

SENATE BILL NO. 127

INTRODUCED BY BLAYLOCK

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 16, 1979	Introduced and referred to Committee on Public Health, Welfare, and Safety.
January 25, 1979	Committee recommend bill do pass. Report adopted.
January 26, 1979	Printed and placed on members' desks.
January 27, 1979	Second reading, do pass.
January 29, 1979	Considered correctly engrossed.
January 30, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

January 31, 1979	Introduced and referred to Committee on Human Services.
February 5, 1979	Committee recommend bill be concurred in and placed on Consent Calendar. Report adopted.
February 8, 1979	Third reading Consent Calendar concurred in.

IN THE SENATE

February 10, 1979	Returned from second house. Concurred in. Sent to enrolling.  Reported correctly enrolled.
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1 *Senate* BILL NO. *187*  
 2 INTRODUCED BY *Blaylock*  
 3 BY REQUEST OF THE CODE COMMISSIONER  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE LAWS RELATING TO SOCIAL SERVICES AND  
 7 INSTITUTIONS; AMENDING SECTIONS 53-2-104, 53-2-202,  
 8 53-2-205, 53-3-103, 53-4-213, 53-4-406, 53-4-501, 53-4-505,  
 9 53-4-509, 53-5-303, 53-5-304, 53-9-109, 53-20-112,  
 10 53-20-205, 53-21-112, 53-24-104, 53-24-108, 53-24-206,  
 11 53-24-304, 53-30-212, AND 53-30-214, MCA; AND REPEALING  
 12 SECTIONS 38-121 AND 80-2101 THROUGH 80-2107, R.C.M. 1947."  
 13

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

15 Section 1. Section 53-2-104, MCA, is amended to read:  
 16 "53-2-104. Audit of public assistance records. All  
 17 applications, information, and records concerning any  
 18 applicant or recipient of assistance or services under this  
 19 title are subject to audit for legislative oversight or  
 20 determination of ~~welfare~~ public assistance fraud."

21 Section 2. Section 53-2-202, MCA, is amended to read:  
 22 "53-2-202. Attorney general to act as legal adviser to  
 23 department. The attorney general of the state shall act as  
 24 legal adviser to the department, shall perform such legal  
 25 services as may be required, and may employ such other and

1 additional counsel as may be necessary for this purpose and  
 2 fix the compensation therefor. ~~The total yearly sum for the~~  
 3 ~~service may not exceed \$2,400, which compensation shall be~~  
 4 ~~paid out of state public assistance funds."~~

5 Section 3. Section 53-2-205, MCA, is amended to read:  
 6 "53-2-205. Department authorized to establish and  
 7 collect social services fees. (1) The department is hereby  
 8 authorized to establish and collect fees for social services  
 9 furnished which are authorized pursuant to Title XX of the  
 10 Social Security Act, Public Law 93-641 ~~93-647~~. Such fees  
 11 shall be based on a schedule determined by the department.

12 (2) The state share of fees provided for by subsection  
 13 (1) shall be paid over to the state treasurer for the credit  
 14 of the earmarked revenue fund for the use of the department  
 15 in providing social services."

16 Section 4. Section 53-3-103, MCA, is amended to read:  
 17 "53-3-103. Medical aid and hospitalization for  
 18 indigent. (1) Except as provided in other parts of this  
 19 title, medical aid and hospitalization for county residents  
 20 and nonresidents within the county unable to provide these  
 21 necessities for themselves are the legal and financial ~~duty~~  
 22 ~~and~~ responsibility of the ~~board of county commissioners~~ and  
 23 are payable from the county poor fund. The ~~board of county~~  
 24 ~~commissioners~~ shall make provisions for competent and  
 25 skilled medical or surgical services as are approved by the

1 department of health and environmental sciences or the state  
 2 medical association or, in the case of osteopathic  
 3 practitioners, by the state osteopathic association, or in  
 4 the case of chiropractors, by the state chiropractic  
 5 association, or in the case of optometrical services, as  
 6 approved by the Montana optometric association, or in the  
 7 case of dental services, as--approved by the dental  
 8 association. "Medical" or "medicine" as used in this section  
 9 refers to the healing art as practiced by licensed  
 10 practitioners.

11 (2) The board, in arranging for medical care for those  
 12 unable to provide it for themselves, may have the care  
 13 provided by physicians appointed by the board who shall be  
 14 known as county physicians or deputy county physicians and  
 15 may fix a rate of compensation for the furnishing of the  
 16 medical attendance.

17 (3) The department may promulgate rules to determine  
 18 under what circumstances persons in the county are unable to  
 19 provide medical aid and hospitalization for themselves,  
 20 including the power to define the term "medically needy".  
 21 However, the definition may not allow payment by a county  
 22 for general assistance--medical for persons whose income  
 23 exceeds 300% of the limitation for obtaining regular county  
 24 general relief assistance.

25 (4) In any case where the county or state pays medical

1 expenses or hospitalization for an individual, the county or  
 2 state is subrogated to the claims of the physician or  
 3 hospital to the extent of payment. To the extent necessary  
 4 for reimbursement of medical benefits paid to or on behalf  
 5 of an individual, the county or state is subrogated to the  
 6 rights of the individual to recover from a third party who  
 7 may be liable to pay the medical expenses. The provisions of  
 8 53-2-612 which relate to medical benefits provided under  
 9 Titles XIX and or XX of the Social Security Act apply to  
 10 medical benefits provided for in this section."

11 Section 5. Section 53-4-213, MCA, is amended to read:  
 12 "53-4-213. Department rules binding on county welfare  
 13 departments. All rules of the department made under this  
 14 ~~act~~ part shall be binding upon the county departments of  
 15 public welfare."

16 Section 6. Section 53-4-406, MCA, is amended to read:  
 17 "53-4-406. Certified copy of license furnished for  
 18 adoption proceedings. Upon the request of any district  
 19 court, proposed adoptive ~~parents~~ parent, or agency, a  
 20 certified copy of any license issued and in good standing  
 21 shall be furnished by the department for use in any adoption  
 22 proceeding with which any licensed agency is concerned."

23 Section 7. Section 53-4-501, MCA, is amended to read:  
 24 "53-4-501. Definitions. In this part, the following  
 25 definitions apply:

1 (1) "Child" means a person under 12 years of age.

2 (2) "Day-care facility" means a person, association,  
3 or place, incorporated or unincorporated, that receives for  
4 care during the day or part of the day three or more  
5 children of separate families and continues this type of  
6 care for 5 or more consecutive weeks. It does not include a  
7 person who limits care to children who are related to him by  
8 blood or marriage or under his legal guardianship ~~and not~~ or  
9 any group ~~facilities~~ facility established chiefly for  
10 educational purposes.

11 (3) "Day-care center" means a day-care facility that  
12 receives seven or more children for care for 5 or more hours  
13 of the day for 5 or more consecutive weeks. It may include  
14 facilities known as child-care centers, nursery schools, day  
15 nurseries, and centers for the mentally retarded.

16 (4) "Department" means the department of social and  
17 rehabilitation services provided for in Title 2, chapter 15,  
18 part 22."

19 Section 8. Section 53-4-505, MCA, is amended to read:

20 "53-4-505. Fire safety -- certification required. (1)  
21 The state fire marshal of the department of justice shall  
22 adopt and enforce rules for the protection of children in  
23 care facilities from fire hazards and arrange for such  
24 inspections and investigations as it considers necessary.

25 (2) Each applicant for a license to operate a day-care

1 center shall submit to the department of social and  
2 rehabilitation services a certificate of approval indicating  
3 that fire safety rules have been met before a license can be  
4 issued.

5 (3) Automatic sprinkler systems acceptable to the  
6 ~~department--of--justice~~ state fire marshal shall be installed  
7 in all nonfire-resistant homes two stories or more in height  
8 with 10 or more children, with the ~~department--of--justice~~  
9 state fire marshal to issue for the information and use of  
10 the department of social and rehabilitation services  
11 certificates of compliance with fire rules and standards  
12 applicable to the facilities."

13 Section 9. Section 53-4-509, MCA, is amended to read:

14 "53-4-509. Provisional license. The department of  
15 social and rehabilitation services may in its discretion  
16 issue a provisional license for a period of not more than 6  
17 months if it finds that a substandard day-care facility is  
18 attempting to meet the minimum standards. The requirement  
19 that a day-care center shall be certified by the state fire  
20 marshal of the department of justice and the department of  
21 health and environmental sciences may not be waived."

22 Section 10. Section 53-5-303, MCA, is amended to read:

23 "53-5-303. Purpose. In order to ensure the proper care  
24 of aged persons or disabled adults in foster family care  
25 homes and to implement provisions of ~~federal law~~ in Title

1 ~~XX, of the Social Services-Amendments-of-1974 Security Acts~~  
 2 ~~Public Law 93-647,~~ the department may obtain, license, and  
 3 supervise adult foster family care homes for three or fewer  
 4 aged persons or disabled adults in need of such care."

5 Section 11. Section 53-5-304, MCA, is amended to read:  
 6 "53-5-304. Standards for adult foster family care  
 7 homes. The department may establish standards by which  
 8 private residences may be licensed as adult foster family  
 9 care homes. These standards shall provide for the safety and  
 10 comfort of the residents and ~~shall be~~ are subject to the  
 11 advice and recommendations of the ~~state fire marshal of the~~  
 12 department of ~~health-and-environmental-sciences~~ justice in  
 13 relation to fire and safety requirements."

14 Section 12. Section 53-20-112, MCA, is amended to  
 15 read:

16 "53-20-112. Procedural rights. (1) Any person subject  
 17 to emergency admittance to a residential facility, to  
 18 examination or evaluation by a professional person, or to  
 19 any hearing held pursuant to this part shall have all the  
 20 rights accorded to a person subject to involuntary  
 21 commitment proceedings under the laws of this state relating  
 22 to involuntary commitment of the seriously mentally ill.

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

1 (a) be present at any hearing held pursuant to this  
 2 part;

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

4 (c) offer evidence and cross-examine witnesses in any  
 5 hearing; and

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

11 Section 13. Section 53-20-205, MCA, is amended to  
 12 read:

13 "53-20-205. Community services. (1) The department may  
 14 establish and administer community comprehensive services,  
 15 programs, clinics, or other facilities throughout the state  
 16 for the purpose of aiding in the prevention, diagnosis,  
 17 amelioration, or treatment of developmental disabilities.  
 18 Programs, clinics, or other services may be provided  
 19 directly by state agencies, ~~or~~ indirectly through contract  
 20 or cooperative arrangements with other agencies of  
 21 government, regional or local, private or public agencies,  
 22 or private professional persons, ~~or~~ ~~in~~ accredited health or  
 23 long-term care facilities.

24 (2) The department may contract for programs for  
 25 developmental disabilities services. Contracts entered into

1 by the department shall contain specific conditions for  
2 performance by the contractor. It shall set minimum  
3 standards for programs and establish appropriate  
4 qualifications for persons employed in such programs.

5 (3) All developmental disabilities facilities and  
6 services shall comply with existing federal guidelines and  
7 with requirements which will enable the services and  
8 facilities to qualify for available aid funds. However,  
9 nothing herein requires facilities serving the  
10 developmentally disabled to meet the same or equal standards  
11 as licensed medical facilities unless the developmental  
12 disabilities facility is providing professional or skilled  
13 medical care.

14 (4) Comprehensive services, programs, clinics, or  
15 other facilities established or provided by the department  
16 under this part shall conform as nearly as possible to the  
17 plans of the advisory council created under 2-15-2204 and  
18 the regional councils provided for in 53-20-207."

19 Section 14. Section 53-21-112, MCA, is amended to  
20 read:

21 "53-21-112. Voluntary admission of minors. (1)  
22 Notwithstanding any other provision of law, a minor who is  
23 16 years of age or older may consent to receive mental  
24 health services to be rendered by a facility or a person  
25 licensed to practice medicine or psychology in this state.

1 ~~(2) Except as provided by this section, the provisions~~  
2 ~~of 53-21-111 apply to the voluntary admission of a minor to~~  
3 ~~a mental health facility or the state hospital.~~

4 ~~(3)~~(3) Except as provided by this subsection,  
5 voluntary admission of a minor to a mental health facility  
6 for an inpatient course of treatment shall be for the same  
7 period of time as that for an adult. A minor voluntarily  
8 admitted shall have the right to be released within 5 days  
9 of his request as provided in 53-21-111(3). The minor  
10 himself may make such request. Unless there has been a  
11 periodic review and a voluntary readmission consented to by  
12 the minor patient and his counsel, voluntary admission  
13 terminates at the expiration of 1 year. Counsel shall be  
14 appointed for the minor.

15 ~~(3)~~(4) If, in any application for voluntary admission  
16 for any period of time to a mental health facility, a minor  
17 fails to join in the consent of his parents or guardian to  
18 the voluntary admission, then the application for admission  
19 shall be treated as on a petition for involuntary  
20 commitment. Notice of the substance of this subsection and  
21 of the right to counsel shall be set forth in conspicuous  
22 type in a conspicuous location on any form or application  
23 used for the voluntary admission of a minor to a mental  
24 health facility. The notice shall be explained to the minor  
25 by the professional person approving the application."

1 Section 15. Section 53-24-104, MCA, is amended to  
2 read:

3 "53-24-104. Deposit of funds from federal or private  
4 sources with state treasurer. Funds available to the  
5 department from federal or private sources for use in  
6 ~~etohol~~ alcoholism and drug dependence prevention,  
7 treatment, and control programs shall be deposited with the  
8 state treasurer to the account of the department in the  
9 federal and private revenue fund."

10 Section 16. Section 53-24-108, MCA, is amended to  
11 read:

12 "53-24-108. Utilization of funds generated by taxation  
13 on alcoholic beverages. (1) Revenue generated by 16-1-404,  
14 16-1-406, and 16-1-408 for the treatment, rehabilitation,  
15 and prevention of alcoholism may be distributed in either of  
16 the following manners:

17 (a) as payment of fees for alcoholism services  
18 provided by state-approved alcoholism programs, certified  
19 alcoholism counselors, licensed physicians, and licensed  
20 hospitals; end gr

21 (b) as grants to persons operating state-approved  
22 alcoholism programs.

23 (2) No person operating a state-approved alcoholism  
24 program may be required to provide matching funds as a  
25 condition of receiving a grant under subsection (1) of this

1 section.

2 (3) In addition to funding received under this  
3 section, a person operating a state-approved alcoholism  
4 program may accept gifts, bequests, or the donation of  
5 services or money for the treatment, rehabilitation, or  
6 prevention of alcoholism.

7 (4) No person receiving funding under this section to  
8 support operation of a state-approved alcoholism program may  
9 refuse alcoholism treatment, rehabilitation, or prevention  
10 services to a person solely because of that person's  
11 inability to pay for those services.

12 (5) A grant made under this section is subject to the  
13 following conditions:

14 (a) The grant application must contain an estimate of  
15 all program income, including income from earned fees,  
16 gifts, bequests, donations, and grants from other than state  
17 sources during the period for which grant support is sought.

18 (b) Whenever, during the period of grant support,  
19 program income exceeds the amount estimated in the grant  
20 application, the amount of the excess shall be reported to  
21 the grantor.

22 (c) The excess shall be used by the grantee under the  
23 terms of the grant in accordance with one or a combination  
24 of the following options:

25 (i) use for any purpose that furthers the objectives

1 of the legislation under which the grant was made; or  
2 (ii) deduction from total project costs to determine  
3 the net costs on which the grantor's share of the costs is  
4 based.

5 (6) Revenue generated by 16-1-404, 16-1-406, and  
6 16-1-408 for the treatment, rehabilitation, and prevention  
7 of alcoholism which has not been encumbered for those  
8 purposes by the counties of Montana or the department shall  
9 be returned to the state's general fund within 30 days after  
10 the close of each fiscal year."

11 Section 17. Section 53-24-206, MCA, is amended to  
12 read:

13 "53-24-206. Receipt of financial assistance  
14 authorized. The department may apply for and receive grants,  
15 allotments, or allocations of funds or other assistance for  
16 purposes pertaining to the problems of ~~alcohol~~ alcoholism  
17 and drug dependence or related social problems under laws  
18 and rules of the United States, any other state, or any  
19 private organization. The department may cooperate with any  
20 other government agency or private organization in programs  
21 on ~~alcohol~~ alcoholism and drug dependence related social  
22 problems. In carrying out cooperative programs, the  
23 department may make grants of financial assistance to  
24 government agencies and private organizations under terms  
25 and conditions agreed upon."

1 Section 18. Section 53-24-304, MCA, is amended to  
2 read:

3 "53-24-304. Emergency commitment of intoxicated  
4 persons and persons incapacitated by alcohol. (1) An  
5 intoxicated person who has threatened, attempted, or  
6 inflicted physical harm on another and is likely to inflict  
7 physical harm on another unless committed or a person who is  
8 incapacitated by alcohol may be committed to an approved  
9 public treatment facility for emergency treatment. A refusal  
10 to undergo treatment does not constitute evidence of lack of  
11 judgment as to the need for treatment.

12 (2) The certifying physician, spouse, guardian, or  
13 relative of the person to be committed or any other  
14 responsible person may make a written application for  
15 commitment under this section directed to the administrator  
16 of the approved public treatment facility. The application  
17 shall state facts to support the need for emergency  
18 treatment and be accompanied by a physician's certificate  
19 stating that he has examined the person sought to be  
20 committed within 2 days before the certificate's date and  
21 facts supporting the need for emergency treatment. A  
22 physician employed by the admitting facility or the  
23 department is not eligible to be the certifying physician.

24 (3) Upon approval of the application by the  
25 administrator of the approved public treatment facility, the

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1 person shall be brought to the facility by a peace officer,  
 2 health officer, the applicant for commitment, the patient's  
 3 spouse, the patient's guardian, or any other interested  
 4 person. The person shall be detained at the facility to  
 5 which he was admitted or transferred to another appropriate  
 6 public or private treatment facility until discharged under  
 7 subsection (5).

8 (4) The administrator of an approved public treatment  
 9 facility shall refuse an application if in his opinion the  
 10 application and certificate fail to sustain the grounds for  
 11 commitment.

12 (5) When on the advice of the medical staff the  
 13 administrator determines that the grounds for commitment no  
 14 longer exist, he shall discharge a person committed under  
 15 this section. No person committed under this section may be  
 16 detained in any treatment facility for more than 5 days. If  
 17 a petition for involuntary commitment under 53-24-302 has  
 18 been filed within the 5 days and the administrator in charge  
 19 of an approved public treatment facility finds that grounds  
 20 for emergency commitment still exist, he may detain the  
 21 person until the petition has been heard and determined, but  
 22 no longer than 10 days after filing the petition.

23 (6) A copy of the written application for commitment  
 24 and of the physician's certificate and a written explanation  
 25 of the person's right to counsel shall be given to the

1 person by the department within 24 hours after commitment.  
 2 The department shall provide a reasonable opportunity for  
 3 the person to consult counsel."

4 Section 19. Section 53-30-212, MCA, is amended to  
 5 read:

6 "53-30-212. Commutation of sentence to state prison  
 7 and transfer of prisoner to juvenile correctional facility.  
 8 (1) Upon the application of a person under the age of 21  
 9 years of age who has been sentenced to the state prison or  
 10 upon the application of his parents or guardian, the  
 11 governor may, after consulting with the department of  
 12 institutions and with the approval of the board of pardons,  
 13 commute the sentence by committing such person to the  
 14 department ~~during his minority until he is 21 years of age~~  
 15 or until sooner placed or discharged.

16 (2) If such person's behavior after being committed to  
 17 the department indicates that he is not a proper person to  
 18 reside at one of the department's juvenile facilities, the  
 19 governor, after consulting with the department and with the  
 20 approval of the board of pardons, may revoke the commutation  
 21 and return him to the state prison to serve out his  
 22 unexpired term, and the time spent by him at one of the  
 23 department ~~department's~~ juvenile facilities or while a  
 24 refugee from one of the department ~~department's~~ juvenile  
 25 facilities shall not be considered as a part of his original

1 sentence.

2 (3) Upon recommendation of the warden and with the  
3 approval of the department, a person under ~~the age of~~ 21  
4 years of age who has been sentenced to the state prison may  
5 be transferred to any juvenile facility under the  
6 jurisdiction and control of the department.

7 (4) Upon recommendation of the warden and approval of  
8 a person sentenced to the state prison or application of a  
9 person sentenced to the state prison and approval of the  
10 warden and with the approval of the department, such person  
11 sentenced to the state prison who is 25 years ~~old~~ of age or  
12 younger may be transferred to the Swan River youth forest  
13 camp. Upon such transfer such person shall be under the  
14 supervision and control of the facility to which he is  
15 transferred.

16 (5) If such person's behavior after transfer to such  
17 juvenile facility indicates he might be released on parole  
18 or his sentence be commuted and he be discharged from  
19 custody, the superintendent of such facility, with the  
20 approval of the department, may make an appropriate  
21 recommendation to the state board of pardons and the  
22 governor, who may, in their discretion, parole such person  
23 or commute his sentence.

24 (6) If such person's behavior after transfer to a  
25 juvenile facility indicates he is not a proper person to

1 reside in such facility, upon recommendation of the  
2 superintendent and with the approval of the department, such  
3 person shall be returned to the state prison to serve out  
4 his unexpired term."

5 Section 20. Section 53-30-214, MCA, is amended to  
6 read:

7 "53-30-214. Apprehension and return of child leaving  
8 juvenile facility without permission. A child who has left a  
9 juvenile facility of the department of institutions without  
10 permission may be apprehended and returned by any citizen.  
11 The term "juvenile facility of the department" means any  
12 facility under the supervision and control of the department  
13 of institutions ~~whose~~ which has as its primary function ~~is~~  
14 the care, training, custody, and control of children and  
15 specifically includes the Pine Hills school for boys, the  
16 Mountain View school for girls, ~~the Montana children's~~  
17 ~~center--Boulder--River--school--and--hospital, and~~ the Swan  
18 River youth forest camp ~~and Eastmont training center."~~

19 Section 21. Repealer. Sections 38-121 and 80-101  
20 through 80-2107, R.C.M. 1947, are repealed.

-End-

SF 117

Approved by Committee on Public Health, Welfare & Safety

*Senate* BILL NO. *127*  
*Blaylock*

INTRODUCED BY \_\_\_\_\_  
BY REQUEST OF THE CODE COMMISSIONER

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1 department of health and environmental sciences or the state  
 2 medical association or, in the case of osteopathic  
 3 practitioners, by the state osteopathic association, or in  
 4 the case of chiropractors, by the state chiropractic  
 5 association, or in the case of optometrical services, as  
 6 approved by the Montana optometric association, or in the  
 7 case of dental services, as approved by the dental  
 8 association. "Medical" or "medicine" as used in this section  
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 21 However, the definition may not allow payment by a county  
 22 for general assistance--medical for persons whose income  
 23 exceeds 300% of the limitation for obtaining regular county  
 24 general relief assistance.

25 (4) In any case where the county or state pays medical

1 expenses or hospitalization for an individual, the county or  
 2 state is subrogated to the claims of the physician or  
 3 hospital to the extent of payment. To the extent necessary  
 4 for reimbursement of medical benefits paid to or on behalf  
 5 of an individual, the county or state is subrogated to the  
 6 rights of the individual to recover from a third party who  
 7 may be liable to pay the medical expenses. The provisions of  
 8 53-2-612 which relate to medical benefits provided under  
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 19 court, proposed adoptive ~~parents~~ parent, or agency, a  
 20 certified copy of any license issued and in good standing  
 21 shall be furnished by the department for use in any adoption  
 22 proceeding with which any licensed agency is concerned."

23 Section 7. Section 53-4-501, MCA, is amended to read:  
 24 "53-4-501. Definitions. In this part, the following  
 25 definitions apply:

1 (1) "Child" means a person under 12 years of age.

2 (2) "Day-care facility" means a person, association,

3 or place, incorporated or unincorporated, that receives for

4 care during the day or part of the day three or more

5 children of separate families and continues this type of

6 care for 5 or more consecutive weeks. It does not include a

7 person who limits care to children who are related to him by

8 blood or marriage or under his legal guardianship ~~and not~~ or

9 any group facilities facility established chiefly for

10 educational purposes.

11 (3) "Day-care center" means a day-care facility that

12 receives seven or more children for care for 5 or more hours

13 of the day for 5 or more consecutive weeks. It may include

14 facilities known as child-care centers, nursery schools, day

15 nurseries, and centers for the mentally retarded.

16 (4) "Department" means the department of social and

17 rehabilitation services provided for in Title 2, chapter 15,

18 part 22."

19 Section 8. Section 53-4-505, MCA, is amended to read:

20 "53-4-505. Fire safety -- certification required. (1)

21 The state fire marshal of the department of justice shall

22 adopt and enforce rules for the protection of children in

23 care facilities from fire hazards and arrange for such

24 inspections and investigations as it considers necessary.

25 (2) Each applicant for a license to operate a day-care

1 center shall submit to the department of social and

2 rehabilitation services a certificate of approval indicating

3 that fire safety rules have been met before a license can be

4 issued.

5 (3) Automatic sprinkler systems acceptable to the

6 department--of-justice state fire marshal shall be installed

7 in all nonfire-resistant homes two stories or more in height

8 with 10 or more children, with the department--of--justice

9 state fire marshal to issue for the information and use of

10 the department of social and rehabilitation services

11 certificates of compliance with fire rules and standards

12 applicable to the facilities."

13 Section 9. Section 53-4-509, MCA, is amended to read:

14 "53-4-509. Provisional license. The department of

15 social and rehabilitation services may in its discretion

16 issue a provisional license for a period of not more than 6

17 months if it finds that a substandard day-care facility is

18 attempting to meet the minimum standards. The requirement

19 that a day-care center shall be certified by the state fire

20 marshal of the department of justice and the department of

21 health and environmental sciences may not be waived."

22 Section 10. Section 53-5-303, MCA, is amended to read:

23 "53-5-303. Purpose. In order to ensure the proper care

24 of aged persons or disabled adults in foster family care

25 homes and to implement provisions of ~~federal law~~ in Title

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1 ~~XX, of the Social Services-Amendments-of-1974 Security Act,~~  
 2 ~~Public Law 93-647,~~ the department may obtain, license, and  
 3 supervise adult foster family care homes for three or fewer  
 4 aged persons or disabled adults in need of such care."

5 Section 11. Section 53-5-304, MCA, is amended to read:  
 6 "53-5-304. Standards for adult foster family care  
 7 homes. The department may establish standards by which  
 8 private residences may be licensed as adult foster family  
 9 care homes. These standards shall provide for the safety and  
 10 comfort of the residents and ~~shall be~~ are subject to the  
 11 advice and recommendations of the ~~state fire marshal of the~~  
 12 department of ~~health-and-environmental-sciences~~ justice in  
 13 relation to fire and safety requirements."

14 Section 12. Section 53-20-112, MCA, is amended to  
 15 read:

16 "53-20-112. Procedural rights. (1) Any person subject  
 17 to emergency admittance to a residential facility, to  
 18 examination or evaluation by a professional person, or to  
 19 any hearing held pursuant to this part shall have all the  
 20 rights accorded to a person subject to involuntary  
 21 commitment proceedings under the laws of this state relating  
 22 to involuntary commitment of the seriously mentally ill.

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

1 (a) be present at any hearing held pursuant to this  
 2 part;

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

4 (c) offer evidence and cross-examine witnesses in any  
 5 hearing; and

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

11 Section 13. Section 53-20-205, MCA, is amended to  
 12 read:

13 "53-20-205. Community services. (1) The department may  
 14 establish and administer community comprehensive services,  
 15 programs, clinics, or other facilities throughout the state  
 16 for the purpose of aiding in the prevention, diagnosis,  
 17 amelioration, or treatment of developmental disabilities.  
 18 Programs, clinics, or other services may be provided  
 19 directly by state agencies ~~or~~ indirectly through contract  
 20 or cooperative arrangements with other agencies of  
 21 government, regional or local, private or public agencies,  
 22 or private professional persons ~~or~~ ~~in~~ accredited health or  
 23 long-term care facilities.

24 (2) The department may contract for programs for  
 25 developmental disabilities services. Contracts entered into

1 by the department shall contain specific conditions for  
2 performance by the contractor. It shall set minimum  
3 standards for programs and establish appropriate  
4 qualifications for persons employed in such programs.

5 (3) All developmental disabilities facilities and  
6 services shall comply with existing federal guidelines and  
7 with requirements which will enable the services and  
8 facilities to qualify for available aid funds. However,  
9 nothing herein requires facilities serving the  
10 developmentally disabled to meet the same or equal standards  
11 as licensed medical facilities unless the developmental  
12 disabilities facility is providing professional or skilled  
13 medical care.

14 (4) Comprehensive services, programs, clinics, or  
15 other facilities established or provided by the department  
16 under this part shall conform as nearly as possible to the  
17 plans of the advisory council created, under 2-15-2204 and  
18 the regional councils provided for in 53-20-207."

19 Section 14. Section 53-21-112, MCA, is amended to  
20 read:

21 "53-21-112. Voluntary admission of minors. (1)  
22 Notwithstanding any other provision of law, a minor who is  
23 16 years of age or older may consent to receive mental  
24 health services to be rendered by a facility or a person  
25 licensed to practice medicine or psychology in this state.

1 ~~(2) Except as provided by this section, the provisions~~  
2 ~~of 53-21-111 apply to the voluntary admission of a minor to~~  
3 ~~a mental health facility or the state hospital.~~

4 ~~(3)~~(3) Except as provided by this subsection,  
5 voluntary admission of a minor to a mental health facility  
6 for an inpatient course of treatment shall be for the same  
7 period of time as that for an adult. A minor voluntarily  
8 admitted shall have the right to be released within 5 days  
9 of his request as provided in 53-21-111(3). The minor  
10 himself may make such request. Unless there has been a  
11 periodic review and a voluntary readmission consented to by  
12 the minor patient and his counsel, voluntary admission  
13 terminates at the expiration of 1 year. Counsel shall be  
14 appointed for the minor.

15 ~~(3)~~(4) If, in any application for voluntary admission  
16 for any period of time to a mental health facility, a minor  
17 fails to join in the consent of his parents or guardian to  
18 the voluntary admission, then the application for admission  
19 shall be treated as on a petition for involuntary  
20 commitment. Notice of the substance of this subsection and  
21 of the right to counsel shall be set forth in conspicuous  
22 type in a conspicuous location on any form or application  
23 used for the voluntary admission of a minor to a mental  
24 health facility. The notice shall be explained to the minor  
25 by the professional person approving the application."

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1 Section 15. Section 53-24-104, MCA, is amended to  
2 read:

3 "53-24-104. Deposit of funds from federal or private  
4 sources with state treasurer. Funds available to the  
5 department from federal or private sources for use in  
6 ~~alcohol~~ **alcoholism** and drug dependence prevention,  
7 treatment, and control programs shall be deposited with the  
8 state treasurer to the account of the department in the  
9 federal and private revenue fund."

10 Section 16. Section 53-24-108, MCA, is amended to  
11 read:

12 "53-24-108. Utilization of funds generated by taxation  
13 on alcoholic beverages. (1) Revenue generated by 16-1-404,  
14 16-1-406, and 16-1-408 for the treatment, rehabilitation,  
15 and prevention of alcoholism may be distributed in either of  
16 the following manners:

17 (a) as payment of fees for alcoholism services  
18 provided by state-approved alcoholism programs, certified  
19 alcoholism counselors, licensed physicians, and licensed  
20 hospitals; and or

21 (b) as grants to persons operating state-approved  
22 alcoholism programs.

23 (2) No person operating a state-approved alcoholism  
24 program may be required to provide matching funds as a  
25 condition of receiving a grant under subsection (1) of this

1 section.

2 (3) In addition to funding received under this  
3 section, a person operating a state-approved alcoholism  
4 program may accept gifts, bequests, or the donation of  
5 services or money for the treatment, rehabilitation, or  
6 prevention of alcoholism.

7 (4) No person receiving funding under this section to  
8 support operation of a state-approved alcoholism program may  
9 refuse alcoholism treatment, rehabilitation, or prevention  
10 services to a person solely because of that person's  
11 inability to pay for those services.

12 (5) A grant made under this section is subject to the  
13 following conditions:

14 (a) The grant application must contain an estimate of  
15 all program income, including income from earned fees,  
16 gifts, bequests, donations, and grants from other than state  
17 sources during the period for which grant support is sought.

18 (b) Whenever, during the period of grant support,  
19 program income exceeds the amount estimated in the grant  
20 application, the amount of the excess shall be reported to  
21 the grantor.

22 (c) The excess shall be used by the grantee under the  
23 terms of the grant in accordance with one or a combination  
24 of the following options:

25 (i) use for any purpose that furthers the objectives

1 of the legislation under which the grant was made; or  
 2 (ii) deduction from total project costs to determine  
 3 the net costs on which the grantor's share of the costs is  
 4 based.

5 (6) Revenue generated by 16-1-404, 16-1-406, and  
 6 16-1-408 for the treatment, rehabilitation, and prevention  
 7 of alcoholism which has not been encumbered for those  
 8 purposes by the counties of Montana or the department shall  
 9 be returned to the state's general fund within 30 days after  
 10 the close of each fiscal year."

11 Section 17. Section 53-24-206, MCA, is amended to  
 12 read:

13 "53-24-206. Receipt of financial assistance  
 14 authorized. The department may apply for and receive grants,  
 15 allotments, or allocations of funds or other assistance for  
 16 purposes pertaining to the problems of ~~alcohol~~ alcoholism  
 17 and drug dependence or related social problems under laws  
 18 and rules of the United States, any other state, or any  
 19 private organization. The department may cooperate with any  
 20 other government agency or private organization in programs  
 21 on ~~alcohol~~ alcoholism and drug dependence related social  
 22 problems. In carrying out cooperative programs, the  
 23 department may make grants of financial assistance to  
 24 government agencies and private organizations under terms  
 25 and conditions agreed upon."

1 Section 18. Section 53-24-304, MCA, is amended to  
 2 read:

3 "53-24-304. Emergency commitment of intoxicated  
 4 persons and persons incapacitated by alcohol. (1) An  
 5 intoxicated person who has threatened, attempted, or  
 6 inflicted physical harm on another and is likely to inflict  
 7 physical harm on another unless committed or a person who is  
 8 incapacitated by alcohol may be committed to an approved  
 9 public treatment facility for emergency treatment. A refusal  
 10 to undergo treatment does not constitute evidence of lack of  
 11 judgment as to the need for treatment.

12 (2) The certifying physician, spouse, guardian, or  
 13 relative of the person to be committed or any other  
 14 responsible person may make a written application for  
 15 commitment under this section directed to the administrator  
 16 of the approved public treatment facility. The application  
 17 shall state facts to support the need for emergency  
 18 treatment and be accompanied by a physician's certificate  
 19 stating that he has examined the person sought to be  
 20 committed within 2 days before the certificate's date and  
 21 facts supporting the need for emergency treatment. A  
 22 physician employed by the admitting facility or the  
 23 department is not eligible to be the certifying physician.

24 (3) Upon approval of the application by the  
 25 administrator of the approved public treatment facility, the

1 person shall be brought to the facility by a peace officer,  
 2 health officer, the applicant for commitment, the patient's  
 3 spouse, the patient's guardian, or any other interested  
 4 person. The person shall be detained at the facility to  
 5 which he was admitted or transferred to another appropriate  
 6 public or private treatment facility until discharged under  
 7 subsection (5).

8 (4) The administrator of an approved public treatment  
 9 facility shall refuse an application if in his opinion the  
 10 application and certificate fail to sustain the grounds for  
 11 commitment.

12 (5) When on the advice of the medical staff the  
 13 administrator determines that the grounds for commitment no  
 14 longer exist, he shall discharge a person committed under  
 15 this section. No person committed under this section may be  
 16 detained in any treatment facility for more than 5 days. If  
 17 a petition for involuntary commitment under 53-24-302 has  
 18 been filed within the 5 days and the administrator in charge  
 19 of an approved public treatment facility finds that grounds  
 20 for emergency commitment still exist, he may detain the  
 21 person until the petition has been heard and determined, but  
 22 no longer than 10 days after filing the petition.

23 (6) A copy of the written application for commitment  
 24 and of the physician's certificate and a written explanation  
 25 of the person's right to counsel shall be given to the

1 person by the department within 24 hours after commitment.  
 2 The department shall provide a reasonable opportunity for  
 3 the person to consult counsel."

4 Section 19. Section 53-30-212, MCA, is amended to  
 5 read:

6 "53-30-212. Commutation of sentence to state prison  
 7 and transfer of prisoner to juvenile correctional facility.  
 8 (1) Upon the application of a person under ~~the age of~~ 21  
 9 years of age who has been sentenced to the state prison or  
 10 upon the application of his parents or guardian, the  
 11 governor may, after consulting with the department of  
 12 institutions and with the approval of the board of pardons,  
 13 commute the sentence by committing such person to the  
 14 department ~~during his minority until he is 21 years of age~~  
 15 or until sooner placed or discharged.

16 (2) If such person's behavior after being committed to  
 17 the department indicates that he is not a proper person to  
 18 reside at one of the department's juvenile facilities, the  
 19 governor, after consulting with the department and with the  
 20 approval of the board of pardons, may revoke the commutation  
 21 and return him to the state prison to serve out his  
 22 unexpired term, and the time spent by him at one of the  
 23 department ~~department's~~ juvenile facilities or while a  
 24 refugee from one of the department ~~department's~~ juvenile  
 25 facilities shall not be considered as a part of his original

1 sentence.

2 (3) Upon recommendation of the warden and with the  
3 approval of the department, a person under ~~the age of~~ 21  
4 years of age who has been sentenced to the state prison may  
5 be transferred to any juvenile facility under the  
6 jurisdiction and control of the department.

7 (4) Upon recommendation of the warden and approval of  
8 a person sentenced to the state prison or application of a  
9 person sentenced to the state prison and approval of the  
10 warden and with the approval of the department, such person  
11 sentenced to the state prison who is 25 years ~~old~~ of age or  
12 younger may be transferred to the Swan River youth forest  
13 camp. Upon such transfer such person shall be under the  
14 supervision and control of the facility to which he is  
15 transferred.

16 (5) If such person's behavior after transfer to such  
17 juvenile facility indicates he might be released on parole  
18 or his sentence be commuted and he be discharged from  
19 custody, the superintendent of such facility, with the  
20 approval of the department, may make an appropriate  
21 recommendation to the state board of pardons and the  
22 governor, who may, in their discretion, parole such person  
23 or commute his sentence.

24 (6) If such person's behavior after transfer to a  
25 juvenile facility indicates he is not a proper person to

1 reside in such facility, upon recommendation of the  
2 superintendent and with the approval of the department, such  
3 person shall be returned to the state prison to serve out  
4 his unexpired term."

5 Section 20. Section 53-30-214, MCA, is amended to  
6 read:

7 "53-30-214. Apprehension and return of child leaving  
8 juvenile facility without permission. A child who has left a  
9 juvenile facility of the department of institutions without  
10 permission may be apprehended and returned by any citizen.  
11 The term "juvenile facility of the department" means any  
12 facility under the supervision and control of the department  
13 of institutions whose which has as its primary function is  
14 the care, training, custody, and control of children and  
15 specifically includes the Pine Hills school for boys, the  
16 Mountain View school for girls, ~~the Montana children's~~  
17 ~~center, Boulder River school and hospital~~ and the Swan  
18 River youth forest camp ~~and Eastmont training center."~~

19 Section 21. Repealer. Sections 38-121 and 80-2101  
20 through 80-2107, R.C.M. 1947, are repealed.

-End-

1 Agate BILL NO. 127  
 2 INTRODUCED BY Blaylock  
 3 BY REQUEST OF THE CODE COMMISSIONER  
 4

5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
 6 CLARIFY THE LAWS RELATING TO SOCIAL SERVICES AND  
 7 INSTITUTIONS; AMENDING SECTIONS 53-2-104, 53-2-202,  
 8 53-2-205, 53-3-103, 53-4-213, 53-4-406, 53-4-501, 53-4-505,  
 9 53-4-509, 53-5-303, 53-5-304, 53-9-109, 53-20-112,  
 10 53-20-205, 53-21-112, 53-24-104, 53-24-108, 53-24-206,  
 11 53-24-304, 53-30-212, AND 53-30-214, MCA; AND REPEALING  
 12 SECTIONS 38-121 AND 80-2101 THROUGH 80-2107, R.C.M. 1947."  
 13

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

15 Section 1. Section 53-2-104, MCA, is amended to read:  
 16 "53-2-104. Audit of public assistance records. All  
 17 applications, information, and records concerning any  
 18 applicant or recipient of assistance or services under this  
 19 title are subject to audit for legislative oversight or  
 20 determination of ~~welfare~~ public assistance fraud."  
 21

22 Section 2. Section 53-2-202, MCA, is amended to read:  
 23 "53-2-202. Attorney general to act as legal adviser to  
 24 department. The attorney general of the state shall act as  
 25 legal adviser to the department, shall perform such legal  
 services as may be required, and may employ such other and

1 additional counsel as may be necessary for this purpose and  
 2 fix the compensation therefor. ~~The total yearly sum for the~~  
 3 ~~service may not exceed \$2,400, which compensation shall be~~  
 4 ~~paid out of state public assistance funds."~~

5 Section 3. Section 53-2-205, MCA, is amended to read:  
 6 "53-2-205. Department authorized to establish and  
 7 collect social services fees. (1) The departaent is hereby  
 8 authorized to establish and collect fees for social services  
 9 furnished which are authorized pursuant to Title XX of the  
 10 Social Security Act, Public Law 93-641 ~~93-647~~. Such fees  
 11 shall be based on a schedule determined by the department.

12 (2) The state share of fees provided for by subsection  
 13 (1) shall be paid over to the state treasurer for the credit  
 14 of the earmarked revenue fund for the use of the department  
 15 in providing social services."

16 Section 4. Section 53-3-103, MCA, is amended to read:  
 17 "53-3-103. Medical aid and hospitalization for  
 18 indigent. (1) Except as provided in other parts of this  
 19 title, medical aid and hospitalization for county residents  
 20 and nonresidents within the county unable to provide these  
 21 necessities for themselves are the legal and financial duty  
 22 and responsibility of the ~~board of~~ county commissioners and  
 23 are payable from the county poor fund. The ~~board of~~ county  
 24 commissioners shall make provisions for competent and  
 25 skilled medical or surgical services as are approved by the

1 department of health and environmental sciences or the state  
 2 medical association or, in the case of osteopathic  
 3 practitioners, by the state osteopathic association, or in  
 4 the case of chiropractors, by the state chiropractic  
 5 association, or in the case of optometrical services, as  
 6 approved by the Montana optometric association, or in the  
 7 case of dental services, as approved by the dental  
 8 association. "Medical" or "medicine" as used in this section  
 9 refers to the healing art as practiced by licensed  
 10 practitioners.

11 (2) The board, in arranging for medical care for those  
 12 unable to provide it for themselves, may have the care  
 13 provided by physicians appointed by the board who shall be  
 14 known as county physicians or deputy county physicians and  
 15 may fix a rate of compensation for the furnishing of the  
 16 medical attendance.

17 (3) The department may promulgate rules to determine  
 18 under what circumstances persons in the county are unable to  
 19 provide medical aid and hospitalization for themselves,  
 20 including the power to define the term "medically needy".  
 21 However, the definition may not allow payment by a county  
 22 for general assistance--medical for persons whose income  
 23 exceeds 300% of the limitation for obtaining regular county  
 24 general relief assistance.

25 (4) In any case where the county or state pays medical

1 expenses or hospitalization for an individual, the county or  
 2 state is subrogated to the claims of the physician or  
 3 hospital to the extent of payment. To the extent necessary  
 4 for reimbursement of medical benefits paid to or on behalf  
 5 of an individual, the county or state is subrogated to the  
 6 rights of the individual to recover from a third party who  
 7 may be liable to pay the medical expenses. The provisions of  
 8 53-2-612 which relate to medical benefits provided under  
 9 Titles XIX and or XX of the Social Security Act apply to  
 10 medical benefits provided for in this section."

11 Section 5. Section 53-4-213, MCA, is amended to read:  
 12 "53-4-213. Department rules binding on county welfare  
 13 departments. All rules of the department made under this  
 14 ~~part~~ shall be binding upon the county departments of  
 15 public welfare."

16 Section 6. Section 53-4-406, MCA, is amended to read:  
 17 "53-4-406. Certified copy of license furnished for  
 18 adoption proceedings. Upon the request of any district  
 19 court, proposed adoptive ~~parents~~ parent, or agency, a  
 20 certified copy of any license issued and in good standing  
 21 shall be furnished by the department for use in any adoption  
 22 proceeding with which any licensed agency is concerned."

23 Section 7. Section 53-4-501, MCA, is amended to read:  
 24 "53-4-501. Definitions. In this part, the following  
 25 definitions apply:

1 (1) "Child" means a person under 12 years of age.

2 (2) "Day-care facility" means a person, association,  
3 or place, incorporated or unincorporated, that receives for  
4 care during the day or part of the day three or more  
5 children of separate families and continues this type of  
6 care for 5 or more consecutive weeks. It does not include a  
7 person who limits care to children who are related to him by  
8 blood or marriage or under his legal guardianship ~~and at~~ or  
9 any group facilities facility established chiefly for  
10 educational purposes.

11 (3) "Day-care center" means a day-care facility that  
12 receives seven or more children for care for 5 or more hours  
13 of the day for 5 or more consecutive weeks. It may include  
14 facilities known as child-care centers, nursery schools, day  
15 nurseries, and centers for the mentally retarded.

16 (4) "Department" means the department of social and  
17 rehabilitation services provided for in Title 2, chapter 15,  
18 part 22."

19 Section 8. Section 53-4-505, MCA, is amended to read:

20 "53-4-505. Fire safety -- certification required. (1)  
21 The state fire marshal of the department of justice shall  
22 adopt and enforce rules for the protection of children in  
23 care facilities from fire hazards and arrange for such  
24 inspections and investigations as it considers necessary.

25 (2) Each applicant for a license to operate a day-care

1 center shall submit to the department of social and  
2 rehabilitation services a certificate of approval indicating  
3 that fire safety rules have been met before a license can be  
4 issued.

5 (3) Automatic sprinkler systems acceptable to the  
6 ~~department--of-justice~~ state fire marshal shall be installed  
7 in all nonfire-resistant homes two stories or more in height  
8 with 10 or more children, with the ~~department--of--justice~~  
9 state fire marshal to issue for the information and use of  
10 the department of social and rehabilitation services  
11 certificates of compliance with fire rules and standards  
12 applicable to the facilities."

13 Section 9. Section 53-4-509, MCA, is amended to read:

14 "53-4-509. Provisional license. The department of  
15 social and rehabilitation services may in its discretion  
16 issue a provisional license for a period of not more than 6  
17 months if it finds that a substandard day-care facility is  
18 attempting to meet the minimum standards. The requirement  
19 that a day-care center shall be certified by the state fire  
20 marshal of the department of justice and the department of  
21 health and environmental sciences may not be waived."

22 Section 10. Section 53-5-303, MCA, is amended to read:

23 "53-5-303. Purpose. In order to ensure the proper care  
24 of aged persons or disabled adults in foster family care  
25 homes and to implement provisions of ~~federal-law~~ in Title

1 ~~XXV of the Social Services Amendments of 1974 Security Acts~~  
 2 ~~Public Law 93-647~~, the department may obtain, license, and  
 3 supervise adult foster family care homes for three or fewer  
 4 aged persons or disabled adults in need of such care."

5 Section 11. Section 53-5-304, MCA, is amended to read:

6 "53-5-304. Standards for adult foster family care  
 7 homes. The department may establish standards by which  
 8 private residences may be licensed as adult foster family  
 9 care homes. These standards shall provide for the safety and  
 10 comfort of the residents and ~~shall be~~ ~~are~~ subject to the  
 11 advice and recommendations of the ~~state fire marshal of the~~  
 12 ~~department of health and environmental sciences~~ justice in  
 13 relation to fire and safety requirements."

14 Section 12. Section 53-20-112, MCA, is amended to  
 15 read:

16 "53-20-112. Procedural rights. (1) Any person subject  
 17 to emergency admittance to a residential facility, to  
 18 examination or evaluation by a professional person, or to  
 19 any hearing held pursuant to this part shall have all the  
 20 rights accorded to a person subject to involuntary  
 21 commitment proceedings under the laws of this state relating  
 22 to involuntary commitment of the seriously mentally ill.

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

1 (a) be present at any hearing held pursuant to this  
 2 part;

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

4 (c) offer evidence and cross-examine witnesses in any  
 5 hearing; and

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

11 Section 13. Section 53-20-205, MCA, is amended to  
 12 read:

13 "53-20-205. Community services. (1) The department may  
 14 establish and administer community comprehensive services,  
 15 programs, clinics, or other facilities throughout the state  
 16 for the purpose of aiding in the prevention, diagnosis,  
 17 amelioration, or treatment of developmental disabilities.  
 18 Programs, clinics, or other services may be provided  
 19 directly by state agencies ~~or~~ indirectly through contract  
 20 or cooperative arrangements with other agencies of  
 21 government, regional or local, private or public agencies,  
 22 or private professional persons ~~or~~ ~~in~~ accredited health or  
 23 long-term care facilities.

24 (2) The department may contract for programs for  
 25 developmental disabilities services. Contracts entered into

1 by the department shall contain specific conditions for  
2 performance by the contractor. It shall set minimum  
3 standards for programs and establish appropriate  
4 qualifications for persons employed in such programs.

5 (3) All developmental disabilities facilities and  
6 services shall comply with existing federal guidelines and  
7 with requirements which will enable the services and  
8 facilities to qualify for available aid funds. However,  
9 nothing herein requires facilities serving the  
10 developmentally disabled to meet the same or equal standards  
11 as licensed medical facilities unless the developmental  
12 disabilities facility is providing professional or skilled  
13 medical care.

14 (4) Comprehensive services, programs, clinics, or  
15 other facilities established or provided by the department  
16 under this part shall conform as nearly as possible to the  
17 plans of the advisory council created under 2-15-2204 and  
18 the regional councils provided for in 53-20-207."

19 Section 14. Section 53-21-112, MCA, is amended to  
20 read:

21 "53-21-112. Voluntary admission of minors. (1)  
22 Notwithstanding any other provision of law, a minor who is  
23 16 years of age or older may consent to receive mental  
24 health services to be rendered by a facility or a person  
25 licensed to practice medicine or psychology in this state.

1 ~~(2) Except as provided by this section, the provisions~~  
2 ~~of 53-21-111 apply to the voluntary admission of a minor to~~  
3 ~~a mental health facility or the state hospital.~~

4 ~~(2)(3)~~ Except as provided by this subsection,  
5 voluntary admission of a minor to a mental health facility  
6 for an inpatient course of treatment shall be for the same  
7 period of time as that for an adult. A minor voluntarily  
8 admitted shall have the right to be released within 5 days  
9 of his request, as provided in 53-21-111(3). The minor  
10 himself may make such request. Unless there has been a  
11 periodic review and a voluntary readmission consented to by  
12 the minor patient and his counsel, voluntary admission  
13 terminates at the expiration of 1 year. Counsel shall be  
14 appointed for the minor.

15 ~~(3)(4)~~ If, in any application for voluntary admission  
16 for any period of time to a mental health facility, a minor  
17 fails to join in the consent of his parents or guardian to  
18 the voluntary admission, then the application for admission  
19 shall be treated as on a petition for involuntary  
20 commitment. Notice of the substance of this subsection and  
21 of the right to counsel shall be set forth in conspicuous  
22 type in a conspicuous location on any form or application  
23 used for the voluntary admission of a minor to a mental  
24 health facility. The notice shall be explained to the minor  
25 by the professional person approving the application."

1 Section 15. Section 53-24-104, MCA, is amended to  
2 read:

3 "53-24-104. Deposit of funds from federal or private  
4 sources with state treasurer. Funds available to the  
5 department from federal or private sources for use in  
6 alcohol ~~alcoholism~~ and drug dependence prevention,  
7 treatment, and control programs shall be deposited with the  
8 state treasurer to the account of the department in the  
9 federal and private revenue fund."

10 Section 16. Section 53-24-108, MCA, is amended to  
11 read:

12 "53-24-108. Utilization of funds generated by taxation  
13 on alcoholic beverages. (1) Revenue generated by 16-1-404,  
14 16-1-406, and 16-1-408 for the treatment, rehabilitation,  
15 and prevention of alcoholism may be distributed in either of  
16 the following manners:

17 (a) as payment of fees for alcoholism services  
18 provided by state-approved alcoholism programs, certified  
19 alcoholism counselors, licensed physicians, and licensed  
20 hospitals; and or

21 (b) as grants to persons operating state-approved  
22 alcoholism programs.

23 (2) No person operating a state-approved alcoholism  
24 program may be required to provide matching funds as a  
25 condition of receiving a grant under subsection (1) of this

1 section.

2 (3) In addition to funding received under this  
3 section, a person operating a state-approved alcoholism  
4 program may accept gifts, bequests, or the donation of  
5 services or money for the treatment, rehabilitation, or  
6 prevention of alcoholism.

7 (4) No person receiving funding under this section to  
8 support operation of a state-approved alcoholism program may  
9 refuse alcoholism treatment, rehabilitation, or prevention  
10 services to a person solely because of that person's  
11 inability to pay for those services.

12 (5) A grant made under this section is subject to the  
13 following conditions:

14 (a) The grant application must contain an estimate of  
15 all program income, including income from earned fees,  
16 gifts, bequests, donations, and grants from other than state  
17 sources during the period for which grant support is sought

18 (b) Whenever, during the period of grant support,  
19 program income exceeds the amount estimated in the grant  
20 application, the amount of the excess shall be reported to  
21 the grantor.

22 (c) The excess shall be used by the grantee under the  
23 terms of the grant in accordance with one or a combination  
24 of the following options:

25 (i) use for any purpose that furthers the objectives

1 of the legislation under which the grant was made; or  
 2 (ii) deduction from total project costs to determine  
 3 the net costs on which the grantor's share of the costs is  
 4 based.

5 (6) Revenue generated by 16-1-404, 16-1-406, and  
 6 16-1-408 for the treatment, rehabilitation, and prevention  
 7 of alcoholism which has not been encumbered for those  
 8 purposes by the counties of Montana or the department shall  
 9 be returned to the state's general fund within 30 days after  
 10 the close of each fiscal year."

11 Section 17. Section 53-24-206, MCA, is amended to  
 12 read:

13 "53-24-206. Receipt of financial assistance  
 14 authorized. The department may apply for and receive grants,  
 15 allotments, or allocations of funds or other assistance for  
 16 purposes pertaining to the problems of ~~alcohol~~ alcoholism  
 17 and drug dependence or related social problems under laws  
 18 and rules of the United States, any other state, or any  
 19 private organization. The department may cooperate with any  
 20 other government agency or private organization in programs  
 21 on ~~alcohol~~ alcoholism and drug dependence related social  
 22 problems. In carrying out cooperative programs, the  
 23 department may make grants of financial assistance to  
 24 government agencies and private organizations under terms  
 25 and conditions agreed upon."

1 Section 18. Section 53-24-304, MCA, is amended to  
 2 read:

3 "53-24-304. Emergency commitment of intoxicated  
 4 persons and persons incapacitated by alcohol. (1) An  
 5 intoxicated person who has threatened, attempted, or  
 6 inflicted physical harm on another and is likely to inflict  
 7 physical harm on another unless committed or a person who is  
 8 incapacitated by alcohol may be committed to an approved  
 9 public treatment facility for emergency treatment. A refusal  
 10 to undergo treatment does not constitute evidence of lack of  
 11 judgment as to the need for treatment.

12 (2) The certifying physician, spouse, guardian, or  
 13 relative of the person to be committed or any other  
 14 responsible person may make a written application for  
 15 commitment under this section directed to the administrator  
 16 of the approved public treatment facility. The application  
 17 shall state facts to support the need for emergency  
 18 treatment and be accompanied by a physician's certificate  
 19 stating that he has examined the person sought to be  
 20 committed within 2 days before the certificate's date and  
 21 facts supporting the need for emergency treatment. A  
 22 physician employed by the admitting facility or the  
 23 department is not eligible to be the certifying physician.

24 (3) Upon approval of the application by the  
 25 administrator of the approved public treatment facility, the

1 person shall be brought to the facility by a peace officer,  
 2 health officer, the applicant for commitment, the patient's  
 3 spouse, the patient's guardian, or any other interested  
 4 person. The person shall be detained at the facility to  
 5 which he was admitted or transferred to another appropriate  
 6 public or private treatment facility until discharged under  
 7 subsection (5).

8 (4) The administrator of an approved public treatment  
 9 facility shall refuse an application if in his opinion the  
 10 application and certificate fail to sustain the grounds for  
 11 commitment.

12 (5) When on the advice of the medical staff the  
 13 administrator determines that the grounds for commitment no  
 14 longer exist, he shall discharge a person committed under  
 15 this section. No person committed under this section may be  
 16 detained in any treatment facility for more than 5 days. If  
 17 a petition for involuntary commitment under 53-24-302 has  
 18 been filed within the 5 days and the administrator in charge  
 19 of an approved public treatment facility finds that grounds  
 20 for emergency commitment still exist, he may detain the  
 21 person until the petition has been heard and determined, but  
 22 no longer than 10 days after filing the petition.

23 (6) A copy of the written application for commitment  
 24 and of the physician's certificate and a written explanation  
 25 of the person's right to counsel shall be given to the

1 person by the department within 24 hours after commitment.  
 2 The department shall provide a reasonable opportunity for  
 3 the person to consult counsel."

4 Section 19. Section 53-30-212, MCA, is amended to  
 5 read:

6 "53-30-212. Commutation of sentence to state prison  
 7 and transfer of prisoner to juvenile correctional facility.  
 8 (1) Upon the application of a person under the age of 21  
 9 years of age who has been sentenced to the state prison or  
 10 upon the application of his parents or guardian, the  
 11 governor may, after consulting with the department of  
 12 institutions and with the approval of the board of pardons,  
 13 commute the sentence by committing such person to the  
 14 department ~~during his minority until he is 21 years of age~~  
 15 or until sooner placed or discharged.

16 (2) If such person's behavior after being committed to  
 17 the department indicates that he is not a proper person to  
 18 reside at one of the department's juvenile facilities, the  
 19 governor, after consulting with the department and with the  
 20 approval of the board of pardons, may revoke the commutation  
 21 and return him to the state prison to serve out his  
 22 unexpired term, and the time spent by him at one of the  
 23 department ~~department's~~ juvenile facilities or while a  
 24 refugee from one of the department ~~department's~~ juvenile  
 25 facilities shall not be considered as a part of his original

1 sentence.

2 (3) Upon recommendation of the warden and with the  
3 approval of the department, a person under ~~the age of~~ 21  
4 years ~~of age~~ who has been sentenced to the state prison may  
5 be transferred to any juvenile facility under the  
6 jurisdiction and control of the department.

7 (4) Upon recommendation of the warden and approval of  
8 a person sentenced to the state prison or application of a  
9 person sentenced to the state prison and approval of the  
10 warden and with the approval of the department, such person  
11 sentenced to the state prison who is 25 years ~~old~~ ~~of age~~ or  
12 younger may be transferred to the Swan River youth forest  
13 camp. Upon such transfer such person shall be under the  
14 supervision and control of the facility to which he is  
15 transferred.

16 (5) If such person's behavior after transfer to such  
17 juvenile facility indicates he might be released on parole  
18 or his sentence ~~be~~ commuted and he be discharged from  
19 custody, the superintendent of such facility, with the  
20 approval of the department, may make an appropriate  
21 recommendation to the state board of pardons and the  
22 governor, who may, in their discretion, parole such person  
23 or commute his sentence.

24 (6) If such person's behavior after transfer to a  
25 juvenile facility indicates he is not a proper person to

1 reside in such facility, upon recommendation of the  
2 superintendent and with the approval of the department, such  
3 person shall be returned to the state prison to serve out  
4 his unexpired term."

5 Section 20. Section ~~53-30-214~~, MCA, is amended to  
6 read:

7 \*53-30-214. Apprehension and return of child leaving  
8 juvenile facility without permission. A child who has left a  
9 juvenile facility of the department of institutions without  
10 permission may be apprehended and returned by any citizen.  
11 The term "juvenile facility of the department" means any  
12 facility under the supervision and control of the department  
13 of institutions ~~whose~~ ~~which has as its~~ primary function ~~is~~  
14 the care, training, custody, and control of children and  
15 specifically includes the Pine Hills school for boys, the  
16 Mountain View school for girls, the ~~Montana children's~~  
17 ~~center~~ ~~Boulder River school and hospital~~ and the Swan  
18 River youth forest camp ~~and Eastmont training center.~~"

19 Section 21. Repealer. Sections 38-121 and 80-2101  
20 through 80-2107, R.C.M. 1947, are repealed.

-End-

50127

## 1 SENATE BILL NO. 127

2 INTRODUCED BY BLAYLOCK

3 BY REQUEST OF THE CODE COMMISSIONER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY THE LAWS RELATING TO SOCIAL SERVICES AND  
7 INSTITUTIONS; AMENDING SECTIONS 53-2-104, 53-2-202,  
8 53-2-205, 53-3-103, 53-4-213, 53-4-406, 53-4-501, 53-4-505,  
9 53-4-509, 53-5-303, 53-5-304, 53-9-109, 53-20-112,  
10 53-20-205, 53-21-112, 53-24-104, 53-24-108, 53-24-206,  
11 53-24-304, 53-30-212, AND 53-30-214, MCA; AND REPEALING  
12 SECTIONS 38-121 AND 80-2101 THROUGH 80-2107, R.C.M. 1947."  
13

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

15 Section 1. Section 53-2-104, MCA, is amended to read:

16 "53-2-104. Audit of public assistance records. All  
17 applications, information, and records concerning any  
18 applicant or recipient of assistance or services under this  
19 title are subject to audit for legislative oversight or  
20 determination of welfare public assistance fraud."

21 Section 2. Section 53-2-202, MCA, is amended to read:

22 "53-2-202. Attorney general to act as legal adviser to  
23 department. The attorney general of the state shall act as  
24 legal adviser to the department, shall perform such legal  
25 services as may be required, and may employ such other and

1 additional counsel as may be necessary for this purpose and  
2 fix the compensation therefor. ~~The total yearly sum for the~~  
3 ~~services may not exceed \$2,400, which compensation shall be~~  
4 ~~paid out of state public assistance funds."~~

5 Section 3. Section 53-2-205, MCA, is amended to read:

6 "53-2-205. Department authorized to establish and  
7 collect social services fees. (1) The department is hereby  
8 authorized to establish and collect fees for social services  
9 furnished which are authorized pursuant to Title XX of the  
10 Social Security Act, Public Law 93-644 ~~93-647~~. Such fees  
11 shall be based on a schedule determined by the department.

12 (2) The state share of fees provided for by subsection  
13 (1) shall be paid over to the state treasurer for the credit  
14 of the earmarked revenue fund for the use of the department  
15 in providing social services."

16 Section 4. Section 53-3-103, MCA, is amended to read:

17 "53-3-103. Medical aid and hospitalization for  
18 indigent. (1) Except as provided in other parts of this  
19 title, medical aid and hospitalization for county residents  
20 and nonresidents within the county unable to provide these  
21 necessities for themselves are the legal and financial duty  
22 and responsibility of the board of county commissioners and  
23 are payable from the county poor fund. The board of county  
24 commissioners shall make provisions for competent and  
25 skilled medical or surgical services as are approved by the

1 (1) "Child" means a person under 12 years of age.

2 (2) "Day-care facility" means a person, association,  
3 or place, incorporated or unincorporated, that receives for  
4 care during the day or part of the day three or more  
5 children of separate families and continues this type of  
6 care for 5 or more consecutive weeks. It does not include a  
7 person who limits care to children who are related to him by  
8 blood or marriage or under his legal guardianship ~~and~~ ~~or~~  
9 ~~any~~ group ~~facilities~~ facility established chiefly for  
10 educational purposes.

11 (3) "Day-care center" means a day-care facility that  
12 receives seven or more children for care for 5 or more hours  
13 of the day for 5 or more consecutive weeks. It may include  
14 facilities known as child-care centers, nursery schools, day  
15 nurseries, and centers for the mentally retarded.

16 (4) "Department" means the department of social and  
17 rehabilitation services provided for in Title 2, chapter 15,  
18 part 22."

19 Section 8. Section 53-4-505, MCA, is amended to read:

20 "53-4-505. Fire safety -- certification required. (1)  
21 The state fire marshal of the department of justice shall  
22 adopt and enforce rules for the protection of children in  
23 care facilities from fire hazards and arrange for such  
24 inspections and investigations as it considers necessary.

25 (2) Each applicant for a license to operate a day-care

1 center shall submit to the department of social and  
2 rehabilitation services a certificate of approval indicating  
3 that fire safety rules have been met before a license can be  
4 issued.

5 (3) Automatic sprinkler systems acceptable to the  
6 ~~department--of-justice~~ state fire marshal shall be installed  
7 in all nonfire-resistant homes two stories or more in height  
8 with 10 or more children, with the ~~department--of--justice~~  
9 state fire marshal to issue for the information and use of  
10 the department of social and rehabilitation services  
11 certificates of compliance with fire rules and standards  
12 applicable to the facilities."

13 Section 9. Section 53-4-509, MCA, is amended to read:

14 "53-4-509. Provisional license. The department of  
15 social and rehabilitation services may in its discretion  
16 issue a provisional license for a period of not more than 6  
17 months if it finds that a substandard day-care facility is  
18 attempting to meet the minimum standards. The requirement  
19 that a day-care center shall be certified by the state fire  
20 marshal of the department of justice and the department of  
21 health and environmental sciences may not be waived."

22 Section 10. Section 53-5-303, MCA, is amended to read:

23 "53-5-303. Purpose. In order to ensure the proper care  
24 of aged persons or disabled adults in foster family care  
25 homes and to implement provisions of ~~federat-law-in~~ Title

1 by the department shall contain specific conditions for  
2 performance by the contractor. It shall set minimum  
3 standards for programs and establish appropriate  
4 qualifications for persons employed in such programs.

5 (3) All developmental disabilities facilities and  
6 services shall comply with existing federal guidelines and  
7 with requirements which will enable the services and  
8 facilities to qualify for available aid funds. However,  
9 nothing herein requires facilities serving the  
10 developmentally disabled to meet the same or equal standards  
11 as licensed medical facilities unless the developmental  
12 disabilities facility is providing professional or skilled  
13 medical care.

14 (4) Comprehensive services, programs, clinics, or  
15 other facilities established or provided by the department  
16 under this part shall conform as nearly as possible to the  
17 plans of the advisory council created under 2-15-2204 and  
18 the regional councils provided for in 53-20-207."

19 Section 14. Section 53-21-112, MCA, is amended to  
20 read:

21 "53-21-112. Voluntary admission of minors. (1)  
22 Notwithstanding any other provision of law, a minor who is  
23 16 years of age or older may consent to receive mental  
24 health services to be rendered by a facility or a person  
25 licensed to practice medicine or psychology in this state.

1 ~~(2) Except as provided by this section, the provisions~~  
2 ~~of 53-21-111 apply to the voluntary admission of a minor to~~  
3 ~~a mental health facility or the state hospital.~~

4 ~~(2)(2)~~ Except as provided by this subsection,  
5 voluntary admission of a minor to a mental health facility  
6 for an inpatient course of treatment shall be for the same  
7 period of time as that for an adult. A minor voluntarily  
8 admitted shall have the right to be released within 5 days  
9 of his request as provided in 53-21-111(3). The minor  
10 himself may make such request. Unless there has been a  
11 periodic review and a voluntary readmission consented to by  
12 the minor patient and his counsel, voluntary admission  
13 terminates at the expiration of 1 year. Counsel shall be  
14 appointed for the minor.

15 ~~(3)(4)~~ If, in any application for voluntary admission  
16 for any period of time to a mental health facility, a minor  
17 fails to join in the consent of his parents or guardian to  
18 the voluntary admission, then the application for admission  
19 shall be treated as on a petition for involuntary  
20 commitment. Notice of the substance of this subsection and  
21 of the right to counsel shall be set forth in conspicuous  
22 type in a conspicuous location on any form or application  
23 used for the voluntary admission of a minor to a mental  
24 health facility. The notice shall be explained to the minor  
25 by the professional person approving the application."

1 of the legislation under which the grant was made; or  
 2 (ii) deduction from total project costs to determine  
 3 the net costs on which the grantor's share of the costs is  
 4 based.

5 (6) Revenue generated by 16-1-404, 16-1-406, and  
 6 16-1-408 for the treatment, rehabilitation, and prevention  
 7 of alcoholism which has not been encumbered for those  
 8 purposes by the counties of Montana or the department shall  
 9 be returned to the state's general fund within 30 days after  
 10 the close of each fiscal year."

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 12 read:

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 14 authorized. The department may apply for and receive grants,  
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 16 purposes pertaining to the problems of ~~etcohol~~ alcoholism  
 17 and drug dependence or related social problems under laws  
 18 and rules of the United States, any other state, or any  
 19 private organization. The department may cooperate with any  
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 2 read:

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 4 persons and persons incapacitated by alcohol. (1) An  
 5 intoxicated person who has threatened, attempted, or  
 6 inflicted physical harm on another and is likely to inflict  
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 8 incapacitated by alcohol may be committed to an approved  
 9 public treatment facility for emergency treatment. A refusal  
 10 to undergo treatment does not constitute evidence of lack of  
 11 judgment as to the need for treatment.

12 (2) The certifying physician, spouse, guardian, or  
 13 relative of the person to be committed or any other  
 14 responsible person may make a written application for  
 15 commitment under this section directed to the administrator  
 16 of the approved public treatment facility. The application  
 17 shall state facts to support the need for emergency  
 18 treatment and be accompanied by a physician's certificate  
 19 stating that he has examined the person sought to be  
 20 committed within 2 days before the certificate's date and  
 21 facts supporting the need for emergency treatment. A  
 22 physician employed by the admitting facility or the  
 23 department is not eligible to be the certifying physician.

24 (3) Upon approval of the application by the  
 25 administrator of the approved public treatment facility, the

1 sentence.

2 {3} Upon recommendation of the warden and with the  
3 approval of the department, a person under the--age--of 21  
4 years of age who has been sentenced to the state prison may  
5 be transferred to any juvenile facility under the  
6 jurisdiction and control of the department.

7 {4} Upon recommendation of the warden and approval of  
8 a person sentenced to the state prison or application of a  
9 person sentenced to the state prison and approval of the  
10 warden and with the approval of the department, such person  
11 sentenced to the state prison who is 25 years old of age or  
12 younger may be transferred to the Swan River youth forest  
13 camp. Upon such transfer such person shall be under the  
14 supervision and control of the facility to which he is  
15 transferred.

16 {5} If such person's behavior after transfer to such  
17 juvenile facility indicates he might be released on parole  
18 or his sentence be commuted and he be discharged from  
19 custody, the superintendent of such facility, with the  
20 approval of the department, may make an appropriate  
21 recommendation to the state board of pardons and the  
22 governor, who may, in their discretion, parole such person  
23 or commute his sentence.

24 {6} If such person's behavior after transfer to a  
25 juvenile facility indicates he is not a proper person to

1 reside in such facility, upon recommendation of the  
2 superintendent and with the approval of the department, such  
3 person shall be returned to the state prison to serve out  
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6 read:

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12 facility under the supervision and control of the department  
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14 the care, training, custody, and control of children and  
15 specifically includes the Pine Hills school for boys, the  
16 Mountain View school for girls, the--Montana--children's  
17 center,--Boulder--River--school--and--hospital, and the Swan  
18 River youth forest camp,--and--Eastmont--training--center."

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-End-