

SENATE BILL 419

IN THE SENATE

February 8, 1979	Introduced and referred to Committee on Public Health, Welfare and Safety.
February 19, 1979	Committee recommend bill, do not pass.  On motion, Senate reconsider its action taken on adverse Committee report and order printed and placed on second reading. Motion adopted.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, indefinitely postponed.

1 *Amended* BILL NO. *419*  
 2 INTRODUCED BY *Sen. Christine Tubbs*

3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE MENTAL  
 5 DISABILITIES BOARD OF VISITORS AND TRANSFER SOME OF ITS  
 6 FUNCTIONS TO THE OFFICE OF THE LEGISLATIVE AUDITOR; AMENDING  
 7 SECTIONS 53-20-102, 53-20-146, 53-20-147, 53-20-161,  
 8 53-20-163, 53-21-102, 53-21-142, 53-21-147, 53-21-163,  
 9 53-21-165, AND 53-21-166, MCA; REPEALING SECTIONS 2-15-211,  
 10 53-20-104, AND 53-21-104, MCA; AND PROVIDING AN IMMEDIATE  
 11 EFFECTIVE DATE."

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

14 NEW SECTION. Section 1. Program evaluation of state  
 15 institutions. The office of the legislative auditor shall  
 16 review the programs designed for the care and treatment of  
 17 persons with mental disorders or developmental disabilities  
 18 who have been admitted or committed to the Warm Springs  
 19 state hospital, the Boulder River school and hospital, the  
 20 center for the aged, the Eastmont training center, or the  
 21 Galen state hospital to assess the programs' conformity with  
 22 the provisions of Title 53, chapters 20 and 21.

23 Section 2. Section 53-20-102, MCA, is amended to read:  
 24 "53-20-102. Definitions. As used in this part, the  
 25 following definitions apply:

1 ~~{1}--"Board" or "mental disabilities board of visitors"~~  
 2 ~~means the mental disabilities board of visitors created by~~  
 3 ~~2-15-211.~~

4 ~~{2}{1}~~ "Community-based facilities" or  
 5 "community-based services" includes those services and  
 6 facilities which are available for the evaluation,  
 7 treatment, and habilitation of the developmentally disabled  
 8 in a community setting, including but not limited to  
 9 outpatient facilities, special education services, group  
 10 homes, foster homes, day-care facilities, sheltered  
 11 workshops, and other community-based services and  
 12 facilities.

13 ~~{3}{2}~~ "Court" means a district court of the state of  
 14 Montana.

15 ~~{4}{1}~~ "Developmentally disabled" means suffering from  
 16 disabilities attributable to mental retardation, cerebral  
 17 palsy, epilepsy, autism, or any other neurologically  
 18 handicapping condition closely related to mental retardation  
 19 and requiring treatment similar to that required by mentally  
 20 retarded individuals, which condition has continued or can  
 21 be expected to continue indefinitely and constitutes a  
 22 substantial handicap of such individuals.

23 ~~{5}{4}~~ "Habilitation" means the process by which a  
 24 person who is developmentally disabled is assisted to  
 25 acquire and maintain those life skills which enable him to

1 cope more effectively with the demands of his own person and  
 2 environment and to raise the level of his physical, mental,  
 3 and social efficiency. Habilitation includes but is not  
 4 limited to formal, structured education and treatment.

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

8 ~~(7)~~(6) "Professional person" means:

9 (a) a medical doctor; or

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

16 ~~(8)~~(7) "Resident" means a person admitted to a  
 17 residential facility for a course of evaluation, treatment,  
 18 or habilitation.

19 ~~(9)~~(8) "Residential facility" or "facility" means any  
 20 residential hospital or hospital and school which exists for  
 21 the purpose of evaluating, treating, and habilitating the  
 22 developmentally disabled on an inpatient basis, including  
 23 the Boulder River school and hospital and the Eastmont  
 24 training center. The term does not include a group home,  
 25 foster home, or halfway house. A correctional facility or a

1 facility for the treatment of the mentally ill shall not be  
 2 a "residential facility" within the meaning of this part.

3 ~~(10)~~(9) "Respondent" means a person alleged in a  
 4 petition filed pursuant to this part to be developmentally  
 5 disabled and in need of developmental disability services.

6 ~~(11)~~(10) "Responsible person" means any person willing  
 7 and able to assume responsibility for a person who is  
 8 developmentally disabled or alleged to be developmentally  
 9 disabled.

10 ~~(12)~~(11) "Seriously developmentally disabled" means  
 11 developmentally disabled due to developmental or physical  
 12 disability or a combination of both, rendering a person  
 13 unable to function in a community-based setting and which  
 14 has resulted in self-inflicted injury or injury to others or  
 15 the imminent threat thereof or which has deprived the person  
 16 afflicted of the ability to protect his life or health."

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

18 "53-20-146. Right not to be subjected to certain  
 19 treatment procedures. (1) Residents of a residential  
 20 facility shall have a right not to be subjected to any  
 21 unusual or hazardous treatment procedures without the  
 22 express and informed consent of the resident, if the  
 23 resident is able to give such consent, and of his parents or  
 24 guardian or the responsible person appointed by the court  
 25 after opportunities for consultation with independent

1 specialists and legal counsel. ~~Such proposed procedures~~  
 2 ~~shall first have been reviewed and approved by the mental~~  
 3 ~~disabilities board of visitors before such consent shall be~~  
 4 ~~sought.~~

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

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

24 (4) Behavior modification programs involving the use  
 25 of noxious or aversive stimuli ~~shall be reviewed and~~

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

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

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

1 Section 4. Section 53-20-147, MCA, is amended to read:

2 "53-20-147. Right not to be subjected to experimental  
3 research. ~~(1)~~ Residents of a residential facility shall have  
4 a right not to be subjected to experimental research without  
5 the express and informed consent of the resident, if the  
6 resident is able to give such consent, and of his parents or  
7 guardian or the responsible person appointed by the court  
8 after opportunities for consultation with independent  
9 specialists and with legal counsel.

10 ~~(2) Such proposed research shall first have been~~  
11 ~~reviewed and approved by the mental disabilities board of~~  
12 ~~visitors before such consent shall be sought. Prior to such~~  
13 ~~approval, the board shall determine that such research~~  
14 ~~complies with the principles of the statement on the use of~~  
15 ~~human subjects for research of the American association on~~  
16 ~~mental deficiency and with the principles for research~~  
17 ~~involving human subjects required by the United States~~  
18 ~~department of health, education, and welfare for projects~~  
19 ~~supported by that agency."~~

20 Section 5. Section 53-20-161, MCA, is amended to read:

21 "53-20-161. Maintenance of records. Complete records  
22 for each resident shall be maintained and shall be readily  
23 available to professional persons, and to the resident-care  
24 workers who are directly involved with the particular  
25 resident, ~~and to the mental disabilities board of visitors.~~

1 All information contained in a resident's records shall be  
2 considered privileged and confidential. The parents or  
3 guardian, the responsible person appointed by the court, and  
4 any person properly authorized in writing by the resident,  
5 if such resident is capable of giving informed consent, or  
6 by his parents or guardian or the responsible person shall  
7 be permitted access to the resident's records. These records  
8 shall include:

- 9 (1) identification data, including the resident's  
10 legal status;
- 11 (2) the resident's history, including but not limited  
12 to:
- 13 (a) family data, educational background, and  
14 employment record;
- 15 (b) prior medical history, both physical and mental,  
16 including prior institutionalization;
- 17 (3) the resident's grievances, if any;
- 18 (4) an inventory of the resident's life skills;
- 19 (5) a record of each physical examination which  
20 describes the results of the examination;
- 21 (6) a copy of the individual habilitation plan and any  
22 modifications thereto and an appropriate summary which will  
23 guide and assist the resident care workers in implementing  
24 the resident's program;
- 25 (7) the findings made in periodic reviews of the

1 habilitation plan, which findings shall include an analysis  
2 of the successes and failures of the habilitation program  
3 and shall direct whatever modifications are necessary;

4 (8) a copy of the postinstitutionalization plan and  
5 any modifications thereto and a summary of the steps that  
6 have been taken to implement that plan;

7 (9) a medication history and status;

8 (10) a summary of each significant contact by a  
9 professional person with a resident;

10 (11) a summary of the resident's response to his  
11 program, prepared by a professional person involved in the  
12 resident's habilitation and recorded at least monthly.  
13 Wherever possible, such response shall be scientifically  
14 documented.

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

18 (13) a signed order by a professional person for any  
19 physical restraints;

20 (14) a description of any extraordinary incident or  
21 accident in the facility involving the resident, to be  
22 entered by a staff member noting personal knowledge of the  
23 incident or accident or other source of information,  
24 including any reports of investigations of resident's  
25 mistreatment;

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

2 (16) a summary of attendance and leaves from the  
3 facility;

4 (17) a record of any seizures, illnesses, treatments  
5 thereof, and immunizations."

6 Section 6. Section 53-20-163, MCA, is amended to read:

7 "53-20-163. Abuse of residents prohibited. ~~††~~ Every  
8 residential facility shall prohibit mistreatment, neglect,  
9 or abuse in any form of any resident. Alleged violations  
10 shall be reported immediately to the professional person in  
11 charge of the facility, and there shall be a written record  
12 that:

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

15 ~~††~~(2) the results of such investigation are reported  
16 to the professional person in charge of the facility within  
17 24 hours of the report of the incident.

18 ~~††~~Such reports shall also be made to the mental  
19 disabilities board of visitors monthly and to the  
20 developmental disabilities advisory council at its next  
21 scheduled public meeting. Each facility shall cause a  
22 written statement of this policy to be posted in each  
23 cottage and building and circulated to all staff members."

24 Section 7. Section 53-21-102, MCA, is amended to read:

25 "53-21-102. Definitions. As used in this part, the

1 following definitions apply:

2 ~~{1}--"Board" or "mental disabilities board of visitors"~~  
3 ~~means--the--mental--disabilities--board--of--visitors--created--by~~  
4 ~~2-15-211.~~

5 {2}{11} "Court" means any district court of the state  
6 of Montana.

7 {3}{12} "Department" means the department of  
8 institutions provided for in Title 2, chapter 15, part 23.

9 {4}{13} "Emergency situation" means a situation in  
10 which any person is in imminent danger of death or serious  
11 bodily harm from the activity of a person who appears to be  
12 seriously mentally ill.

13 {5}{14} "Mental disorder" means any organic, mental, or  
14 emotional impairment which has substantial adverse effects  
15 on an individual's cognitive or volitional functions.

16 {6}{15} "Mental health facility" or "facility" means a  
17 public hospital or a licensed private hospital which is  
18 equipped and staffed to provide treatment for persons with  
19 mental disorders or a community mental health center or any  
20 mental health clinic or treatment center approved by the  
21 department. No correctional institution or facility or jail  
22 is a mental health facility within the meaning of this part.

23 {7}{16} "Next of kin" shall include but need not be  
24 limited to the spouse, parents, adult children, and adult  
25 brothers and sisters of a person.

1 {8}{17} "Patient" means a person committed by the court  
2 for treatment for any period of time.

3 {9}{18} "Peace officer" means any sheriff, deputy  
4 sheriff, marshal, policeman, or other peace officer.

5 {10}{19} "Professional person" means:

6 (a) a medical doctor; or

7 (b) a person trained in the field of mental health and  
8 certified by the department in accordance with standards of  
9 professional licensing boards, federal regulations, and the  
10 joint commission on accreditation of hospitals.

11 {11}{20} "Reasonable medical certainty" means  
12 reasonable certainty as judged by the standards of a  
13 professional person.

14 {12}{21} "Respondent" means a person alleged in a  
15 petition filed pursuant to this part to be seriously  
16 mentally ill.

17 {13}{22} "Responsible person" means any person willing  
18 and able to assume responsibility for a seriously mental-  
19 ly ill person or person alleged to be seriously mentally ill,  
20 including next of kin, the person's conservator or legal  
21 guardian, if any, representatives of a charitable or  
22 religious organization, or any other person appointed by the  
23 court to perform the functions of a responsible person set  
24 out in this part. Only one person may at any one time be the  
25 responsible person within the meaning of this part. In

1 appointing a responsible person, the court shall consider  
 2 the preference of the respondent. The court may at any time,  
 3 for good cause shown, change its designation of the  
 4 responsible person.

5 ~~(14)~~(13) "Seriously mentally ill" means suffering from  
 6 a mental disorder which has resulted in self-inflicted  
 7 injury or injury to others or the imminent threat thereof or  
 8 which has deprived the person afflicted of the ability to  
 9 protect his life or health. No person may be involuntarily  
 10 committed to a mental health facility or detained for  
 11 evaluation and treatment because he is an epileptic,  
 12 mentally deficient, mentally retarded, senile, or suffering  
 13 from a mental disorder unless the condition causes him to be  
 14 seriously mentally ill within the meaning of this part.

15 ~~(15)~~(14) "State hospital" means the Warm Springs state  
 16 hospital."

17 Section 8. Section 53-21-142, MCA, is amended to read:

18 "53-21-142. Rights of persons admitted to facility.  
 19 Patients admitted to a mental health facility, whether  
 20 voluntarily or involuntarily, shall have the following  
 21 rights:

- 22 (1) Patients have a right to privacy and dignity.  
 23 (2) Patients have a right to the least restrictive  
 24 conditions necessary to achieve the purposes of commitment.  
 25 (3) Patients shall have the same rights to visitation

1 and reasonable access to private telephone communications as  
 2 patients at any public hospitals except to the extent that  
 3 the professional person responsible for formulation of a  
 4 particular patient's treatment plan writes an order imposing  
 5 special restrictions. The written order must be renewed  
 6 after each periodic review of the treatment plan if any  
 7 restrictions are to be continued. Patients shall have an  
 8 unrestricted right to visitation with attorneys, with  
 9 spiritual counselors, and with private physicians and other  
 10 professional persons.

11 (4) Patients shall have an unrestricted right to send  
 12 sealed mail. Patients shall have an unrestricted right to  
 13 receive sealed mail from their attorneys, private physicians  
 14 and other professional persons, ~~the mental disabilities~~  
 15 ~~board---of---visitors,~~ courts, and government officials.  
 16 Patients shall have a right to receive sealed mail from  
 17 others except to the extent that a professional person  
 18 responsible for formulation of a particular patient's  
 19 treatment plan writes an order imposing special restrictions  
 20 on receipt of sealed mail. The written order must be renewed  
 21 after each periodic review of the treatment plan if any  
 22 restrictions are to be continued.

23 (5) Patients have an unrestricted right to have access  
 24 to letter-writing materials, including postage, and have a  
 25 right to have staff members of the facility assist persons



1 who are unable to write, prepare, and mail correspondence.

2 (6) Patients have a right to wear their own clothes  
3 and to keep and use their own personal possessions,  
4 including toilet articles, except insofar as such clothes or  
5 personal possessions may be determined by a professional  
6 person in charge of the patient's treatment plan to be  
7 dangerous or otherwise inappropriate to the treatment  
8 regimen. The facility has an obligation to supply an  
9 adequate allowance of clothing to any patients who do not  
10 have suitable clothing of their own. Patients shall have the  
11 opportunity to select from various types of neat, clean, and  
12 seasonable clothing. Such clothing shall be considered the  
13 patient's throughout his stay at the facility. The facility  
14 shall make provision for the laundering of patient clothing.

15 (7) Patients have the right to keep and be allowed to  
16 spend a reasonable sum of their own money.

17 (8) Patients have the right to religious worship.  
18 Provisions for such worship shall be made available to all  
19 patients on a nondiscriminatory basis. No individual shall  
20 be required to engage in any religious activities.

21 (9) Patients have a right to regular physical exercise  
22 several times a week. Moreover, it shall be the duty of the  
23 facility to provide facilities and equipment for such  
24 exercise. Patients have a right to be outdoors at regular  
25 and frequent intervals in the absence of contrary medical

1 considerations.

2 (10) Patients have the right to be provided, with  
3 adequate supervision, suitable opportunities for interaction  
4 with members of the opposite sex except to the extent that a  
5 professional person in charge of the patient's treatment  
6 plan writes an order stating that such interaction is  
7 inappropriate to the treatment regimen.

8 (11) Patients have a right to receive prompt and  
9 adequate medical treatment for any physical ailments. In  
10 providing medical care, the mental health facility shall  
11 take advantage of whatever community-based facilities are  
12 appropriate and available and shall coordinate the patient's  
13 treatment for mental illness with his medical treatment.

14 (12) Patients have a right to a diet that will provide  
15 at a minimum the recommended daily dietary allowances as  
16 developed by the national academy of sciences. Provisions  
17 shall be made for special therapeutic diets and for  
18 substitutes at the request of the patient or the responsible  
19 person in accordance with the religious requirements of any  
20 patient's faith. Denial of a nutritionally adequate diet  
21 shall not be used as punishment.

22 (13) Patients have a right to a humane psychological  
23 and physical environment within the mental health  
24 facilities. These facilities shall be designed to afford  
25 patients with comfort and safety, promote dignity, and

1 ensure privacy. The facilities shall be designed to make a  
2 positive contribution to the efficient attainment of the  
3 treatment goals set for the patient. In order to assure the  
4 accomplishment of this goal:

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

9 (b) there must be special provision made for geriatric  
10 and other nonambulatory patients to assure their safety and  
11 comfort, including special fittings on toilets and  
12 wheelchairs. Appropriate provision shall be made to permit  
13 nonambulatory patients to communicate their needs to the  
14 facility staff.

15 (c) pursuant to an established routine maintenance and  
16 repair program, the physical plant of every facility shall  
17 be kept in a continuous state of good repair and operation  
18 in accordance with the needs of the health, comfort, safety,  
19 and well-being of the patients;

20 (d) every facility must meet all fire and safety  
21 standards established by the state and locality. In  
22 addition, any hospital shall meet such provisions of the  
23 life safety code of the national fire protection association  
24 as are applicable to hospitals. Any hospital shall meet all  
25 standards established by the state for general hospitals

1 insofar as they are relevant to psychiatric facilities.\*

2 Section 9. Section 53-21-147, MCA, is amended to read:

3 \*53-21-147. Right not to be subjected to experimental  
4 research. ~~(1)~~ Patients shall have a right not to be  
5 subjected to experimental research without the express and  
6 informed consent of the patient, if the patient is able to  
7 give such consent, and of his guardian, if any, and the  
8 responsible person appointed by the court after  
9 opportunities for consultation with independent specialists  
10 and with legal counsel. If there is no responsible person or  
11 if the responsible person appointed by the court is no  
12 longer available, then a responsible person who is in no way  
13 connected with the facility, the department, or the research  
14 project shall be appointed prior to the involvement of the  
15 patient in any experimental research. At least 10 days prior  
16 to the commencement of such experimental research, the  
17 facility shall send notice of intent to involve the patient  
18 in experimental research to the patient, his next of kin, if  
19 known, his legal guardian, if any, the attorney who most  
20 recently represented him, and the responsible person  
21 appointed by the court.

22 ~~(2) Such proposed research shall first have been~~  
23 ~~reviewed and approved by the mental disabilities board of~~  
24 ~~visitors before such consent shall be sought. Prior to such~~  
25 ~~approval, the board shall determine that such research~~

1 ~~complies with the principles of the statement on the use of~~  
 2 ~~human subjects for research of the American association on~~  
 3 ~~mental deficiency and with the principles for research~~  
 4 ~~involving human subjects required by the United States~~  
 5 ~~department of health, education, and welfare for projects~~  
 6 ~~supported by that agency."~~

7 Section 10. Section 53-21-163, MCA, is amended to  
 8 read:

9 "53-21-163. Examination following commitment. No later  
 10 than 30 days after a patient is committed to a mental health  
 11 facility, the professional person in charge of the facility  
 12 or his appointed, professionally qualified agent shall  
 13 reexamine the committed patient and shall determine whether  
 14 he continues to require commitment to the facility and  
 15 whether a treatment plan complying with this part has been  
 16 implemented. If the patient no longer requires commitment to  
 17 the facility in accordance with the standards for  
 18 commitment, he must be released immediately unless he agrees  
 19 to continue with treatment on a voluntary basis. If for  
 20 sound professional reasons a treatment plan has not been  
 21 implemented, this fact shall be reported immediately to the  
 22 professional person in charge of the facility, the director  
 23 of the department, ~~the mental disabilities board of~~  
 24 ~~visitors,~~ and the patient's counsel."

25 Section 11. Section 53-21-165, MCA, is amended to

1 read:

2 "53-21-165. Records to be maintained. Complete patient  
 3 records shall be kept by the mental health facility and  
 4 shall be available to any person authorized in writing by  
 5 the patient ~~and the board~~. The records shall also be made  
 6 available to any attorney charged with representing the  
 7 patient or any professional person charged with evaluating  
 8 or treating the patient. These records shall include:

- 9 (1) identification data, including the patient's legal  
 10 status;  
 11 (2) a patient history, including but not limited to:  
 12 (a) family data, educational background, and  
 13 employment record;  
 14 (b) prior medical history, both physical and mental,  
 15 including prior hospitalization;  
 16 (3) the chief complaints of the patient and the chief  
 17 complaints of others regarding the patient;  
 18 (4) an evaluation which notes the onset of illness,  
 19 the circumstances leading to admission, attitudes, behavior,  
 20 estimate of intellectual functioning, memory functioning,  
 21 orientation, and an inventory of the patient's assets in  
 22 descriptive rather than interpretative fashion;  
 23 (5) a summary of each physical examination which  
 24 describes the results of the examination;  
 25 (6) a copy of the individual treatment plan and any

1 modifications thereto;

2 (7) a detailed summary of the findings made by the  
3 reviewing professional person after each periodic review of  
4 the treatment plan which analyzes the successes and failures  
5 of the treatment program and directs whatever modifications  
6 are necessary;

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

10 (9) a medication history and status which includes the  
11 signed orders of the prescribing physician. The staff person  
12 administering the medication shall indicate by signature  
13 that orders have been carried out.

14 (10) a detailed summary of each significant contact by  
15 a professional person with the patient;

16 (11) a detailed summary, on at least a weekly basis, by  
17 a professional person involved in the patient's treatment,  
18 of the patient's progress along the treatment plan;

19 (12) a weekly summary of the extent and nature of the  
20 patient's work activities and the effect of such activity  
21 upon the patient's progress along the treatment plan;

22 (13) a signed order by a professional person for any  
23 restrictions on visitations and communications;

24 (14) a signed order by a professional person for any  
25 physical restraints and isolation;

1 (15) a detailed summary of any extraordinary incident  
2 in the facility involving the patient, to be entered by a  
3 staff member noting that he has personal knowledge of the  
4 incident or specifying his other source of information and  
5 initialed within 24 hours by a professional person; and

6 (16) a summary by the professional person in charge of  
7 the facility or his appointed agent of his findings after  
8 the 30-day review provided for in 53-21-163.\*

9 Section 12. Section 53-21-166, MCA, is amended to  
10 read:

11 \*53-21-166. Records to be confidential -- exceptions.  
12 All information obtained and records prepared in the course  
13 of providing any services under this part to individuals  
14 under any provision of this part shall be confidential and  
15 privileged matter. Such information and records may be  
16 disclosed only:

17 (1) in communications between qualified professional  
18 persons in the provision of services or appropriate  
19 referrals;

20 (2) when the recipient of services designates persons  
21 to whom information or records may be released, provided  
22 that if a recipient of services is a ward and his guardian  
23 or conservator designates in writing persons to whom records  
24 or information may be disclosed, such designation shall be  
25 valid in lieu of the designation by the recipient; except

1 that nothing in this section shall be construed to compel a  
 2 physician, psychologist, social worker, nurse, attorney, or  
 3 other professional person to reveal information which has  
 4 been given to him in confidence by members of a patient's  
 5 family;

6 (3) to the extent necessary to make claims on behalf  
 7 of a recipient of aid, insurance, or medical assistance to  
 8 which he may be entitled;

9 (4) for research if the department has promulgated  
 10 rules for the conduct of research; such rules shall include  
 11 but not be limited to the requirement that all researchers  
 12 must sign an oath of confidentiality;

13 (5) to the courts as necessary to the administration  
 14 of justice;

15 (6) to persons authorized by an order of court, after  
 16 notice and opportunity for hearing to the person to whom the  
 17 record or information pertains and the custodian of the  
 18 record or information pursuant to the rules of civil  
 19 procedure;

20 ~~(7) to members of the mental disabilities board of~~  
 21 ~~visitors or their agents when necessary to perform their~~  
 22 ~~functions as set out in 53-21-104 in the staff of the~~  
 23 legislative auditor."

24 Section 13. Repealer. Sections 2-15-211, 53-20-104,  
 25 and 53-21-104, MCA, are repealed.

1 Section 14. Effective date. This act is effective on  
 2 passage and approval.

-End-

SENATE BILL NO. 419

INTRODUCED BY TOWE, THIESSEN, GERKE

A BILL FOR AN ACT ENTITLED: "AN ACT TO ABOLISH THE MENTAL DISABILITIES BOARD OF VISITORS AND TRANSFER SOME OF ITS FUNCTIONS TO THE OFFICE OF THE LEGISLATIVE AUDITOR; AMENDING SECTIONS 53-20-102, 53-20-146, 53-20-147, 53-20-161, 53-20-163, 53-21-102, 53-21-142, 53-21-147, 53-21-163, 53-21-165, AND 53-21-166, MCA; REPEALING SECTIONS 2-15-211, 53-20-104, AND 53-21-104, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Program evaluation of state institutions. The office of the legislative auditor shall review the programs designed for the care and treatment of persons with mental disorders or developmental disabilities who have been admitted or committed to the Warm Springs state hospital, the Boulder River school and hospital, the center for the aged, the Eastmont training center, or the Galen state hospital to assess the programs' conformity with the provisions of Title 53, chapters 20 and 21.

Section 2. Section 53-20-102, MCA, is amended to read: "53-20-102. Definitions. As used in this part, the following definitions apply:

~~{}--"Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors--created--by 2-15-211.~~

~~{2}11 "Community-based facilities" or "community-based services" includes those services and facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled in a community setting, including but not limited to outpatient facilities, special education services, group homes, foster homes, day-care facilities, sheltered workshops, and other community-based services and facilities.~~

~~{3}12 "Court" means a district court of the state of Montana.~~

~~{4}13 "Developmentally disabled" means suffering from disabilities attributable to mental retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental retardation and requiring treatment similar to that required by mentally retarded individuals, which condition has continued or can be expected to continue indefinitely and constitutes a substantial handicap of such individuals.~~

~~{5}14 "Habilitation" means the process by which a person who is developmentally disabled is assisted to acquire and maintain those life skills which enable him to~~

1 cope more effectively with the demands of his own person and  
 2 environment and to raise the level of his physical, mental,  
 3 and social efficiency. Habilitation includes but is not  
 4 limited to formal, structured education and treatment.

5 ~~67~~51 "Next of kin" includes but need not be limited  
 6 to the spouse, parents, adult children, and adult brothers  
 7 and sisters of a person.

8 ~~77~~61 "Professional person" means:

- 9 (a) a medical doctor; or  
 10 (b) a person trained in the field of developmental  
 11 disabilities and certified by the department of institutions  
 12 or the department of social and rehabilitation services in  
 13 accordance with standards of professional licensing boards,  
 14 federal regulations, and the joint commissions on  
 15 accreditation of hospitals.

16 ~~87~~71 "Resident" means a person admitted to a  
 17 residential facility for a course of evaluation, treatment,  
 18 or habilitation.

19 ~~97~~81 "Residential facility" or "facility" means any  
 20 residential hospital or hospital and school which exists for  
 21 the purpose of evaluating, treating, and habilitating the  
 22 developmentally disabled on an inpatient basis, including  
 23 the Boulder River school and hospital and the Eastmont  
 24 training center. The term does not include a group home,  
 25 foster home, or halfway house. A correctional facility or a

1 facility for the treatment of the mentally ill shall not be  
 2 a "residential facility" within the meaning of this part.

3 ~~107~~91 "Respondent" means a person alleged in a  
 4 petition filed pursuant to this part to be developmentally  
 5 disabled and in need of developmental disability services.

6 ~~117~~101 "Responsible person" means any person willing  
 7 and able to assume responsibility for a person who is  
 8 developmentally disabled or alleged to be developmentally  
 9 disabled.

10 ~~127~~111 "Seriously developmentally disabled" means  
 11 developmentally disabled due to developmental or physical  
 12 disability or a combination of both, rendering a person  
 13 unable to function in a community-based setting and which  
 14 has resulted in self-inflicted injury or injury to others or  
 15 the imminent threat thereof or which has deprived the person  
 16 afflicted of the ability to protect his life or health."

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

18 "53-20-146. Right not to be subjected to certain  
 19 treatment procedures. (1) Residents of a residential  
 20 facility shall have a right not to be subjected to any  
 21 unusual or hazardous treatment procedures without the  
 22 express and informed consent of the resident, if the  
 23 resident is able to give such consent, and of his parents or  
 24 guardian or the responsible person appointed by the court  
 25 after opportunities for consultation with independent

1 specialists and legal counsel. ~~Such proposed procedures~~  
 2 ~~shall first have been reviewed and approved by the mental~~  
 3 ~~disabilities board of visitors before such consent shall be~~  
 4 ~~sought.~~

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

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

24 (4) Behavior modification programs involving the use  
 25 of noxious or aversive stimuli ~~shall be reviewed and~~

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

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

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



1 Section 4. Section 53-20-147, MCA, is amended to read:  
 2 "53-20-147. Right not to be subjected to experimental  
 3 research. (1) Residents of a residential facility shall have  
 4 a right not to be subjected to experimental research without  
 5 the express and informed consent of the resident, if the  
 6 resident is able to give such consent, and of his parents or  
 7 guardian or the responsible person appointed by the court  
 8 after opportunities for consultation with independent  
 9 specialists and with legal counsel.

10 ~~(2) Such proposed research shall first have been~~  
 11 ~~reviewed and approved by the mental disabilities board of~~  
 12 ~~visitors before such consent shall be sought. Prior to such~~  
 13 ~~approval, the board shall determine that such research~~  
 14 ~~complies with the principles of the statement on the use of~~  
 15 ~~human subjects for research of the American association on~~  
 16 ~~mental deficiency and with the principles for research~~  
 17 ~~involving human subjects required by the United States~~  
 18 ~~department of health, education, and welfare for projects~~  
 19 ~~supported by that agency."~~

20 Section 5. Section 53-20-161, MCA, is amended to read:  
 21 "53-20-161. Maintenance of records. Complete records  
 22 for each resident shall be maintained and shall be readily  
 23 available to professional persons, and to the resident-care  
 24 workers who are directly involved with the particular  
 25 resident, ~~and to the mental disabilities board of visitors.~~

1 All information contained in a resident's records shall be  
 2 considered privileged and confidential. The parents or  
 3 guardian, the responsible person appointed by the court, and  
 4 any person properly authorized in writing by the resident,  
 5 if such resident is capable of giving informed consent, or  
 6 by his parents or guardian or the responsible person shall  
 7 be permitted access to the resident's records. These records  
 8 shall include:

- 9 (1) identification data, including the resident's
- 10 legal status;
- 11 (2) the resident's history, including but not limited
- 12 to:
- 13 (a) family data, educational background, and
- 14 employment record;
- 15 (b) prior medical history, both physical and mental,
- 16 including prior institutionalization;
- 17 (3) the resident's grievances, if any;
- 18 (4) an inventory of the resident's life skills;
- 19 (5) a record of each physical examination which
- 20 describes the results of the examination;
- 21 (6) a copy of the individual habilitation plan and any
- 22 modifications thereto and an appropriate summary which will
- 23 guide and assist the resident care workers in implementing
- 24 the resident's program;
- 25 (7) the findings made in periodic reviews of the

1 habilitation plan, which findings shall include an analysis  
2 of the successes and failures of the habilitation program  
3 and shall direct whatever modifications are necessary;

4 (8) a copy of the postinstitutionalization plan and  
5 any modifications thereto and a summary of the steps that  
6 have been taken to implement that plan;

7 (9) a medication history and status;

8 (10) a summary of each significant contact by a  
9 professional person with a resident;

10 (11) a summary of the resident's response to his  
11 program, prepared by a professional person involved in the  
12 resident's habilitation and recorded at least monthly.  
13 Wherever possible, such response shall be scientifically  
14 documented.

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

18 (13) a signed order by a professional person for any  
19 physical restraints;

20 (14) a description of any extraordinary incident or  
21 accident in the facility involving the resident, to be  
22 entered by a staff member noting personal knowledge of the  
23 incident or accident or other source of information,  
24 including any reports of investigations of resident's  
25 mistreatment;

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

2 (16) a summary of attendance and leaves from the  
3 facility;

4 (17) a record of any seizures, illnesses, treatments  
5 thereof, and immunizations."

6 Section 6. Section 53-20-163, MCA, is amended to read:

7 "53-20-163. Abuse of residents prohibited. ~~{t}~~ Every  
8 residential facility shall prohibit mistreatment, neglect,  
9 or abuse in any form of any resident. Alleged violations  
10 shall be reported immediately to the professional person in  
11 charge of the facility, and there shall be a written record  
12 that:

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

15 ~~{t}~~(2) the results of such investigation are reported  
16 to the professional person in charge of the facility within  
17 24 hours of the report of the incident.

18 ~~{t}~~"Such reports shall also be made to the mental  
19 disabilities board of visitors monthly and to the  
20 developmental disabilities advisory council at its next  
21 scheduled public meeting. Each facility shall cause a  
22 written statement of this policy to be posted in each  
23 cottage and building and circulated to all staff members."

24 Section 7. Section 53-21-102, MCA, is amended to read:

25 "53-21-102. Definitions. As used in this part, the

1 following definitions apply:

2 ~~{1}--"Board" or "mental disabilities board of visitors"~~  
3 ~~means--the--mental--disabilities--board--of--visitors--created--by~~  
4 ~~2-15-211\*~~

5 {2}{11} "Court" means any district court of the state  
6 of Montana.

7 {3}{12} "Department" means the department of  
8 institutions provided for in Title 2, chapter 15, part 23.

9 {4}{13} "Emergency situation" means a situation in  
10 which any person is in imminent danger of death or serious  
11 bodily harm from the activity of a person who appears to be  
12 seriously mentally ill.

13 {5}{14} "Mental disorder" means any organic, mental, or  
14 emotional impairment which has substantial adverse effects  
15 on an individual's cognitive or volitional functions.

16 {6}{15} "Mental health facility" or "facility" means a  
17 public hospital or a licensed private hospital which is  
18 equipped and staffed to provide treatment for persons with  
19 mental disorders or a community mental health center or any  
20 mental health clinic or treatment center approved by the  
21 department. No correctional institution or facility or jail  
22 is a mental health facility within the meaning of this part.

23 {7}{16} "Next of kin" shall include but need not be  
24 limited to the spouse, parents, adult children, and adult  
25 brothers and sisters of a person.

1 ~~{8}{17}~~ "Patient" means a person committed by the court  
2 for treatment for any period of time.

3 {9}{18} "Peace officer" means any sheriff, deputy  
4 sheriff, marshal, policeman, or other peace officer.

5 {10}{19} "Professional person" means:

6 (a) a medical doctor; or

7 (b) a person trained in the field of mental health and  
8 certified by the department in accordance with standards of  
9 professional licensing boards, federal regulations, and the  
10 joint commission on accreditation of hospitals.

11 {11}{10} "Reasonable medical certainty" means  
12 reasonable certainty as judged by the standards of a  
13 professional person.

14 {12}{11} "Respondent" means a person alleged in a  
15 petition filed pursuant to this part to be seriously  
16 mentally ill.

17 {13}{12} "Responsible person" means any person willing  
18 and able to assume responsibility for a seriously mentally  
19 ill person or person alleged to be seriously mentally ill,  
20 including next of kin, the person's conservator or legal  
21 guardian, if any, representatives of a charitable or  
22 religious organization, or any other person appointed by the  
23 court to perform the functions of a responsible person set  
24 out in this part. Only one person may at any one time be the  
25 responsible person within the meaning of this part. In

1 appointing a responsible person, the court shall consider  
 2 the preference of the respondent. The court may at any time,  
 3 for good cause shown, change its designation of the  
 4 responsible person.

5 ~~(14)~~(13) "Seriously mentally ill" means suffering from  
 6 a mental disorder which has resulted in self-inflicted  
 7 injury or injury to others or the imminent threat thereof or  
 8 which has deprived the person afflicted of the ability to  
 9 protect his life or health. No person may be involuntarily  
 10 committed to a mental health facility or detained for  
 11 evaluation and treatment because he is an epileptic,  
 12 mentally deficient, mentally retarded, senile, or suffering  
 13 from a mental disorder unless the condition causes him to be  
 14 seriously mentally ill within the meaning of this part.

15 ~~(15)~~(14) "State hospital" means the Warm Springs state  
 16 hospital."

17 Section 8. Section 53-21-142, MCA, is amended to read:  
 18 "53-21-142. Rights of persons admitted to facility.  
 19 Patients admitted to a mental health facility, whether  
 20 voluntarily or involuntarily, shall have the following  
 21 rights:

- 22 (1) Patients have a right to privacy and dignity.  
 23 (2) Patients have a right to the least restrictive  
 24 conditions necessary to achieve the purposes of commitment.  
 25 (3) Patients shall have the same rights to visitation

1 and reasonable access to private telephone communications as  
 2 patients at any public hospitals except to the extent that  
 3 the professional person responsible for formulation of a  
 4 particular patient's treatment plan writes an order imposing  
 5 special restrictions. The written order must be renewed  
 6 after each periodic review of the treatment plan if any  
 7 restrictions are to be continued. Patients shall have an  
 8 unrestricted right to visitation with attorneys, with  
 9 spiritual counselors, and with private physicians and other  
 10 professional persons.

11 (4) Patients shall have an unrestricted right to send  
 12 sealed mail. Patients shall have an unrestricted right to  
 13 receive sealed mail from their attorneys, private physicians  
 14 and other professional persons, ~~the--mental--disabilities~~  
 15 ~~board---of---visitors,~~ courts, and government officials.  
 16 Patients shall have a right to receive sealed mail from  
 17 others except to the extent that a professional person  
 18 responsible for formulation of a particular patient's  
 19 treatment plan writes an order imposing special restrictions  
 20 on receipt of sealed mail. The written order must be renewed  
 21 after each periodic review of the treatment plan if any  
 22 restrictions are to be continued.

23 (5) Patients have an unrestricted right to have access  
 24 to letter-writing materials, including postage, and have a  
 25 right to have staff members of the facility assist persons

1 who are unable to write, prepare, and mail correspondence.

2 (6) Patients have a right to wear their own clothes  
3 and to keep and use their own personal possessions,  
4 including toilet articles, except insofar as such clothes or  
5 personal possessions may be determined by a professional  
6 person in charge of the patient's treatment plan to be  
7 dangerous or otherwise inappropriate to the treatment  
8 regimen. The facility has an obligation to supply an  
9 adequate allowance of clothing to any patients who do not  
10 have suitable clothing of their own. Patients shall have the  
11 opportunity to select from various types of neat, clean, and  
12 seasonable clothing. Such clothing shall be considered the  
13 patient's throughout his stay at the facility. The facility  
14 shall make provision for the laundering of patient clothing.

15 (7) Patients have the right to keep and be allowed to  
16 spend a reasonable sum of their own money.

17 (8) Patients have the right to religious worship.  
18 Provisions for such worship shall be made available to all  
19 patients on a nondiscriminatory basis. No individual shall  
20 be required to engage in any religious activities.

21 (9) Patients have a right to regular physical exercise  
22 several times a week. Moreover, it shall be the duty of the  
23 facility to provide facilities and equipment for such  
24 exercise. Patients have a right to be outdoors at regular  
25 and frequent intervals in the absence of contrary medical

1 considerations.

2 (10) Patients have the right to be provided, with  
3 adequate supervision, suitable opportunities for interaction  
4 with members of the opposite sex except to the extent that a  
5 professional person in charge of the patient's treatment  
6 plan writes an order stating that such interaction is  
7 inappropriate to the treatment regimen.

8 (11) Patients have a right to receive prompt and  
9 adequate medical treatment for any physical ailments. In  
10 providing medical care, the mental health facility shall  
11 take advantage of whatever community-based facilities are  
12 appropriate and available and shall coordinate the patient's  
13 treatment for mental illness with his medical treatment.

14 (12) Patients have a right to a diet that will provide  
15 at a minimum the recommended daily dietary allowances as  
16 developed by the national academy of sciences. Provisions  
17 shall be made for special therapeutic diets and for  
18 substitutes at the request of the patient or the responsible  
19 person in accordance with the religious requirements of any  
20 patient's faith. Denial of a nutritionally adequate diet  
21 shall not be used as punishment.

22 (13) Patients have a right to a humane psychological  
23 and physical environment within the mental health  
24 facilities. These facilities shall be designed to afford  
25 patients with comfort and safety, promote dignity, and

1 ensure privacy. The facilities shall be designed to make a  
2 positive contribution to the efficient attainment of the  
3 treatment goals set for the patient. In order to assure the  
4 accomplishment of this goal:

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

9 (b) there must be special provision made for geriatric  
10 and other nonambulatory patients to assure their safety and  
11 comfort, including special fittings on toilets and  
12 wheelchairs. Appropriate provision shall be made to permit  
13 nonambulatory patients to communicate their needs to the  
14 facility staff.

15 (c) pursuant to an established routine maintenance and  
16 repair program, the physical plant of every facility shall  
17 be kept in a continuous state of good repair and operation  
18 in accordance with the needs of the health, comfort, safety,  
19 and well-being of the patients;

20 (d) every facility must meet all fire and safety  
21 standards established by the state and locality. In  
22 addition, any hospital shall meet such provisions of the  
23 life safety code of the national fire protection association  
24 as are applicable to hospitals. Any hospital shall meet all  
25 standards established by the state for general hospitals

1 insofar as they are relevant to psychiatric facilities."

2 Section 9. Section 53-21-147, MCA, is amended to read:

3 "53-21-147. Right not to be subjected to experimental  
4 research. ~~{1}~~ Patients shall have a right not to be  
5 subjected to experimental research without the express and  
6 informed consent of the patient, if the patient is able to  
7 give such consent, and of his guardian, if any, and the  
8 responsible person appointed by the court after  
9 opportunities for consultation with independent specialists  
10 and with legal counsel. If there is no responsible person or  
11 if the responsible person appointed by the court is no  
12 longer available, then a responsible person who is in no way  
13 connected with the facility, the department, or the research  
14 project shall be appointed prior to the involvement of the  
15 patient in any experimental research. At least 10 days prior  
16 to the commencement of such experimental research, the  
17 facility shall send notice of intent to involve the patient  
18 in experimental research to the patient, his next of kin, if  
19 known, his legal guardian, if any, the attorney who most  
20 recently represented him, and the responsible person  
21 appointed by the court.

22 ~~{2}--Such--proposed--research--shall--first--have--been~~  
23 ~~reviewed--and--approved--by--the--mental--disabilities--board--of~~  
24 ~~visitors--before--such--consent--shall--be--sought--Prior--to--such~~  
25 ~~approval--the--board--shall--determine--that--such--research~~

1 complies with the principles of the statement on the use of  
 2 human subjects for research of the American Association on  
 3 mental deficiency and with the principles for research  
 4 involving human subjects required by the United States  
 5 department of health, education, and welfare for projects  
 6 supported by that agency."

7 Section 10. Section 53-21-163, MCA, is amended to  
 8 read:

9 "53-21-163. Examination following commitment. No later  
 10 than 30 days after a patient is committed to a mental health  
 11 facility, the professional person in charge of the facility  
 12 or his appointed, professionally qualified agent shall  
 13 reexamine the committed patient and shall determine whether  
 14 he continues to require commitment to the facility and  
 15 whether a treatment plan complying with this part has been  
 16 implemented. If the patient no longer requires commitment to  
 17 the facility in accordance with the standards for  
 18 commitment, he must be released immediately unless he agrees  
 19 to continue with treatment on a voluntary basis. If for  
 20 sound professional reasons a treatment plan has not been  
 21 implemented, this fact shall be reported immediately to the  
 22 professional person in charge of the facility, the director  
 23 of the department, the mental disabilities board of  
 24 visitors, and the patient's counsel."

25 Section 11. Section 53-21-165, MCA, is amended to

1 read:

2 "53-21-165. Records to be maintained. Complete patient  
 3 records shall be kept by the mental health facility and  
 4 shall be available to any person authorized in writing by  
 5 the patient and the board. The records shall also be made  
 6 available to any attorney charged with representing the  
 7 patient or any professional person charged with evaluating  
 8 or treating the patient. These records shall include:

- 9 (1) identification data, including the patient's legal  
 10 status;
- 11 (2) a patient history, including but not limited to:  
 12 (a) family data, educational background, and  
 13 employment record;
- 14 (b) prior medical history, both physical and mental,  
 15 including prior hospitalization;
- 16 (3) the chief complaints of the patient and the chief  
 17 complaints of others regarding the patient;
- 18 (4) an evaluation which notes the onset of illness,  
 19 the circumstances leading to admission, attitudes, behavior,  
 20 estimate of intellectual functioning, memory functioning,  
 21 orientation, and an inventory of the patient's assets in  
 22 descriptive rather than interpretative fashion;
- 23 (5) a summary of each physical examination which  
 24 describes the results of the examination;
- 25 (6) a copy of the individual treatment plan and any

1 modifications thereto;

2 (7) a detailed summary of the findings made by the  
3 reviewing professional person after each periodic review of  
4 the treatment plan which analyzes the successes and failures  
5 of the treatment program and directs whatever modifications  
6 are necessary;

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

10 (9) a medication history and status which includes the  
11 signed orders of the prescribing physician. The staff person  
12 administering the medication shall indicate by signature  
13 that orders have been carried out.

14 (10) a detailed summary of each significant contact by  
15 a professional person with the patient;

16 (11) a detailed summary, on at least a weekly basis, by  
17 a professional person involved in the patient's treatment,  
18 of the patient's progress along the treatment plan;

19 (12) a weekly summary of the extent and nature of the  
20 patient's work activities and the effect of such activity  
21 upon the patient's progress along the treatment plan;

22 (13) a signed order by a professional person for any  
23 restrictions on visitations and communications;

24 (14) a signed order by a professional person for any  
25 physical restraints and isolation;

1 (15) a detailed summary of any extraordinary incident  
2 in the facility involving the patient, to be entered by a  
3 staff member noting that he has personal knowledge of the  
4 incident or specifying his other source of information and  
5 initialed within 24 hours by a professional person; and

6 (16) a summary by the professional person in charge of  
7 the facility or his appointed agent of his findings after  
8 the 30-day review provided for in 53-21-163.\*

9 Section 12. Section 53-21-166, MCA, is amended to  
10 read:

11 "53-21-166. Records to be confidential -- exceptions.  
12 All information obtained and records prepared in the course  
13 of providing any services under this part to individuals  
14 under any provision of this part shall be confidential and  
15 privileged matter. Such information and records may be  
16 disclosed only:

17 (1) in communications between qualified professional  
18 persons in the provision of services or appropriate  
19 referrals;

20 (2) when the recipient of services designates persons  
21 to whom information or records may be released, provided  
22 that if a recipient of services is a ward and his guardian  
23 or conservator designates in writing persons to whom records  
24 or information may be disclosed, such designation shall be  
25 valid in lieu of the designation by the recipient; except



1 that nothing in this section shall be construed to compel a  
 2 physician, psychologist, social worker, nurse, attorney, or  
 3 other professional person to reveal information which has  
 4 been given to him in confidence by members of a patient's  
 5 family;

6 (3) to the extent necessary to make claims on behalf  
 7 of a recipient of aid, insurance, or medical assistance to  
 8 which he may be entitled;

9 (4) for research if the department has promulgated  
 10 rules for the conduct of research; such rules shall include  
 11 but not be limited to the requirement that all researchers  
 12 must sign an oath of confidentiality;

13 (5) to the courts as necessary to the administration  
 14 of justice;

15 (6) to persons authorized by an order of court, after  
 16 notice and opportunity for hearing to the person to whom the  
 17 record or information pertains and the custodian of the  
 18 record or information pursuant to the rules of civil  
 19 procedure;

20 (7) ~~to members of the mental disabilities board of~~  
 21 ~~visitors or their agents when necessary to perform their~~  
 22 ~~functions as set out in 53-21-104~~ to the staff of the  
 23 legislative auditor."

24 Section 13. Repealer. Sections 2-15-211, 53-20-104,  
 25 and 53-21-104, MCA, are repealed.

1 Section 14. Effective date. This act is effective on  
 2 passage and approval.

-End-