW SECTION. Section 1. Voluntary admission to
 18 residential facility -- procedures -- rights. (1) Nothing in
 19 this part may be construed in any way as limiting the right
 20 of any person who is seriously developmentally disabled to
 21 make voluntary application for admission at any time to any
 22 facility for residential evaluation or habilitation. Except
 23 for minors as provided for in [section 2], a seriously
 24 developmentally disabled person, or the parents or guardian
 25 of a seriously developmentally disabled person who is unable

1 to give informed consent, may apply for admission to any
 2 facility for evaluation or habilitation. An application for
 3 admission to a facility must be in writing on a form
 4 prescribed by the facility and approved by the department.
 5 An application may not be accepted unless a professional
 6 person has first certified that the applicant is seriously
 7 developmentally disabled and that the community-based
 8 facilities in the region of the person's residence are
 9 unable to provide adequate evaluation and treatment. An
 10 approved copy of the application must be given to the
 11 person requesting admittance to the residential facility or
 12 to the parents or guardian of a person unable to give
 13 informed consent. The application form must contain a
 14 statement of the rights of the person applying for
 15 admission, including the right to release, and a statement
 16 prohibiting the facility from detaining a person more than 5
 17 days (excluding weekends and holidays) beyond a written
 18 request for release on behalf of the person.

19 (2) The community-based professional person is
 20 responsible for the respondent until a court has formally
 21 committed the respondent to a facility for habilitation or
 22 treatment.

23 (3) A person voluntarily entering or remaining in a
 24 facility shall have the same rights as those persons
 25 involuntarily committed to a facility except that a person

1 who voluntarily admits himself shall have the right to
2 release himself at will.

3 NEW SECTION. Section 2. Voluntary admission of
4 minors. (1) A minor who is 16 years of age or older may
5 consent to receive developmental disability services that
6 are provided by a facility, a person licensed to practice
7 medicine, or a person certified by the department of
8 institutions as a professional person in the area of
9 developmental disabilities.

10 (2) Voluntary admission of a minor can be made:

11 (a) by the parent or guardian in charge of a person
12 under the age of 12; or

13 (b) jointly by the parent or guardian in charge of a
14 person over the age of 12 but under the age of majority and
15 the person, if the person is capable of giving informed
16 consent to the admission.

17 (3) When the minor is over the age of 12 and he and
18 his parents do not agree, the minor can be voluntarily
19 admitted to a facility only if he receives legal counsel.

20 NEW SECTION. Section 3. Cost of voluntary admission.

21 (1) The cost of involuntarily committing a person who is
22 voluntarily admitted to a facility at the time the
23 involuntary proceedings are commenced shall be paid by the
24 county of the person's residence at the time of admission.

25 (2) The costs of transportation to a residential

1 facility shall be paid by the welfare department of the
2 county of the person's residence. However, if protective
3 proceedings have been or are being initiated, the welfare
4 department may seek reimbursement. If no one is available to
5 transport the person, the sheriff shall provide
6 transportation.

7 Section 4. Section 53-20-104, MCA, is amended to read:

8 "53-20-104. Powers and duties of mental disabilities
9 board of visitors. (1) The board shall be an independent
10 board of inquiry and review to assure that the treatment of
11 all persons admitted to a residential facility is humane and
12 decent and meets the requirements set forth in this part.

13 (2) 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 part may be
24 commenced unless it is approved by the mental disabilities
25 board of visitors.

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

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

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

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

21 (7) If the board believes that any facility is failing
22 to comply with the provisions of this part in regard to its
23 physical facilities or its treatment of any resident, it
24 shall report its findings at once to the professional person
25 in charge of the facility and the director of the department

1 of institutions. If appropriate, after waiting a reasonable
2 time for a response from such professional person, if an
3 acceptable response does not follow, the board may notify
4 the parents or guardian of any patient resident involved,
5 the next of kin, if known, the responsible person appointed
6 by the court for any patient resident involved, and the
7 district court which has jurisdiction over the facility of
8 the failure to comply.

9 (8) The board shall report annually to the governor
10 and shall report to each session of the legislature
11 concerning the status of the residential facilities and
12 habilitation programs which it has inspected."

13 Section 5. Section 53-20-114, MCA, is amended to read:

14 "53-20-114. Appointment of responsible person.
15 Whenever, in any proceeding under this part, the court
16 believes that a conflict of interest may exist between a
17 person who is developmentally disabled or alleged to be
18 developmentally disabled and his parents or guardian or that
19 the parents or guardian are unable to protect the interests
20 of such person or whenever there is no parent or guardian,
21 the court shall appoint a responsible person to protect the
22 interests of the person who is developmentally disabled or
23 alleged to be developmentally disabled. The responsible
24 person may not be an employee of a residential facility.
25 Only one person shall at any one time be the responsible

1 person within the meaning of this part. In appointing a
 2 responsible person, the court shall consider the preference
 3 of the respondent or patient. The court may at any time,
 4 for good cause shown, change its designation of who is the
 5 responsible person. The appointment of the responsible
 6 person must terminate at the time of the resident's
 7 discharge from the residential facility."

8 Section 6. Section 53-20-123, MCA, is amended to read:
 9 "53-20-123. Outcome of examination -- dismissal of
 10 petition -- court-ordered evaluation and treatment --
 11 hearing. (1) If the professional person, based on his
 12 examination and inquiry, determines that the respondent is
 13 not developmentally disabled or is not in need of
 14 developmental disability services, he shall report this
 15 finding in writing to the court and the petition shall be
 16 dismissed. If the professional person concludes that the
 17 respondent is developmentally disabled and in need of
 18 developmental disability services, he shall report this
 19 conclusion to the court in writing, together with his
 20 recommendations for evaluation and treatment. The report
 21 shall include an explanation of the basis on which the
 22 professional person has reached his conclusion, ~~and shall~~
 23 ~~include~~ a description of any tests or evaluation devices he
 24 has employed, and an opinion of whether institutional or
 25 community services are required. The recommendation as to

1 placement shall be based on consultation with the mental
 2 health and residential services division of the department
 3 of institutions or the superintendent or agent of a
 4 residential facility or the director of the developmental
 5 disabilities division of the department of social and
 6 rehabilitation services.

7 (2) (a) If the professional person's recommendation is
 8 for further evaluation and treatment, notice of this
 9 recommendation shall be sent to the respondent, his parents
 10 or guardian, the next of kin, the responsible person
 11 appointed by the court, if any, and any attorney
 12 representing the respondent or his parents or guardian. If
 13 no responsible person has yet been appointed, the court may
 14 appoint one at this time.

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

21 (3) Prior to any hearing held pursuant to this
 22 section, the court shall appoint counsel to represent the
 23 respondent if the respondent has not retained independent
 24 counsel. The parents (or guardian) shall be informed of
 25 their right to counsel, and if they are indigent, the court

1 shall on their request appoint counsel for them. In no case
2 may the same attorney represent the respondent and his
3 parents or guardian.

4 (4) If the hearing is waived or if the court finds,
5 after hearing, that the respondent is developmentally
6 disabled and in need of further evaluation and treatment,
7 the court shall order that the respondent undergo such
8 evaluation and treatment. Evaluation and treatment ordered
9 pursuant to this subsection may not be for more than 30
10 days. It shall take place in the least restrictive
11 environment in which the necessary evaluation and treatment
12 can be accomplished. Evaluation and treatment in a
13 residential facility may be ordered only if the necessary
14 evaluation and treatment cannot be accomplished through the
15 use of community-based facilities."

16 Section 7. Section 53-20-130, MCA, is amended to read:
17 "53-20-130. Patient transfers from mental health
18 facilities. If any person is a patient in a mental health
19 facility and the professional person in charge of the
20 patient determines that the patient is suffering from a
21 developmental disability rather than mental illness and
22 should more properly be admitted to a residential facility
23 or an appropriate less restrictive alternative, then the
24 professional person shall commence proceedings to effect
25 such admission, consistent with the procedures set forth in

1 this part for admissions generally."

2 Section 8. Section 53-20-142, MCA, is amended to read:

3 "53-20-142. Rights while in a residential facility.
4 Persons admitted to a residential facility for a period of
5 habilitation shall enjoy the following rights:

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

8 (2) Residents shall be entitled to send and receive
9 sealed mail. Moreover, it shall be the duty of the facility
10 to foster the exercise of this right by furnishing the
11 necessary materials and assistance.

12 (3) Residents shall have the same rights and access to
13 private telephone communication as patients at any public
14 hospital except to the extent that a professional person
15 responsible for formulation of a particular resident's
16 habilitation plan writes an order imposing special
17 restrictions and explains the reasons for any such
18 restrictions. The written order must be renewed monthly if
19 any restrictions are to be continued.

20 (4) Residents shall have an unrestricted right to
21 visitation except to the extent that a professional person,
22 responsible for formulation of a particular resident's
23 habilitation plan writes an order imposing special
24 restrictions and explains the reasons for any such
25 restrictions. The written order must be renewed monthly if

1 any restrictions are to be continued.

2 (5) Residents shall have a right to receive suitable
3 educational and habilitation services regardless of
4 chronological age, degree of retardation, or accompanying
5 disabilities or handicaps.

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

19 (7) Each resident shall have the right to keep and use
20 his own personal possessions except insofar as such clothes
21 or personal possessions may be determined by a professional
22 person to be dangerous either to himself or to others.

23 (8) A resident has a right to a humane physical
24 environment within the residential facilities. These
25 facilities shall be designed to make a positive contribution

1 to the efficient attainment of the habilitation goals of the
2 resident. To accomplish this purpose:

3 (a) regular housekeeping and maintenance procedures
4 which will ensure that the facility is maintained in a safe,
5 clean, and attractive condition shall be developed and
6 implemented;

7 (b) pursuant to an established routine maintenance and
8 repair program, the physical plant shall be kept in a
9 continuous state of good repair and operation so as to
10 ensure the health, comfort, safety, and well-being of the
11 residents and so as not to impede in any manner the
12 habilitation programs of the residents;

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

18 (d) there must be special facilities for nonambulatory
19 residents to assure their safety and comfort, including
20 special fittings on toilets and wheelchairs. Appropriate
21 provision shall be made to permit nonambulatory residents to
22 communicate their needs to staff.

23 (9) Residents shall have a right to receive prompt and
24 adequate medical treatment for any physical ailments or
25 mental ailments, injuries, or physical disabilities and for

1 the prevention of any illness or disability. Such medical
2 treatment shall meet standards of medical practice in the
3 community.

4 (10) Corporal punishment shall not be permitted.

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

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

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

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

8 Section 9. Section 53-20-144, MCA, is amended to read:

9 "53-20-144. Rights concerning photographs. (1) A
10 person admitted to a residential facility may be
11 photographed upon admission for identifications, medical,
12 habilitative, and the administrative purposes of the
13 facility. Such photographs shall be confidential and shall
14 not be released by the facility except pursuant to court
15 order.

16 (2) No other nonmedical or nonhabilitative photographs
17 shall be taken or used without consent of the resident's
18 parents or guardian or the responsible person appointed by
19 the court."

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

22 "53-20-145. Right to be free from unnecessary or
23 excessive medication. Residents have a right to be free from
24 unnecessary or excessive medication. No medication shall be
25 administered unless at the written order of a physician. The

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1 professional person in charge of the facility and the
 2 attending physician shall be responsible for all medication
 3 given or administered to a resident. The use of medication
 4 shall not exceed standards of use that are advocated by the
 5 United States food and drug administration. Notation of each
 6 individual's medication shall be kept in his medical
 7 records. ~~A pharmacist or a registered nurse shall review~~
 8 ~~monthly the record of each resident on medication for~~
 9 ~~potential adverse reactions, allergies, interactions,~~
 10 ~~contraindications, rationality, and laboratory test~~
 11 ~~modifications and shall advise the physician of any~~
 12 ~~problems. Medications shall be reviewed quarterly by the~~
 13 ~~attending or staff physician. At least monthly an attending~~
 14 ~~physician shall review the drug regimen of each patient on~~
 15 ~~psychotropic medication. All prescriptions shall be written~~
 16 ~~with a termination date that may not exceed 90 days.~~
 17 ~~Medication for newly admitted residents shall be reviewed~~
 18 ~~and reordered as necessary upon admission and then every 30~~
 19 ~~days for the first 90 days. At least weekly, an attending~~
 20 ~~physician shall review the drug regimen of each patient~~
 21 ~~under his care. All prescriptions shall be written with a~~
 22 ~~termination date which shall not exceed 30 days.~~
 23 Medications shall not be used as punishment, for the
 24 convenience of staff, as a substitute for programs or in
 25 quantities that interfere with the resident's treatment

1 program."

2 Section 11. Section 53-20-146, MCA, is amended to
 3 read:

4 "53-20-146. Right not to be subjected to certain
 5 treatment procedures. (1) Residents of a residential
 6 facility shall have a right not to be subjected to any
 7 unusual or hazardous treatment procedures without the
 8 express and informed consent of the resident, if the
 9 resident is able to give such consent, and of his parents or
 10 guardian or the responsible person appointed by the court
 11 after opportunities for consultation with independent
 12 specialists and legal counsel. Such proposed procedures
 13 shall first have been reviewed and approved by the mental
 14 disabilities board of visitors before such consent shall be
 15 sought.

16 (2) Physical restraint shall be employed only when
 17 absolutely necessary to protect the resident from injury to
 18 himself or to prevent injury to others. ~~Mechanical supports~~
 19 ~~used to achieve proper body position and balance which are~~
 20 ~~ordered by a physician are not considered a physical~~
 21 ~~restraint. Restraint shall not be employed as punishment,~~
 22 ~~for the convenience of staff, or as a substitute for a~~
 23 ~~habilitation program. Restraint shall be applied only if~~
 24 ~~alternative techniques have failed and only if such~~
 25 ~~restraint imposes the least possible restriction consistent~~

1 with its purpose. Only a professional person may authorize
 2 the use of restraints. Orders for restraints by a
 3 professional person shall be in writing and shall not be in
 4 force for longer than 12 hours. Whenever physical restraint
 5 is ordered, suitable provision shall be made for the comfort
 6 and physical needs of the person restrained.

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

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

24 (5) No resident shall be subjected to a behavior
 25 modification program which attempts to extinguish socially

1 appropriate behavior or to develop new behavior patterns
 2 when such behavior modifications serve only institutional
 3 convenience.

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

14 Section 12. Section 53-20-148, MCA, is amended to
 15 read:

16 "53-20-148. Right to habilitation. (1) Persons
 17 admitted to residential facilities shall have a right to
 18 habilitation, including medical treatment, education, and
 19 care suited to their needs, regardless of age, degree of
 20 retardation, or handicapping condition. Each resident has a
 21 right to a habilitation program which will maximize his
 22 human abilities and enhance his ability to cope with his
 23 environment. Every residential facility shall recognize that
 24 each resident, regardless of ability or status, is entitled
 25 to develop and realize his fullest potential. The facility

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1 shall implement the principle of normalization so that each
2 resident may live as normally as possible.

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

- 7 (a) more to less structured living;
- 8 (b) larger to smaller facilities;
- 9 (c) larger to smaller living units;
- 10 (d) group to individual residence;
- 11 (e) segregated from the community to integrated into
12 the community living;
- 13 (f) dependent to independent living.

14 (3) Within 30 days of his admission to a residential
15 facility, each resident shall have an evaluation by
16 appropriate specialists for programming purposes.

17 (4) Each resident shall have an individualized
18 habilitation plan formulated by the facility. This plan
19 shall be developed by appropriate professional persons and
20 implemented as soon as possible, but no later than ~~4~~ 30
21 days after the resident's admission to the facility. An
22 interim program of habilitation, based on the preadmission
23 evaluation conducted pursuant to this part, shall commence
24 promptly upon the resident's admission. Each individualized
25 habilitation plan shall contain:

1 (a) a statement of the nature of the specific
2 limitations and ~~specific~~ general needs of the resident;

3 (b) a description of intermediate and long-range
4 habilitation goals with a projected timetable for their
5 attainment;

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

9 (d) a statement of the least restrictive setting for
10 habilitation necessary to achieve the habilitation goals of
11 the resident;

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

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

18 (5) As part of his habilitation plan, each resident
19 shall have an individualized postinstitutionalization plan
20 that includes an identification of services needed to make a
21 satisfactory community placement possible. This plan shall
22 be developed by a professional person who shall begin
23 preparation of such plan upon the resident's admission to
24 the institution and shall complete such plan as soon as
25 practicable. The parents or guardian or next of kin of the

1 resident, the responsible person appointed by the court, if
 2 any, and the resident, if able to give informed consent,
 3 shall be consulted in the development of such plan and shall
 4 be informed of the content of such plan.

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

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

25 (8) Each resident ~~discharged~~ to placed in the

1 community shall ~~have a program of~~ receive transitional
 2 habilitation assistance.

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

12 (10) The parents or guardian of each resident or the
 13 responsible person appointed by the court shall promptly
 14 upon the resident's admission receive a written copy of,
 15 including but not limited to, all the above standards for
 16 adequate habilitation. Each resident, if the resident is
 17 able to comprehend, shall promptly upon his admission be
 18 orally informed in clear language of the above standards
 19 and, where appropriate, be provided with a written copy."

20 Section 13. Section 53-20-161, MCA, is amended to
 21 read:

22 "53-20-161. Maintenance of records. (1) Complete
 23 records for each resident shall be maintained and shall be
 24 readily available to professional persons, to the
 25 resident-care workers who are directly involved with the

1 particular resident, and to the mental disabilities board of
 2 visitors. All information contained in a resident's records
 3 shall be considered privileged and confidential. The parents
 4 or guardian, the responsible person appointed by the court,
 5 and any person properly authorized in writing by the
 6 resident, if such resident is capable of giving informed
 7 consent, or by his parents or guardian or the responsible
 8 person shall be permitted access to the resident's records.
 9 ~~No information may be released from the records of a~~
 10 ~~resident or former resident of the residential facility~~
 11 ~~unless the release of such information has been properly~~
 12 ~~authorized in writing by:~~

13 (a) ~~the court;~~
 14 (b) ~~the resident or former resident if he is over the~~
 15 ~~age of majority and is capable of giving informed consent;~~
 16 (c) ~~the parents or guardian in charge of a resident~~
 17 ~~under the age of 12;~~
 18 (d) ~~the parents or guardian in charge of a resident~~
 19 ~~over the age of 12 but under the age of majority and the~~
 20 ~~resident if the resident is capable of giving informed~~
 21 ~~consent;~~
 22 (e) ~~the guardian of a resident over the age of~~
 23 ~~majority who is incapable of giving informed consent;~~
 24 (f) ~~the superintendent of the residential facility or~~
 25 ~~his designee as custodian of a resident over the age of~~

1 ~~majority who is incapable of giving informed consent and for~~
 2 ~~whom no legal guardian has been appointed;~~
 3 (g) ~~the superintendent of the residential facility or~~
 4 ~~his designee as custodian of a resident under the age of~~
 5 ~~majority for whom there is no parent or legal guardian; or~~
 6 (h) ~~the superintendent of the residential facility or~~
 7 ~~his designee as custodian of a resident of that facility may~~
 8 ~~release information as required by federal and state law and~~
 9 ~~department of social and rehabilitation services rules.~~

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

21 (3) These records shall include:
 22 (1)(a) identification data, including the resident's
 23 legal status;
 24 (2)(b) the resident's history, including but not
 25 limited to:

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

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

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

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

8 (5)(e) a record of each physical examination which
 9 describes the results of the examination;

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

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

19 (8)(h) a copy of the postinstitutionalization plan
 20 that includes a statement of services needed in the
 21 community and any modifications thereto and a summary of the
 22 steps that have been taken to implement that plan;

23 (9)(i) a medication history and status;

24 (10)(j) a summary of each significant contact by a
 25 professional person with a resident;

1 (11)(k) a summary of the resident's response to his
 2 program habilitation plan, prepared by a professional person
 3 involved in the resident's habilitation and recorded at
 4 least monthly. Wherever possible, such response shall be
 5 scientifically documented.

6 (12)(l) a monthly summary of the extent and nature of
 7 the resident's work activities and the effect of such
 8 activity upon the resident's progress along the habilitation
 9 plan;

10 (13)(m) a signed order by a professional person for
 11 any physical restraints;

12 (14)(n) a description of any extraordinary incident or
 13 accident in the facility involving the resident, to be
 14 entered by a staff member noting personal knowledge of the
 15 incident or accident or other source of information,
 16 including any reports of investigations of resident's
 17 mistreatment;

18 (15)(o) a summary of family visits and contacts;

19 (16)(p) a summary of attendance and leaves from the
 20 facility;

21 (17)(q) a record of any seizures, illnesses, injuries
 22 and treatments thereof, and immunizations.*

23 Section 14. Section 53-21-187, MCA, is amended to
 24 read:

25 *53-21-187. Clothing for patients discharged or

1 conditionally released. A patient may not be discharged or
2 conditionally released from a mental health facility or
3 residential facility for the developmentally disabled
4 without suitable reasonable clothing ~~adapted to the season~~
5 ~~in which he is discharged~~ which will allow the resident to
6 make a normal appearance in the community."

7 Section 15. Codification. It is intended that sections
8 1 through 3 be codified as an integral part of Title 53,
9 chapter 20, part 1, and the provisions of Title 53, chapter
10 20, apply to sections 1 through 3.

-End-

HOUSE BILL NO. 487

INTRODUCED BY BENGTON, TOWE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO ALLOW A SERIOUSLY DEVELOPMENTALLY DISABLED PERSON, INCLUDING A MINOR, TO VOLUNTARILY ADMIT HIMSELF TO A RESIDENTIAL FACILITY, PROVIDING FOR THE BEST OF ADMISSION, REQUIRING REQUIRE PERIODIC PHARMACEUTICAL OR MEDICAL REVIEWS OF RESIDENT MEDICATIONS; ESTABLISHING STIPULATIONS FOR THE RELEASE OF RECORDS; AND GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO THE DEVELOPMENTALLY DISABLED; AMENDING SECTIONS 53-20-104, 53-20-114, 53-20-123, 53-20-130, 53-20-142, 53-20-144 THROUGH 53-20-146, 53-20-148, 53-20-161, AND 53-21-187, MCA."

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

~~NEW SECTION~~ Section 53-20-104. Voluntary admission to residential facility procedures and rights. (1) Nothing in this part may be construed in any way as limiting the right of any person who is seriously developmentally disabled to make voluntary application for admission at any time to any facility for residential evaluation or habitation. Except for minors as provided for in section 53-20-104, a seriously developmentally disabled person or the parents or guardian of a seriously developmentally disabled

person who is unable to give informed consent, may apply for admission to any facility for evaluation or habitation. An application for admission to a facility must be in writing on a form prescribed by the facility and approved by the department. An application may not be accepted unless a professional person has first certified that the applicant is seriously developmentally disabled and that the community-based facilities in the region of the person's residence are unable to provide adequate evaluation and treatment. An approved copy of the application must be given to the person requesting admittance to the residential facility or to the parents or guardian of a person unable to give informed consent. The application form must contain a statement of the rights of the person applying for admission, including the right to release and a statement prohibiting the facility from detaining a person more than 5 days (excluding weekends and holidays) beyond a written request for release on behalf of the person.

(2) The community-based professional person is responsible for the respondent until a court has formally committed the respondent to a facility for habitation or treatment.

(3) A person voluntarily entering or remaining in a facility shall have the same rights as those persons involuntarily committed to a facility except that a person

1 who voluntarily admits himself shall have the right to
2 release himself at will.

3 NEW SECTION Section 2. Voluntary admission of
4 minors. (1) A minor who is 16 years of age or older may
5 consent to receive developmental disability services that
6 are provided by a facility, a person licensed to practice
7 medicine or a person certified by the department of
8 institutions as a professional person in the area of
9 developmental disabilities.

10 (2) Voluntary admission of a minor can be made
11 (a) by the parent or guardian in charge of a person
12 under the age of 12 or

13 (b) jointly by the parent or guardian in charge of a
14 person over the age of 12 but under the age of majority and
15 the person, if the person is capable of giving informed
16 consent to the admission.

17 (3) When the minor is over the age of 12 and he and
18 his parents do not agree, the minor can be voluntarily
19 admitted to a facility only if he receives legal counsel.

20 NEW SECTION Section 3. Cost of voluntary admission.
21 (1) The cost of involuntarily committing a person who is
22 voluntarily admitted to a facility at the time the
23 involuntary proceedings are commenced shall be paid by the
24 county of the person's residence at the time of admission.

25 (2) The costs of transportation to a residential

1 facility shall be paid by the welfare department of the
2 county of the person's residence. However, if protective
3 proceedings have been or are being initiated, the welfare
4 department may seek reimbursement if no one is available to
5 transport the person, the sheriff shall provide
6 transportation.

7 Section 1. Section 53-20-104, MCA, is amended to read:
8 "53-20-104. Powers and duties of mental disabilities
9 board of visitors. (1) The board shall be an independent
10 board of inquiry and review to assure that the treatment of
11 all persons admitted to a residential facility is humane and
12 decent and meets the requirements set forth in this part.

13 (2) 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 part may be
24 commenced unless it is approved by the mental disabilities
25 board of visitors.

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

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

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

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

21 (7) If the board believes that any facility is failing
22 to comply with the provisions of this part in regard to its
23 physical facilities or its treatment of any resident, it
24 shall report its findings at once to the professional person
25 in charge of the facility and the director of the department

1 of institutions. If appropriate, after waiting a reasonable
2 time for a response from such professional person, ~~if an~~
3 ~~acceptable response does not follow~~, the board may notify
4 the parents or guardian of any patient resident involved,
5 the next of kin, if known, the responsible person appointed
6 by the court for any patient resident involved, and the
7 district court which has jurisdiction over the facility of
8 ~~the failure to comply.~~

9 (8) The board shall report annually to the governor
10 and shall report to each session of the legislature
11 concerning the status of the residential facilities and
12 habilitation programs which it has inspected."

13 Section 2. Section 53-20-114, MCA, is amended to read:
14 "53-20-114. Appointment of responsible person.
15 Whenever, in any proceeding under this part, the court
16 believes that a conflict of interest may exist between a
17 person who is developmentally disabled or alleged to be
18 developmentally disabled and his parents or guardian or that
19 the parents or guardian are unable to protect the interests
20 of such person or whenever there is no parent or guardian,
21 the court shall appoint a responsible person to protect the
22 interests of the person who is developmentally disabled or
23 alleged to be developmentally disabled. The responsible
24 person may not be an employee of a residential facility.
25 Only one person shall at any one time be the responsible

1 person within the meaning of this part. In appointing a
 2 responsible person, the court shall consider the preference
 3 of the respondent or patient. The court may at any time,
 4 for good cause shown, change its designation of who is the
 5 responsible person. The appointment of the responsible
 6 person must terminate at the time of the resident's
 7 discharge from the residential facility. HOWEVER, THE
 8 APPOINTMENT OF THE RESPONSIBLE PERSON SHALL NOT TERMINATE
 9 DURING ANY PERIOD OF CONDITIONAL RELEASE FROM THE FACILITY."

10 Section 3. Section 53-20-123, MCA, is amended to read:
 11 *53-20-123. Outcome of examination -- dismissal of
 12 petition -- court-ordered evaluation and treatment --
 13 hearing. (1) If the professional person, based on his
 14 examination and inquiry, determines that the respondent is
 15 not developmentally disabled or is not in need of
 16 developmental disability services, he shall report this
 17 finding in writing to the court and the petition shall be
 18 dismissed. If the professional person concludes that the
 19 respondent is developmentally disabled and in need of
 20 developmental disability services, he shall report this
 21 conclusion to the court in writing, together with his
 22 recommendations for evaluation and treatment. The report
 23 shall include an explanation of the basis on which the
 24 professional person has reached his conclusion, and shall
 25 include a description of any tests or evaluation devices he

1 has employed, and an opinion of whether institutional or
 2 community services are required. The recommendation as to
 3 placement shall be based on consultation with the mental
 4 health and residential services division of the department
 5 of institutions or the superintendent or agent of a
 6 residential facility or the director of the developmental
 7 disabilities division of AND the department of social and
 8 rehabilitation services. THE TWO DEPARTMENTS SHALL DEVELOP
 9 WRITTEN POLICIES TO IMPLEMENT THIS REQUIREMENT.

10 (2) (a) If the professional person's recommendation is
 11 for further evaluation and treatment, notice of this
 12 recommendation shall be sent to the respondent, his parents
 13 or guardian, the next of kin, the responsible person
 14 appointed by the court, if any, and any attorney
 15 representing the respondent or his parents or guardian. If
 16 no responsible person has yet been appointed, the court may
 17 appoint one at this time.

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

24 (3) Prior to any hearing held pursuant to this
 25 section, the court shall appoint counsel to represent the

1 respondent if the respondent has not retained independent
 2 counsel. The parents (or guardian) shall be informed of
 3 their right to counsel, and if they are indigent, the court
 4 shall on their request appoint counsel for them. In no case
 5 may the same attorney represent the respondent and his
 6 parents or guardian.

7 (4) If the hearing is waived or if the court finds,
 8 after hearing, that the respondent is developmentally
 9 disabled and in need of further evaluation and treatment,
 10 the court shall order that the respondent undergo such
 11 evaluation and treatment. Evaluation and treatment ordered
 12 pursuant to this subsection may not be for more than 30
 13 days. It shall take place in the least restrictive
 14 environment in which the necessary evaluation and treatment
 15 can be accomplished. Evaluation and treatment in a
 16 residential facility may be ordered only if the necessary
 17 evaluation and treatment cannot be accomplished through the
 18 use of community-based facilities."

19 Section 4. Section 53-20-130, MCA, is amended to read:
 20 "53-20-130. Patient transfers from mental health
 21 facilities. If any person is a patient in a mental health
 22 facility and the professional person in charge of the
 23 patient determines that the patient is suffering from a
 24 developmental disability rather than mental illness and
 25 should more properly be admitted to a residential facility

1 ~~or an appropriate less restrictive alternative,~~ then the
 2 professional person shall commence proceedings to effect
 3 such admission, consistent with the procedures set forth in
 4 this part for admissions generally."

5 Section 5. Section 53-20-142, MCA, is amended to read:
 6 "53-20-142. Rights while in a residential facility.
 7 Persons admitted to a residential facility for a period of
 8 habilitation shall enjoy the following rights:

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

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

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

23 (4) Residents shall have an unrestricted right to
 24 visitation except to the extent that a professional person
 25 responsible for formulation of a particular resident's

1 habilitation plan writes an order imposing special
 2 restrictions and explains the reasons for any such
 3 restrictions. The written order must be renewed monthly if
 4 any restrictions are to be continued.

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

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

22 (7) Each resident shall have the right to keep and use
 23 his own personal possessions except insofar as such clothes
 24 or personal possessions may be determined by a professional
 25 person to be dangerous either to himself or to others.

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

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

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

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

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

1 (9) Residents shall have a right to receive prompt and
 2 adequate medical treatment for any physical ailments or
 3 ~~mental ailments, injuries, or physical disabilities~~ and for
 4 the prevention of any illness or disability. Such medical
 5 treatment shall meet standards of medical practice in the
 6 community. ~~HOWEVER, NOTHING IN THIS SUBSECTION SHALL BE~~
 7 ~~INTERPRETED TO IMPAIR THE RIGHT OF ANY RESIDENT IN REGARD TO~~
 8 ~~INVOLUNTARY COMMITMENT FOR MENTAL ILLNESS, USE OF~~
 9 ~~PSYCHOTROPIC MEDICATION, USE OF HAZARDOUS, AVERSIVE, OR~~
 10 ~~EXPERIMENTAL PROCEDURES, OR THE REFUSAL OF TREATMENT BY A~~
 11 ~~RESIDENT.~~

12 (10) Corporal punishment shall not be permitted.

13 (11) The opportunity for religious worship shall be
 14 accorded to each resident who desires such worship.
 15 Provisions for religious worship shall be made available to
 16 all residents on a nondiscriminatory basis. No individual
 17 shall be compelled to engage in any religious activities.

18 (12) Residents shall have a right to a nourishing,
 19 well-balanced diet. The diet for residents shall provide at
 20 a minimum the recommended daily dietary allowance as
 21 developed by the national academy of sciences. Provisions
 22 shall be made for special therapeutic diets and for
 23 substitutes at the request of the resident, his parents,
 24 guardian, or next of kin, or the responsible person
 25 appointed by the court in accordance with the religious

1 requirements of any resident's faith. Denial of a
 2 nutritionally adequate diet shall not be used as punishment.

3 (13) Residents shall have a right to regular physical
 4 exercise several times a week. It shall be the duty of the
 5 facility to provide both indoor and outdoor facilities and
 6 equipment for such exercise. Residents shall have a right
 7 to be outdoors daily in the absence of contrary medical
 8 considerations.

9 (14) Residents shall have a right, under appropriate
 10 supervision, to suitable opportunities for the interaction
 11 with members of the opposite sex except where a professional
 12 person responsible for the formulation of a particular
 13 resident's habilitation plan writes an order to the contrary
 14 and explains the reasons therefor. The order must be renewed
 15 monthly if the restriction is to be continued."

16 Section 6. Section 53-20-144, MCA, is amended to read:

17 "53-20-144. Rights concerning photographs. (1) A
 18 person admitted to a residential facility may be
 19 photographed upon admission for identifications, ~~medical,~~
 20 ~~habilitative,~~ and the administrative purposes of the
 21 facility. Such photographs shall be confidential and shall
 22 not be released by the facility except pursuant to court
 23 order.

24 (2) No other nonmedical or nonhabilitative photographs
 25 shall be taken or used without consent of the resident's

1 parents or guardian or the responsible person appointed by
2 the court."

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

1 days for the first 90 days. At least weekly an attending
2 physician shall review the drug regimen of each patient
3 under his care. All prescriptions shall be written with a
4 termination date which shall not exceed 30 days.
5 Medications shall not be used as punishment, for the
6 convenience of staff, as a substitute for program, or in
7 quantities that interfere with the resident's treatment
8 program. NOTHING IN THIS SECTION SHALL BE INTERPRETED TO
9 RELIEVE ANY PHYSICIAN OR OTHER PROFESSIONAL OR MEDICAL STAFF
10 PERSON FROM ANY OBLIGATION TO ADEQUATELY MONITOR THE
11 MEDICATION OF ANY RESIDENT, WITH DUE CONSIDERATION TO THE
12 NATURE OF THE MEDICATION, THE PURPOSE FOR WHICH IT IS GIVEN,
13 AND THE CONDITION OF THE RESIDENT."

14 Section 8. Section 53-20-146, MCA, is amended to read:
15 "53-20-146. Right not to be subjected to certain
16 treatment procedures. (1) Residents of a residential
17 facility shall have a right not to be subjected to any
18 unusual or hazardous treatment procedures without the
19 express and informed consent of the resident, if the
20 resident is able to give such consent, and of his parents or
21 guardian or the responsible person appointed by the court
22 after opportunities for consultation with independent
23 specialists and legal counsel. Such proposed procedures
24 shall first have been reviewed and approved by the mental
25 disabilities board of visitors before such consent shall be

1 sought.

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

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

23 (4) Behavior modification programs involving the use
24 of noxious or aversive stimuli shall be reviewed and
25 approved by the mental disabilities board of visitors and

1 shall be conducted only with the express and informed
2 consent of the affected 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 with legal counsel. Such behavior modification programs
7 shall be conducted only under the supervision of and in the
8 presence of a professional person who has had proper
9 training in such techniques.

10 (5) No resident shall be subjected to a behavior
11 modification program which attempts to extinguish socially
12 appropriate behavior or to develop new behavior patterns
13 when such behavior modifications serve only institutional
14 convenience.

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

25 Section 9. Section 53-20-148, MCA, is amended to read:

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

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

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

24 (3) Within 30 days of his admission to a residential
 25 facility, each resident shall have an evaluation by

1 appropriate specialists for programming purposes.

2 (4) Each resident shall have an individualized
 3 habilitation plan formulated by the facility. This plan
 4 shall be developed by appropriate professional persons and
 5 implemented as soon as possible, but no later than 14 30
 6 days after the resident's admission to the facility. An
 7 interim program of habilitation, based on the preadmission
 8 evaluation conducted pursuant to this part, shall commence
 9 promptly upon the resident's admission. Each individualized
 10 habilitation plan shall contain:

- 11 (a) a statement of the nature of the specific
 12 limitations and specific ~~general~~ IHE needs of the resident;
- 13 (b) a description of intermediate and long-range
 14 habilitation goals with a projected timetable for their
 15 attainment;
- 16 (c) a statement of and an explanation for the plan of
 17 habilitation for achieving these intermediate and long-range
 18 goals;
- 19 (d) a statement of the least restrictive setting for
 20 habilitation necessary to achieve the habilitation goals of
 21 the resident;
- 22 (e) a specification of the professional persons and
 23 other staff members who are responsible for the particular
 24 resident's attaining these habilitation goals;
- 25 (f) criteria for release to less restrictive settings

1 for habilitation, based on the resident's needs, including
2 criteria for discharge and a projected date for discharge.

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

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

23 (7) The habilitation plan shall be continuously
24 reviewed monthly by the professional person responsible for
25 supervising the implementation of the plan and shall be

1 modified if necessary. In addition, 6 months after admission
2 and at least annually thereafter, each resident shall
3 receive a comprehensive psychological, social, educational
4 habilitative, and medical diagnosis and evaluation and his
5 habilitation plan shall be reviewed by an interdisciplinary
6 team of no less than two professional persons and such
7 resident care workers as are directly involved in his
8 habilitation and care. A habilitation plan shall be reviewed
9 monthly.

10 (8) Each resident ~~discharged--to~~ placed in the
11 community shall have ~~a--program--of~~ receive transitional
12 habilitation assistance.

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

22 (10) The parents or guardian of each resident or the
23 responsible person appointed by the court shall promptly
24 upon the resident's admission receive a written copy of
25 including-but-not-limited-to all the above standards for

1 adequate habilitation. Each resident, if the resident is
 2 able to comprehend, shall promptly upon his admission be
 3 orally informed in clear language of the above standards
 4 and, where appropriate, be provided with a written copy. IN
 5 ADDITION, THE PARENTS, GUARDIAN, RESPONSIBLE PERSON, AND
 6 WHERE ABLE TO COMPREHEND, THE RESIDENT SHALL RECEIVE SUCH
 7 OTHER INFORMATION CONCERNING THE CARE AND HABILITATION OF
 8 THE RESIDENT AS MAY BE AVAILABLE TO ASSIST THEM IN
 9 UNDERSTANDING THE SITUATION OF THE RESIDENT AND THE RIGHTS
 10 OF THE RESIDENT IN THE INSTITUTION."

11 Section 10. Section 53-20-161, MCA, is amended to
 12 read:

13 "53-20-161. Maintenance of records. (1) Complete
 14 records for each resident shall be maintained and shall be
 15 readily available to professional persons, to the
 16 resident-care workers who are directly involved with the
 17 particular resident, and to the mental disabilities board of
 18 visitors. All information contained in a resident's records
 19 shall be considered privileged and confidential. The parents
 20 or guardian, the responsible person appointed by the court,
 21 and any person properly authorized in writing by the
 22 resident, if such resident is capable of giving informed
 23 consent, or by his parents or guardian or the responsible
 24 person shall be permitted access to the resident's records.
 25 No information may be released from the records of a

1 resident or former resident of the residential facility
 2 unless the release of such information has been properly
 3 authorized in writing by:

- 4 (a) the court;
- 5 (b) the resident or former resident if he is over the
 6 age of majority and is capable of giving informed consent;
- 7 (c) the parents or guardian in charge of a resident
 8 under the age of 12;
- 9 (d) the parents or guardian in charge of a resident
 10 over the age of 12 but under the age of majority and the
 11 resident if the resident is capable of giving informed
 12 consent;
- 13 (e) the guardian of a resident over the age of
 14 majority who is incapable of giving informed consent;
- 15 (f) the superintendent of the residential facility or
 16 his designee as custodian of a resident over the age of
 17 majority who is incapable of giving informed consent and for
 18 whom no legal guardian has been appointed;
- 19 (g) the superintendent of the residential facility or
 20 his designee as custodian of a resident under the age of
 21 majority for whom there is no parent or legal guardian; or
 22 (h) the superintendent of the residential facility or
 23 his designee as custodian of a resident of that facility may
 24 release information as required by federal and state law and
 25 department of social and rehabilitation services rules.

1 (2) Information may not be released by a
 2 superintendent or his designee as set forth in subsection
 3 (1)(f), (1)(g), or (1)(h) less than 15 days after sending
 4 notice of the proposed release of information to the
 5 resident, his parents or guardian, the attorney who most
 6 recently represented the resident, if any, the responsible
 7 person appointed by the court, if any, and the court which
 8 ordered the admission. If any of the parties so notified
 9 objects to the release of information, they may petition the
 10 court for a hearing to determine whether the release of
 11 information should be allowed. NO INFORMATION MAY BE
 12 RELEASED PURSUANT TO (1)(F), (1)(G), AND (1)(H) UNLESS IT IS
 13 RELEASED TO FURTHER SOME LEGITIMATE NEED OF THE RESIDENT OR
 14 TO ACCOMPLISH A LEGITIMATE PURPOSE OF THE INSTITUTION WHICH
 15 IS NOT INCONSISTENT WITH THE NEEDS AND RIGHTS OF THE
 16 RESIDENT. NO INFORMATION SHALL BE RELEASED PURSUANT TO THESE
 17 SUBSECTIONS EXCEPT IN ACCORDANCE WITH WRITTEN POLICIES
 18 CONSISTENT WITH THE REQUIREMENTS OF THIS PART ADOPTED BY THE
 19 INSTITUTION. PERSONS RECEIVING NOTICE OF A PROPOSED RELEASE
 20 OF INFORMATION SHALL ALSO RECEIVE A COPY OF THE WRITTEN
 21 POLICY OF THE INSTITUTION GOVERNING RELEASE OF INFORMATION.

22 (3) These records shall include:

23 (1)(a) identification data, including the resident's
 24 legal status;

25 (2)(b) the resident's history, including but not

1 limited to:

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

4 (1)(ii) prior medical history, both physical and
 5 mental, including prior institutionalization;

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

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

9 (1)(e) a record of each physical examination which
 10 describes the results of the examination;

11 (1)(f) a copy of the individual habilitation plan and
 12 any modifications thereto and an appropriate summary which
 13 will guide and assist the resident care workers in
 14 implementing the resident's program;

15 (1)(g) the findings made in periodic monthly reviews
 16 of the habilitation plan, which findings shall include an
 17 analysis of the successes and failures of the habilitation
 18 program and shall direct whatever modifications are
 19 necessary;

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

24 (1)(i) a medication history and status;

25 (1)(j) a summary of each significant contact by a

1 professional person with a resident;

2 ~~†††††~~ a summary of the resident's response to his

3 ~~program habilitation plan~~, prepared by a professional person

4 involved in the resident's habilitation and recorded at

5 least monthly. Wherever possible, such response shall be

6 scientifically documented.

7 ~~†††††~~ a monthly summary of the extent and nature of

8 the resident's work activities and the effect of such

9 activity upon the resident's progress along the habilitation

10 plan;

11 ~~†††††~~ a signed order by a professional person for

12 any physical restraints;

13 ~~†††††~~ a description of any extraordinary incident or

14 accident in the facility involving the resident, to be

15 entered by a staff member noting personal knowledge of the

16 incident or accident or other source of information,

17 including any reports of investigations of resident's

18 mistreatment;

19 ~~†††††~~ a summary of family visits and contacts;

20 ~~†††††~~ a summary of attendance and leaves from the

21 facility;

22 ~~†††††~~ a record of any seizures, illnesses, injuries,

23 and treatments thereof, and immunizations."

24 Section 11. Section 53-21-187, MCA, is amended to

25 read:

1 "53-21-187. Clothing for patients discharged or

2 conditionally released. A patient may not be discharged or

3 conditionally released from a mental health facility or

4 residential facility for the developmentally disabled

5 without suitable reasonable clothing ~~adopted to the season~~

6 ~~in which he is discharged~~ which will allow the resident to

7 make a normal appearance in the community."

8 Section 12. Codification. It is intended that sections

9 1 through 3 be codified as an integral part of Title 53,

10 chapter 20, part 1, and the provisions of Title 53, chapter

11 20, apply to sections 1 through 3.

-End-

HOUSE BILL NO. 487

INTRODUCED BY BENGTSON, TONE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ESTABLISH PROCEDURES TO ALLOW A SERIOUSLY DEVELOPMENTALLY DISABLED PERSON, INCLUDING A MINOR, TO VOLUNTARILY ADMIT HIMSELF TO A RESIDENTIAL FACILITY, PROVIDING FOR THE COST OF ADMISSION, REQUIRING REQUIRE PERIODIC PHARMACEUTICAL OR MEDICAL REVIEWS OF RESIDENT MEDICATIONS; ESTABLISHING STIPULATIONS FOR THE RELEASE OF RECORDS; AND GENERALLY REVISING AND CLARIFYING THE LAWS RELATING TO THE DEVELOPMENTALLY DISABLED; AMENDING SECTIONS 53-20-104, 53-20-114, 53-20-123, 53-20-130, 53-20-142, 53-20-144 THROUGH 53-20-146, 53-20-148, 53-20-161, AND ~~53-21-107~~ 53-20-164, MCA."

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

~~SECTION~~ Section 53-20-164. Voluntary admission to residential facility procedures. (1) Nothing in this part may be construed in any way as limiting the right of any person who is seriously developmentally disabled to make voluntary application for admission at any time to any facility for residential evaluation or habilitation. Except for minors as provided for in [section 53-20-164] a seriously developmentally disabled person or the parents or guardian of a seriously developmentally disabled

person who is unable to give informed consent may apply for admission to any facility for evaluation or habilitation. An application for admission to a facility must be in writing on a form prescribed by the facility and approved by the department. An application may not be accepted unless a professional person has first certified that the applicant is seriously developmentally disabled and that the community-based facilities in the region of the person's residence are unable to provide adequate evaluation and treatment. An approved copy of the application must be given to the person requesting admittance to the residential facility or to the parents or guardian of a person unable to give informed consent. The application form must contain a statement of the rights of the person applying for admission, including the right to release and a statement prohibiting the facility from detaining a person more than 5 days (excluding weekends and holidays) beyond a written request for release on behalf of the person.

(2) The community-based professional person is responsible for the respondent until a court has formally committed the respondent to a facility for habilitation or treatment.

(3) A person voluntarily entering or remaining in a facility shall have the same rights as those persons involuntarily committed to a facility except that a person

1 who--voluntarily--admits--himself--shall--have--the--right--to
2 release--himself--at--will.

3 **NEW-SECTION** Section 24--Voluntary--admission--of
4 minors--(1)--A--minor--who--is--16--years--of--age--or--older--may
5 consent--to--receive--developmental--disability--services--that
6 are--provided--by--a--facility--a--person--licensed--to--practice
7 medicine--or--a--person--certified--by--the--department--of
8 institutions--as--a--professional--person--in--the--area--of
9 developmental--disabilities.

10 (2)--Voluntary--admission--of--a--minor--can--be--made

11 (a)--by--the--parent--or--guardian--in--charge--of--a--person
12 under--the--age--of--12--or

13 (b)--jointly--by--the--parent--or--guardian--in--charge--of--a
14 person--over--the--age--of--12--but--under--the--age--of--majority--and
15 the--person--if--the--person--is--capable--of--giving--informed
16 consent--to--the--admission.

17 (3)--When--the--minor--is--over--the--age--of--12--and--he--and
18 his--parents--do--not--agree--the--minor--can--be--voluntarily
19 admitted--to--a--facility--only--if--he--receives--legal--counsel.

20 **NEW-SECTION** Section 34--Cost--of--voluntary--admission

21 (1)--The--cost--of--involuntarily--committing--a--person--who--is
22 voluntarily--admitted--to--a--facility--at--the--time--the
23 involuntary--proceedings--are--commenced--shall--be--paid--by--the
24 county--of--the--person's--residence--at--the--time--of--admission.

25 (2)--The--costs--of--transportation--to--a--residential

1 facility--shall--be--paid--by--the--welfare--department--of--the
2 county--of--the--person's--residence. However--if--protective
3 proceedings--have--been--or--are--being--initiated--the--welfare
4 department--may--seek--reimbursement--if--no--one--is--available--to
5 transport--the--person--the--sheriff--shall--provide
6 transportation.

7 Section 14, Section 53-20-104, MCA, is amended to read:
8 "53-20-104. Powers and duties of mental disabilities
9 board of visitors. (1) The board shall be an independent
10 board of inquiry and review to assure that the treatment of
11 all persons admitted to a residential facility is humane and
12 decent and meets the requirements set forth in this part.

13 (2) 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 part may be
24 commenced unless it is approved by the mental disabilities
25 board of visitors.

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

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

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

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

21 (7) If the board believes that any facility is failing
22 to comply with the provisions of this part in regard to its
23 physical facilities or its treatment of any resident, it
24 shall report its findings at once to the professional person
25 in charge of the facility and the director of the department

1 of institutions. If appropriate, after waiting a reasonable
2 time for a response from such professional person, ~~if an~~
3 ~~acceptable response does not follow~~, the board may notify
4 the parents or guardian of any patient resident involved,
5 the next of kin, if known, the responsible person appointed
6 by the court for any patient resident involved, and the
7 district court which has jurisdiction over the facility ~~of~~
8 ~~the failure to comply.~~

9 (8) The board shall report annually to the governor
10 and shall report to each session of the legislature
11 concerning the status of the residential facilities and
12 habilitation programs which it has inspected."

13 Section 2. Section 53-20-114, MCA, is amended to read:
14 "53-20-114. Appointment of responsible person.
15 Whenever, in any proceeding under this part, the court
16 believes that a conflict of interest may exist between a
17 person who is developmentally disabled or alleged to be
18 developmentally disabled and his parents or guardian or that
19 the parents or guardian are unable to protect the interests
20 of such person or whenever there is no parent or guardian,
21 the court shall appoint a responsible person to protect the
22 interests of the person who is developmentally disabled or
23 alleged to be developmentally disabled. The responsible
24 person may not be an employee of a residential facility.
25 Only one person shall at any one time be the responsible

1 person within the meaning of this part. In appointing a
 2 responsible person, the court shall consider the preference
 3 of the respondent or patient. The court may at any time,
 4 for good cause shown, change its designation of who is the
 5 responsible person. The appointment of the responsible
 6 person must terminate at the time of the resident's
 7 discharge from the residential facility. HOWEVER, THE
 8 APPOINTMENT OF THE RESPONSIBLE PERSON SHALL NOT TERMINATE
 9 DURING ANY PERIOD OF CONDITIONAL RELEASE FROM THE FACILITY."

10 Section 3. Section 53-20-123, MCA, is amended to read:

11 "53-20-123. Outcome of examination -- dismissal of
 12 petition -- court-ordered evaluation and treatment --
 13 hearing. (1) If the professional person, based on his
 14 examination and inquiry, determines that the respondent is
 15 not developmentally disabled or is not in need of
 16 developmental disability services, he shall report this
 17 finding in writing to the court and the petition shall be
 18 dismissed. If the professional person concludes that the
 19 respondent is developmentally disabled and in need of
 20 developmental disability services, he shall report this
 21 conclusion to the court in writing, together with his
 22 recommendations for evaluation and treatment. The report
 23 shall include an explanation of the basis on which the
 24 professional person has reached his conclusion, ~~and shall~~
 25 ~~include~~ a description of any tests or evaluation devices he

1 has employed, ~~and an opinion of whether institutional or~~
 2 ~~community services are required. The recommendation as to~~
 3 ~~placement shall be based on consultation with the mental~~
 4 ~~health and residential services division of the department~~
 5 ~~of institutions or the superintendent or agent of a~~
 6 ~~residential facility or the director of the developmental~~
 7 ~~disabilities division of AND the department of social and~~
 8 ~~rehabilitation services. THE TWO DEPARTMENTS SHALL DEVELOP~~
 9 ~~WRITTEN POLICIES TO IMPLEMENT THIS REQUIREMENT.~~

10 (2) (a) If the professional person's recommendation is
 11 for further evaluation and treatment, notice of this
 12 recommendation shall be sent to the respondent, his parents
 13 or guardian, the next of kin, the responsible person
 14 appointed by the court, if any, and any attorney
 15 representing the respondent or his parents or guardian. If
 16 no responsible person has yet been appointed, the court may
 17 appoint one at this time.

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

24 (3) Prior to any hearing held pursuant to this
 25 section, the court shall appoint counsel to represent the

1 respondent if the respondent has not retained independent
 2 counsel. The parents (or guardian) shall be informed of
 3 their right to counsel, and if they are indigent, the court
 4 shall on their request appoint counsel for them. In no case
 5 may the same attorney represent the respondent and his
 6 parents or guardian.

7 (4) If the hearing is waived or if the court finds,
 8 after hearing, that the respondent is developmentally
 9 disabled and in need of further evaluation and treatment,
 10 the court shall order that the respondent undergo such
 11 evaluation and treatment. Evaluation and treatment ordered
 12 pursuant to this subsection may not be for more than 30
 13 days. It shall take place in the least restrictive
 14 environment in which the necessary evaluation and treatment
 15 can be accomplished. Evaluation and treatment in a
 16 residential facility may be ordered only if the necessary
 17 evaluation and treatment cannot be accomplished through the
 18 use of community-based facilities."

19 Section 4. Section 53-20-130, MCA, is amended to read:
 20 "53-20-130. Patient transfers from mental health
 21 facilities. If any person is a patient in a mental health
 22 facility and the professional person in charge of the
 23 patient determines that the patient is suffering from a
 24 developmental disability rather than mental illness and
 25 should more properly be admitted to a residential facility

1 ~~or an appropriate less restrictive alternative~~, then the
 2 professional person shall commence proceedings to effect
 3 such admission, consistent with the procedures set forth in
 4 this part for admissions generally."

5 Section 5. Section 53-20-142, MCA, is amended to read:
 6 "53-20-142. Rights while in a residential facility.
 7 Persons admitted to a residential facility for a period of
 8 habilitation shall enjoy the following rights:

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

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

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

23 (4) Residents shall have an unrestricted right to
 24 visitation except to the extent that a professional person
 25 responsible for formulation of a particular resident's

1 habilitation plan writes an order imposing special
2 restrictions and explains the reasons for any such
3 restrictions. The written order must be renewed monthly if
4 any restrictions are to be continued.

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

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

22 (7) Each resident shall have the right to keep and use
23 his own personal possessions except insofar as such clothes
24 or personal possessions may be determined by a professional
25 person to be dangerous either to himself or to others.

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

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

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

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

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

1 (9) Residents shall have a right to receive prompt and
 2 adequate medical treatment for any physical ailments or
 3 ~~mental ailments or injuries or physical disabilities~~ and
 4 for the prevention of any illness or disability. Such
 5 medical treatment shall meet standards of medical practice
 6 in the community. ~~HOWEVER, NOTHING IN THIS SUBSECTION SHALL~~
 7 ~~MAY BE INTERPRETED TO IMPAIR THE RIGHT OTHER RIGHTS OF ANY~~
 8 ~~RESIDENT IN REGARD TO INVOLUNTARY COMMITMENT FOR MENTAL~~
 9 ~~ILLNESS, USE OF PSYCHOTROPIC MEDICATION, USE OF HAZARDOUS,~~
 10 ~~AVERSIVE, OR EXPERIMENTAL PROCEDURES, OR THE REFUSAL OF SUCH~~
 11 ~~TREATMENT BY A RESIDENT.~~

12 (10) Corporal punishment shall not be permitted.

13 (11) The opportunity for religious worship shall be
 14 accorded to each resident who desires such worship.
 15 Provisions for religious worship shall be made available to
 16 all residents on a nondiscriminatory basis. No individual
 17 shall be compelled to engage in any religious activities.

18 (12) Residents shall have a right to a nourishing,
 19 well-balanced diet. The diet for residents shall provide at
 20 a minimum the recommended daily dietary allowance as
 21 developed by the national academy of sciences. Provisions
 22 shall be made for special therapeutic diets and for
 23 substitutes at the request of the resident, his parents,
 24 guardian, or next of kin, or the responsible person
 25 appointed by the court in accordance with the religious

1 requirements of any resident's faith. Denial of a
 2 nutritionally adequate diet shall not be used as punishment.

3 (13) Residents shall have a right to regular physical
 4 exercise several times a week. It shall be the duty of the
 5 facility to provide both indoor and outdoor facilities and
 6 equipment for such exercise. Residents shall have a right
 7 to be outdoors daily in the absence of contrary medical
 8 considerations.

9 (14) Residents shall have a right, under appropriate
 10 supervision, to suitable opportunities for the interaction
 11 with members of the opposite sex except where a professional
 12 person responsible for the formulation of a particular
 13 resident's habilitation plan writes an order to the contrary
 14 and explains the reasons therefor. The order must be renewed
 15 monthly if the restriction is to be continued."

16 Section 6. Section 53-20-144, MCA, is amended to read:

17 "53-20-144. Rights concerning photographs. (1) A
 18 person admitted to a residential facility may be
 19 photographed upon admission for identifications, ~~medical,~~
 20 ~~habilitative,~~ and the administrative purposes of the
 21 facility. Such photographs shall be confidential and shall
 22 not be released by the facility except pursuant to court
 23 order.

24 (2) No other nonmedical or nonhabilitative photographs
 25 shall be taken or used without consent of the resident's

1 parents or guardian or the responsible person appointed by
2 the court."

3 Section 7. Section 53-20-145, 4CA, is amended to read:

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

1 ~~days for the first 90 days. At least weekly an attending~~
2 ~~physician shall review the drug regimen of each patient~~
3 ~~under his care. All prescriptions shall be written with a~~
4 ~~termination date which shall not exceed 30 days.~~
5 Medications shall not be used as punishment, for the
6 convenience of staff, as a substitute for program, or in
7 quantities that interfere with the resident's treatment
8 program. ~~NOTHING IN THIS SECTION SHALL MAY BE INTERPRETED TO~~
9 ~~RELIEVE ANY PHYSICIAN OR OTHER PROFESSIONAL OR MEDICAL STAFF~~
10 ~~PERSON FROM ANY OBLIGATION TO ADEQUATELY MONITOR THE~~
11 ~~MEDICATION OF ANY RESIDENT, WITH DUE CONSIDERATION TO THE~~
12 ~~NATURE OF THE MEDICATION, THE PURPOSE FOR WHICH IT IS GIVEN,~~
13 ~~AND THE CONDITION OF THE RESIDENT."~~

14 Section 8. Section 53-20-146, MCA, is amended to read:

15 "53-20-146. Right not to be subjected to certain
16 treatment procedures. (1) Residents of a residential
17 facility shall have a right not to be subjected to any
18 unusual or hazardous treatment procedures without the
19 express and informed consent of the resident, if the
20 resident is able to give such consent, and of his parents or
21 guardian or the responsible person appointed by the court
22 after opportunities for consultation with independent
23 specialists and legal counsel. Such proposed procedures
24 shall first have been reviewed and approved by the mental
25 disabilities board of visitors before such consent shall be

1 sought.

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

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

23 (4) Behavior modification programs involving the use
 24 of noxious or aversive stimuli shall be reviewed and
 25 approved by the mental disabilities board of visitors and

1 shall be conducted only with the express and informed
 2 consent of the affected 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 with legal counsel. Such behavior modification programs
 7 shall be conducted only under the supervision of and in the
 8 presence of a professional person who has had proper
 9 training in such techniques.

10 (5) No resident shall be subjected to a behavior
 11 modification program which attempts to extinguish socially
 12 appropriate behavior or to develop new behavior patterns
 13 when such behavior modifications serve only institutional
 14 convenience.

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

25 Section 9. Section 53-20-148, MCA, is amended to read:

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

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

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

24 (3) Within 30 days of his admission to a residential
 25 facility, each resident shall have an evaluation by

1 appropriate specialists for programming purposes.

2 (4) Each resident shall have an individualized
 3 habilitation plan formulated by the facility. This plan
 4 shall be developed by appropriate professional persons and
 5 implemented as soon as possible, but no later than 14 30
 6 days after the resident's admission to the facility. An
 7 interim program of habilitation, based on the preadmission
 8 evaluation conducted pursuant to this part, shall commence
 9 promptly upon the resident's admission. Each individualized
 10 habilitation plan shall contain:

- 11 (a) a statement of the nature of the specific
 12 limitations and specific ~~general~~ IHE needs of the resident;
- 13 (b) a description of intermediate and long-range
 14 habilitation goals with a projected timetable for their
 15 attainment;
- 16 (c) a statement of and an explanation for the plan of
 17 habilitation for achieving these intermediate and long-range
 18 goals;
- 19 (d) a statement of the least restrictive setting for
 20 habilitation necessary to achieve the habilitation goals of
 21 the resident;
- 22 (e) a specification of the professional persons and
 23 other staff members who are responsible for the particular
 24 resident's attaining these habilitation goals;
- 25 (f) criteria for release to less restrictive settings

1 for habilitation, ~~based on the resident's needs~~ including
 2 criteria for discharge and a projected date for discharge.

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

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

23 (7) The habilitation plan shall be ~~continuously~~
 24 reviewed monthly by the professional person responsible for
 25 supervising the implementation of the plan and shall be

1 modified if necessary. In addition, 6 months after admission
 2 and at least annually thereafter, each resident shall
 3 receive a comprehensive psychological, social, ~~educational~~
 4 ~~habilitative~~, and medical diagnosis and evaluation and his
 5 habilitation plan shall be reviewed by an interdisciplinary
 6 team of no less than two professional persons and such
 7 resident care workers as are directly involved in his
 8 habilitation and care. A habilitation plan shall be reviewed
 9 monthly.

10 (8) Each resident ~~discharged---to~~ placed in the
 11 community shall ~~have---a---program---of~~ receive transitional
 12 habilitation assistance.

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

22 (10) The parents or guardian of each resident or the
 23 responsible person appointed by the court shall promptly
 24 upon the resident's admission receive a written copy of
 25 ~~including---but---not---limited---to~~ all the above standards for

1 adequate habilitation. Each resident, if the resident is
 2 able to comprehend, shall promptly upon his admission be
 3 orally informed in clear language of the above standards
 4 and, where appropriate, be provided with a written copy. IN
 5 ADDITION, THE PARENTS, GUARDIAN, RESPONSIBLE PERSON, AND
 6 WHERE ABLE TO COMPREHEND, THE RESIDENT SHALL RECEIVE SUCH
 7 OTHER INFORMATION CONCERNING THE CARE AND HABILITATION OF
 8 THE RESIDENT AS MAY BE AVAILABLE TO ASSIST THEM IN
 9 UNDERSTANDING THE SITUATION OF THE RESIDENT AND THE RIGHTS
 10 OF THE RESIDENT IN THE INSTITUTION."

11 Section 10. Section 53-20-161, MCA, is amended to
 12 read:

13 "53-20-161. Maintenance of records. (1) Complete
 14 records for each resident shall be maintained and shall be
 15 readily available to professional persons; to the
 16 resident-care workers who are directly involved with the
 17 particular resident; and to the mental disabilities board of
 18 visitors. All information contained in a resident's records
 19 shall be considered privileged and confidential. The parents
 20 or guardian, the responsible person appointed by the court,
 21 and any person properly authorized in writing by the
 22 resident, if such resident is capable of giving informed
 23 consent, or by his parents or guardian or the responsible
 24 person shall be permitted access to the resident's records.
 25 No information may be released from the records of a

1 resident or former resident of the residential facility
 2 unless the release of such information has been properly
 3 authorized in writing by:

- 4 (a) the court;
 5 (b) the resident or former resident if he is over the
 6 age of majority and is capable of giving informed consent;
 7 (c) the parents or guardian in charge of a resident
 8 under the age of 12;
 9 (d) the parents or guardian in charge of a resident
 10 over the age of 12 but under the age of majority and the
 11 resident if the resident is capable of giving informed
 12 consent;
 13 (e) the guardian of a resident over the age of
 14 majority who is incapable of giving informed consent;
 15 (f) the superintendent of the residential facility or
 16 his designee as custodian of a resident over the age of
 17 majority who is incapable of giving informed consent and for
 18 whom no legal guardian has been appointed;
 19 (g) the superintendent of the residential facility or
 20 his designee as custodian of a resident under the age of
 21 majority for whom there is no parent or legal guardian; or
 22 (h) the superintendent of the residential facility or
 23 his designee as custodian of a resident of that facility may
 24 release information--as WHENEVER RELEASE IS required by
 25 federal and OR state law and OR department of social and

1 rehabilitation services rules.
 2 (2) Information may not be released by a
 3 superintendent or his designee as set forth in subsection
 4 (1)(f), (1)(g), or (1)(h) less than 15 days after sending
 5 notice of the proposed release of information to the
 6 resident, his parents or guardian, the attorney who most
 7 recently represented the resident, if any, the responsible
 8 person appointed by the court, if any, and the court which
 9 ordered the admission. If any of the parties so notified
 10 objects to the release of information, they may petition the
 11 court for a hearing to determine whether the release of
 12 information should be allowed. NO INFORMATION MAY BE
 13 RELEASED PURSUANT TO SUBSECTION (1)(F), (1)(G), AND OR
 14 (1)(H) UNLESS IT IS RELEASED TO FURTHER SOME LEGITIMATE NEED
 15 OF THE RESIDENT OR TO ACCOMPLISH A LEGITIMATE PURPOSE OF THE
 16 INSTITUTION WHICH IS NOT INCONSISTENT WITH THE NEEDS AND
 17 RIGHTS OF THE RESIDENT. NO INFORMATION SHALL MAY BE RELEASED
 18 PURSUANT TO THESE SUBSECTIONS EXCEPT IN ACCORDANCE WITH
 19 WRITTEN POLICIES CONSISTENT WITH THE REQUIREMENTS OF THIS
 20 PART ADOPTED BY THE INSTITUTION. PERSONS RECEIVING NOTICE OF
 21 A PROPOSED RELEASE OF INFORMATION SHALL ALSO RECEIVE A COPY
 22 OF THE WRITTEN POLICY OF THE INSTITUTION GOVERNING RELEASE
 23 OF INFORMATION.

24 (3) These records shall include:
 25 (a) identification data, including the resident's

1 legal status;
 2 (b) the resident's history, including but not
 3 limited to:
 4 (i) family data, educational background, and
 5 employment record;
 6 (ii) prior medical history, both physical and
 7 mental, including prior institutionalization;
 8 (c) the resident's grievances, if any;
 9 (d) an inventory of the resident's life skills,
 10 including mode of communication;
 11 (e) a record of each physical examination which
 12 describes the results of the examination;
 13 (f) a copy of the individual habilitation plan and
 14 any modifications thereto and an appropriate summary which
 15 will guide and assist the resident care workers in
 16 implementing the resident's program;
 17 (g) the findings made in periodic monthly reviews
 18 of the habilitation plan, which findings shall include an
 19 analysis of the successes and failures of the habilitation
 20 program and shall direct whatever modifications are
 21 necessary;
 22 (h) a copy of the postinstitutionalization plan
 23 that includes a statement of services needed in the
 24 community and any modifications thereto and a summary of the
 25 steps that have been taken to implement that plan;

- 1 †9†(i) a medication history and status;
- 2 †10†(j) a summary of each significant contact by a
- 3 professional person with a resident;
- 4 †11†(k) a summary of the resident's response to his
- 5 program habilitation plan, prepared by a professional person
- 6 involved in the resident's habilitation and recorded at
- 7 least monthly. Wherever possible, such response shall be
- 8 scientifically documented.
- 9 †12†(l) a monthly summary of the extent and nature of
- 10 the resident's work activities and the effect of such
- 11 activity upon the resident's progress along the habilitation
- 12 plan;
- 13 †13†(m) a signed order by a professional person for
- 14 any physical restraints;
- 15 †14†(n) a description of any extraordinary incident or
- 16 accident in the facility involving the resident, to be
- 17 entered by a staff member noting personal knowledge of the
- 18 incident or accident or other source of information,
- 19 including any reports of investigations of resident's
- 20 mistreatment;
- 21 †15†(o) a summary of family visits and contacts;
- 22 †16†(p) a summary of attendance and leaves from the
- 23 facility;
- 24 †17†(q) a record of any seizures, illnesses, injuries,
- 25 and treatments thereof and immunizations."

1 Section ~~11v~~ ~~Section 53-21-187~~ ~~MCAs~~ ~~is~~ ~~amended~~ ~~to~~

2 read:

3 "~~53-21-187. Clothing for patients discharged or~~

4 ~~conditionally released. A patient may not be discharged or~~

5 ~~conditionally released from a mental health facility or~~

6 ~~residential facility for the developmentally disabled~~

7 ~~without suitable reasonable clothing adapted to the season~~

8 ~~in which he is discharged which will allow the resident to~~

9 ~~make a normal appearance in the community."~~

10 Section ~~12v~~ ~~Modification~~ ~~it~~ ~~is~~ ~~intended~~ ~~that~~

11 ~~sections 1 through 3 be codified as an integral part of~~

12 ~~title 53v chapter 20v part 1v and the provisions of title~~

13 ~~53v chapter 20v apply to sections 1 through 3v~~

14 SECTION 11. SECTION 53-20-164, MCAs IS AMENDED TO

15 READ:

16 "53-20-164. Resident labor. The following rules shall

17 govern resident labor:

18 (1) No resident shall be required to perform labor

19 which involves the operation and maintenance of the facility

20 or for which the facility is under contract with an outside

21 organization. Privileges or release from the facility shall

22 not be conditioned upon the performance of labor covered by

23 this provision. Residents may voluntarily engage in such

24 labor if the labor is compensated in accordance with the

25 minimum wage laws of the Fair Labor Standards Act, 29

1 U.S.C., sec. 206, as amended.

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

5 (a) has volunteered;

6 (b) has been specifically trained in the necessary
7 skills;

8 (c) has the humane judgment required for such
9 activities;

10 (d) is adequately supervised; and

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

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

20 (a) an integrated part of the resident's habilitation
21 plan and approved as a habilitation activity by a
22 professional person responsible for supervising the
23 resident's habilitation;

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

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

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

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

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

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

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

1 (f) Deductions or payments for care and other charges
2 shall not deprive a resident of a reasonable amount of the
3 compensation received pursuant to this section for personal
4 and incidental purchases and expenses.

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

11 SECTION 12. THERE IS A NEW MGA SECTION THAT READS:

12 Clothing for residents discharged or conditionally
13 released. A resident may not be discharged or conditionally
14 released from a residential facility for the developmentally
15 disabled without suitable reasonable clothing that will
16 allow the resident to make a normal appearance in the
17 community.

18 SECTION 13. CODIFICATION. SECTION 12 IS INTENDED TO
19 BE CODIFIED AS AN INTEGRAL PART OF TITLE 53, CHAPTER 20,
20 PART 1, AND THE PROVISIONS OF TITLE 53, CHAPTER 20, PART 1,
21 APPLY TO SECTION 12.

-End-

March 13, 1979

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 487 be amended as follows:

1. Title, line 14.
Following: "AND"
Strike: "53-21-187"
Insert: "53-20-164"
2. Page 13, line 3.
Following: "ailments"
Strike: ", "
Insert: "or"
Following: "injuries"
Strike: ", "
3. Page 13, line 6.
Following: "SUBSECTION"
Strike: "SHALL"
Insert: "may"
4. Page 13, line 7.
Following: "IMPAIR"
Strike: "THE RIGHT"
Insert: "other rights"
5. Page 13, line 10.
Following: "OF"
Insert: "such"
6. Page 13, lines 10 and 11.
Strike: "BY A RESIDENT"
7. Page 16, line 8.
Following: "SECTION"
Strike: "SHALL"
Insert: "may"
8. Page 24, lines 23 and 24.
Following: "facility"
Strike: "may release information as"
Insert: "whenever release is"
9. Page 24, line 24.
Following: "federal"
Strike: "and"
Insert: "or"
Following: "law"
Strike: "and"
Insert: "or"

10. Page 25, line 12.

Following: "TO"
Insert: "subsection"
Following: "(1)(G),"
Strike: "AND"
Insert: "or"

11. Page 25, line 16.

Following: "INFORMATION"
Strike: "SHALL"
Insert: "may"

12. Page 27, line 24 through line 11 on page 28.

Following: line 23 on page 27

Strike: sections 11 and 12 in their entirety

Insert: "Section 11. Section 53-20-164, MCA, IS AMENDED TO READ:

"53-20-164. Resident labor. The following rules shall govern resident labor: (1) No resident shall be required to perform

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

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

(a) has volunteered;

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

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

(d) is adequately supervised; and

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

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

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

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

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

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

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

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

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

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

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

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

"Section 12. THERE IS A NEW MCA SECTION THAT READS:

Clothing for residents discharged or conditionally released. A resident may not be discharged or conditionally released from a residential facility for the developmentally disabled without suitable reasonable clothing that will allow the resident to make a normal appearance in the community.

Section 13. Codification. Section 12 is intended to be codified as an integral part of Title 53, chapter 20, part 1, and the provisions of Title 53, chapter 20, part 1, apply to section 12."