

SENATE BILL NO. 229

INTRODUCED BY MAZUREK

BY REQUEST OF THE DEPARTMENT
OF SOCIAL AND REHABILITATION SERVICES

IN THE SENATE

JANUARY 27, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
FEBRUARY 17, 1987	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 18, 1987	PRINTING REPORT.
FEBRUARY 19, 1987	SECOND READING, DO PASS.
FEBRUARY 20, 1987	ENGROSSING REPORT.
FEBRUARY 21, 1987	THIRD READING, PASSED. AYES, 49; NOES, 0. TRANSMITTED TO HOUSE.

IN THE HOUSE

FEBRUARY 23, 1987	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
MARCH 3, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 5, 1987	ON MOTION, TAKEN FROM SECOND READING AND REREFERRED TO COMMITTEE ON JUDICIARY.
MARCH 27, 1987	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 28, 1987	ON MOTION, RULES SUSPENDED TO PLACE BILL ON THIRD READING THE 70TH LEGISLATIVE DAY.
MARCH 30, 1987	SECOND READING, CONCURRED IN.

MARCH 30, 1987

THIRD READING, CONCURRED IN.
AYES, 82; NOES, 13.

RETURNED TO SENATE.

IN THE SENATE

MARCH 30, 1987

RECEIVED FROM HOUSE.

SENT TO ENROLLING.

1 Senate BILL NO. 229
 2 INTRODUCED BY Raymond
 3 BY REQUEST OF THE DEPARTMENT
 4 OF SOCIAL AND REHABILITATION SERVICES

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A DISTRICT
 7 COURT FROM ORDERING THE PLACEMENT OF OR DELIVERY OF SERVICES
 8 TO A DEVELOPMENTALLY DISABLED PERSON IN COMMUNITY-BASED
 9 SERVICES; REQUIRING THE COURT TO DISMISS PETITIONS
 10 CONCERNING TREATMENT AND HABILITATION FOR CERTAIN
 11 DEVELOPMENTALLY DISABLED RESPONDENTS AND TO REFER THE
 12 RESPONDENTS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION
 13 SERVICES; AMENDING SECTIONS 53-20-124, 53-20-125, AND
 14 53-20-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

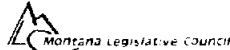
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 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 NEW SECTION. Section 1. Court-ordered placement in
 18 community-based services prohibited. Nothing in this part
 19 may be construed as authorizing the placement of and
 20 delivery of services to developmentally disabled persons in
 21 community-based services by court order except as provided
 22 in 53-20-123(4). Placement of persons in community-based
 23 services is governed by 53-20-209.

24 Section 2. Section 53-20-124, MCA, is amended to read:
 25 "53-20-124. Outcome of evaluation and treatment --

1 recommendation for community-based treatment -- hearing. (1)
 2 If, as a result of the evaluation and treatment ordered by
 3 the court, the professional person in charge of the case
 4 recommends a course of habilitation and treatment at the
 5 community level making use of community- and regional-based
 6 services for the developmentally disabled, he shall report
 7 his recommendation in writing to the court. The
 8 recommendation shall be accompanied by a written report
 9 indicating the factual basis for the recommendation and
 10 describing any tests or evaluation devices which the
 11 professional person has employed in evaluating the
 12 respondent. If this course of treatment and habilitation is
 13 agreed to by the parents, guardian, person evaluated,
 14 responsible person, if any, and counsel for the person
 15 evaluated, if any, then this community-based course of
 16 treatment shall be commenced as soon as practicable and the
 17 petition shall be dismissed.

18 (2) If any of the parties listed in the preceding
 19 subsection object to the community-based course of
 20 treatment, they may request the court to conduct a hearing
 21 on the matter. If a responsible person has not yet been
 22 appointed, the court may appoint a responsible person prior
 23 to the hearing. Notice of the time, date, and place of the
 24 hearing shall be mailed or delivered to all of the parties
 25 listed in the preceding subsection and to the attorney for



1 the parents or guardian, if any. The hearing shall be held
 2 before the court without a jury. The rules of civil
 3 procedure shall apply. If the court finds that the
 4 respondent is developmentally disabled and in need of
 5 community-based developmental disabilities services, it
 6 shall ~~order that the respondent undertake a community-based~~
 7 ~~course of treatment and habilitation~~ dismiss the petition
 8 and refer the respondent to the department of social and
 9 rehabilitation services to be considered for placement in
 10 community-based services according to 53-20-209."

11 Section 3. Section 53-20-125, MCA, is amended to read:

12 "53-20-125. Outcome of evaluation and treatment --
 13 recommendation for treatment at residential facility --
 14 hearing. (1) If as a result of the evaluation and treatment,
 15 either agreed to by the parents, guardian, or the person
 16 himself pursuant to 53-20-120 or ordered by the court, the
 17 professional person in charge of the case concludes that the
 18 person evaluated is seriously developmentally disabled and
 19 recommends that treatment and habilitation be had in a
 20 residential facility on an extended basis, the professional
 21 person shall file his written recommendation and report
 22 with the court and request that the court order the
 23 admission. The report shall include the factual basis for
 24 the recommendation and shall describe any tests or
 25 evaluation devices which have been employed in evaluating

1 the patient. If no responsible person has yet been
 2 appointed, the court may appoint one at this time. If there
 3 is no parent or guardian, the court shall appoint a
 4 responsible person. At the request of the respondent, his
 5 parents or guardian, or the responsible person, the court
 6 shall appoint counsel for the respondent. If the parents
 7 (or guardian) are indigent and if they request it, the court
 8 shall appoint counsel for the parents or guardian. Notice
 9 of the recommendation shall be mailed or delivered to the
 10 respondent, his parents or guardian, the responsible person,
 11 next of kin, if known, and the attorney for the respondent,
 12 if any, and for the parents or guardian, if any.

13 (2) The respondent, his parents or guardian, the
 14 responsible person, or the attorney for any party may
 15 request that a hearing be had on the recommendation. If a
 16 hearing is requested, the court shall mail or deliver notice
 17 of the date, time, and place of the hearing to each of the
 18 parties listed at the beginning of this subsection. The
 19 hearing shall be to the court without jury. The rules of
 20 civil procedure shall apply.

21 (3) If the court finds that the respondent is
 22 seriously developmentally disabled and that available
 23 community-based services are not adequate to protect the
 24 life and physical safety of the person and others or to
 25 provide appropriate treatment and habilitation, it shall

1 order the respondent admitted to a residential facility for
 2 an extended course of treatment and habilitation. If the
 3 court finds that the respondent is developmentally disabled,
 4 in need of developmental disability services, and eligible
 5 for placement in community-based services and that available
 6 community-based services are adequate to protect the life
 7 and physical safety of the person and others and to provide
 8 appropriate treatment and habilitation, it shall ~~order the~~
 9 ~~respondent--to--undertake--a--community-based--course--of~~
 10 ~~treatment--and--habilitation~~ dismiss the petition and refer
 11 the respondent to the department of social and
 12 rehabilitation services to be considered for placement in
 13 community-based services according to 53-20-209. If the
 14 court finds that the respondent is not developmentally
 15 disabled or is not in need of developmental disability
 16 services, it shall dismiss the request petition.

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

1 Section 4. Section 53-20-128, MCA, is amended to read:
 2 "53-20-128. Extension of admission period -- hearing.
 3 (1) If the professional person in charge of the resident
 4 determines that the admission to the residential facility
 5 should continue beyond the period specified in the court
 6 order, he shall, at least 15 days before the end of the
 7 period set out in the court order, send written notice of
 8 his recommendation and request for renewal of the order to
 9 the court which issued the order, the resident, his parents
 10 or guardian, the next of kin, if known, the attorney who
 11 most recently represented the resident, if any, and the
 12 responsible person appointed by the court, if any. The
 13 recommendation and request shall be accompanied by a written
 14 report which shall describe the habilitation plan which has
 15 been undertaken for the resident and the future habilitation
 16 plan which is anticipated by the professional person.

17 (2) If any person so notified requests a hearing, the
 18 court shall set a time and place for the hearing and shall
 19 mail or deliver notice to all of the persons informed of the
 20 recommendation. The hearing shall be conducted in the manner
 21 set out in 53-20-125. If the court finds that the
 22 residential admission is still justified, it may order
 23 continuation of the admission to that residential facility
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 25 facility. If the court finds that the resident is still in

1 need of developmental disabilities services but does not
2 require residential treatment,~~it shall order an appropriate~~
3 ~~course of community-based habitation~~ or, if all parties
4 are willing for the resident to participate in a
5 community-based program of habilitation, it shall dismiss
6 the petition and refer the respondent to the department of
7 social and rehabilitation services to be considered for
8 placement in community-based services according to
9 53-20-209. If the need for developmental disabilities
10 services no longer exists, the court shall dismiss the
11 petition. The court shall not order continuation of
12 admission to a residential facility which does not have an
13 individualized habilitation plan for the resident. In its
14 order, the court shall make findings of fact on which its
15 order is based. The court may on its own initiative inquire
16 concerning the suitability of continuing an admission to a
17 residential facility."

18 NEW SECTION. Section 5. Codification instruction.
19 Section 1 is intended to be codified as an integral part of
20 Title 53, chapter 20, part 1, and the provisions of section
21 1 apply to Title 53, chapter 20, part 1.

22 NEW SECTION. Section 6. Effective date. This act is
23 effective on passage and approval.

-End-

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 12 RESPONDENTS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION
 13 SERVICES; AMENDING SECTIONS 53-20-124, 53-20-125, AND
 14 53-20-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 15

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

17 NEW SECTION. Section 1. Court-ordered placement in
 18 community-based services prohibited. Nothing in this part
 19 may be construed as authorizing the placement of and
 20 delivery of services to developmentally disabled persons in
 21 community-based services by court order except as provided
 22 in 53-20-123(4). Placement of persons in community-based
 23 services is governed by 53-20-209.

24 Section 2. Section 53-20-124, MCA, is amended to read:
 25 "53-20-124. Outcome of evaluation and treatment --

1 recommendation for community-based treatment -- hearing. (1)
 2 If, as a result of the evaluation and treatment ordered by
 3 the court, the professional person in charge of the case
 4 recommends a course of habilitation and treatment at the
 5 community level making use of community- and regional-based
 6 services for the developmentally disabled, he shall report
 7 his recommendation in writing to the court. The
 8 recommendation shall be accompanied by a written report
 9 indicating the factual basis for the recommendation and
 10 describing any tests or evaluation devices which the
 11 professional person has employed in evaluating the
 12 respondent. If this course of treatment and habilitation is
 13 agreed to by the parents, guardian, person evaluated,
 14 responsible person, if any, and counsel for the person
 15 evaluated, if any, then this community-based course of
 16 treatment shall be commenced as soon as practicable and the
 17 petition shall be dismissed.

18 (2) If any of the parties listed in the preceding
 19 subsection object to the community-based course of
 20 treatment, they may request the court to conduct a hearing
 21 on the matter. If a responsible person has not yet been
 22 appointed, the court may appoint a responsible person prior
 23 to the hearing. Notice of the time, date, and place of the
 24 hearing shall be mailed or delivered to all of the parties
 25 listed in the preceding subsection and to the attorney for



1 the parents or guardian, if any. The hearing shall be held
 2 before the court without a jury. The rules of civil
 3 procedure shall apply. If the court finds that the
 4 respondent is developmentally disabled and in need of
 5 community-based developmental disabilities services, it
 6 shall ~~order that the respondent undertake a community-based~~
 7 ~~course-of-treatment-and-habilitation~~ dismiss the petition
 8 and refer the respondent to the department of social and
 9 rehabilitation services to be considered for placement in
 10 community-based services according to 53-20-209."

11 Section 3. Section 53-20-125, MCA, is amended to read:
 12 "53-20-125. Outcome of evaluation and treatment --
 13 recommendation for treatment at residential facility --
 14 hearing. (1) If as a result of the evaluation and treatment,
 15 either agreed to by the parents, guardian, or the person
 16 himself pursuant to 53-20-120 or ordered by the court, the
 17 professional person in charge of the case concludes that the
 18 person evaluated is seriously developmentally disabled and
 19 recommends that treatment and habilitation be had in a
 20 residential facility on an extended basis, the professional
 21 person shall file his written recommendation and report
 22 with the court and request that the court order the
 23 admission. The report shall include the factual basis for
 24 the recommendation and shall describe any tests or
 25 evaluation devices which have been employed in evaluating

1 the patient. If no responsible person has yet been
 2 appointed, the court may appoint one at this time. If there
 3 is no parent or guardian, the court shall appoint a
 4 responsible person. At the request of the respondent, his
 5 parents or guardian, or the responsible person, the court
 6 shall appoint counsel for the respondent. If the parents
 7 (or guardian) are indigent and if they request it, the court
 8 shall appoint counsel for the parents or guardian. Notice
 9 of the recommendation shall be mailed or delivered to the
 10 respondent, his parents or guardian, the responsible person,
 11 next of kin, if known, and the attorney for the respondent,
 12 if any, and for the parents or guardian, if any.

13 (2) The respondent, his parents or guardian, the
 14 responsible person, or the attorney for any party may
 15 request that a hearing be had on the recommendation. If a
 16 hearing is requested, the court shall mail or deliver notice
 17 of the date, time, and place of the hearing to each of the
 18 parties listed at the beginning of this subsection. The
 19 hearing shall be to the court without jury. The rules of
 20 civil procedure shall apply.

21 (3) If the court finds that the respondent is
 22 seriously developmentally disabled and that available
 23 community-based services are not adequate to protect the
 24 life and physical safety of the person and others or to
 25 provide appropriate treatment and habilitation, it shall

1 order the respondent admitted to a residential facility for
 2 an extended course of treatment and habilitation. If the
 3 court finds that the respondent is developmentally disabled,
 4 in need of developmental disability services, and eligible
 5 for placement in community-based services and that available
 6 community-based services are adequate to protect the life
 7 and physical safety of the person and others and to provide
 8 appropriate treatment and habilitation, it shall ~~order the~~
 9 ~~respondent--to--undertake--a---community-based---course---of~~
 10 ~~treatment--and--habilitation~~ dismiss the petition and refer
 11 the respondent to the department of social and
 12 rehabilitation services to be considered for placement in
 13 community-based services according to 53-20-209. If the
 14 court finds that the respondent is not developmentally
 15 disabled or is not in need of developmental disability
 16 services, it shall dismiss the request petition.

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

1 Section 4. Section 53-20-128, MCA, is amended to read:
 2 "53-20-128. Extension of admission period -- hearing.
 3 (1) If the professional person in charge of the resident
 4 determines that the admission to the residential facility
 5 should continue beyond the period specified in the court
 6 order, he shall, at least 15 days before the end of the
 7 period set out in the court order, send written notice of
 8 his recommendation and request for renewal of the order to
 9 the court which issued the order, the resident, his parents
 10 or guardian, the next of kin, if known, the attorney who
 11 most recently represented the resident, if any, and the
 12 responsible person appointed by the court, if any. The
 13 recommendation and request shall be accompanied by a written
 14 report which shall describe the habilitation plan which has
 15 been undertaken for the resident and the future habilitation
 16 plan which is anticipated by the professional person.

17 (2) If any person so notified requests a hearing, the
 18 court shall set a time and place for the hearing and shall
 19 mail or deliver notice to all of the persons informed of the
 20 recommendation. The hearing shall be conducted in the manner
 21 set out in 53-20-125. If the court finds that the
 22 residential admission is still justified, it may order
 23 continuation of the admission to that residential facility
 24 or transfer of the resident to a different residential
 25 facility. If the court finds that the resident is still in

1 need of developmental disabilities services but does not
2 require residential treatment,~~it shall order an appropriate~~
3 ~~course of community-based habilitation~~ or, if all parties
4 are willing for the resident to participate in a
5 community-based program of habilitation, it shall ~~dismiss~~
6 ~~the petition and refer the respondent to the department of~~
7 social and rehabilitation services to be considered for
8 placement in community-based services according to
9 53-20-209. If the PERSON IS PLACED IN COMMUNITY-BASED
10 SERVICES OR IF THE need for developmental disabilities
11 services no longer exists, the court shall dismiss the
12 petition. The court shall not order continuation of
13 admission to a residential facility which does not have an
14 individualized habilitation plan for the resident. In its
15 order, the court shall make findings of fact on which its
16 order is based. The court may on its own initiative inquire
17 concerning the suitability of continuing an admission to a
18 residential facility."

19 NEW SECTION. Section 5. Codification instruction.
20 Section 1 is intended to be codified as an integral part of
21 Title 53, chapter 20, part 1, and the provisions of section
22 1 apply to Title 53, chapter 20, part 1.

23 NEW SECTION. Section 6. Effective date. This act is
24 effective on passage and approval.

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