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.

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LC 1209/01

INTRODUCED BY OF SOCIAL AND REHABILITATION SERVICES A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A DISTRICT COURT FROM ORDERING THE PLACEMENT OF OR DELIVERY OF SERVICES

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

15

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

17 <u>NEW SECTION.</u> 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 --



recommendation for community-based treatment -- hearing. (1) 1 2 If, as a result of the evaluation and treatment ordered by the court, the professional person in charge of the case 3 4 recommends a course of habilitation and treatment at the 5 community level making use of community- and regional-based services for the developmentally disabled, he shall report 6 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, responsible person, if any, and counsel for the person 14 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 on the matter. If a responsible person has not yet been 21 appointed, the court may appoint a responsible person prior 22 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

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INTRODUCED BILL

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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 respondent is developmentally disabled and in need of 4 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 and refer the respondent to the department of social and 8 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 recommendation and shall describe any tests or the 25 evaluation devices which have been employed in evaluating

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

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

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

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

17 (4) If none of the parties notified of the recommendation request a hearing, the court may issue an 18 19 order authorizing the person to be admitted to the residential facility for an extended period of treatment and 20 21 habilitation or the court may initiate its own inquiry as to whether the order should be granted. The court may refuse 22 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."

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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 determines that the admission to the residential facility 4 should continue beyond the period specified in the court 5 order, he shall, at least 15 days before the end of the 6 period set out in the court order, send written notice of 7 his recommendation and request for renewal of the order to 8 the court which issued the order, the resident, his parents 9 or guardian, the next of kin, if known, the attorney who 10 11 most recently represented the resident, if any, and the responsible person appointed by the court, if any, The 12 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 plan which is anticipated by the professional person. 16

17 (2) If any person so notified requests a hearing, the court shall set a time and place for the hearing and shall 18 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 residential admission is still justified, it may order 22 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

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need of developmental disabilities services but does not 1 2 require residential treatment-it-shall-order-an-appropriate course--of--community-based--habilitation or; if all parties 3 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 placement in community-based services according to 8 9 53-20-209. If the need for developmental disabilities services no longer exists, the court shall dismiss the 10 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 order, the court shall make findings of fact on which its 14 15 order is based. The court may on its own initiative inquire concerning the suitability of continuing an admission to a 16 17 residential facility."

18 <u>NEW SECTION.</u> 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.

<u>NEW SECTION.</u> Section 6. Effective date. This act is
effective on passage and approval.

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APPROVED BY COMMITTEE ON JUDICIARY

1	SENATE BILL NO. 229
2	INTRODUCED BY MAZUREK
3	BY REQUEST OF THE DEPARTMENT
4	OF SOCIAL AND REHABILITATION SERVICES
5	

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

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

17 <u>NEW SECTION.</u> 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.

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



recommendation for community-based treatment $\neg \rightarrow$ hearing. (1) 1 If, as a result of the evaluation and treatment ordered by 2 3 the court, the professional person in charge of the case recommends a course of habilitation and treatment at the Δ community level making use of community- and regional-based 5 б services for the developmentally disabled, he shall report his recommendation in writing to the 7 court. The recommendation shall be accompanied by a written report 8 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 treatment shall be commenced as soon as practicable and the 16 petition shall be dismissed. 17

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 on the matter. If a responsible person has not yet been 21 22 appointed, the court may appoint a responsible person prior 23 to the hearing. Notice of the time, date, and place of the hearing shall be mailed or delivered to all of the parties 24 listed in the preceding subsection and to the attorney for 25

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the parents or quardian, if any. The hearing shall be held 1 2 before the court without a jury. The rules of civil procedure shall apply. If the court finds that the 3 respondent is developmentally disabled and in need of 4 5 community-based developmental disabilities services, it shall order-that-the-respondent-undertake-a-community-based 6 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 -hearing. (1) If as a result of the evaluation and treatment, 14 15 either agreed to by the parents, guardian, or the person himself pursuant to 53-20-120 or ordered by the court, the 16 professional person in charge of the case concludes that the 17 person evaluated is seriously developmentally disabled and 18 19 recommends that treatment and habilitation be had in a residential facility on an extended basis, the professional 20 person shall file his written recommendation and report 21 22 with the court and request that the court order the 23 admission. The report shall include the factual basis for 24 recommendation and shall describe any tests or the evaluation devices which have been employed in evaluating 25

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

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

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

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

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

1 Section 4. Section 53-20-128, MCA, is amended to read: "53-20-128. Extension of admission period -- hearing. 2 (1) If the professional person in charge of the resident 3 4 determines that the admission to the residential facility 5 should continue beyond the period specified in the court order, he shall, at least 15 days before the end of the 6 period set out in the court order, send written notice of 7 8 his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents 9 or quardian, the next of kin, if known, the attorney who 10 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 mail or deliver notice to all of the persons informed of the 19 recommendation. The hearing shall be conducted in the manner 20 set out in 53-20-125. If the court finds that the 21 22 residential admission is still justified, it may order 23 continuation of the admission to that residential facility or transfer of the resident to a different residential 24 facility. If the court finds that the resident is still in 25

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

19 <u>NEW SECTION.</u> 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 <u>NEW SECTION.</u> Section 6. Effective date. This act is
24 effective on passage and approval.

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SB 0229/02

 1
 SENATE BILL NO. 229

 2
 INTRODUCED BY MAZUREK

 3
 BY REQUEST OF THE DEPARTMENT

 4
 OF SOCIAL AND REHABILITATION SERVICES

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

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

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

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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 indicating the factual basis for the recommendation and 9 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 agreed to by the parents, guardian, person evaluated, 13 responsible person, if any, and counsel for the person 14 15 evaluated, if any, then this community-based course of treatment shall be commenced as soon as practicable and the 16 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 treatment, they may request the court to conduct a hearing 20 21 on the matter. If a responsible person has not yet been 22 appointed, the court may appoint a responsible person prior 21 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

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THIRD READING

1 the parents or quardian, 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 respondent is developmentally disabled and in need of 4 community-based developmental disabilities services, it 5 б shall order-that-the-respondent-undertake-a-community-based 7 course-of-treatment-and-habilitation dismiss the petition and refer the respondent to the department of social and 8 9 rehabilitation services to be considered for placement in 10 community-based services according to 53-20-209."

Section 3. Section 53-20-125, MCA, is amended to read: 11 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 himself pursuant to 53-20-120 or ordered by the court, the 16 professional person in charge of the case concludes that the 17 person evaluated is seriously developmentally disabled and 18 19 recommends that treatment and habilitation be had in a 20 residential facility on an extended basis, the professional person shall file his written recommendation and report 21 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 evaluation devices which have been employed in evaluating 25

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

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

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

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

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17 (2) If any person so notified requests a hearing, the 18 court shall set a time and place for the hearing and shall mail or deliver notice to all of the persons informed of the 19 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

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

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

-End-

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SB 0229/02

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

6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A DISTRICT COURT FROM ORDERING THE PLACEMENT OF OR DELIVERY OF SERVICES 7 TO A DEVELOPMENTALLY DISABLED PERSON IN COMMUNITY-BASED в SERVICES; REQUIRING THE COURT TO DISMISS 9 PETITIONS CONCERNING 10 TREATMENT AND HABILITATION FOR CERTAIN DEVELOPMENTALLY DISABLED RESPONDENTS AND TO REFER THE 11 RESPONDENTS TO THE DEPARTMENT OF SOCIAL AND REHABILITATION 12 SERVICES; AMENDING SECTIONS 53-20-124, 53-20-125, 13 AND 53-20-128, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE." 14 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 may be construed as authorizing the placement of and 19 20 delivery of services to developmentally disabled persons in community-based services by court order except as provided 21 22 in 53-20-123(4). Placement of persons in community-based services is governed by 53-20-209. 23

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

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REFERENCE BILL

1 the parents or quardian, if any. The hearing shall be held before the court without a jury. The rules of civil 2 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 petilion and refer the respondent to the department of social and 8 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 -hearing. (1) If as a result of the evaluation and treatment, 14 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

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

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

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

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

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

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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
8 9 10 11 12 13 14 15 16	his recommendation and request for renewal of the order to the court which issued the order, the resident, his parents or guardian, the next of kin, if known, the attorney who most recently represented the resident, if any, and the responsible person appointed by the court, if any. The recommendation and request shall be accompanied by a written report which shall describe the habilitation plan which has been undertaken for the resident and the Future habilitation plan which is anticipated by the professional person.

court shall set a time and place for the hearing and shall 18 19 mail or deliver notice to all of the persons informed of the recommendation. The hearing shall be conducted in the manner 20 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 or transfer of the resident to a different residential 24 facility. If the court finds that the resident is still in 25

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1 need of developmental disabilities services but does not 2 require residential treatmenty-it-shall-order-an-appropriate 3 course--of--community-based--habilitation or, if all parties are willing for the resident to participate in a 4 community-based program of habilitation, it shall dismiss 5 6 the petition and refer the respondent to the department of social and rehabilitation services to be considered for 7 8 placement in community-based services according to 9 53-20-209. If the PERSON IS PLACED IN COMMUNITY-BASED SERVICES OR 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 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."

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

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

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