

SENATE BILL NO. 403

INTRODUCED BY NAZUREK, DUSSAULT, HOLLIDAY, KENNIS,
BENGTSON

IN THE SENATE

February 9, 1981	Introduced and referred to Committee on Judiciary.
February 14, 1981	Committee recommend bill do pass. Report adopted.
February 16, 1981	Bill printed and placed on members' desks.
February 17, 1981	Second reading, do pass.
February 18, 1981	Correctly engrossed.
February 19, 1981	Third reading, passed. Ayes, 47; Noes, 0. Transmitted to House.

IN THE HOUSE

February 20, 1981	Introduced and referred to Committee on Judiciary.
March 14, 1981	Committee recommend bill be concurred in. Report adopted.
March 21, 1981	Second reading, pass consideration.
March 24, 1981	Second reading, pass consideration.
March 27, 1981	Second reading, concurred in.
March 30, 1981	On motion rules suspended and bill allowed to be transmitted on 71st legislative day. Motion adopted.
March 31, 1981	Third reading, concurred in. Ayes, 83; Noes, 14.

IN THE SENATE

April 1, 1981

Returned from House. Con-
curred in. Sent to enrolling.

Reported correctly enrolled.

1 *Senate* BILL NO. *403*
 2 INTRODUCED BY *Margaret Russell Lacey Kemmis*
 3 *Baigton*

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE
 5 PROVISIONS APPLICABLE TO PROTECTIVE SERVICES FOR
 6 DEVELOPMENTALLY DISABLED AND ELDERLY PERSONS TO MONTANA'S
 7 GUARDIANSHIP AND CONSERVATOR LAW; AMENDING SECTIONS
 8 53-20-402 THROUGH 53-20-406, MCA."

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

11 Section 1. Section 53-20-402, MCA, is amended to read:

12 "53-20-402. Legislative findings and directives. (1)

13 In recognition of the need to provide supervision and
 14 protection from exploitation for the developmentally
 15 disabled and in acknowledgment of the desirability of
 16 providing such services outside the state institutions, the
 17 legislature hereby finds and declares that a program should
 18 be established by the department to provide protective
 19 services for the developmentally disabled. Such a program
 20 should be designed to provide the services set forth in this
 21 part for developmentally disabled persons.

22 (2) The director of the department shall adopt rules
 23 for the administration of this part. The department shall
 24 develop a statewide system of protective service in
 25 accordance with regulations and standards established by the

1 department with respect to this program. The department
 2 may:

3 (a) provide direct services;

4 (b) enter into a contract with any responsible agency,
 5 public or private, for provision of protective service by
 6 the agency;

7 (c) accept appointment by any district court as
 8 guardian, ~~conservator~~, trustee, protector, or trustee and
 9 protector of a mentally retarded or other developmentally
 10 disabled person. ~~However, this subsection does not relieve~~
 11 ~~the department of the duty to comply with the requirements~~
 12 ~~of Title 72, chapter 5, for the appointment of a guardian or~~
 13 ~~conservator or the requirements of 53-20-406."~~

14 Section 2. Section 53-20-403, MCA, is amended to read:

15 "53-20-403. Application for protective services. (1)
 16 Protective services may be provided on a voluntary basis for
 17 any developmentally disabled person who requests them for
 18 himself or at the request of any interested person, when the
 19 department determines that such person is a developmentally
 20 disabled person who would benefit from services provided in
 21 this part and that the department is currently able to
 22 supply services to such person. A parent may name the
 23 department as guardian of the developmentally disabled
 24 person in his will. A parent may also name the department as
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1 to assume such duties during the parents' lifetime.
 2 Voluntary services may be discontinued upon the written
 3 request of the ward or any personal representative of the
 4 ward. ~~Any appointment of the department as guardian by the~~
 5 ~~parent of a developmentally disabled person, either by will~~
 6 ~~or by appointment during the parent's lifetime, must comply~~
 7 ~~with and is governed by the requirements of Title 72,~~
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 10 part shall be made to the designated field staff of the
 11 department or other designated state agency in the county in
 12 which the applicant resides, and the application shall be
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 15 upon the form prescribed by the department and shall contain
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 18 department. The rules of the department shall simplify the
 19 application process in order that protective services may be
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 3 "53-20-404. Petition to make developmentally disabled
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 12 respondent's disability, and alleging that it will be in the
 13 best interests of the respondent that he be made a ward of
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 15 report of the findings of an evaluation team composed of but
 16 not limited to a physician, a psychologist, and a social
 17 worker and expressing the belief that the respondent is
 18 developmentally disabled to an extent which would cause the
 19 respondent to benefit from the protective services provided
 20 for in this part.

21 (2) Upon the filing of such verified petition and team
 22 evaluation statement, the court shall issue an order fixing
 23 the time and place of a hearing on such petition, which time
 24 shall be no earlier than 7 days or later than 14 days after
 25 the filing thereof. Such order shall appoint an attorney for

1 the respondent, whose duty shall be to make such
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 9 department, the county attorney, and the attorney may waive
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11 (3) Upon hearing, the petitioner shall present the
 12 evidence to the court. When the court is fully advised, it
 13 shall determine whether the respondent is a developmentally
 14 disabled person who would benefit from the protective
 15 services provided for in this part and whether it is in the
 16 best interest of the respondent that he be made a ward of
 17 the department and, if it is so found, the court shall enter
 18 an order that the respondent is made the ward of the
 19 department; otherwise, the petition shall be dismissed.

20 (4) ~~In any order making the respondent a ward of the~~
 21 ~~department, the court shall specify any legal disabilities~~
 22 ~~to be imposed upon the ward. Where appropriate, the order~~
 23 ~~may contain specific provisions concerning the right to~~
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 8 ~~provisions of Title 72, chapter 5, part 3, or, if~~
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10 (5) Every proceeding under this part shall be civil in
 11 nature and shall be entitled "In the interest of
 12 respondent" or "In the interest of ward", as the case
 13 may be."

14 Section 4. Section 53-20-405, MCA, is amended to read:
 15 "53-20-405. Protective and supportive services
 16 provided. (1) The department shall provide, in the manner
 17 set forth, for each of its wards those protective and
 18 supportive services which the department believes necessary
 19 to help the ward function to the extent of his capabilities
 20 as an independent, self-sufficient member of society.
 21 Services under this part may include but shall not be
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- 23 (a) housing, clothing, and food;
 24 (b) education and training for living in society and,
 25 where possible, for employment;

- 1 (c) employment;
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3 entitled;
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7 ward's property;
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- 9 (i) participation in cultural and recreational
10 activities.

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13 exploitation of the ward by others and in preventing injury
14 to the ward and injury by the ward to others.

15 (3) The provision of protective services pursuant to
16 this part does not create a guardianship relationship
17 between the department and the developmentally disabled
18 person unless a guardianship is created in accordance with
19 the requirements of Title 72, chapter 5, part 3."

20 Section 5. Section 53-20-406, MCA, is amended to read:

21 *53-20-406. Department as conservator of small estate
22 of person adjudicated developmentally disabled. The
23 department may be appointed as conservator of the estate of
24 any person adjudicated developmentally disabled if the
25 department is providing protective services for such person

1 and if it shall appear to the court that the value of the
2 assets of such person does not exceed \$10,000 and that there
3 is no other person or institution whose appointment in such
4 capacity would be more appropriate. The department shall
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6 discharge of its duties as conservator of an estate under
7 this section and shall otherwise be subject to the
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13 **NEW SECTION.** Section 6. Department to compile list of
14 qualified visitors. The department shall compile and provide
15 to each district court within the state a list of
16 professional persons within the region where the district
17 court is located who possess competencies in the evaluation
18 and habilitation of persons with developmental disabilities
19 and who may be available to the court to act as visitors or
20 to otherwise provide evaluation services in guardianship
21 proceedings involving developmentally disabled persons,
22 together with an indication of the particular competencies
23 the professional person possesses.

24 **NEW SECTION.** Section 7. Protective services not
25 creating guardianship or conservatorship. The provision of

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3 aged person unless a guardianship or conservatorship is
4 created in accordance with the requirements of Title 72,
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6 Section 8. Codification instruction. (1) Section 6 is
7 intended to be codified as an integral part of Title 53,
8 chapter 20, part 4, and the provisions of Title 53, chapter
9 20, part 4, apply to section 6.

10 (2) Section 7 is intended to be codified as an
11 integral part of Title 53, chapter 5, part 2, and the
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-End-

SB403

Approved by Committee
on Judiciary

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2 INTRODUCED BY *Mazurek, Russell, Lacey, Komina*
3 *Boughton*

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 12 respondent" or "In the interest of, ward", as the case
 13 may be."

14 Section 4. Section 53-20-405, MCA, is amended to read:
 15 "53-20-405. Protective and supportive services
 16 provided. (1) The department shall provide, in the manner
 17 set forth, for each of its wards those protective and
 18 supportive services which the department believes necessary
 19 to help the ward function to the extent of his capabilities
 20 as an independent, self-sufficient member of society.
 21 Services under this part may include but shall not be
 22 limited to assistance in obtaining:

- 23 (a) housing, clothing, and food;
 24 (b) education and training for living in society and,
 25 where possible, for employment;

1 (c) employment;

2 (d) financial benefits to which the ward may be
3 entitled;

4 (e) medical services and supplies;

5 (f) necessary legal services;

6 (g) marshaling, protection, and insurance of the
7 ward's property;

8 (h) financial advice and services;

9 (i) participation in cultural and recreational
10 activities.

11 (2) Services under this part may also include but
12 shall not be limited to assistance in preventing
13 exploitation of the ward by others and in preventing injury
14 to the ward and injury by the ward to others.

15 ~~(3) The provision of protective services pursuant to
16 this part does not create a guardianship relationship
17 between the department and the developmentally disabled
18 person unless a guardianship is created in accordance with
19 the requirements of Title 72, chapter 5, part 3.~~

20 Section 5. Section 53-20-406, MCA, is amended to read:
21 "53-20-406. Department as conservator of small estate
22 of person adjudicated developmentally disabled. The
23 department may be appointed as conservator of the estate of
24 any person adjudicated developmentally disabled if the
25 department is providing protective services for such person

1 and if it shall appear to the court that the value of the
2 assets of such person does not exceed \$10,000 and that there
3 is no other person or institution whose appointment in such
4 capacity would be more appropriate. The department shall
5 report annually to the court which appointed it on the
6 discharge of its duties as conservator of an estate under
7 this section and shall otherwise be subject to the
8 requirements of ~~general guardian Title 72, chapter 5, part~~
9 ~~4. Any appointment of the department as conservator of the~~
10 ~~estate of a developmentally disabled person made pursuant to~~
11 ~~this section is governed by and must comply with the~~
12 ~~requirements of Title 72, chapter 5, part 4."~~

13 **NEW SECTION.** Section 6. Department to compile list of
14 qualified visitors. The department shall compile and provide
15 to each district court within the state a list of
16 professional persons within the region where the district
17 court is located who possess competencies in the evaluation
18 and habilitation of persons with developmental disabilities
19 and who may be available to the court to act as visitors or
20 to otherwise provide evaluation services in guardianship
21 proceedings involving developmentally disabled persons,
22 together with an indication of the particular competencies
23 the professional person possesses.

24 **NEW SECTION.** Section 7. Protective services not
25 creating guardianship or conservatorship. The provision of

1 protective services does not create a guardianship or
2 conservatorship relationship between the department and the
3 aged person unless a guardianship or conservatorship is
4 created in accordance with the requirements of Title 72,
5 chapter 5, part 3 or 4.

6 Section 8. Codification instruction. (1) Section 6 is
7 intended to be codified as an integral part of Title 53,
8 chapter 20, part 4, and the provisions of Title 53, chapter
9 20, part 4, apply to section 6.

10 (2) Section 7 is intended to be codified as an
11 integral part of Title 53, chapter 5, part 2, and the
12 provisions of Title 53, chapter 5, part 2, apply to section
13 7.

-End-

SB403

SENATE BILL NO. 403

INTRODUCED BY MAZUREK, DUSSAULT, HOLLIDAY, KEMMIS,
BENGTSON

A BILL FOR AN ACT ENTITLED: "AN ACT TO CONFORM THE PROVISIONS APPLICABLE TO PROTECTIVE SERVICES FOR DEVELOPMENTALLY DISABLED AND ELDERLY PERSONS TO MONTANA'S GUARDIANSHIP AND CONSERVATOR LAW; AMENDING SECTIONS 53-20-402 THROUGH 53-20-406, MCA."

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

Section 1. Section 53-20-402, MCA, is amended to read:

"53-20-402. Legislative findings and directives. (1)

In recognition of the need to provide supervision and protection from exploitation for the developmentally disabled and in acknowledgment of the desirability of providing such services outside the state institutions, the legislature hereby finds and declares that a program should be established by the department to provide protective services for the developmentally disabled. Such a program should be designed to provide the services set forth in this part for developmentally disabled persons.

(2) The director of the department shall adopt rules for the administration of this part. The department shall develop a statewide system of protective service in

accordance with regulations and standards established by the department with respect to this program. The department may:

(a) provide direct services;

(b) enter into a contract with any responsible agency, public or private, for provision of protective service by the agency;

(c) accept appointment by any district court as guardian, conservator, trustee, protector, or trustee and protector of a mentally retarded or other developmentally disabled person. However, this subsection does not relieve the department of the duty to comply with the requirements of Title 72, chapter 5, for the appointment of a guardian or conservator or the requirements of 53-20-406."

Section 2. Section 53-20-403, MCA, is amended to read:

"53-20-403. Application for protective services. (1)

Protective services may be provided on a voluntary basis for any developmentally disabled person who requests them for himself or at the request of any interested person, when the department determines that such person is a developmentally disabled person who would benefit from services provided in this part and that the department is currently able to supply services to such person. A parent may name the department as guardian of the developmentally disabled person in his will. A parent may also name the department as

1 guardian or trustee of the developmentally disabled person
 2 to assume such duties during the parents' lifetime.
 3 Voluntary services may be discontinued upon the written
 4 request of the ward or any personal representative of the
 5 ward. Any appointment of the department as guardian by the
 6 parent of a developmentally disabled person, either by will
 7 or by appointment during the parent's lifetime, must comply
 8 with and is governed by the requirements of Title 72,
 9 chapter 5, part 3.

10 (2) Application for protective services under this
 11 part shall be made to the designated field staff of the
 12 department or other designated state agency in the county in
 13 which the applicant resides, and the application shall be
 14 transmitted promptly to the department. Such application
 15 shall be in writing or reduced to writing in the manner and
 16 upon the form prescribed by the department and shall contain
 17 the name, age, and residence of the applicant and such other
 18 information as may be required by the rules of the
 19 department. The rules of the department shall simplify the
 20 application process in order that protective services may be
 21 furnished as soon as possible. Adequate safeguards shall be
 22 established by the department to insure that only eligible
 23 persons receive protective services under this part. The
 24 department shall notify the applicant and the designated
 25 field staff of the department or other designated state

1 agency in writing of its decision concerning eligibility for
 2 protective services."

3 Section 3. Section 53-20-404, MCA, is amended to read:

4 "53-20-404. Petition to make developmentally disabled
 5 person ward of department. (1) Any developmentally disabled
 6 person may be made a ward of the department by a judicial
 7 proceeding which shall be initiated when any reputable
 8 person, including the potential ward, or the department
 9 shall file in the district court of the county in which the
 10 respondent resides or is physically present a verified
 11 petition alleging that the respondent is a developmentally
 12 disabled person, describing the nature and extent of the
 13 respondent's disability, and alleging that it will be in the
 14 best interests of the respondent that he be made a ward of
 15 the department. The petition shall be accompanied by a
 16 report of the findings of an evaluation team composed of but
 17 not limited to a physician, a psychologist, and a social
 18 worker and expressing the belief that the respondent is
 19 developmentally disabled to an extent which would cause the
 20 respondent to benefit from the protective services provided
 21 for in this part.

22 (2) Upon the filing of such verified petition and team
 23 evaluation statement, the court shall issue an order fixing
 24 the time and place of a hearing on such petition, which time
 25 shall be no earlier than 7 days or later than 14 days after

1 the filing thereof. Such order shall appoint an attorney for
 2 the respondent, whose duty shall be to make such
 3 investigation as is necessary to protect the rights of the
 4 respondent and to attend all hearings in the matter. Such
 5 order shall also advise the respondent of his right to
 6 appear at the hearing and shall give the address and
 7 telephone number of the attorney. Personal service shall be
 8 made on the respondent, the department, the county attorney,
 9 and attorney at least 5 days prior to the hearing date. The
 10 department, the county attorney, and the attorney may waive
 11 service.

12 (3) Upon hearing, the petitioner shall present the
 13 evidence to the court. When the court is fully advised, it
 14 shall determine whether the respondent is a developmentally
 15 disabled person who would benefit from the protective
 16 services provided for in this part and whether it is in the
 17 best interest of the respondent that he be made a ward of
 18 the department and, if it is so found, the court shall enter
 19 an order that the respondent is made the ward of the
 20 department; otherwise, the petition shall be dismissed.

21 ~~(4) in any order making the respondent a ward of the~~
 22 ~~department, the court shall specify any legal disabilities~~
 23 ~~to be imposed upon the ward. Where appropriate, the order~~
 24 ~~may contain specific provisions concerning the right to~~
 25 ~~operate a motor vehicle, the right to enter into contracts,~~

1 ~~or any other civil, political, personal, or property rights~~
 2 ~~No person who becomes a ward of the department shall lose~~
 3 ~~any legal right by reason thereof except as provided in this~~
 4 ~~subsection. If, in addition to seeking authorization for the~~
 5 ~~department to provide protective services, the petition~~
 6 ~~seeks to impose any legal disabilities on the ward, the~~
 7 ~~petition shall be treated as a petition to create a~~
 8 ~~guardianship or, if appropriate, a conservatorship, and the~~
 9 ~~provisions of Title 72, chapter 5, part 3, or, if~~
 10 ~~appropriate, Title 72, chapter 5, part 4, apply.~~

11 (5) Every proceeding under this part shall be civil in
 12 nature and shall be entitled "In the interest of
 13 respondent" or "In the interest of ward", as the case
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4 is no other person or institution whose appointment in such
5 capacity would be more appropriate. The department shall
6 report annually to the court which appointed it on the
7 discharge of its duties as conservator of an estate under
8 this section and shall otherwise be subject to the
9 requirements of ~~a general guardian~~ Title 72, chapter 5, part
10 4. Any appointment of the department as conservator of the
11 estate of a developmentally disabled person made pursuant to
12 this section is governed by and must comply with the
13 requirements of Title 72, chapter 5, part 4."

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