

1 HOUSE BILL NO. 65

2 INTRODUCED BY MCKEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT
6 TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED;
7 DISCONTINUING THE FUNCTION OF THE EASTMONT HUMAN SERVICES CENTER AT GLENDIVE AS A
8 RESIDENTIAL FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES; SETTING QUALIFICATIONS
9 FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS 53-1-202,
10 53-1-402, 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116,
11 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130,
12 53-20-133, 53-20-146, 53-20-161, AND 53-20-501, MCA; REPEALING SECTIONS 53-20-105, 53-20-111,
13 AND 53-20-502, MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING EFFECTIVE
14 DATES."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 **Section 1.** Section 53-1-202, MCA, is amended to read:

19 **"53-1-202. Department of corrections and human services.** (1) The following components are
20 included in the department of corrections and human services to carry out the purposes of the department:

21 (a) adult corrections services consisting of the following institutional components to incarcerate
22 and rehabilitate felons pursuant to Title 46, chapter 18:

23 (i) Montana state prison;

24 (ii) the Montana women's correctional center; and

25 (iii) appropriate community-based programs for the placement, supervision, and rehabilitation of
26 adult felons who meet the criteria developed by the department for placement:

27 (A) in prerelease centers;

28 (B) under intensive supervision;

29 (C) under parole or probation pursuant to Title 46, chapter 23, part 2; or

30 (D) in other appropriate programs;

1 (b) mental health services consisting of the following institutional components for care and
2 treatment of the mentally ill pursuant to Title 53, chapter 21:

3 (i) Montana state hospital;

4 (ii) Montana center for the aged; and

5 (iii) a community services component consisting of appropriate services for the care and treatment
6 of the mentally ill pursuant to Title 53, chapter 21, part 2;

7 (c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive
8 outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant
9 to Title 53, chapter 24;

10 (d) institutional and residential components of the developmental disabilities system for those
11 ~~developmentally disabled~~ persons with developmental disabilities who require that care according to Title
12 53, chapter 20, consisting of:

13 ~~(i) the Montana developmental center; and~~

14 ~~(ii) Eastmont human services center; and~~

15 (e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged
16 veterans as provided by law, consisting of:

17 (i) Montana veterans' home; and

18 (ii) eastern Montana veterans' home at Glendive.

19 (2) A state institution may not be moved, discontinued, or abandoned without prior consent of the
20 legislature."

21
22 **Section 2.** Section 53-1-402, MCA, is amended to read:

23 **"53-1-402. Residents subject to per diem and ancillary charges.** (1) The department shall assess
24 and collect per diem and ancillary charges for the care of residents in the following institutions:

25 (a) Montana state hospital;

26 (b) Montana developmental center;

27 (c) Montana veterans' home;

28 (d) eastern Montana veterans' home; and

29 (e) Montana center for the aged;

30 ~~(f) Eastmont human services center.~~

1 (2) This section does not apply to the eastern Montana veterans' home if the department contracts
2 with a private vendor to operate the facility as provided for in 10-2-416."

3
4 **Section 3.** Section 53-20-102, MCA, is amended to read:

5 **"53-20-102. ~~(Temporary)~~ Definitions.** As used in this part, the following definitions apply:

6 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
7 created by 2-15-211.

8 (2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~
9 facilities and ~~facilities which services that~~ are available for the evaluation, treatment, and habilitation of ~~the~~
10 developmentally disabled persons with developmental disabilities in a community setting, ~~including but not~~
11 ~~limited to outpatient facilities, special education services, group homes, foster homes, day care facilities,~~
12 ~~sheltered workshops, and other community-based services and facilities.~~

13 (3) "Court" means a district court of the state of Montana.

14 (4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed
15 psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

16 (a) has training and experience in psychometric testing and evaluation;

17 (b) has experience in the field of developmental disabilities; and

18 (c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services
19 and the department of corrections and human services.

20 (5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental
21 retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely
22 related to mental retardation and ~~requiring that requires~~ treatment similar to that required by mentally
23 retarded individuals, ~~if the~~ A developmental disability is a disability that originated before the individual
24 attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a
25 substantial handicap of ~~such~~ the individual.

26 ~~(5)(6)~~ (6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has
27 a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~
28 that enable him the person to cope more effectively with personal needs and the demands of ~~his own~~
29 ~~person and~~ the environment and ~~to raise~~ in raising the level of ~~his~~ the person's physical, mental, and social
30 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

1 ~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved
2 in and responsible for the habilitation of a ~~person committed to~~ resident ~~a residential facility~~. The ~~committed~~
3 ~~person~~ resident is a member of the team.

4 ~~(7)~~(8) "Next of kin" includes but ~~need is~~ is not ~~be~~ limited to the spouse, parents, adult children, and
5 adult brothers and sisters of a person.

6 ~~(8)~~ "Professional person" means ~~a licensed psychologist, licensed psychiatrist, or a person with~~
7 ~~a master's degree in psychology, who:~~

8 ~~(a) has training and experience in psychometric testing and evaluation;~~

9 ~~(b) has experience in the field of developmental disabilities; and~~

10 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
11 ~~and the department of corrections and human services.~~

12 (9) "Qualified mental retardation professional" means ~~a person who has at least 1 year of~~
13 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
14 ~~who is:~~

15 ~~(a) a licensed physician or osteopath;~~

16 ~~(b) a registered nurse; or~~

17 ~~(c) a professional program staff person for the residential facility who the department of corrections~~
18 ~~and human services determines meets the professional requirements necessary for federal certification of~~
19 ~~the facility.~~

20 (10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of~~
21 ~~evaluation, treatment, or habilitation.~~

22 (11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont
23 human services center.

24 (12) "Residential facility screening team" means a team of persons, appointed as provided in
25 53-20-133, who are responsible for screening a respondent to determine if the commitment of the
26 respondent to a residential facility is appropriate.

27 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
28 developmentally disabled and in need of developmental disability services in a residential facility.

29 (14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a person
30 who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

1 (15) "Seriously developmentally disabled" means a person who:

2 (a) ~~is developmentally disabled~~ has a developmental disability;

3 (b) is impaired in cognitive functioning; and

4 (c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits
5 so severe as to require total care or near total care and who because of those behaviors or deficits, cannot
6 be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995 sec.
7 27, Ch. 381, L. 1991.)~~

8 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
9 ~~apply:~~

10 (1) ~~"Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
11 ~~created by 2-15-211.~~

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

17 (3) ~~"Court" means a district court of the state of Montana.~~

18 (4) ~~"Developmentally disabled" means suffering from a disability attributable to mental retardation,~~
19 ~~cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to mental~~
20 ~~retardation and requiring treatment similar to that required by mentally retarded individuals if the disability~~
21 ~~originated before the individual attained age 18, has continued or can be expected to continue indefinitely,~~
22 ~~and constitutes a substantial handicap of such individual.~~

23 (5) ~~"Habilitation" means the process by which a person who is developmentally disabled is assisted~~
24 ~~to acquire and maintain those life skills which enable him to cope more effectively with the demands of his~~
25 ~~own person and environment and to raise the level of his physical, mental, and social efficiency. Habilitation~~
26 ~~includes but is not limited to formal, structured education and treatment.~~

27 (6) ~~"Individual treatment planning team" means the interdisciplinary team of persons involved in~~
28 ~~and responsible for the habilitation of a person committed to a residential facility. The committed person~~
29 ~~is a member of the team.~~

30 (7) ~~"Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult~~

1 ~~brothers and sisters of a person.~~

2 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
3 ~~a master's degree in psychology, who:~~

4 ~~(a) has training and experience in psychometric testing and evaluation;~~

5 ~~(b) has experience in the field of developmental disabilities; and~~

6 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
7 ~~and the department of corrections and human services.~~

8 ~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of~~
9 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
10 ~~who is:~~

11 ~~(a) a licensed physician or osteopath;~~

12 ~~(b) a registered nurse; or~~

13 ~~(c) a professional program staff person for the residential facility who the department of corrections~~
14 ~~and human services determines meets the professional requirements necessary for federal certification of~~
15 ~~the facility.~~

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

18 ~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont~~
19 ~~human services center.~~

20 ~~(12) "Residential facility screening team" means a team of persons appointed as provided in~~
21 ~~53-20-133.~~

22 ~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be~~
23 ~~developmentally disabled and in need of developmental disability services.~~

24 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
25 ~~who is developmentally disabled or alleged to be developmentally disabled.~~

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

30

1 **Section 4.** Section 53-20-102, MCA, is amended to read:

2 **"53-20-102. (Temporary) Definitions.** As used in this part, the following definitions apply:

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

5 (2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~
6 facilities and facilities which services that are available for the evaluation, treatment, and habilitation of ~~the~~
7 developmentally disabled persons with developmental disabilities in a community setting, ~~including but not~~
8 ~~limited to outpatient facilities, special education services, group homes, foster homes, day care facilities,~~
9 ~~sheltered workshops, and other community-based services and facilities.~~

10 (3) "Court" means a district court of the state of Montana.

11 (4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed
12 psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

13 (a) has training and experience in psychometric testing and evaluation;

14 (b) has experience in the field of developmental disabilities; and

15 (c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services
16 and the department of corrections and human services.

17 (5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental
18 retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely
19 related to mental retardation and ~~requiring that requires~~ treatment similar to that required by mentally
20 retarded individuals, ~~if the~~ A developmental disability is a disability that originated before the individual
21 attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a
22 substantial handicap of ~~such~~ the individual.

23 ~~(5)(6)~~ (6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has
24 a developmental disability is assisted ~~to acquire in acquiring~~ and ~~maintain~~ maintaining those life skills ~~which~~
25 that enable him the person to cope more effectively with personal needs and the demands of ~~his own~~
26 ~~person and~~ the environment and ~~to raise in raising~~ the level of ~~his~~ the person's physical, mental, and social
27 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

28 ~~(6)(7)~~ (7) "Individual treatment planning team" means the interdisciplinary team of persons involved
29 in and responsible for the habilitation of a ~~person committed to~~ resident a residential facility. The ~~committed~~
30 ~~person~~ resident is a member of the team.

1 ~~(7)~~(8) "Next of kin" includes but ~~need~~ is not be limited to the spouse, parents, adult children, and
2 adult brothers and sisters of a person.

3 ~~(8)~~ "Professional person" means ~~a licensed psychologist, licensed psychiatrist, or a person with~~
4 ~~a master's degree in psychology, who:~~

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14 ~~(c) a professional program staff person for the residential facility who the department of corrections~~
15 ~~and human services determines meets the professional requirements necessary for federal certification of~~
16 ~~the facility.~~

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

19 (11) "Residential facility" or "facility" means the Montana developmental center ~~and the Eastmont~~
20 ~~human services center.~~

21 (12) "Residential facility screening team" means a team of persons, appointed as provided in
22 53-20-133, who are responsible for screening a respondent to determine if the commitment of the
23 respondent to a residential facility is appropriate.

24 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
25 developmentally disabled and in need of developmental disability services in a residential facility.

26 (14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a person
27 who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

28 (15) "Seriously developmentally disabled" means a person who:

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1 (c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits
 2 so severe as to require total care or near total care and who because of those behaviors or deficits, cannot
 3 be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995 see-~~
 4 ~~27, Ch. 381, L. 1991.)~~

5 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
 6 ~~apply:~~

7 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
 8 ~~created by 2-15-211.~~

9 ~~(2) "Community based facilities" or "community based services" includes those services and~~
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 11 ~~in a community setting, including but not limited to outpatient facilities, special education services, group~~
 12 ~~homes, foster homes, day care facilities, sheltered workshops, and other community based services and~~
 13 ~~facilities.~~

14 ~~(3) "Court" means a district court of the state of Montana.~~

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20 ~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted~~
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 26 ~~is a member of the team.~~

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29 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
 30 ~~a master's degree in psychology, who:~~

1 ~~(a) has training and experience in psychometric testing and evaluation;~~

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4 ~~and the department of corrections and human services.~~

5 ~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of~~
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17 ~~(12) "Residential facility screening team" means a team of persons appointed as provided in~~
18 ~~53-20-133.~~

19 ~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be~~
20 ~~developmentally disabled and in need of developmental disability services.~~

21 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
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26 ~~which has deprived the person afflicted of the ability to protect his life or health."~~

27
28 **Section 5.** Section 53-20-102, MCA, is amended to read:

29 **"53-20-102. {Temporary} Definitions.** As used in this part, the following definitions apply:

30 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors

1 created by 2-15-211.

2 (2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~
3 ~~facilities~~ and ~~facilities which~~ services that are available for the evaluation, treatment, and habilitation of ~~the~~
4 ~~developmentally disabled~~ persons with developmental disabilities in a community setting, ~~including but not~~
5 ~~limited to outpatient facilities, special education services, group homes, foster homes, day care facilities,~~
6 ~~sheltered workshops, and other community-based services and facilities.~~

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17 retarded individuals. ~~if the~~ A developmental disability is a disability that originated before the individual
18 attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a
19 substantial handicap of ~~such~~ the individual.

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21 a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~
22 that enable him the person to cope more effectively with personal needs and the demands of ~~his own~~
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24 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

25 ~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved
26 in and responsible for the habilitation of a ~~person committed to~~ resident a residential facility. The ~~committed~~
27 ~~person~~ resident is a member of the team.

28 ~~(7)~~(8) "Next of kin" includes but ~~need is~~ is not ~~be~~ limited to the spouse, parents, adult children, and
29 adult brothers and sisters of a person.

30 ~~(8)~~ "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with

1 a master's degree in psychology, who:

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5 ~~and the department of corrections and human services.~~

6 (9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of~~
7 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
8 ~~who is:~~

9 ~~(a) a licensed physician or osteopath;~~

10 ~~(b) a registered nurse; or~~

11 ~~(c) a professional program staff person for the residential facility who the department of corrections~~
12 ~~and human services determines meets the professional requirements necessary for federal certification of~~
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14 (10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of~~
15 ~~evaluation, treatment, or habilitation.~~

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20 respondent to a residential facility is appropriate.

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22 developmentally disabled and in need of developmental disability services in a residential facility.

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24 who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

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29 so severe as to require total care ~~or near total care~~ and who because of those behaviors or deficits, cannot
30 be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995 - see:~~

1 ~~27, Ch. 381, L. 1991.)~~

2 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
 3 ~~apply:~~

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 7 ~~facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled~~
 8 ~~in a community setting, including but not limited to outpatient facilities, special education services, group~~
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 4 ~~who is:~~

5 ~~(a) a licensed physician or osteopath;~~

6 ~~(b) a registered nurse; or~~

7 ~~(c) a professional program staff person for the residential facility who the department of corrections~~
 8 ~~and human services determines meets the professional requirements necessary for federal certification of~~
 9 ~~the facility.~~

10 ~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation,~~
 11 ~~treatment, or habilitation.~~

12 ~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont~~
 13 ~~human services center.~~

14 ~~(12) "Residential facility screening team" means a team of persons appointed as provided in~~
 15 ~~53-20-133.~~

16 ~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be~~
 17 ~~developmentally disabled and in need of developmental disability services.~~

18 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
 19 ~~who is developmentally disabled or alleged to be developmentally disabled.~~

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

24
 25 **Section 6.** Section 53-20-104, MCA, is amended to read:

26 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
 27 independent board of inquiry and review established to ensure that the treatment of all persons ~~admitted~~
 28 committed to a residential facility is humane and decent and meets the requirements set forth in this part.

29 (2) The board shall review all plans for experimental research or hazardous treatment procedures
 30 involving persons ~~admitted~~ committed to a residential facility to ensure that the research project is humane

1 and not unduly hazardous and that it complies with the principles of the statement on the use of human
 2 subjects for research of the American association on mental deficiency and with the principles for research
 3 involving human subjects required by the United States department of health and human services. An
 4 experimental research project involving persons ~~admitted~~ committed to a residential facility affected by this
 5 part may not be commenced unless it is approved by the mental disabilities board of visitors.

6 (3) The board shall investigate all cases of alleged mistreatment of a resident.

7 (4) The board shall at least annually inspect every residential facility that is providing a course of
 8 residential habilitation and treatment to any person pursuant to this part. The board shall inspect the
 9 physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and
 10 treatment or habilitation areas. The board shall inquire concerning all habilitation programs being
 11 implemented by the facility.

12 (5) The board shall inspect the file of each person ~~admitted~~ committed to a residential facility
 13 pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall
 14 inquire concerning all use of restraints, isolation, or other extraordinary measures.

15 (6) The board may assist a resident at a residential facility in resolving ~~any~~ a grievance the resident
 16 may have concerning the resident's ~~admission~~ commitment or course of treatment and habilitation in the
 17 facility.

18 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard
 19 to its physical facilities or its treatment of ~~any~~ a resident, it shall report its findings at once to the
 20 superintendent of the facility and the director of the department of corrections and human services. If
 21 appropriate, after waiting a reasonable time for a response from the superintendent or the director, the
 22 board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible
 23 person appointed by the court for the resident involved, and the district court that has jurisdiction over the
 24 facility.

25 (8) The board shall report annually to the governor concerning the status of the residential facilities
 26 and habilitation programs that it has inspected."

27
 28 **Section 7.** Section 53-20-106, MCA, is amended to read:

29 **"53-20-106. Certification of ~~professional persons~~ developmental disabilities professionals.** (1) ~~The~~
 30 A developmental disabilities professional must be certified by the department of social and rehabilitation

1 services and the department of corrections and human services ~~shall certify professional persons for~~
2 ~~purposes of this part.~~

3 (2) The department of social and rehabilitation services and the department of corrections and
4 human services shall adopt rules governing the certification of ~~professional persons~~ developmental
5 disabilities professionals. The rules must establish the appropriate combination of education, skills, and
6 experience necessary for certification and set forth qualifications developed by reference to recognized
7 national standards in the field of developmental disabilities."
8

8

9 **Section 8.** Section 53-20-107, MCA, is amended to read:

10 **"53-20-107. Department to compile list of qualified visitors developmental disabilities professionals.**

11 The department of corrections and human services shall compile and provide to each district court within
12 the state a list of ~~professional persons within the region where the district court is located~~ developmental
13 disabilities professionals who possess competencies in the evaluation and habilitation of persons with
14 developmental disabilities ~~and who may be available to the court to act as visitors or to otherwise provide~~
15 ~~evaluation services in guardianship proceedings involving developmentally disabled persons, together with~~
16 ~~an indication of the particular competencies the professional person possesses."~~

17

18 **Section 9.** Section 53-20-112, MCA, is amended to read:

19 **"53-20-112. Procedural rights.** (1) A ~~person subject to emergency admittance to a residential~~
20 ~~facility or to any hearing held pursuant to this part~~ respondent has all the rights accorded to a person
21 subject to involuntary commitment proceedings under the laws of this state relating to involuntary
22 commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

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

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

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

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

28 (d) have the respondent examined by a professional ~~person~~ of their choice when ~~such a~~
29 professional ~~person~~ is reasonably available, unless the person so chosen is objected to by the respondent
30 or by a responsible person appointed by the court."

1 **Section 10.** Section 53-20-113, MCA, is amended to read:

2 "**53-20-113. Waiver of rights.** (1) A ~~person~~ respondent may waive ~~his~~ the respondent's procedural
3 rights provided that the waiver is knowingly and intentionally made.

4 (2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

5 (3) The right to habilitation provided for in this part may not be waived.

6 ~~(2)(4)~~ A ~~person admitted to a residential facility for evaluation and treatment or for an extended~~
7 ~~course of habilitation~~ respondent may knowingly and intentionally waive ~~his~~ the respondent's rights only
8 with the concurrence of the ~~person's~~ respondent's counsel, if any, or, if ~~he~~ the respondent has no counsel,
9 ~~his~~ the respondent's parents, guardian, or other responsible person appointed by the court.

10 ~~(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:~~

11 ~~(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of the~~
12 ~~responsible person, if any;~~

13 ~~(ii) when the minor is over the age of 12, by the minor and his parents;~~

14 ~~(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor may~~
15 ~~make an effective waiver of his rights only with the advice of counsel.~~

16 ~~(b) If the court believes that there may be a conflict of interest between a minor and his parents~~
17 ~~or guardian, the court may appoint a responsible person or guardian ad litem for the minor."~~

18

19 **Section 11.** Section 53-20-114, MCA, is amended to read:

20 "**53-20-114. Appointment of responsible person.** ~~Whenever, in any~~ (1) In a proceeding under this
21 part, the court believes shall appoint a responsible person to protect the interests of the respondent if the
22 court determines:

23 (a) that a conflict of interest may exist between ~~a person who is developmentally disabled or~~
24 ~~alleged to be developmentally disabled and his~~ the respondent and the respondent's parents or guardian;
25 or

26 (b) that the parents or guardian are unable to protect the interests of ~~such person~~ the respondent;
27 or

28 (c) ~~whenever there is~~ that the respondent has no parent or guardian, ~~the court shall appoint a~~
29 ~~responsible person to protect the interests of the person who is developmentally disabled or alleged to be~~
30 ~~developmentally disabled.~~

1 (2) The responsible person may not be an employee of a residential facility.

2 (3) Only one person ~~shall at any one time~~ may be the responsible person within the meaning of this
3 part.

4 (4) In appointing a responsible person, the court shall consider the preference of the respondent
5 ~~or patient~~. The court may at any time, for good cause shown, change its designation of who is the
6 responsible person.

7 (5) The appointment of the responsible person must terminate at the time of the resident's
8 discharge from the residential facility. ~~However, the~~ The appointment of the responsible person ~~shall~~ may
9 not terminate during any period of conditional release from the facility."
10

11 **Section 12.** Section 53-20-116, MCA, is amended to read:

12 "**53-20-116. Professional person to attend Residential facility screening team member -- testimony**
13 **at hearing.** In ~~any a~~ hearing held pursuant to this part, a member of the residential facility screening team
14 ~~or the professional person who evaluated the person must be present at the hearing and subject to~~
15 ~~cross examination~~ may be required to testify with regard to a determination made by the residential facility
16 screening team."
17

18 **Section 13.** Section 53-20-118, MCA, is amended to read:

19 "**53-20-118. Venue for hearing.**(1) Hearings held pursuant to this part ~~shall~~ must be held in the
20 district court for the district ~~where in which~~ the respondent resides, ~~except that at the request of any party~~
21 ~~or the professional person, who must be present at the hearing, a hearing may be held in the district court~~
22 ~~for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential~~
23 ~~facility or is undergoing community based evaluation, treatment, or habilitation.~~ or in which the residential
24 facility is located to which the respondent is or is to be committed.

25 (2) The cost of any hearing held pursuant to this part ~~shall~~ must be borne by the county where the
26 respondent resides."
27

28 **Section 14.** Section 53-20-121, MCA, is amended to read:

29 "**53-20-121. Petition for involuntary treatment -- contents of.** (1) ~~Any~~ A person who believes that
30 there is a person who is seriously developmentally disabled and in need of ~~placement in~~ commitment to a

1 residential facility may request the county attorney to file a petition alleging that the person is seriously
2 developmentally disabled and in need of ~~placement in~~ commitment to a residential facility.

3 (2) The petition must contain:

4 (a) the name and address of the person requesting the petition and ~~their~~ the person's interest in
5 the case;

6 (b) the name and address of the respondent;

7 (c) the name and address of the parents or guardian of the respondent and of any other person
8 believed to be legally responsible for the care, support, and maintenance of the respondent;

9 (d) the name and address of the respondent's next of kin, to the extent known;

10 (e) the name and address of any person who the county attorney believes might be willing and able
11 to be appointed as a responsible person; and

12 (f) a statement of the rights of the respondent and ~~his~~ the respondent's parents or guardian that
13 must be in conspicuous print and identified by a suitable heading.

14 (3) A copy of the petition must be sent to the residential facility screening team."

15
16 **Section 15.** Section 53-20-125, MCA, is amended to read:

17 "**53-20-125. Outcome of screening -- recommendation for ~~treatment at~~ commitment to residential**
18 **facility -- hearing.** (1) A person may be committed to a residential facility only if the person:

19 (a) is 18 years of age or older; and

20 (b) is determined to be seriously developmentally disabled and in need of commitment to a
21 residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided
22 in 53-20-129 or in this section.

23 (2) If as a result of the screening required by 53-20-133 the residential facility screening team
24 concludes that the ~~person~~ respondent who has been evaluated is seriously developmentally disabled and
25 recommends that the respondent be committed to a residential facility for treatment and habilitation ~~in a~~
26 residential facility on an extended basis, the team shall file its written recommendation and report with the
27 court and request that the court order the admission. The report shall must include the factual basis for the
28 recommendation and shall must describe any tests or evaluation devices that have been employed in
29 evaluating the ~~patient~~ respondent.

30 ~~(2) If no responsible person has yet been appointed, the court may appoint one at this time. If there~~

1 ~~is no parent or guardian, the court shall appoint a responsible person.~~

2 (3) At the request of the respondent, ~~his~~ the respondent's parents or guardian, or the responsible
3 person, the court shall appoint counsel for the respondent. If the parents ~~(or guardian)~~ are indigent and if
4 they request it or if a guardian is indigent and requests it, the court shall appoint counsel for the parents
5 or guardian.

6 (4) Notice of the ~~recommendation~~ determination of the residential facility screening team must be
7 mailed or delivered to:

8 (a) the respondent; ~~his;~~

9 (b) the respondent's parents or guardian, or next of kin, if known;

10 (c) the responsible person; ~~next of kin, if known;~~

11 (d) the respondent's advocate, if any;

12 (e) the county attorney;

13 (f) the residential facility; ~~and~~

14 (g) the attorney for the respondent, if any; and

15 (h) the attorney for the parents or guardian, if any.

16 (5) The respondent, ~~his~~ the respondent's parents or guardian, the responsible person, the
17 respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the
18 recommendation of the residential facility screening team. ~~If a hearing is requested, the court shall mail or~~
19 ~~deliver notice of the date, time, and place of the hearing~~

20 (6) Notice of the hearing must be mailed or delivered to each of the parties listed at the beginning
21 ~~of this in~~ subsection (5).

22 (7) The hearing must be held before the court without jury. The rules of civil procedure ~~must~~ apply.

23 ~~(6)(8)~~ (8) If the court finds that the respondent is seriously developmentally disabled and in need of
24 commitment to a residential facility, it shall order the respondent ~~admitted~~ committed to a residential facility
25 for an extended course of treatment and habilitation. If the court finds that the respondent is
26 ~~developmentally disabled~~ has a developmental disability but is not seriously developmentally disabled, it
27 shall dismiss the petition and refer the respondent to the department of social and rehabilitation services
28 to be considered for placement in community-based services according to 53-20-209. If the court finds that
29 the respondent ~~is not developmentally disabled~~ does not have a developmental disability or is not in need
30 of developmental disability services, it shall dismiss the petition.

1 ~~(7)~~(9) If none of the parties notified of the recommendation request a hearing, the court may issue
 2 an order ~~authorizing the person to be admitted~~ for the commitment of the respondent to the residential
 3 facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to
 4 whether the order should be granted.

5 (10) The court may refuse to authorize ~~admission~~ commitment of a ~~person~~ respondent to a
 6 residential facility for an extended period of treatment and habilitation if ~~admission~~ commitment is not in
 7 the best interests of the ~~person~~ respondent.

8 (11) An order for commitment must be accompanied by findings of fact.

9 (12) A court order entered in a proceeding under this part must be provided to the residential facility
 10 screening team."

11
 12 **Section 16.** Section 53-20-126, MCA, is amended to read:

13 "**53-20-126. Maximum period of admission commitment to residential facility.** ~~(1) No person shall~~
 14 ~~be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a~~
 15 ~~person is admitted to a residential facility for longer than 30 days, the court may appoint a person other~~
 16 ~~than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian,~~
 17 ~~the court shall appoint a responsible person.~~

18 ~~(2)~~ The court order approving the ~~admission~~ commitment ~~shall~~ must specify the maximum period
 19 of time for which the person is ~~admitted~~ committed to the residential facility. ~~In no case shall~~
 20 ~~this~~ The maximum period may not exceed 1 year."

21
 22 **Section 17.** Section 53-20-127, MCA, is amended to read:

23 "**53-20-127. Transfer to another residential facility -- release to community-based alternative --**
 24 **hearing.** (1) If, at any time during the period for which a ~~person~~ resident is ~~admitted~~ committed to a
 25 residential facility for an extended period of habilitation and treatment, the qualified mental retardation
 26 professional ~~in charge of~~ responsible for the resident resident's habilitation decides that the ~~person~~ resident
 27 no longer requires placement in a residential facility and that there exist sufficient community-based
 28 alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the
 29 life and physical safety of the resident and others ~~or that it is in the best interests of the resident that he~~
 30 ~~be transferred to another residential facility, then he~~ the qualified mental retardation professional may

1 release the resident to the community-based alternative ~~or transfer the resident to the other residential~~
 2 ~~facility no less than 15 days after sending.~~

3 ~~(2) notice~~ Notice of the proposed release or transfer must be sent at least 15 days prior to the date
 4 of release to:

5 (a) the resident, ~~his;~~

6 (b) the resident's parents or guardian;

7 (c) the attorney who most recently represented the resident, if any;

8 (d) the responsible person appointed by the court, if any, ~~and;~~

9 (e) the resident's advocate, if any; and

10 (f) the court that ordered the admission commitment. ~~If the resident has been found unfit to~~
 11 ~~proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to the~~
 12 ~~county attorney and the attorney who represented the resident at the time the resident was found unfit to~~
 13 ~~proceed to trial.~~

14 ~~(a)(3) If any of the parties or a party that was~~ notified objects to the release ~~or transfer~~, they the
 15 party may petition the court for a hearing to determine whether the release ~~or transfer~~ should be allowed.
 16 The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative
 17 inquire concerning the propriety of the release ~~or transfer~~.

18 ~~(b)(4) Nothing in this subsection (1) prevents the transfer of a~~ A resident may be transferred
 19 without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical
 20 treatment or ~~emergency transfer of a resident to a mental health facility~~ for emergency treatment provided
 21 that the emergency transfer complies with the statutory requirements for emergency detention of the
 22 mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the
 23 parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

24 ~~(2)(5) If a person is admitted~~ committed to a residential facility for an extended course of
 25 habilitation without a hearing and if subsequent to admission commitment one of the parties who could
 26 have requested a hearing learns that an alternative course of treatment is available that is more suitable to
 27 the needs of the resident, the party may request the qualified mental retardation professional ~~in charge of~~
 28 responsible for the resident resident's habilitation to release the resident to the alternative if it is a
 29 community-based alternative ~~or transfer the resident to the alternative if it is a residential alternative. Any~~
 30 ~~transfer or A~~ release must comply with the requirements of ~~subsection~~ subsections (1) through (4). If the

1 qualified mental retardation professional in charge of the resident refuses to authorize the release or
 2 transfer, then the party may petition the court for a hearing to determine whether the ~~present residential~~
 3 ~~alternative~~ resident's commitment should be continued. The hearing must comply with the procedures set
 4 forth in 53-20-125."

5
 6 **Section 18.** Section 53-20-128, MCA, is amended to read:

7 **"53-20-128. ~~Extension of admission period — hearing~~ Recommitment.** (1) If the qualified mental
 8 retardation professional ~~in charge of the resident~~ responsible for a resident's habilitation determines that
 9 the ~~admission to the residential facility should continue beyond the period specified in the court order, he~~
 10 ~~shall, at least 15 days before the end of the period set out in the court order, send written notice of his~~
 11 ~~recommendation and request for renewal of the order to the court that issued the order, the resident, his~~
 12 ~~parents or guardian, the next of kin, if known, the attorney who most recently represented the resident,~~
 13 ~~if any, and the responsible person appointed by the court, if any. The recommendation and request must~~
 14 ~~be accompanied by a written report describing the habilitation plan that has been undertaken for the~~
 15 ~~resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.~~
 16 resident continues to be seriously developmentally disabled and in need of commitment to a residential
 17 facility beyond the term of the current commitment order, the qualified mental retardation professional shall
 18 request that a petition for recommitment be filed.

19 (2) A petition for recommitment must be filed with the district court before the end of the current
 20 period of commitment.

21 (3) The recommendation of the qualified mental retardation professional must be presented in a
 22 written report that includes a summary of the current habilitation plan for the resident.

23 (4) The resident must be screened in accordance with 53-20-133 by the residential facility
 24 screening team.

25 (5) Copies of the petition for recommitment and the report of the qualified mental retardation
 26 professional must be sent to:

27 (a) the court that issued the current order;

28 (b) the residential screening team;

29 (c) the resident;

30 (d) the resident's parents or guardian or next of kin, if any;

1 (e) the attorney who most recently represented the resident, if any;

2 (f) the responsible person appointed by the court, if any; and

3 (g) the resident's advocate, if any.

4 (6) If the residential facility screening team recommends that the resident be recommitted, the court
 5 may enter an order for recommitment without hearing unless a person notified as provided in subsection
 6 (5) requests that a hearing be held or the court determines that it would be in the best interest of the
 7 resident to hold a hearing.

8 ~~(2)(7) If any person so notified requests~~ the court sets a hearing, the court shall set a time and
 9 ~~place for the hearing and shall mail or deliver~~ provide notice to all of the persons ~~informed of the~~
 10 ~~recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds~~
 11 ~~that the residential admission is still justified, it may order continuation of the admission to that residential~~
 12 ~~facility or transfer of the resident to a different residential facility.~~ notified pursuant to subsection (5).

13 (8) A court may order a resident's recommitment to a residential facility if the court determines that
 14 the resident continues to be seriously developmentally disabled and in need of continued commitment to
 15 the residential facility. If the court finds that the resident is still in need of developmental disabilities
 16 services but does not require ~~treatment in~~ commitment to a residential facility or if all parties are willing for
 17 the resident to participate in a community-based program of habilitation, it shall refer the ~~respondent~~
 18 resident to the department of social and rehabilitation services to be considered for placement in
 19 community-based services according to 53-20-209. If the ~~person~~ resident is placed in community-based
 20 services or if the need for developmental disabilities services no longer exists, the court shall dismiss the
 21 petition. ~~The~~

22 (9) The court may not order ~~continuation of admission~~ recommitment to a residential facility that
 23 does not have an individualized habilitation plan for the resident. ~~In its order, the court shall make findings~~
 24 ~~of fact on which its order is based.~~

25 (10) At a hearing, the ~~The~~ court may ~~on its own initiative~~ inquire concerning the suitability of
 26 ~~continuing an admission~~ a resident's commitment to a residential facility."

27

28 **Section 19.** Section 53-20-129, MCA, is amended to read:

29 **"53-20-129. Emergency admission and commitment.** (1) A professional person may admit a person
 30 believed to be seriously developmentally disabled to may be admitted in a residential facility on an

1 emergency basis when necessary to protect the person or others from death or serious bodily harm.

2 (2) An emergency admission to a residential facility may be initiated only by a developmental
3 disabilities professional.

4 (3) An emergency admission may not proceed unless the residential facility and the department
5 of social and rehabilitation services are given reasonable notice of the need for placement by the
6 developmental disabilities professional responsible for emergency admission.

7 (4) A petition as set out in 53-20-121 and 53-20-126 for emergency commitment must be filed
8 on the next judicial day after an emergency admission by the county attorney of the county where the
9 person resides. If a petition is filed, the

10 (5) The residential facility screening team shall report back to the court on the fifth seventh judicial
11 day following the filing of the petition for emergency commitment.

12 (6) Once a petition is filed the report of the residential facility screening team is received by the
13 court, continued detention placement in the residential facility may be allowed only on not continue without
14 an order of the court for emergency commitment.

15 (7) A court may order an emergency commitment only when the court determines that the
16 emergency commitment is necessary to protect the respondent or others from death or serious bodily harm.
17 In no case may an

18 (8) An order for emergency commitment may be entered without a hearing before the court, if the
19 court finds that the record supports the order.

20 (9) An emergency admission commitment to a residential facility may not continue for longer than
21 30 days without subsequent proceedings after placement in the residential facility unless a petition for an
22 extended commitment to the residential facility has been filed before the court.

23 (10) The residential facility screening team may recommend that the respondent under a petition
24 for emergency commitment be committed by court order to the residential facility on an extended basis."
25

26 **Section 20.** Section 53-20-130, MCA, is amended to read:

27 **"53-20-130. Patient transfers from mental health facilities.** If ~~any~~ a person is a patient in a mental
28 health facility and the professional person, as defined in 53-21-102, in charge of the patient determines that
29 the patient is suffering from a developmental disability rather than mental illness and should more properly
30 be ~~admitted~~ committed to a residential facility or an appropriate less restrictive alternative, ~~then~~ the

1 professional person shall commence proceedings to effect ~~such admission~~ a commitment, consistent with
 2 the procedures set forth in this part for ~~admissions~~ commitments generally."

3
 4 **Section 21.** Section 53-20-133, MCA, is amended to read:

5 **"53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When
 6 the district court ~~considers a person~~ receives a petition for commitment to a residential facility under this
 7 part, the court, prior to proceeding, shall refer the ~~person~~ respondent to the residential facility screening
 8 team for screening to determine whether placement and habilitation in a residential facility are appropriate
 9 for the ~~person~~ respondent.

10 (2) A court may not commit a ~~person~~ respondent to a residential facility under 53-20-125,
 11 53-20-128, or 53-20-129 unless the residential facility screening team determines that placement and
 12 habilitation in a residential facility are appropriate for the ~~person~~ respondent.

13 (3) The residential facility screening team may not determine that placement and habilitation in a
 14 residential facility are appropriate on an extended basis unless the residential facility screening team
 15 determines that the ~~person~~ respondent is seriously developmentally disabled.

16 (4) The residential facility screening team shall provide the court and the county attorney with the
 17 social and placement information relied upon by the residential facility screening team in making its
 18 determination.

19 (5) For purposes of this part, the department of social and rehabilitation services and the
 20 department of corrections and human services shall adopt rules providing for the membership and terms
 21 of the members of the residential facility screening team and setting forth the criteria and procedures to
 22 govern the determinations made by the residential facility screening team."

23
 24 **Section 22.** Section 53-20-146, MCA, is amended to read:

25 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a
 26 residential facility have a right not to be subjected to ~~any~~ unusual or hazardous treatment procedures
 27 without the express and informed consent of the resident, if the resident is able to give consent, and of ~~his~~
 28 the resident's parents or guardian or the responsible person appointed by the court after opportunities for
 29 consultation with independent specialists and legal counsel. ~~Such proposed~~ Proposed procedures must first
 30 have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

1 (2) Physical restraint may be employed only when absolutely necessary to protect the resident from
2 injury ~~to himself~~ or to prevent injury to others. Mechanical supports used to achieve proper body position
3 and balance that are ordered by a physician are not considered a physical restraint. Restraint may not be
4 employed as punishment, for the convenience of staff, or as a substitute for a habilitation program.
5 Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least
6 possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a
7 developmental disabilities professional ~~person~~, or a qualified mental retardation professional. Orders for
8 restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint
9 is ordered, suitable provision must be made for the comfort and physical needs of the ~~person~~ resident
10 restrained.

11 (3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic
12 purposes, may not be employed. Legitimate "time out" procedures may be ~~utilized~~ used under close and
13 direct professional supervision as a technique in behavior-shaping programs.

14 (4) Behavior modification programs involving the use of noxious or aversive stimuli must be
15 reviewed and approved by the mental disabilities board of visitors and may be conducted only with the
16 express and informed consent of the affected resident, if the resident is able to give consent, and of ~~his~~
17 the resident's parents or guardian or the responsible person appointed by the court after opportunities for
18 consultation with independent specialists and with legal counsel. ~~Such~~ These behavior modification
19 programs may be conducted only under the supervision of and in the presence of a qualified mental
20 retardation professional who has had proper training ~~in such techniques~~.

21 (5) A resident may not be subjected to a behavior modification program that attempts to extinguish
22 socially appropriate behavior or to develop new behavior patterns when ~~such~~ the behavior modifications
23 serve only institutional convenience.

24 (6) Electric shock devices are considered a research technique for the purpose of this part. ~~Such~~
25 Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading
26 to repeated and possibly permanent physical damage to the resident and only after alternative techniques
27 have failed. The use of ~~such~~ electric shock devices is subject to the conditions prescribed by this part for
28 experimental research generally and may be used only under the direct and specific order of a physician
29 and the superintendent of the residential facility."
30

1 **Section 23.** Section 53-20-161, MCA, is amended to read:

2 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained
3 and must be readily available to persons who are directly involved with the particular resident and to the
4 mental disabilities board of visitors. All information contained in a resident's records must be considered
5 privileged and confidential. The parents or guardian, the responsible person appointed by the court, and any
6 person properly authorized in writing by the resident, if the resident is capable of giving informed consent,
7 or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access to the
8 resident's records. Information may not be released from the records of a resident or former resident of the
9 residential facility unless the release of the information has been properly authorized in writing by:

10 (a) the court;

11 (b) the resident or former resident if ~~he~~ the resident is over the age of majority and is capable of
12 giving informed consent;

13 (c) the parents or guardian in charge of a resident under the age of 12;

14 (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority
15 and the resident if the resident is capable of giving informed consent;

16 (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

17 (f) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
18 of a resident over the age of majority who is incapable of giving informed consent and for whom no legal
19 guardian has been appointed;

20 (g) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
21 of a resident under the age of majority for whom there is no parent or legal guardian; or

22 (h) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
23 of a resident of that facility whenever release is required by federal or state law or department of social and
24 rehabilitation services rules.

25 (2) Information may not be released by a superintendent or ~~his~~ the superintendent's designee as
26 set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release
27 of information to the resident, ~~his~~ the resident's parents or guardian, the attorney who most recently
28 represented the resident, if any, the responsible person appointed by the court, if any, the resident's
29 advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the
30 release of information, they may petition the court for a hearing to determine whether the release of

1 information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or
 2 (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate
 3 purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may
 4 not be released pursuant to ~~these subsections~~ subsection (1)(f), (1)(g), or (1)(h) except in accordance with
 5 written policies consistent with the requirements of this part adopted by the facility. Persons receiving
 6 notice of a proposed release of information ~~shall~~ must also receive a copy of the written policy of the
 7 facility governing release of information.

8 (3) These records must include:

9 (a) identification data, including the resident's legal status;

10 (b) the resident's history, including but not limited to:

11 (i) family data, educational background, and employment record;

12 (ii) prior medical history, both physical and mental, including prior institutionalization;

13 (c) the resident's grievances, if any;

14 (d) an inventory of the resident's life skills, including mode of communication;

15 (e) a record of each physical examination that describes the results of the examination;

16 (f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an
 17 appropriate summary ~~that will~~ to guide and assist the resident care workers in implementing the resident's
 18 ~~program~~ habilitation plan;

19 (g) the findings made in monthly reviews of the habilitation plan, ~~which findings must include~~
 20 including an analysis of the successes and failures of the habilitation program and ~~direct~~ whatever
 21 modifications are necessary;

22 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the
 23 community and any modifications ~~thereto~~ to the postinstitutionalization plan and a summary of the steps
 24 that have been taken to implement that plan;

25 (i) a medication history and status;

26 (j) a summary of each significant contact by a qualified mental retardation professional ~~person~~ with
 27 a resident;

28 (k) a summary of the resident's response to ~~his~~ the resident's habilitation plan, prepared by a
 29 qualified mental retardation professional involved in the resident's habilitation and recorded at least monthly.
 30 Wherever possible, ~~such~~ the response must be scientifically documented.

1 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of
2 the activity upon the resident's progress in the habilitation plan;

3 (m) a signed order by a qualified mental retardation professional, ~~professional person,~~ or physician
4 for any physical restraints;

5 (n) a description of any extraordinary incident or accident in the facility involving the resident, to
6 be entered by a staff member noting personal knowledge of the incident or accident or other source of
7 information, including any reports of investigations of the resident's mistreatment;

8 (o) a summary of family visits and contacts;

9 (p) a summary of attendance and leaves from the facility;

10 (q) a record of any seizures;₂ illnesses;₂ injuries;₂ ~~and treatments thereof~~ of seizures, illnesses, and
11 injuries; and immunizations."

12
13 **Section 24.** Section 53-20-501, MCA, is amended to read:

14 "**53-20-501. Primary function of Montana developmental center and ~~Eastmont human services~~**
15 **~~center.~~** The primary functions of the Montana developmental center ~~and the Eastmont human services~~
16 ~~center~~ are the care, treatment, training, education, and necessary medical treatment of ~~mentally retarded~~
17 persons who have been determined to be seriously developmentally disabled."

18
19 **NEW SECTION. Section 25. Repealer.** Sections 53-20-105, 53-20-111, 53-20-502, MCA, and
20 Section 27, Chapter 381, Laws of 1991, are repealed.

21
22 **NEW SECTION. Section 26. Phrase change -- directions to code commissioner.** Wherever a
23 reference to a person who is developmentally disabled or to a developmentally disabled person appears in
24 the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is
25 directed to change the reference to a person with developmental disabilities. The phrase "seriously
26 developmentally disabled" should remain.

27
28 **NEW SECTION. Section 27. Effective dates.** (1) [Sections 3, 6 through 23, 25, 26, and this
29 section] are effective on passage and approval.

30 (2) [Sections 1, 2, 4, and 24] are effective January 1, 1997.

1 (3) [Section 5] is effective January 1, 1998.

2 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0065, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise the laws governing commitment to residential facilities for people who are developmentally disabled, to discontinue the function of the Eastmont Human Services Center (EHSC) at Glendive, and to set qualifications for a person to be committed to a residential facility.

ASSUMPTIONS:

1. The Executive Budget contains new proposals, which recommend the closure of the Eastmont Human Services Center (EHSC) and expansion of community services to serve developmentally disabled (DD) clients, and which are summarized in assumptions three through 16 below.
2. The Executive Budget **present law base** maintains the operation of EHSC through the end of the 1997 biennium. The present law base contains operating expenses for one new group home (available starting FY95) in FY96 and startup costs and operating for two new group homes in FY97. These would allow community placements to keep the Montana Development Center (MDC) population below 110 clients and EHSC at 50. Medicaid certification for MDC is jeopardized if the population exceeds 110 clients.
3. EHSC would close January 1, 1997, and clients would be moved to community-based services. The Executive Budget reflects six months savings in FY97 under new proposals.
4. Separate **new proposals** are included in the Executive Budget under the Department of Corrections and Human Services (DCHS), the Department of Social and Rehabilitation Services (SRS), and the Department of Family Services (DFS) to reflect the implementation of this bill. This fiscal note primarily details the difference from the present law base as a result of this bill.
5. Services will be provided in several smaller group homes or individualized supported living arrangements rather than in one larger residential facility. A variety of work/day service options will be available. The closure of EHSC will require the movement of approximately 48 clients to community group homes. Eight, 6 person, intensive community group homes would be added in the 1997 biennium to provide for these clients.
6. Group homes will be available in the following schedule: three in August 1996; three in September 1996 and two in October 1996.
7. Start-up costs are \$80,000 general fund per group home. There is budgeted in SRS \$640,000 general fund in FY96 for eight group homes, including the purchase and equipping of the group homes, and a net \$2,458,849 in FY97 comprised of \$818,133 general fund and \$1,640,716 federal special revenue. The annual cost of group home operation is \$342,130 in FY96. Of this amount, \$330,130 is funded at the Medicaid match rate and is estimated to increase 3% per year. An additional \$12,000 of general fund is used each year for operating each group home.
8. The Medicaid match rate (FMAP) is budgeted as follows: actual FY95 = 29.13% general fund and 70.87% federal special revenue; actual FY96 = 30.26% GF and 69.74% FSR; estimated FY97 = 31.00% GF and 69.00% FSR.
9. There is a Vocational Program expansion new proposal in DCHS, which contains 2.25 FTE and \$56,448 in FY96 and \$55,624 in FY97 to maintain the program required for Medicaid certification of EHSC.
10. A 3% inflation factor is applied to EHSC budgets for FY97, FY98, and FY99, consistent with inflation in community programs.
11. Included in operating costs for EHSC in FY97 is \$2,000 per FTE for an Employee Transition Assistance program for a total of \$210,240, including vacation and sick leave payouts. The net reduction of state employees in DCHS would be 52.57 FTE in FY97.
12. There is private revenue shown in the DCHS FY94 base that comes from third-party recovery of costs and is deposited to the general fund, but which would be eliminated for a general fund loss of \$106,815 in FY97 and about \$212,000 on an annualized basis.

(continued)

Dave Lewis 1-8-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Jeanette J. McKee 1/9/95
 JEANNETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0065, as introduced

HB 65

(continued)

13. Federal legislation would require Medicaid to rebase FY96 and FY97 costs at EHSC during shutdown.
14. The cost of DD Case Management is \$170 per person per month and is funded at the Medicaid match rate. These amounts are included in the operating costs outlined in number 7 above.
15. The DFS cost for state Supplemental Security Income program (SSI) will be \$94 per month per client funded by general fund and held constant over the years. The amount budgeted in new proposals is \$45,872 in FY97. Clients previously served at EHSC will become eligible for SSI when moved to community services.
16. **In summary, these new proposals already contained in the Executive Budget in all three state agencies result in a general fund cost of \$630,500 in FY96 and a general fund savings of \$774,470 in FY97.**
17. An additional \$100,000 general fund cost needs to be budgeted to provide a staff retention incentive program in order to maintain Medicaid certification at EHSC until closure. Loss of Medicaid certification would result in loss of revenue to the general fund of approximately \$208,334 per month.

FISCAL IMPACT:

The only fiscal impact from this bill not already reflected in the executive budget is an additional \$100,000 general fund cost in FY97 for the retention incentive program discussed in number 17 above. **The total net impact during the 1997 biennium is a \$43,970 general fund savings.**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Disposition of the physical property at EHSC could have one or more of the following effects:
 - o Income to the state from the sale of the physical property, based on PAMS valuation, would be \$1,988,966.
 - o Income from leasing the physical property at EHSC would be \$156,715 (based upon 43,303 sq. ft. at EHSC x \$4.90 provided by Dept. of Administration, General Services = \$212,185 less \$55,470 utilities based upon FYE94 SBAS for EHSC).
 - o Cost to the state of maintaining the physical property if EHSC is neither sold or leased would be \$75,470 (utility costs of \$55,470 + \$20,000 for a contracted custodian).
2. Additional community services would be developed in the 1999 biennium and two intensive group homes serving six persons each would be available in July, 1998.
3. Not including any assumptions regarding the disposition of the EHSC physical property, the general fund savings will be as follows:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
DCHS	(1,098,136)	(1,133,071)
SRS	994,938	1,020,995
DFS	<u>54,144</u>	<u>54,144</u>
 Total General Fund Savings	 (49,054)	 (57,932)

STATE OF MONTANA - FISCAL NOTE

Revised Fiscal Note for HB0065, as introduced


DESCRIPTION OF PROPOSED LEGISLATION:

A bill to generally revise the laws governing commitment to residential facilities for people who are developmentally disabled, to discontinue the function of the Eastmont Human Services Center (EHSC) at Glendive, and to set qualifications for a person to be committed to a residential facility.

ASSUMPTIONS:

1. The Executive Budget contains new proposals, which recommend the closure of the Eastmont Human Services Center (EHSC) and expansion of community services to serve developmentally disabled (DD) clients, and which are summarized in assumptions three through 16 below.
2. The Executive Budget **present law base** maintains the operation of EHSC through the end of the 1997 biennium. The present law base contains operating expenses for one new group home (available starting FY95) in FY96 and startup costs and operating for two new group homes in FY97. These would allow community placements to keep the Montana Development Center (MDC) population below 110 clients and EHSC at 50. Medicaid certification for MDC is jeopardized if the population exceeds 110 clients.
3. EHSC would close January 1, 1997, and clients would be moved to community-based services. The Executive Budget reflects six months savings in FY97 under new proposals.
4. Separate **new proposals** are included in the Executive Budget under the Department of Corrections and Human Services (DCHS), the Department of Social and Rehabilitation Services (SRS), and the Department of Family Services (DFS) to reflect the implementation of this bill. This fiscal note primarily details the difference from the present law base as a result of this bill.
5. Services will be provided in several smaller group homes or individualized supported living arrangements rather than in one larger residential facility. A variety of work/day service options will be available. The closure of EHSC will require the movement of approximately 48 clients to community group homes. Eight, 6 person, intensive community group homes would be added in the 1997 biennium to provide for these clients.
6. Group homes will be available in the following schedule: three in August 1996; three in September 1996 and two in October 1996.
7. Start-up costs are \$80,000 general fund per group home. There is budgeted in SRS \$640,000 general fund in FY96 for eight group homes, including the purchase and equipping of the group homes, and a net \$2,458,849 in FY97 comprised of \$818,133 general fund and \$1,640,716 federal special revenue. The annual cost of group home operation is \$342,130 in FY96. Of this amount, \$330,130 is funded at the Medicaid match rate and is estimated to increase 3% per year. An additional \$12,000 of general fund is used each year for operating each group home.
8. The Medicaid match rate (FMAP) is budgeted as follows: actual FY95 = 29.13% general fund and 70.87% federal special revenue; actual FY96 = 30.26% GF and 69.74% FSR; estimated FY97 = 31.00% GF and 69.00% FSR.
9. There is a Vocational Program expansion new proposal in DCHS, which contains 2.25 FTE and \$56,448 in FY96 and \$55,624 in FY97 to maintain the program required for Medicaid certification of EHSC.
10. A 3% inflation factor is applied to EHSC budgets for FY97, FY98, and FY99, consistent with inflation in community programs.
11. Included in operating costs for EHSC in FY97 is \$2,000 per FTE for an Employee Transition Assistance program for a total of \$210,240, including vacation and sick leave payouts. The net reduction of state employees in DCHS would be 52.57 FTE in FY97.
12. There is private revenue shown in the DCHS FY94 base that comes from third-party recovery of costs and is deposited to the general fund, but which would be eliminated for a general fund loss of \$106,815 in FY97 and about \$212,000 on an annualized basis.

(continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JEANETTE MCKEE, PRIMARY SPONSOR DATE

Revised Fiscal Note for HB0065, as introduced

REV.-HB65

(continued)

13. Federal legislation would require Medicaid to rebase FY96 and FY97 costs at EHSC during shutdown.
14. The cost of DD Case Management is \$170 per person per month and is funded at the Medicaid match rate. These amounts are included in the operating costs outlined in number 7 above.
15. The DFS cost for state Supplemental Security Income program (SSI) will be \$94 per month per client funded by general fund and held constant over the years. The amount budgeted in new proposals is \$45,872 in FY97. Clients previously served at EHSC will become eligible for SSI when moved to community services.
16. In summary, these new proposals already contained in the Executive Budget in all three state agencies result in a general fund cost of \$630,500 in FY96 and \$616,720 in FY97.
17. An additional \$100,000 general fund cost needs to be budgeted to provide a staff retention incentive program in order to maintain Medicaid certification at EHSC until closure. Loss of Medicaid certification would result in loss of revenue to the general fund of approximately \$208,334 per month.

FISCAL IMPACT:

The only fiscal impact from this bill not already reflected in the executive budget is an additional \$100,000 general fund cost in FY97 for the retention incentive program discussed in number 17 above. The total net impact during the 1997 biennium is a \$1,347,220 general fund cost.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

1. Disposition of the physical property at EHSC could have one or more of the following effects:
 - o Income to the state from the sale of the physical property, based on PAMS valuation, would be \$1,988,966.
 - o Income from leasing the physical property at EHSC would be \$156,715 (based upon 43,303 sq. ft. at EHSC x \$4.90 provided by Dept. of Administration, General Services = \$212,185 less \$55,470 utilities based upon FYE94 SBAS for EHSC).
 - o Cost to the state of maintaining the physical property if EHSC is neither sold or leased would be \$75,470 (utility costs of \$55,470 + \$20,000 for a contracted custodian).
2. Additional community services would be developed in the 1999 biennium and two intensive group homes serving six persons each would be available in July, 1998.
3. Not including any assumptions regarding the disposition of the EHSC physical property, the general fund savings will be as follows:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
DCHS	(1,098,136)	(1,133,071)
SRS	994,938	1,020,995
DFS	<u>54,144</u>	<u>54,144</u>
 Total General Fund Savings	 (49,054)	 (57,932)

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0065, third reading

DESCRIPTION OF PROPOSED LEGISLATION: Revising laws related to commitment to residential treatment facilities for persons who are seriously developmentally disabled.

ASSUMPTIONS:

Dept. of Corrections and Human Services (DCHS):

1. All fiscal impact addressed in the original fiscal note pertained to the closure of Eastmont Human Services Center (EHSC) and expansion of community services. Since that portion has been amended out of HB65 there is now no fiscal impact to DCHS.

Dept. of Family Services (DFS):

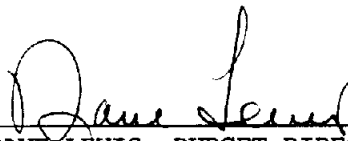
2. With the continuation of the operation of EHSC there will be no fiscal impact of increased Supplemental Security Income payments in the DFS budget.

Dept. of Social and Rehabilitation Services (SRS):

3. As a result amendments to HB65, there is no fiscal impact to SRS.

FISCAL IMPACT:

Based on the amendments to HB65, there is no fiscal impact.

 3-17-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 _____
JEANETTE MCKEE, PRIMARY SPONSOR DATE

Fiscal Note for HB0065, as third reading

HB 65-#3

1 HOUSE BILL NO. 65

2 INTRODUCED BY MCKEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT
6 TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED;
7 ~~DISCONTINUING THE FUNCTION OF THE EASTMONT HUMAN SERVICES CENTER AT GLENDIVE AS A~~
8 ~~RESIDENTIAL FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES~~; SETTING QUALIFICATIONS
9 FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS ~~53-1-202,~~
10 ~~53-1-402,~~ 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114,
11 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129,
12 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, ~~AND 53-20-501,~~ MCA; REPEALING SECTIONS
13 53-20-105, AND 53-20-111, ~~AND 53-20-502,~~ MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991;
14 AND PROVIDING AN IMMEDIATE EFFECTIVE DATES DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:17
18 ~~Section 1. Section 53-1-202, MCA, is amended to read:~~19 ~~"53-1-202. Department of corrections and human services. (1) The following components are~~
20 ~~included in the department of corrections and human services to carry out the purposes of the department:~~21 ~~(a) adult corrections services consisting of the following institutional components to incarcerate~~
22 ~~and rehabilitate felons pursuant to Title 46, chapter 18:~~23 ~~(i) Montana state prison;~~24 ~~(ii) the Montana women's correctional center; and~~25 ~~(iii) appropriate community based programs for the placement, supervision, and rehabilitation of~~
26 ~~adult felons who meet the criteria developed by the department for placement:~~27 ~~(A) in prerelease centers;~~28 ~~(B) under intensive supervision;~~29 ~~(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or~~30 ~~(D) in other appropriate programs;~~

1 ~~(b) mental health services consisting of the following institutional components for care and~~
 2 ~~treatment of the mentally ill pursuant to Title 53, chapter 21:~~

3 ~~(i) Montana state hospital;~~

4 ~~(ii) Montana center for the aged; and~~

5 ~~(iii) a community services component consisting of appropriate services for the care and treatment~~
 6 ~~of the mentally ill pursuant to Title 53, chapter 21, part 2;~~

7 ~~(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive~~
 8 ~~outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant~~
 9 ~~to Title 53, chapter 24;~~

10 ~~(d) institutional and residential components of the developmental disabilities system for those~~
 11 ~~developmentally disabled persons with developmental disabilities who require that care according to Title~~
 12 ~~53, chapter 20, consisting of:~~

13 ~~(i) the Montana developmental center; and~~

14 ~~(ii) Eastmont human services center; and~~

15 ~~(e) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged~~
 16 ~~veterans as provided by law, consisting of:~~

17 ~~(i) Montana veterans' home; and~~

18 ~~(ii) eastern Montana veterans' home at Glendive.~~

19 ~~(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the~~
 20 ~~legislature."~~

21
 22 ~~Section 2. Section 53-1-402, MCA, is amended to read:~~

23 ~~"53-1-402. Residents subject to per diem and ancillary charges. (1) The department shall assess~~
 24 ~~and collect per diem and ancillary charges for the care of residents in the following institutions:~~

25 ~~(a) Montana state hospital;~~

26 ~~(b) Montana developmental center;~~

27 ~~(c) Montana veterans' home;~~

28 ~~(d) eastern Montana veterans' home; and~~

29 ~~(e) Montana center for the aged;~~

30 ~~(f) Eastmont human services center.~~

1 ~~(2) This section does not apply to the eastern Montana veterans' home if the department contracts~~
 2 ~~with a private vendor to operate the facility as provided for in 10-2-416."~~

3
 4 Section 1. Section 53-20-102, MCA, is amended to read:

5 "**53-20-102. ~~(Temporary) Definitions.~~** As used in this part, the following definitions apply:

6 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
 7 created by 2-15-211.

8 (2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~
 9 facilities and ~~facilities which~~ services that are available for the evaluation, treatment, and habilitation of
 10 ~~the developmentally disabled persons with developmental disabilities~~ in a community setting, ~~including but~~
 11 ~~not limited to outpatient facilities, special education services, group homes, foster homes, day care~~
 12 ~~facilities, sheltered workshops, and other community-based services and facilities.~~

13 (3) "Court" means a district court of the state of Montana.

14 (4) ~~"Developmentally disabled"~~ "Developmental disabilities professional" means a licensed
 15 psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

16 (a) has training and experience in psychometric testing and evaluation;

17 (b) has experience in the field of developmental disabilities; and

18 (c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services
 19 and the department of corrections and human services.

20 (5) "Developmental disability" means ~~suffering from~~ a disability that is attributable to mental
 21 retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely
 22 related to mental retardation and ~~requiring~~ that requires treatment similar to that required by mentally
 23 retarded individuals, ~~if the~~ A developmental disability is a disability that originated before the individual
 24 attained age 18, that has continued or can be expected to continue indefinitely, and that constitutes a
 25 substantial handicap of ~~such~~ the individual.

26 ~~(5)(6)~~ (6) "Habilitation" means the process by which a person who ~~is developmentally disabled~~ has
 27 a developmental disability is assisted ~~to acquire~~ in acquiring and ~~maintain~~ maintaining those life skills ~~which~~
 28 that enable him the person to cope more effectively with personal needs and the demands of ~~his own~~
 29 ~~person and~~ the environment and ~~to raise~~ in raising the level of ~~his~~ the person's physical, mental, and social
 30 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

1 ~~(6)~~(7) "Individual treatment planning team" means the interdisciplinary team of persons involved
2 in and responsible for the habilitation of a ~~person committed to~~ resident ~~a residential facility~~. The
3 ~~committed person~~ resident is a member of the team.

4 ~~(7)~~(8) "Next of kin" includes but ~~need is~~ is not be limited to the spouse, parents, adult children, and
5 adult brothers and sisters of a person.

6 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
7 ~~a master's degree in psychology, who:~~

8 ~~(a) has training and experience in psychometric testing and evaluation;~~

9 ~~(b) has experience in the field of developmental disabilities; and~~

10 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
11 ~~and the department of corrections and human services.~~

12 (9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of~~
13 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
14 ~~who is:~~

15 ~~(a) a licensed physician or osteopath;~~

16 ~~(b) a registered nurse; or~~

17 ~~(c) a professional program staff person for the residential facility who the department of~~
18 ~~corrections and human services determines meets the professional requirements necessary for federal~~
19 ~~certification of the facility.~~

20 (10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of~~
21 ~~evaluation, treatment, or habilitation.~~

22 (11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont
23 human services center.

24 (12) "Residential facility screening team" means a team of persons, appointed as provided in
25 53-20-133, who are responsible for screening a respondent to determine if the commitment of the
26 respondent to a residential facility is appropriate.

27 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
28 developmentally disabled and in need of developmental disability services in a residential facility.

29 (14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a
30 person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

1 (15) "Seriously developmentally disabled" means a person who:

2 (a) ~~is developmentally disabled~~ has a developmental disability;

3 (b) is impaired in cognitive functioning; and

4 (c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits
5 so severe as to require total care or near total care and who because of those behaviors or deficits, cannot
6 be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995—see—~~
7 ~~27, Ch. 381, L. 1991.)~~

8 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
9 ~~apply:~~

10 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
11 ~~created by 2-15-211.~~

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

17 ~~(3) "Court" means a district court of the state of Montana.~~

18 ~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation,~~
19 ~~cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to~~
20 ~~mental retardation and requiring treatment similar to that required by mentally retarded individuals if the~~
21 ~~disability originated before the individual attained age 18, has continued or can be expected to continue~~
22 ~~indefinitely, and constitutes a substantial handicap of such individual.~~

23 ~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted~~
24 ~~to acquire and maintain those life skills which enable him to cope more effectively with the demands of~~
25 ~~his own person and environment and to raise the level of his physical, mental, and social efficiency.~~
26 ~~Habilitation includes but is not limited to formal, structured education and treatment.~~

27 ~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in~~
28 ~~and responsible for the habilitation of a person committed to a residential facility. The committed person~~
29 ~~is a member of the team.~~

30 ~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult~~

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2 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
3 ~~a master's degree in psychology, who:~~

4 ~~(a) has training and experience in psychometric testing and evaluation;~~

5 ~~(b) has experience in the field of developmental disabilities; and~~

6 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
7 ~~and the department of corrections and human services.~~

8 ~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of~~
9 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
10 ~~who is:~~

11 ~~(a) a licensed physician or osteopath;~~

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14 ~~corrections and human services determines meets the professional requirements necessary for federal~~
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28 ~~setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or~~
29 ~~which has deprived the person afflicted of the ability to protect his life or health."~~

30

1 ~~Section 4. Section 53-20-102, MCA, is amended to read:~~

2 ~~"53-20-102. (Temporary) Definitions. As used in this part, the following definitions apply:~~

3 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
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22 ~~substantial handicap of such the individual.~~

23 ~~(5)(6) "Habilitation" means the process by which a person who is developmentally disabled has~~
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28 ~~(6)(7) "Individual treatment planning team" means the interdisciplinary team of persons involved~~
29 ~~in and responsible for the habilitation of a person committed to resident a residential facility. The~~
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 2 ~~so severe as to require total care or near total care and who because of those behaviors or deficits, cannot~~
 3 ~~be safely and effectively habilitated in community-based services. (Terminates September 30, 1995 sec.~~
 4 ~~27, Ch. 381, L. 1991.)~~

5 **53-20-102. (Effective October 1, 1995) Definitions.** As used in this part, the following definitions
 6 apply:

7 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
 8 ~~created by 2-15-211.~~

9 ~~(2) "Community-based facilities" or "community-based services" includes those services and~~
 10 ~~facilities which are available for the evaluation, treatment, and habilitation of the developmentally disabled~~
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 22 ~~his own person and environment and to raise the level of his physical, mental, and social efficiency.~~
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21 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
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 28 ~~Section 5. Section 53-20-102, MCA, is amended to read:~~

29 ~~"53-20-102. (Temporary) Definitions. As used in this part, the following definitions apply:~~

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1 ~~27, Ch. 381, L. 1991.)~~

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 22 ~~setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or~~
 23 ~~which has deprived the person afflicted of the ability to protect his life or health."~~

24
 25 **Section 2.** Section 53-20-104, MCA, is amended to read:

26 **"53-20-104. Powers and duties of mental disabilities board of visitors.** (1) The board is an
 27 independent board of inquiry and review established to ensure that the treatment of all persons admitted
 28 committed to a residential facility is humane and decent and meets the requirements set forth in this part.

29 (2) The board shall review all plans for experimental research or hazardous treatment procedures
 30 involving persons admitted committed to a residential facility to ensure that the research project is humane

1 and not unduly hazardous and that it complies with the principles of the statement on the use of human
 2 subjects for research of the American association on mental deficiency and with the principles for research
 3 involving human subjects required by the United States department of health and human services. An
 4 experimental research project involving persons ~~admitted~~ committed to a residential facility affected by this
 5 part may not be commenced unless it is approved by the mental disabilities board of visitors.

6 (3) The board shall investigate all cases of alleged mistreatment of a resident.

7 (4) The board shall at least annually inspect every residential facility that is providing a course of
 8 residential habilitation and treatment to any person pursuant to this part. The board shall inspect the
 9 physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and
 10 treatment or habilitation areas. The board shall inquire concerning all habilitation programs being
 11 implemented by the facility.

12 (5) The board shall inspect the file of each person ~~admitted~~ committed to a residential facility
 13 pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall
 14 inquire concerning all use of restraints, isolation, or other extraordinary measures.

15 (6) The board may assist a resident at a residential facility in resolving ~~any a~~ a grievance the resident
 16 may have concerning the resident's ~~admission~~ commitment or course of treatment and habilitation in the
 17 facility.

18 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard
 19 to its physical facilities or its treatment of ~~any a~~ a resident, it shall report its findings at once to the
 20 superintendent of the facility and the director of the department of corrections and human services. If
 21 appropriate, after waiting a reasonable time for a response from the superintendent or the director, the
 22 board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible
 23 person appointed by the court for the resident involved, and the district court that has jurisdiction over the
 24 facility.

25 (8) The board shall report annually to the governor concerning the status of the residential facilities
 26 and habilitation programs that it has inspected."

27
 28 **Section 3.** Section 53-20-106, MCA, is amended to read:

29 "**53-20-106. Certification of ~~professional persons~~ developmental disabilities professionals.** (1) ~~The~~
 30 A developmental disabilities professional must be certified by the department of social and rehabilitation

1 services and the department of corrections and human services ~~shall certify professional persons for~~
2 ~~purposes of this part.~~

3 (2) The department of social and rehabilitation services and the department of corrections and
4 human services shall adopt rules governing the certification of ~~professional persons~~ developmental
5 disabilities professionals. The rules must establish the appropriate combination of education, skills, and
6 experience necessary for certification and set forth qualifications developed by reference to recognized
7 national standards in the field of developmental disabilities."
8

9 **Section 4.** Section 53-20-107, MCA, is amended to read:

10 "**53-20-107. Department to compile list of qualified ~~visitors~~ developmental disabilities**
11 **professionals**. The department of corrections and human services shall compile and provide to each district
12 court within the state a list of ~~professional persons within the region where the district court is located~~
13 developmental disabilities professionals who possess competencies in the evaluation and habilitation of
14 persons with developmental disabilities ~~and who may be available to the court to act as visitors or to~~
15 ~~otherwise provide evaluation services in guardianship proceedings involving developmentally disabled~~
16 ~~persons, together with an indication of the particular competencies the professional person possesses."~~

17
18 **Section 5.** Section 53-20-112, MCA, is amended to read:

19 "**53-20-112. Procedural rights.** (1) A ~~person subject to emergency admittance to a residential~~
20 ~~facility or to any hearing held pursuant to this part~~ respondent has all the rights accorded to a person
21 subject to involuntary commitment proceedings under the laws of this state relating to involuntary
22 commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

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

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

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

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

28 (d) have the respondent examined by a professional ~~person~~ of their choice when ~~such a~~
29 professional ~~person~~ is reasonably available, unless the person so chosen is objected to by the respondent
30 or by a responsible person appointed by the court."

1 Section 6. Section 53-20-113, MCA, is amended to read:

2 "53-20-113. Waiver of rights. (1) A ~~person~~ respondent may waive ~~his~~ the respondent's procedural
3 rights provided that the waiver is knowingly and intentionally made.

4 (2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

5 (3) The right to habilitation provided for in this part may not be waived.

6 ~~(2)(4)~~ A ~~person admitted to a residential facility for evaluation and treatment or for an extended~~
7 ~~course of habilitation~~ respondent may knowingly and intentionally waive ~~his~~ the respondent's rights only
8 with the concurrence of the ~~person's~~ respondent's counsel, if any, or, if ~~he~~ the respondent has no counsel,
9 ~~his~~ the respondent's parents, guardian, or other responsible person appointed by the court.

10 ~~(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:~~

11 ~~(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of~~
12 ~~the responsible person, if any;~~

13 ~~(ii) when the minor is over the age of 12, by the minor and his parents;~~

14 ~~(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor~~
15 ~~may make an effective waiver of his rights only with the advice of counsel.~~

16 ~~(b) If the court believes that there may be a conflict of interest between a minor and his parents~~
17 ~~or guardian, the court may appoint a responsible person or guardian ad litem for the minor."~~

18
19 Section 7. Section 53-20-114, MCA, is amended to read:

20 "53-20-114. Appointment of responsible person. ~~Whenever, in any~~ (1) In a proceeding under this
21 part, the court believes shall appoint a responsible person to protect the interests of the respondent if the
22 court determines:

23 (a) that a conflict of interest may exist between a person who is developmentally disabled or
24 alleged to be developmentally disabled and his the respondent and the respondent's parents or guardian;

25 or

26 (b) that the parents or guardian are unable to protect the interests of such person the respondent;

27 or

28 (c) whenever there is that the respondent has no parent or guardian, the court shall appoint a
29 responsible person to protect the interests of the person who is developmentally disabled or alleged to be
30 developmentally disabled.

1 (2) The responsible person may not be an employee of a residential facility.

2 (3) Only one person ~~shall at any one time~~ may be the responsible person within the meaning of
3 this part.

4 (4) In appointing a responsible person, the court shall consider the preference of the respondent
5 ~~or patient~~. The court may at any time, for good cause shown, change its designation of who is the
6 responsible person.

7 (5) The appointment of the responsible person ~~must terminate~~ at the time of the resident's
8 discharge from the residential facility. ~~However, the~~ The appointment of the responsible person ~~shall~~ may
9 not terminate during any period of conditional release from the facility."
10

11 Section 8. Section 53-20-116, MCA, is amended to read:

12 "**53-20-116. ~~Professional person to attend Residential facility screening team member -- testimony~~**
13 **at hearing.** In ~~any a~~ a hearing held pursuant to this part, a member of the residential facility screening team
14 ~~or the professional person who evaluated the person must be present at the hearing and subject to~~
15 ~~cross-examination~~ may be required to testify with regard to a determination made by the residential facility
16 screening team."
17

18 Section 9. Section 53-20-118, MCA, is amended to read:

19 "**53-20-118. Venue for hearing.**(1) Hearings held pursuant to this part ~~shall~~ must be held in the
20 district court for the district ~~where in which~~ the respondent resides, ~~except that at the request of any party~~
21 ~~of the professional person, who must be present at the hearing, a hearing may be held in the district court~~
22 ~~for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential~~
23 ~~facility or is undergoing community-based evaluation, treatment, or habilitation.~~ or in which the residential
24 facility is located to which the respondent is or is to be committed.

25 (2) The cost of any hearing held pursuant to this part ~~shall~~ must be borne by the county where
26 the respondent resides."
27

28 Section 10. Section 53-20-121, MCA, is amended to read:

29 "**53-20-121. Petition for involuntary treatment -- contents of.** (1) ~~Any~~ A person who believes that
30 there is a person who is seriously developmentally disabled and in need of ~~placement in~~ commitment to

1 a residential facility may request the county attorney to file a petition alleging that the person is seriously
2 developmentally disabled and in need of ~~placement in~~ commitment to a residential facility.

3 (2) The petition must contain:

4 (a) the name and address of the person requesting the petition and ~~their~~ the person's interest in
5 the case;

6 (b) the name and address of the respondent;

7 (c) the name and address of the parents or guardian of the respondent and of any other person
8 believed to be legally responsible for the care, support, and maintenance of the respondent;

9 (d) the name and address of the respondent's next of kin, to the extent known;

10 (e) the name and address of any person who the county attorney believes might be willing and
11 able to be appointed as a responsible person; and

12 (f) a statement of the rights of the respondent and ~~his~~ the respondent's parents or guardian that
13 must be in conspicuous print and identified by a suitable heading.

14 (3) A copy of the petition must be sent to the residential facility screening team."

15
16 Section 11. Section 53-20-125, MCA, is amended to read:

17 "53-20-125. Outcome of screening -- recommendation for ~~treatment at~~ commitment to residential
18 facility -- hearing. (1) A person may be committed to a residential facility only if the person:

19 (a) is 18 years of age or older; and

20 (b) is determined to be seriously developmentally disabled and in need of commitment to a
21 residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided
22 in 53-20-129 or in this section.

23 (2) If as a result of the screening required by 53-20-133 the residential facility screening team
24 concludes that the ~~person~~ respondent who has been evaluated is seriously developmentally disabled and
25 recommends that the respondent be committed to a residential facility for treatment and habilitation in a
26 ~~residential facility~~ on an extended basis, the team shall file its written recommendation and report with the
27 court ~~and request that the court order the admission.~~ The report ~~shall~~ must include the factual basis for
28 the recommendation and ~~shall~~ must describe any tests or evaluation devices that have been employed in
29 evaluating the ~~patient~~ respondent.

30 ~~(2) If no responsible person has yet been appointed, the court may appoint one at this time. If~~

1 ~~there is no parent or guardian, the court shall appoint a responsible person.~~

2 (3) At the request of the respondent, ~~his~~ the respondent's parents or guardian, or the responsible
3 person, the court shall appoint counsel for the respondent. If the parents ~~(or guardian)~~ are indigent and if
4 they request it or if a guardian is indigent and requests it, the court shall appoint counsel for the parents
5 or guardian.

6 (4) Notice of the ~~recommendation~~ determination of the residential facility screening team must be
7 mailed or delivered to:

8 (a) the respondent, his;

9 (b) the respondent's parents or, guardian, or next of kin, if known;

10 (c) the responsible person, next of kin, if known;

11 (d) the respondent's advocate, if any;

12 (e) the county attorney;

13 (f) the residential facility; and

14 (g) the attorney for the respondent, if any; and

15 (h) the attorney for the parents or guardian, if any.

16 (5) The respondent, ~~his~~ the respondent's parents or guardian, the responsible person, the
17 respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the
18 recommendation of the residential facility screening team. ~~If a hearing is requested, the court shall mail or~~
19 ~~deliver notice of the date, time, and place of the hearing~~

20 (6) Notice of the hearing must be mailed or delivered to each of the parties listed ~~at the beginning~~
21 ~~of this in~~ subsection (5).

22 (7) The hearing must be held before the court without jury. The rules of civil procedure ~~must~~ apply.

23 ~~(6)(8)~~ If the court finds that the respondent is seriously developmentally disabled and in need of
24 commitment to a residential facility, it shall order the respondent ~~admitted~~ committed to a residential
25 facility for an extended course of treatment and habilitation. If the court finds that the respondent is
26 ~~developmentally disabled~~ has a developmental disability but is not seriously developmentally disabled, it
27 shall dismiss the petition and refer the respondent to the department of social and rehabilitation services
28 to be considered for placement in community-based services according to 53-20-209. If the court finds
29 that the respondent ~~is not developmentally disabled~~ does not have a developmental disability or is not in
30 need of developmental disability services, it shall dismiss the petition.

1 ~~(7)~~(9) If none of the parties notified of the recommendation request a hearing, the court may issue
 2 an order ~~authorizing the person to be admitted~~ for the commitment of the respondent to the residential
 3 facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to
 4 whether the order should be granted.

5 (10) The court may refuse to authorize ~~admission~~ commitment of a ~~person~~ respondent to a
 6 residential facility for an extended period of treatment and habilitation if ~~admission~~ commitment is not in
 7 the best interests of the ~~person~~ respondent.

8 (11) An order for commitment must be accompanied by findings of fact.

9 (12) A court order entered in a proceeding under this part must be provided to the residential
 10 facility screening team."

11
 12 Section 12. Section 53-20-126, MCA, is amended to read:

13 "**53-20-126. Maximum period of admission commitment to residential facility.** ~~(1) No person shall~~
 14 ~~be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a~~
 15 ~~person is admitted to a residential facility for longer than 30 days, the court may appoint a person other~~
 16 ~~than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian,~~
 17 ~~the court shall appoint a responsible person.~~

18 ~~(2)~~ The court order approving the admission commitment ~~shall~~ must specify the maximum period
 19 of time for which the person is ~~admitted~~ committed to the residential facility. ~~In no case shall~~
 20 ~~this~~ The maximum period may not exceed 1 year."

21
 22 Section 13. Section 53-20-127, MCA, is amended to read:

23 "**53-20-127. Transfer to another residential facility -- release to community-based alternative --**
 24 **hearing.** (1) If, at any time during the period for which a person resident is ~~admitted~~ committed to a
 25 residential facility for an extended period of habilitation and treatment, the qualified mental retardation
 26 professional ~~in charge of~~ responsible for the resident resident's habilitation decides that the person resident
 27 no longer requires placement in a residential facility and that there exist sufficient community-based
 28 alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the
 29 life and physical safety of the resident and others ~~or that it is in the best interests of the resident that he~~
 30 ~~be transferred to another residential facility, then he~~ the qualified mental retardation professional may

1 release the resident to the community-based alternative ~~or transfer the resident to the other residential~~
 2 facility ~~no less than 15 days after sending,~~

3 ~~(2) notice~~ Notice of the proposed release ~~or transfer~~ must be sent at least 15 days prior to the date
 4 of release to:

5 (a) the resident, ~~his;~~

6 (b) the resident's parents or guardian;

7 (c) the attorney who most recently represented the resident, if any;

8 (d) the responsible person appointed by the court, if any, ~~and;~~

9 (e) the resident's advocate, if any; and

10 (f) the court that ordered the admission commitment. ~~If the resident has been found unfit to~~
 11 ~~proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to~~
 12 ~~the county attorney and the attorney who represented the resident at the time the resident was found unfit~~
 13 ~~to proceed to trial.~~

14 ~~(a)(3) If any of the parties~~ a party that was notified objects to the release ~~or transfer~~, they the
 15 party may petition the court for a hearing to determine whether the release ~~or transfer~~ should be allowed.
 16 The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative
 17 inquire concerning the propriety of the release ~~or transfer~~.

18 ~~(b)(4) Nothing in this subsection (1) prevents the transfer of a~~ A resident may be transferred
 19 without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical
 20 treatment or ~~emergency transfer of a resident~~ to a mental health facility for emergency treatment provided
 21 that the emergency transfer complies with the statutory requirements for emergency detention of the
 22 mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the
 23 parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

24 ~~(2)(5) If a person is admitted~~ committed to a residential facility for an extended course of
 25 habilitation without a hearing and if subsequent to admission commitment one of the parties who could
 26 have requested a hearing learns that an alternative course of treatment is available that is more suitable
 27 to the needs of the resident, the party may request the qualified mental retardation professional ~~in charge~~
 28 ef responsible for the resident resident's habilitation to release the resident to the alternative if it is a
 29 community-based alternative ~~or transfer the resident to the alternative if it is a residential alternative.~~ Any
 30 ~~transfer of A~~ release must comply with the requirements of ~~subsection~~ subsections (1) through (4). If the

1 qualified mental retardation professional in charge of the resident refuses to authorize the release or
2 transfer, then the party may petition the court for a hearing to determine whether the ~~present residential~~
3 alternative resident's commitment should be continued. The hearing must comply with the procedures set
4 forth in 53-20-125."

5
6 Section 14. Section 53-20-128, MCA, is amended to read:

7 "53-20-128. Extension of admission period — hearing Recombitment. (1) If the qualified mental
8 retardation professional ~~in charge of the resident~~ responsible for a resident's habilitation determines that
9 the admission to the residential facility should continue beyond the period specified in the court order, he
10 shall, ~~at least 15 days before the end of the period set out in the court order,~~ send written notice of his
11 recommendation and request for renewal of the order to the court that issued the order, the resident, his
12 parents or guardian, the next of kin, if known, the attorney who most recently represented the resident,
13 if any, and the responsible person appointed by the court, if any. The recommendation and request must
14 be accompanied by a written report describing the habilitation plan that has been undertaken for the
15 resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.
16 resident continues to be seriously developmentally disabled and in need of commitment to a residential
17 facility beyond the term of the current commitment order, the qualified mental retardation professional shall
18 request that a petition for recommitment be filed.

19 (2) A petition for recommitment must be filed with the district court before the end of the current
20 period of commitment.

21 (3) The recommendation of the qualified mental retardation professional must be presented in a
22 written report that includes a summary of the current habilitation plan for the resident.

23 (4) The resident must be screened in accordance with 53-20-133 by the residential facility
24 screening team.

25 (5) Copies of the petition for recommitment and the report of the qualified mental retardation
26 professional must be sent to:

27 (a) the court that issued the current order;

28 (b) the residential screening team;

29 (c) the resident;

30 (d) the resident's parents or guardian or next of kin, if any;

1 (e) the attorney who most recently represented the resident, if any;

2 (f) the responsible person appointed by the court, if any; and

3 (g) the resident's advocate, if any.

4 (6) If the residential facility screening team recommends that the resident be recommitted, the
 5 court may enter an order for recommitment without hearing unless a person notified as provided in
 6 subsection (5) requests that a hearing be held or the court determines that it would be in the best interest
 7 of the resident to hold a hearing.

8 ~~(2)(7) If any person so notified requests the court sets a hearing, the court shall set a time and~~
 9 ~~place for the hearing and shall mail or deliver~~ provide notice to all of the persons informed of the
 10 recommendation. ~~The hearing must be conducted in the manner set forth in 53-20-125. If the court finds~~
 11 ~~that the residential admission is still justified, it may order continuation of the admission to that residential~~
 12 ~~facility or transfer of the resident to a different residential facility,~~ notified pursuant to subsection (5).

13 (8) A court may order a resident's recommitment to a residential facility if the court determines
 14 that the resident continues to be seriously developmentally disabled and in need of continued commitment
 15 to the residential facility. If the court finds that the resident is still in need of developmental disabilities
 16 services but does not require ~~treatment in~~ commitment to a residential facility or if all parties are willing
 17 for the resident to participate in a community-based program of habilitation, it shall refer the ~~respondent~~
 18 resident to the department of social and rehabilitation services to be considered for placement in
 19 community-based services according to 53-20-209. If the ~~person~~ resident is placed in community-based
 20 services or if the need for developmental disabilities services no longer exists, the court shall dismiss the
 21 petition. ~~The~~

22 (9) The court may not order ~~continuation of admission~~ recommitment to a residential facility that
 23 does not have an individualized habilitation plan for the resident. ~~In its order, the court shall make findings~~
 24 ~~of fact on which its order is based.~~

25 (10) At a hearing, the ~~The~~ court may ~~on its own initiative~~ inquire concerning the suitability of
 26 ~~continuing an admission~~ a resident's commitment to a residential facility."

27
 28 **Section 15.** Section 53-20-129, MCA, is amended to read:

29 **"53-20-129. Emergency admission and commitment.** (1) ~~A professional person may admit~~ a person
 30 believed to be seriously developmentally disabled ~~to~~ may be admitted in a residential facility on an

1 emergency basis when necessary to protect the person or others from death or serious bodily harm.

2 (2) An emergency admission to a residential facility may be initiated only by a developmental
3 disabilities professional.

4 (3) An emergency admission may not proceed unless the residential facility and the department
5 of social and rehabilitation services are given reasonable notice of the need for placement by the
6 developmental disabilities professional responsible for emergency admission.

7 (4) A petition as set out in 53-20-121 and 53-20-125 for emergency commitment must be filed
8 on the next judicial day after an emergency admission by the county attorney of the county where the
9 person resides. If a petition is filed, the

10 (5) The residential facility screening team shall report back to the court on the fifth seventh judicial
11 day following the filing of the petition for emergency commitment.

12 (6) Once a petition is filed the report of the residential facility screening team is received by the
13 court, continued detention placement in the residential facility may be allowed only on not continue
14 without an order of the court for emergency commitment.

15 (7) A court may order an emergency commitment only when the court determines that the
16 emergency commitment is necessary to protect the respondent or others from death or serious bodily
17 harm. In no case may an

18 (8) An order for emergency commitment may be entered without a hearing before the court, if the
19 court finds that the record supports the order.

20 (9) An emergency admission commitment to a residential facility may not continue for longer than
21 30 days without subsequent proceedings after placement in the residential facility unless a petition for an
22 extended commitment to the residential facility has been filed before the court.

23 (10) The residential facility screening team may recommend that the respondent under a petition
24 for emergency commitment be committed by court order to the residential facility on an extended basis."

25
26 **Section 16.** Section 53-20-130, MCA, is amended to read:

27 **"53-20-130. Patient transfers from mental health facilities.** If any a person is a patient in a mental
28 health facility and the professional person, as defined in 53-21-102, in charge of the patient determines
29 that the patient is suffering from a developmental disability rather than mental illness and should more
30 properly be ~~admitted~~ committed to a residential facility or an appropriate less restrictive alternative, ~~then~~

1 the professional person shall commence proceedings to effect ~~such admission~~ a commitment, consistent
2 with the procedures set forth in this part for ~~admissions~~ commitments generally."

3
4 **Section 17.** Section 53-20-133, MCA, is amended to read:

5 **"53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When
6 the district court ~~considers a person~~ receives a petition for commitment to a residential facility under this
7 part, the court, prior to proceeding, shall refer the ~~person~~ respondent to the residential facility screening
8 team for screening to determine whether placement and habilitation in a residential facility are appropriate
9 for the ~~person~~ respondent.

10 (2) A court may not commit a ~~person~~ respondent to a residential facility under 53-20-125,
11 53-20-128, or 53-20-129 unless the residential facility screening team determines that placement and
12 habilitation in a residential facility are appropriate for the ~~person~~ respondent.

13 (3) The residential facility screening team may not determine that placement and habilitation in
14 a residential facility are appropriate on an extended basis unless the residential facility screening team
15 determines that the ~~person~~ respondent is seriously developmentally disabled.

16 (4) The residential facility screening team shall provide the court and the county attorney with the
17 social and placement information relied upon by the residential facility screening team in making its
18 determination.

19 (5) For purposes of this part, the department of social and rehabilitation services and the
20 department of corrections and human services shall adopt rules providing for the membership and terms
21 of the members of the residential facility screening team and setting forth the criteria and procedures to
22 govern the determinations made by the residential facility screening team."

23
24 **Section 18.** Section 53-20-146, MCA, is amended to read:

25 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a
26 residential facility have a right not to be subjected to ~~any~~ unusual or hazardous treatment procedures
27 without the express and informed consent of the resident, if the resident is able to give consent, and of
28 ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities
29 for consultation with independent specialists and legal counsel. ~~Such proposed~~ Proposed procedures must
30 first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

1 (2) Physical restraint may be employed only when absolutely necessary to protect the resident
2 from injury ~~to himself~~ or to prevent injury to others. Mechanical supports used to achieve proper body
3 position and balance that are ordered by a physician are not considered a physical restraint. Restraint may
4 not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program.
5 Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least
6 possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a
7 developmental disabilities professional ~~person~~, or a qualified mental retardation professional. Orders for
8 restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint
9 is ordered, suitable provision must be made for the comfort and physical needs of the ~~person~~ resident
10 restrained.

11 (3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic
12 purposes, may not be employed. Legitimate "time out" procedures may be ~~utilized~~ used under close and
13 direct professional supervision as a technique in behavior-shaping programs.

14 (4) Behavior modification programs involving the use of noxious or aversive stimuli must be
15 reviewed and approved by the mental disabilities board of visitors and may be conducted only with the
16 express and informed consent of the affected resident, if the resident is able to give consent, and of ~~his~~
17 the resident's parents or guardian or the responsible person appointed by the court after opportunities for
18 consultation with independent specialists and with legal counsel. ~~Such~~ These behavior modification
19 programs may be conducted only under the supervision of and in the presence of a qualified mental
20 retardation professional who has had proper training ~~in such techniques~~.

21 (5) A resident may not be subjected to a behavior modification program that attempts to extinguish
22 socially appropriate behavior or to develop new behavior patterns when ~~such~~ the behavior modifications
23 serve only institutional convenience.

24 (6) Electric shock devices are considered a research technique for the purpose of this part. ~~Such~~
25 Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading
26 to repeated and possibly permanent physical damage to the resident and only after alternative techniques
27 have failed. The use of ~~such~~ electric shock devices is subject to the conditions prescribed by this part for
28 experimental research generally and may be used only under the direct and specific order of a physician
29 and the superintendent of the residential facility."
30

1 **Section 19.** Section 53-20-161, MCA, is amended to read:

2 **"53-20-161. Maintenance of records.** (1) Complete records for each resident must be maintained
3 and must be readily available to persons who are directly involved with the particular resident and to the
4 mental disabilities board of visitors. All information contained in a resident's records must be considered
5 privileged and confidential. The parents or guardian, the responsible person appointed by the court, and
6 any person properly authorized in writing by the resident, if the resident is capable of giving informed
7 consent, or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access
8 to the resident's records. Information may not be released from the records of a resident or former resident
9 of the residential facility unless the release of the information has been properly authorized in writing by:

10 (a) the court;

11 (b) the resident or former resident if ~~he~~ the resident is over the age of majority and is capable of
12 giving informed consent;

13 (c) the parents or guardian in charge of a resident under the age of 12;

14 (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority
15 and the resident if the resident is capable of giving informed consent;

16 (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

17 (f) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
18 of a resident over the age of majority who is incapable of giving informed consent and for whom no legal
19 guardian has been appointed;

20 (g) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
21 of a resident under the age of majority for whom there is no parent or legal guardian; or

22 (h) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
23 of a resident of that facility whenever release is required by federal or state law or department of social
24 and rehabilitation services rules.

25 (2) Information may not be released by a superintendent or ~~his~~ the superintendent's designee as
26 set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release
27 of information to the resident, ~~his~~ the resident's parents or guardian, the attorney who most recently
28 represented the resident, if any, the responsible person appointed by the court, if any, the resident's
29 advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the
30 release of information, they may petition the court for a hearing to determine whether the release of

1 information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or
 2 (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate
 3 purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may
 4 not be released pursuant to ~~these subsections~~ subsection (1)(f), (1)(g), or (1)(h) except in accordance with
 5 written policies consistent with the requirements of this part adopted by the facility. Persons receiving
 6 notice of a proposed release of information ~~shall~~ must also receive a copy of the written policy of the
 7 facility governing release of information.

8 (3) These records must include:

9 (a) identification data, including the resident's legal status;

10 (b) the resident's history, including but not limited to:

11 (i) family data, educational background, and employment record;

12 (ii) prior medical history, both physical and mental, including prior institutionalization;

13 (c) the resident's grievances, if any;

14 (d) an inventory of the resident's life skills, including mode of communication;

15 (e) a record of each physical examination that describes the results of the examination;

16 (f) a copy of the individual habilitation plan and any modifications ~~thereto~~ to the plan and an
 17 appropriate summary ~~that will~~ to guide and assist the resident care workers in implementing the resident's
 18 ~~program~~ habilitation plan;

19 (g) the findings made in monthly reviews of the habilitation plan, ~~which findings must include~~
 20 including an analysis of the successes and failures of the habilitation program and ~~direct~~ whatever
 21 modifications are necessary;

22 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the
 23 community and any modifications ~~thereto~~ to the postinstitutionalization plan and a summary of the steps
 24 that have been taken to implement that plan;

25 (i) a medication history and status;

26 (j) a summary of each significant contact by a qualified mental retardation professional ~~person~~ with
 27 a resident;

28 (k) a summary of the resident's response to ~~his~~ the resident's habilitation plan, prepared by a
 29 qualified mental retardation professional involved in the resident's habilitation and recorded at least
 30 monthly. Wherever possible, ~~such~~ the response must be scientifically documented.

1 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of
2 the activity upon the resident's progress in the habilitation plan;

3 (m) a signed order by a qualified mental retardation professional, ~~professional person,~~ or physician
4 for any physical restraints;

5 (n) a description of any extraordinary incident or accident in the facility involving the resident, to
6 be entered by a staff member noting personal knowledge of the incident or accident or other source of
7 information, including any reports of investigations of the resident's mistreatment;

8 (o) a summary of family visits and contacts;

9 (p) a summary of attendance and leaves from the facility;

10 (q) a record of any seizures, illnesses, injuries, ~~and treatments thereof~~ of seizures, illnesses, and
11 injuries; and immunizations."

12
13 ~~Section 24. Section 53-20-501, MCA, is amended to read:~~

14 ~~"53-20-501. Primary function of Montana developmental center and Eastmont human services~~
15 ~~center. The primary functions of the Montana developmental center and the Eastmont human services~~
16 ~~center are the care, treatment, training, education, and necessary medical treatment of mentally retarded~~
17 ~~persons who have been determined to be seriously developmentally disabled."~~

18
19 NEW SECTION. Section 20. Repealer. Sections 53-20-105, AND 53-20-111, ~~53-20-502,~~ MCA,
20 and Section 27, Chapter 381, Laws of 1991, are repealed.

21
22 NEW SECTION. Section 21. Phrase change -- directions to code commissioner. Wherever a
23 reference to a person who is developmentally disabled or to a developmentally disabled person appears in
24 the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is
25 directed to change the reference to a person with developmental disabilities. The phrase "seriously
26 developmentally disabled" should remain.

27
28 NEW SECTION. Section 22. Effective dates DATE. (1) ~~{Sections 3, 6 through 23, 25, 26,~~
29 [SECTIONS 1 THROUGH 21 and this section] are effective on passage and approval.

30 (2) ~~{Sections 1, 2, 4, and 24} are effective January 1, 1997.~~

HOUSE BILL NO. 65

INTRODUCED BY MCKEE

BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED; ~~DISCONTINUING THE FUNCTION OF THE EASTMONT HUMAN SERVICES CENTER AT GLENDIVE AS A RESIDENTIAL FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES;~~ SETTING QUALIFICATIONS FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS ~~53-1-202, 53-1-402,~~ 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114, 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129, 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, ~~AND 53-20-501,~~ MCA; REPEALING SECTIONS 53-20-105, AND 53-20-111, ~~AND 53-20-502,~~ MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991; AND PROVIDING AN IMMEDIATE EFFECTIVE DATES DATE."

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE REPRINTED. PLEASE REFER TO SECOND READING COPY (YELLOW) FOR COMPLETE TEXT.

1 HOUSE BILL NO. 65

2 INTRODUCED BY MCKEE

3 BY REQUEST OF THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE LAWS GOVERNING COMMITMENT
 6 TO RESIDENTIAL FACILITIES FOR PERSONS WHO ARE SERIOUSLY DEVELOPMENTALLY DISABLED;
 7 ~~DISCONTINUING THE FUNCTION OF THE EASTMONT HUMAN SERVICES CENTER AT GLENDIVE AS A~~
 8 ~~RESIDENTIAL FACILITY FOR PERSONS WITH DEVELOPMENTAL DISABILITIES; SETTING QUALIFICATIONS~~
 9 FOR A PERSON TO BE COMMITTED TO A RESIDENTIAL FACILITY; AMENDING SECTIONS ~~53-1-202,~~
 10 ~~53-1-402,~~ 53-20-102, 53-20-104, 53-20-106, 53-20-107, 53-20-112, 53-20-113, 53-20-114,
 11 53-20-116, 53-20-118, 53-20-121, 53-20-125, 53-20-126, 53-20-127, 53-20-128, 53-20-129,
 12 53-20-130, 53-20-133, 53-20-146, AND 53-20-161, AND ~~53-20-501,~~ MCA; REPEALING SECTIONS
 13 53-20-105, AND 53-20-111, AND ~~53-20-502,~~ MCA, AND SECTION 27, CHAPTER 381, LAWS OF 1991;
 14 AND PROVIDING AN IMMEDIATE EFFECTIVE DATES DATE."

15
 16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
 18 ~~Section 1. Section 53-1-202, MCA, is amended to read:~~

19 ~~"53-1-202. Department of corrections and human services. (1) The following components are~~
 20 ~~included in the department of corrections and human services to carry out the purposes of the department:~~

21 ~~(a) adult corrections services consisting of the following institutional components to incarcerate~~
 22 ~~and rehabilitate felons pursuant to Title 46, chapter 18:~~

23 ~~(i) Montana state prison;~~

24 ~~(ii) the Montana women's correctional center; and~~

25 ~~(iii) appropriate community based programs for the placement, supervision, and rehabilitation of~~
 26 ~~adult felons who meet the criteria developed by the department for placement:~~

27 ~~(A) in prerelease centers;~~

28 ~~(B) under intensive supervision;~~

29 ~~(C) under parole or probation pursuant to Title 46, chapter 23, part 2; or~~

30 ~~(D) in other appropriate programs;~~

1 ~~(b) mental health services consisting of the following institutional components for care and~~
 2 ~~treatment of the mentally ill pursuant to Title 53, chapter 21;~~

3 ~~(i) Montana state hospital;~~

4 ~~(ii) Montana center for the aged; and~~

5 ~~(iii) a community services component consisting of appropriate services for the care and treatment~~
 6 ~~of the mentally ill pursuant to Title 53, chapter 21, part 2;~~

7 ~~(c) chemical dependency services consisting of appropriate detoxification, inpatient, intensive~~
 8 ~~outpatient, outpatient, prevention, education, and other necessary chemical dependency services pursuant~~
 9 ~~to Title 53, chapter 21;~~

10 ~~(d) institutional and residential components of the developmental disabilities system for those~~
 11 ~~developmentally disabled persons with developmental disabilities who require that care according to Title~~
 12 ~~53, chapter 20, consisting of:~~

13 ~~(i) the Montana developmental center; and~~

14 ~~(ii) Eastmont human services center; and~~

15 ~~(c) veterans' nursing homes for the nursing home and domiciliary care of honorably discharged~~
 16 ~~veterans as provided by law, consisting of:~~

17 ~~(i) Montana veterans' home; and~~

18 ~~(ii) eastern Montana veterans' home at Glendive.~~

19 ~~(2) A state institution may not be moved, discontinued, or abandoned without prior consent of the~~
 20 ~~legislature."~~

21
 22 ~~Section 2. Section 53-1-402, MCA, is amended to read:~~

23 ~~"53-1-402. Residents subject to per diem and ancillary charges. (1) The department shall assess~~
 24 ~~and collect per diem and ancillary charges for the care of residents in the following institutions:~~

25 ~~(a) Montana state hospital;~~

26 ~~(b) Montana developmental center;~~

27 ~~(c) Montana veterans' home;~~

28 ~~(d) eastern Montana veterans' home; and~~

29 ~~(e) Montana center for the aged;~~

30 ~~(f) Eastmont human services center.~~

1 ~~(2) This section does not apply to the eastern Montana veterans' home if the department contracts~~
2 ~~with a private vendor to operate the facility as provided for in 10-2-416."~~

3
4 Section 1. Section 53-20-102, MCA, is amended to read:

5 "~~53-20-102. (Temporary)~~ Definitions. As used in this part, the following definitions apply:

6 (1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors
7 created by 2-15-211.

8 (2) "Community-based facilities" or "community-based services" ~~includes~~ means those ~~services~~
9 facilities and ~~facilities which services that~~ are available for the evaluation, treatment, and habilitation of
10 ~~the developmentally disabled persons with developmental disabilities~~ in a community setting, ~~including but~~
11 ~~not limited to outpatient facilities, special education services, group homes, foster homes, day care~~
12 ~~facilities, sheltered workshops, and other community-based services and facilities.~~

13 (3) "Court" means a district court of the state of Montana.

14 ~~(4) "Developmentally disabled"~~ "Developmental disabilities professional" means a licensed
15 psychologist, a licensed psychiatrist, or a person with a master's degree in psychology, who:

16 (a) has training and experience in psychometric testing and evaluation;

17 (b) has experience in the field of developmental disabilities; and

18 (c) is certified, as provided in 53-20-106, by the department of social and rehabilitation services
19 and the department of corrections and human services.

20 ~~(5) "Developmental disability"~~ means suffering from a disability that is attributable to mental
21 retardation, cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely
22 related to mental retardation and ~~requiring that requires~~ treatment similar to that required by mentally
23 retarded individuals, ~~if the A developmental disability is a disability that~~ originated before the individual
24 attained age 18, ~~that~~ has continued or can be expected to continue indefinitely, and ~~that~~ constitutes a
25 substantial handicap of ~~such the~~ individual.

26 ~~(6)~~ (6) "Habilitation" means the process by which a person who is developmentally disabled has
27 a developmental disability is assisted to acquire in acquiring and maintain maintaining those life skills which
28 that enable him the person to cope more effectively with personal needs and the demands of his own
29 person and the environment and to raise in raising the level of his the person's physical, mental, and social
30 efficiency. Habilitation includes but is not limited to formal, structured education and treatment.

1 ~~(6)(7)~~ "Individual treatment planning team" means the interdisciplinary team of persons involved
 2 in and responsible for the habilitation of a ~~person committed to~~ resident a residential facility. The
 3 ~~committed person~~ resident is a member of the team.

4 ~~(7)(8)~~ "Next of kin" includes but ~~need is not be~~ limited to the spouse, parents, adult children, and
 5 adult brothers and sisters of a person.

6 ~~(8)~~ "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with
 7 a master's degree in psychology, who:

8 ~~(a) has training and experience in psychometric testing and evaluation;~~

9 ~~(b) has experience in the field of developmental disabilities; and~~

10 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
 11 ~~and the department of corrections and human services.~~

12 (9) "Qualified mental retardation professional" means a ~~person who has at least 1 year of~~
 13 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
 14 ~~who is:~~

15 ~~(a) a licensed physician or osteopath;~~

16 ~~(b) a registered nurse; or~~

17 ~~(c) a professional program staff person for the residential facility who the department of~~
 18 ~~corrections and human services determines meets the professional requirements necessary for federal~~
 19 ~~certification of the facility.~~

20 (10) "Resident" means a person ~~admitted~~ committed to a residential facility ~~for a course of~~
 21 ~~evaluation, treatment, or habilitation.~~

22 (11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont
 23 human services center.

24 (12) "Residential facility screening team" means a team of persons, appointed as provided in
 25 53-20-133, who are responsible for screening a respondent to determine if the commitment of the
 26 respondent to a residential facility is appropriate.

27 (13) "Respondent" means a person alleged in a petition filed pursuant to this part to be seriously
 28 developmentally disabled and in need of developmental disability services in a residential facility.

29 (14) "Responsible person" means ~~any~~ a person willing and able to assume responsibility for a
 30 person who is seriously developmentally disabled or alleged to be seriously developmentally disabled.

1 (15) "Seriously developmentally disabled" means a person who:

2 (a) ~~is developmentally disabled~~ has a developmental disability;

3 (b) is impaired in cognitive functioning; and

4 (c) has behaviors that pose an imminent risk of serious harm to self or others or self-help deficits
5 so severe as to require total care or near total care and who because of those behaviors or deficits, cannot
6 be safely and effectively habilitated in community-based services. ~~(Terminates September 30, 1995—see~~
7 ~~27, Ch. 381, L. 1991.)~~

8 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
9 ~~apply:~~

10 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
11 ~~created by 2-15-211.~~

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

17 ~~(3) "Court" means a district court of the state of Montana.~~

18 ~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation,~~
19 ~~cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to~~
20 ~~mental retardation and requiring treatment similar to that required by mentally retarded individuals if the~~
21 ~~disability originated before the individual attained age 18, has continued or can be expected to continue~~
22 ~~indefinitely, and constitutes a substantial handicap of such individual.~~

23 ~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted~~
24 ~~to acquire and maintain those life skills which enable him to cope more effectively with the demands of~~
25 ~~his own person and environment and to raise the level of his physical, mental, and social efficiency.~~
26 ~~Habilitation includes but is not limited to formal, structured education and treatment.~~

27 ~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in~~
28 ~~and responsible for the habilitation of a person committed to a residential facility. The committed person~~
29 ~~is a member of the team.~~

30 ~~(7) "Next of kin" includes but need not be limited to the spouse, parents, adult children, and adult~~

1 ~~brothers and sisters of a person.~~

2 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
 3 ~~a master's degree in psychology, who:~~

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5 ~~(b) has experience in the field of developmental disabilities; and~~

6 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~
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13 ~~(c) a professional program staff person for the residential facility who the department of~~
 14 ~~corrections and human services determines meets the professional requirements necessary for federal~~
 15 ~~certification of the facility.~~

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

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 19 ~~human services center.~~

20 ~~(12) "Residential facility screening team" means a team of persons appointed as provided in~~
 21 ~~53-20-133.~~

22 ~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be~~
 23 ~~developmentally disabled and in need of developmental disability services.~~

24 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
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26 ~~(15) "Seriously developmentally disabled" means developmentally disabled due to developmental~~
 27 ~~or physical disability or a combination of both, rendering a person unable to function in a community based~~
 28 ~~setting and which has resulted in self inflicted injury or injury to others or the imminent threat thereof or~~
 29 ~~which has deprived the person afflicted of the ability to protect his life or health."~~

30

1 Section 4. ~~Section 53-20-102, MCA, is amended to read:~~

2 ~~"53-20-102. (Temporary) Definitions. As used in this part, the following definitions apply:~~

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

5 (2) ~~"Community based facilities" or "community based services" includes means those services~~
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30 ~~committed person resident is a member of the team.~~

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15 ~~corrections and human services determines meets the professional requirements necessary for federal~~
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17 ~~(10) "Resident" means a person admitted committed to a residential facility for a course of~~
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 2 ~~so severe as to require total care or near total care and who because of these behaviors or deficits, cannot~~
 3 ~~be safely and effectively habilitated in community based services. (Terminates September 30, 1995 see-~~
 4 ~~27, Ch. 381, L. 1991.)~~

5 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
 6 ~~apply:~~

7 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~
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 25 ~~setting and which has resulted in self-inflicted injury or injury to others or the imminent threat thereof or~~
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27
 28 ~~Section 5. Section 53-20-102, MCA, is amended to read:~~

29 ~~"53-20-102. (Temporary) Definitions. As used in this part, the following definitions apply:~~

30 ~~(1) "Board" or "mental disabilities board of visitors" means the mental disabilities board of visitors~~

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2 ~~53-20-102. (Effective October 1, 1995) Definitions. As used in this part, the following definitions~~
3 ~~apply:~~

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

11 ~~(3) "Court" means a district court of the state of Montana.~~

12 ~~(4) "Developmentally disabled" means suffering from a disability attributable to mental retardation,~~
13 ~~cerebral palsy, epilepsy, autism, or any other neurologically handicapping condition closely related to~~
14 ~~mental retardation and requiring treatment similar to that required by mentally retarded individuals if the~~
15 ~~disability originated before the individual attained age 18, has continued or can be expected to continue~~
16 ~~indefinitely, and constitutes a substantial handicap of such individual.~~

17 ~~(5) "Habilitation" means the process by which a person who is developmentally disabled is assisted~~
18 ~~to acquire and maintain those life skills which enable him to cope more effectively with the demands of~~
19 ~~his own person and environment and to raise the level of his physical, mental, and social efficiency.~~
20 ~~Habilitation includes but is not limited to formal, structured education and treatment.~~

21 ~~(6) "Individual treatment planning team" means the interdisciplinary team of persons involved in~~
22 ~~and responsible for the habilitation of a person committed to a residential facility. The committed person~~
23 ~~is a member of the team.~~

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

26 ~~(8) "Professional person" means a licensed psychologist, licensed psychiatrist, or a person with~~
27 ~~a master's degree in psychology, who:~~

28 ~~(a) has training and experience in psychometric testing and evaluation;~~

29 ~~(b) has experience in the field of developmental disabilities; and~~

30 ~~(c) is certified as provided for in 53-20-106 by the department of social and rehabilitation services~~

1 ~~and the department of corrections and human services.~~

2 ~~(9) "Qualified mental retardation professional" means a person who has at least 1 year of~~
 3 ~~experience working directly with persons with mental retardation or other developmental disabilities and~~
 4 ~~who is:~~

5 ~~(a) a licensed physician or osteopath;~~

6 ~~(b) a registered nurse; or~~

7 ~~(c) a professional program staff person for the residential facility who the department of~~
 8 ~~corrections and human services determines meets the professional requirements necessary for federal~~
 9 ~~certification of the facility.~~

10 ~~(10) "Resident" means a person admitted to a residential facility for a course of evaluation,~~
 11 ~~treatment, or habilitation.~~

12 ~~(11) "Residential facility" or "facility" means the Montana developmental center and the Eastmont~~
 13 ~~human services center.~~

14 ~~(12) "Residential facility screening team" means a team of persons appointed as provided in~~
 15 ~~53-20-133.~~

16 ~~(13) "Respondent" means a person alleged in a petition filed pursuant to this part to be~~
 17 ~~developmentally disabled and in need of developmental disability services.~~

18 ~~(14) "Responsible person" means any person willing and able to assume responsibility for a person~~
 19 ~~who is developmentally disabled or alleged to be developmentally disabled.~~

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

24
 25 Section 2. Section 53-20-104, MCA, is amended to read:

26 "53-20-104. Powers and duties of mental disabilities board of visitors. (1) The board is an
 27 independent board of inquiry and review established to ensure that the treatment of all persons ~~admitted~~
 28 committed to a residential facility is humane and decent and meets the requirements set forth in this part.

29 (2) The board shall review all plans for experimental research or hazardous treatment procedures
 30 involving persons ~~admitted~~ committed to a residential facility to ensure that the research project is humane

1 and not unduly hazardous and that it complies with the principles of the statement on the use of human
 2 subjects for research of the American association on mental deficiency and with the principles for research
 3 involving human subjects required by the United States department of health and human services. An
 4 experimental research project involving persons ~~admitted~~ committed to a residential facility affected by this
 5 part may not be commenced unless it is approved by the mental disabilities board of visitors.

6 (3) The board shall investigate all cases of alleged mistreatment of a resident.

7 (4) The board shall at least annually inspect every residential facility that is providing a course of
 8 residential habilitation and treatment to any person pursuant to this part. The board shall inspect the
 9 physical plant, including residential, recreational, dining, and sanitary facilities. It shall visit all wards and
 10 treatment or habilitation areas. The board shall inquire concerning all habilitation programs being
 11 implemented by the facility.

12 (5) The board shall inspect the file of each person ~~admitted~~ committed to a residential facility
 13 pursuant to this part to ensure that a habilitation plan exists and is being implemented. The board shall
 14 inquire concerning all use of restraints, isolation, or other extraordinary measures.

15 (6) The board may assist a resident at a residential facility in resolving ~~any~~ a grievance the resident
 16 may have concerning the resident's ~~admission~~ commitment or course of treatment and habilitation in the
 17 facility.

18 (7) If the board believes that a facility is failing to comply with the provisions of this part in regard
 19 to its physical facilities or its treatment of ~~any~~ a resident, it shall report its findings at once to the
 20 superintendent of the facility and the director of the department of corrections and human services. If
 21 appropriate, after waiting a reasonable time for a response from the superintendent or the director, the
 22 board may notify the parents or guardian of the resident involved, the next of kin, if known, the responsible
 23 person appointed by the court for the resident involved, and the district court that has jurisdiction over the
 24 facility.

25 (8) The board shall report annually to the governor concerning the status of the residential facilities
 26 and habilitation programs that it has inspected."

27
 28 **Section 3.** Section 53-20-106, MCA, is amended to read:

29 **"53-20-106. Certification of ~~professional persons~~ developmental disabilities professionals.** (1) ~~The~~
 30 A developmental disabilities professional must be certified by the department of social and rehabilitation

1 services and the department of corrections and human services ~~shall certify professional persons for~~
2 ~~purposes of this part.~~

3 (2) The department of social and rehabilitation services and the department of corrections and
4 human services shall adopt rules governing the certification of ~~professional persons~~ developmental
5 disabilities professionals. The rules must establish the appropriate combination of education, skills, and
6 experience necessary for certification and set forth qualifications developed by reference to recognized
7 national standards in the field of developmental disabilities.”

8
9 Section 4. Section 53-20-107, MCA, is amended to read:

10 “53-20-107. Department to compile list of qualified ~~visitors~~ developmental disabilities
11 professionals. The department of corrections and human services shall compile and provide to each district
12 court within the state a list of ~~professional persons within the region where the district court is located~~
13 developmental disabilities professionals who possess competencies in the evaluation and habilitation of
14 persons with developmental disabilities ~~and who may be available to the court to act as visitors or to~~
15 ~~otherwise provide evaluation services in guardianship proceedings involving developmentally disabled~~
16 ~~persons, together with an indication of the particular competencies the professional person possesses.”~~

17
18 Section 5. Section 53-20-112, MCA, is amended to read:

19 “53-20-112. Procedural rights. (1) A ~~person subject to emergency admittance to a residential~~
20 ~~facility or to any hearing held pursuant to this part~~ respondent has all the rights accorded to a person
21 subject to involuntary commitment proceedings under the laws of this state relating to involuntary
22 commitment of the seriously mentally ill, as provided in 53-21-115 through 53-21-118.

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

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

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

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

28 (d) have the respondent examined by a professional ~~person~~ of their choice when ~~such a~~
29 professional ~~person~~ is reasonably available, unless the person so chosen is objected to by the respondent
30 or by a responsible person appointed by the court.”

1 Section 6. Section 53-20-113, MCA, is amended to read:

2 "53-20-113. Waiver of rights. (1) A ~~person~~ respondent may waive ~~his~~ the respondent's procedural
3 rights provided that the waiver is knowingly and intentionally made.

4 (2) The right to counsel in a hearing held pursuant to 53-20-125 may not be waived.

5 (3) The right to habilitation provided for in this part may not be waived.

6 ~~(2)(4)~~ A ~~person admitted to a residential facility for evaluation and treatment or for an extended~~
7 ~~course of habilitation~~ respondent may knowingly and intentionally waive ~~his~~ the respondent's rights only
8 with the concurrence of the ~~person's~~ respondent's counsel, if any, or, if ~~he~~ the respondent has no counsel,
9 ~~his~~ the respondent's parents, guardian, or other responsible person appointed by the court.

10 ~~(3) (a) In the case of a minor, the waiver of rights may be knowingly and intentionally made:~~

11 ~~(i) when the minor is under the age of 12, by the parents of the minor with the concurrence of~~
12 ~~the responsible person, if any;~~

13 ~~(ii) when the minor is over the age of 12, by the minor and his parents;~~

14 ~~(iii) when the minor is over the age of 12 and the minor and his parents do not agree, the minor~~
15 ~~may make an effective waiver of his rights only with the advice of counsel.~~

16 ~~(b) If the court believes that there may be a conflict of interest between a minor and his parents~~
17 ~~or guardian, the court may appoint a responsible person or guardian ad litem for the minor."~~

18
19 Section 7. Section 53-20-114, MCA, is amended to read:

20 "53-20-114. Appointment of responsible person. ~~Whenever, in any~~ (1) In a proceeding under this
21 part, the court believes shall appoint a responsible person to protect the interests of the respondent if the
22 court determines:

23 (a) that a conflict of interest may exist between a person who is developmentally disabled or
24 alleged to be developmentally disabled and his the respondent and the respondent's parents or guardian;
25 or

26 (b) that the parents or guardian are unable to protect the interests of such person the respondent;
27 or

28 (c) whenever there is that the respondent has no parent or guardian, the court shall appoint a
29 responsible person to protect the interests of the person who is developmentally disabled or alleged to be
30 developmentally disabled.

1 (2) The responsible person may not be an employee of a residential facility.

2 (3) Only one person ~~shall at any one time~~ may be the responsible person within the meaning of
3 this part.

4 (4) In appointing a responsible person, the court shall consider the preference of the respondent
5 ~~or patient~~. The court may at any time, for good cause shown, change its designation of who is the
6 responsible person.

7 (5) The appointment of the responsible person ~~must terminate at the time of the resident's~~
8 discharge from the residential facility. ~~However, the~~ The appointment of the responsible person ~~shall~~ may
9 not terminate during any period of conditional release from the facility."
10

11 Section 8. Section 53-20-116, MCA, is amended to read:

12 "**53-20-116. ~~Professional person to attend Residential facility screening team member -- testimony~~**
13 **at hearing.** In ~~any a~~ hearing held pursuant to this part, a member of the residential facility screening team
14 ~~or the professional person who evaluated the person must be present at the hearing and subject to~~
15 ~~cross-examination~~ may be required to testify with regard to a determination made by the residential facility
16 screening team."
17

18 Section 9. Section 53-20-118, MCA, is amended to read:

19 "**53-20-118. Venue for hearing.** (1) Hearings held pursuant to this part ~~shall~~ must be held in the
20 district court for the district ~~where in which~~ the respondent resides, ~~except that at the request of any party~~
21 ~~or the professional person, who must be present at the hearing, a hearing may be held in the district court~~
22 ~~for the district where the respondent is undergoing evaluation, treatment, or habilitation in a residential~~
23 ~~facility or is undergoing community-based evaluation, treatment, or habilitation.~~ or in which the residential
24 facility is located to which the respondent is or is to be committed.

25 (2) The cost of any hearing held pursuant to this part ~~shall~~ must be borne by the county where
26 the respondent resides."
27

28 Section 10. Section 53-20-121, MCA, is amended to read:

29 "**53-20-121. Petition for involuntary treatment -- contents of.** (1) ~~Any~~ A person who believes that
30 there is a person who is seriously developmentally disabled and in need of ~~placement in~~ commitment to

1 a residential facility may request the county attorney to file a petition alleging that the person is seriously
2 developmentally disabled and in need of ~~placement in~~ commitment to a residential facility.

3 (2) The petition must contain:

4 (a) the name and address of the person requesting the petition and ~~their~~ the person's interest in
5 the case;

6 (b) the name and address of the respondent;

7 (c) the name and address of the parents or guardian of the respondent and of any other person
8 believed to be legally responsible for the care, support, and maintenance of the respondent;

9 (d) the name and address of the respondent's next of kin, to the extent known;

10 (e) the name and address of any person who the county attorney believes might be willing and
11 able to be appointed as a responsible person; and

12 (f) a statement of the rights of the respondent and ~~his~~ the respondent's parents or guardian that
13 must be in conspicuous print and identified by a suitable heading.

14 (3) A copy of the petition must be sent to the residential facility screening team."

15
16 Section 11. Section 53-20-125, MCA, is amended to read:

17 "53-20-125. Outcome of screening -- recommendation for ~~treatment at~~ commitment to residential
18 facility -- hearing. (1) A person may be committed to a residential facility only if the person:

19 (a) is 18 years of age or older; and

20 (b) is determined to be seriously developmentally disabled and in need of commitment to a
21 residential facility by the residential screening team, as provided in 53-20-133, and by a court, as provided
22 in 53-20-129 or in this section.

23 (2) If as a result of the screening required by 53-20-133 the residential facility screening team
24 concludes that the ~~person~~ respondent who has been evaluated is seriously developmentally disabled and
25 recommends that the respondent be committed to a residential facility for treatment and habilitation in a
26 residential facility on an extended basis, the team shall file its written recommendation and report with the
27 court and request that the court order the admission. The report shall must include the factual basis for
28 the recommendation and shall must describe any tests or evaluation devices that have been employed in
29 evaluating the ~~patient~~ respondent.

30 ~~(2) If no responsible person has yet been appointed, the court may appoint one at this time. If~~

1 ~~there is no parent or guardian, the court shall appoint a responsible person.~~

2 (3) At the request of the respondent, ~~his~~ the respondent's parents or guardian, or the responsible
3 person, the court shall appoint counsel for the respondent. If the parents ~~(or guardian)~~ are indigent and if
4 they request it or if a guardian is indigent and requests it, the court shall appoint counsel for the parents
5 or guardian.

6 (4) Notice of the ~~recommendation~~ determination of the residential facility screening team must be
7 mailed or delivered to:

8 (a) the respondent, ~~his~~;

9 (b) the respondent's parents ~~or~~ guardian, or next of kin, if known;

10 (c) the responsible person, ~~next of kin, if known,~~;

11 (d) the respondent's advocate, if any;

12 (e) the county attorney;

13 (f) the residential facility; and

14 (g) the attorney for the respondent, if any; and

15 (h) the attorney for the parents or guardian, if any.

16 (5) The respondent, ~~his~~ the respondent's parents or guardian, the responsible person, the
17 respondent's advocate, if any, or the attorney for any party may request that a hearing be held on the
18 recommendation of the residential facility screening team. ~~If a hearing is requested, the court shall mail or~~
19 ~~deliver notice of the date, time, and place of the hearing~~

20 (6) Notice of the hearing must be mailed or delivered to each of the parties listed ~~at the beginning~~
21 ~~of this in~~ subsection (5).

22 (7) The hearing must be held before the court without jury. The rules of civil procedure must apply.

23 ~~(6)(8)~~ If the court finds that the respondent is seriously developmentally disabled and in need of
24 commitment to a residential facility, it shall order the respondent ~~admitted~~ committed to a residential
25 facility for an extended course of treatment and habilitation. If the court finds that the respondent is
26 ~~developmentally disabled~~ has a developmental disability but is not seriously developmentally disabled, it
27 shall dismiss the petition and refer the respondent to the department of social and rehabilitation services
28 to be considered for placement in community-based services according to 53-20-209. If the court finds
29 that the respondent ~~is not developmentally disabled~~ does not have a developmental disability or is not in
30 need of developmental disability services, it shall dismiss the petition.

1 ~~(7)~~(9) If none of the parties notified of the recommendation request a hearing, the court may issue
 2 an order ~~authorizing the person to be admitted~~ for the commitment of the respondent to the residential
 3 facility for an extended period of treatment and habilitation or the court may initiate its own inquiry as to
 4 whether the order should be granted.

5 (10) The court may refuse to authorize ~~admission~~ commitment of a ~~person~~ respondent to a
 6 residential facility for an extended period of treatment and habilitation if ~~admission~~ commitment is not in
 7 the best interests of the ~~person~~ respondent.

8 (11) An order for commitment must be accompanied by findings of fact.

9 (12) A court order entered in a proceeding under this part must be provided to the residential
 10 facility screening team."

11
 12 Section 12. Section 53-20-126, MCA, is amended to read:

13 "53-20-126. Maximum period of admission commitment to residential facility. ~~(1) No person shall~~
 14 ~~be admitted to a residential facility for longer than 30 days except on approval of the court. Whenever a~~
 15 ~~person is admitted to a residential facility for longer than 30 days, the court may appoint a person other~~
 16 ~~than the parents or guardian to act as responsible person for the resident. If there is no parent or guardian,~~
 17 ~~the court shall appoint a responsible person.~~

18 ~~(2)~~ The court order approving the admission commitment ~~shall~~ must specify the maximum period
 19 of time for which the person is ~~admitted~~ committed to the residential facility. ~~In no case shall~~
 20 ~~this~~ The maximum period may not exceed 1 year."

21
 22 Section 13. Section 53-20-127, MCA, is amended to read:

23 "53-20-127. Transfer to another ~~residential~~ facility -- release to community-based alternative --
 24 hearing. (1) If, at any time during the period for which a ~~person~~ resident is ~~admitted~~ committed to a
 25 residential facility for an extended period of habilitation and treatment, the qualified mental retardation
 26 professional ~~in charge of~~ responsible for the resident resident's habilitation decides that the ~~person~~ resident
 27 no longer requires placement in a residential facility and that there exist sufficient community-based
 28 alternatives to provide adequate treatment and habilitation for the resident and adequate protection of the
 29 life and physical safety of the resident and others ~~or that it is in the best interests of the resident that he~~
 30 ~~be transferred to another residential facility, then he~~ the qualified mental retardation professional may

1 release the resident to the community-based alternative ~~or transfer the resident to the other residential~~
 2 ~~facility no less than 15 days after sending.~~

3 ~~(2) notice~~ Notice of the proposed release ~~or transfer~~ must be sent at least 15 days prior to the date
 4 of release to:

5 (a) the resident, ~~his;~~

6 (b) the resident's parents or guardian;

7 (c) the attorney who most recently represented the resident, if any;

8 (d) the responsible person appointed by the court, if any; ~~and;~~

9 (e) the resident's advocate, if any; and

10 (f) the court that ordered the ~~admission~~ commitment. ~~If the resident has been found unfit to~~
 11 ~~proceed to trial, notice must be sent to the court that found the resident unfit to proceed to trial and to~~
 12 ~~the county attorney and the attorney who represented the resident at the time the resident was found unfit~~
 13 ~~to proceed to trial.~~

14 ~~(a)(3) If any of the parties~~ so a party that was notified objects to the release ~~or transfer~~, they the
 15 party may petition the court for a hearing to determine whether the release ~~or transfer~~ should be allowed.
 16 The hearing must comply with the procedures set forth in 53-20-125. The court may on its own initiative
 17 inquire concerning the propriety of the release ~~or transfer~~.

18 ~~(b)(4) Nothing in this subsection (1) prevents the transfer of a~~ A resident may be transferred
 19 without the notice provided in subsection (2) to a hospital or other medical facility for necessary medical
 20 treatment or ~~emergency transfer of a resident~~ to a mental health facility for emergency treatment provided
 21 that the emergency transfer complies with the statutory requirements for emergency detention of the
 22 mentally ill. Within 24 hours of an emergency medical or psychiatric transfer, notice must be given to the
 23 parents or guardian of the resident, the responsible person appointed by the court, if any, and the court.

24 ~~(2)(5) If a person is admitted~~ committed to a residential facility for an extended course of
 25 habilitation without a hearing and if subsequent to ~~admission~~ commitment one of the parties who could
 26 have requested a hearing learns that an alternative course of treatment is available that is more suitable
 27 to the needs of the resident, the party may request the qualified mental retardation professional ~~in charge~~
 28 of responsible for the resident resident's habilitation to release the resident to the alternative if it is a
 29 community-based alternative ~~or transfer the resident to the alternative if it is a residential alternative~~. Any
 30 ~~transfer of A~~ release must comply with the requirements of ~~subsection~~ subsections (1) through (4). If the

1 qualified mental retardation professional in charge of the resident refuses to authorize the release or
 2 transfer, then the party may petition the court for a hearing to determine whether the present residential
 3 alternative resident's commitment should be continued. The hearing must comply with the procedures set
 4 forth in 53-20-125."

5
 6 Section 14. Section 53-20-128, MCA, is amended to read:

7 "53-20-128. Extension of admission period—hearing Recombitment. (1) If the qualified mental
 8 retardation professional ~~in charge of the resident~~ responsible for a resident's habilitation determines that
 9 the admission to the residential facility should continue beyond the period specified in the court order, he
 10 shall, at least 15 days before the end of the period set out in the court order, send written notice of his
 11 recommendation and request for renewal of the order to the court that issued the order, the resident, his
 12 parents or guardian, the next of kin, if known, the attorney who most recently represented the resident,
 13 if any, and the responsible person appointed by the court, if any. The recommendation and request must
 14 be accompanied by a written report describing the habilitation plan that has been undertaken for the
 15 resident and the future habilitation plan that is anticipated by the qualified mental retardation professional.
 16 resident continues to be seriously developmentally disabled and in need of commitment to a residential
 17 facility beyond the term of the current commitment order, the qualified mental retardation professional shall
 18 request that a petition for recommitment be filed.

19 (2) A petition for recommitment must be filed with the district court before the end of the current
 20 period of commitment.

21 (3) The recommendation of the qualified mental retardation professional must be presented in a
 22 written report that includes a summary of the current habilitation plan for the resident.

23 (4) The resident must be screened in accordance with 53-20-133 by the residential facility
 24 screening team.

25 (5) Copies of the petition for recommitment and the report of the qualified mental retardation
 26 professional must be sent to:

27 (a) the court that issued the current order;

28 (b) the residential screening team;

29 (c) the resident;

30 (d) the resident's parents or guardian or next of kin, if any;

1 (e) the attorney who most recently represented the resident, if any;

2 (f) the responsible person appointed by the court, if any; and

3 (g) the resident's advocate, if any.

4 (6) If the residential facility screening team recommends that the resident be recommitted, the
 5 court may enter an order for recommitment without hearing unless a person notified as provided in
 6 subsection (5) requests that a hearing be held or the court determines that it would be in the best interest
 7 of the resident to hold a hearing.

8 ~~(2)(7) If any person so notified requests~~ the court sets a hearing, the court shall set a time and
 9 ~~place for the hearing and shall mail or deliver~~ provide notice to all of the persons ~~informed of the~~
 10 ~~recommendation. The hearing must be conducted in the manner set forth in 53-20-125. If the court finds~~
 11 ~~that the residential admission is still justified, it may order continuation of the admission to that residential~~
 12 ~~facility or transfer of the resident to a different residential facility.~~ notified pursuant to subsection (5).

13 (8) A court may order a resident's recommitment to a residential facility if the court determines
 14 that the resident continues to be seriously developmentally disabled and in need of continued commitment
 15 to the residential facility. If the court finds that the resident is still in need of developmental disabilities
 16 services but does not require ~~treatment in~~ commitment to a residential facility or if all parties are willing
 17 for the resident to participate in a community-based program of habilitation, it shall refer the ~~respondent~~
 18 resident to the department of social and rehabilitation services to be considered for placement in
 19 community-based services according to 53-20-209. If the ~~person~~ resident is placed in community-based
 20 services or if the need for developmental disabilities services no longer exists, the court shall dismiss the
 21 petition. ~~The~~

22 (9) The court may not order ~~continuation of admission~~ recommitment to a residential facility that
 23 does not have an individualized habilitation plan for the resident. ~~In its order, the court shall make findings~~
 24 ~~of fact on which its order is based.~~

25 (10) At a hearing, the ~~The~~ court may ~~on its own initiative~~ inquire concerning the suitability of
 26 continuing ~~an admission~~ a resident's commitment to a residential facility."

27
 28 **Section 15.** Section 53-20-129, MCA, is amended to read:

29 **"53-20-129. Emergency admission and commitment.** (1) A ~~professional person may admit a person~~
 30 ~~believed to be seriously developmentally disabled to~~ may be admitted in a residential facility on an

1 emergency basis when necessary to protect the person or others from death or serious bodily harm.

2 (2) An emergency admission to a residential facility may be initiated only by a developmental
3 disabilities professional.

4 (3) An emergency admission may not proceed unless the residential facility and the department
5 of social and rehabilitation services are given reasonable notice of the need for placement by the
6 developmental disabilities professional responsible for emergency admission.

7 (4) A petition as set out in 53-20-121 and 53-20-125 for emergency commitment must be filed
8 on the next judicial day after an emergency admission by the county attorney of the county where the
9 person resides. If a petition is filed, the

10 (5) The residential facility screening team shall report back to the court on the fifth seventh judicial
11 day following the filing of the petition for emergency commitment.

12 (6) Once a petition is filed the report of the residential facility screening team is received by the
13 court, continued detention placement in the residential facility may be allowed only on not continue
14 without an order of the court for emergency commitment.

15 (7) A court may order an emergency commitment only when the court determines that the
16 emergency commitment is necessary to protect the respondent or others from death or serious bodily
17 harm. In no case may an

18 (8) An order for emergency commitment may be entered without a hearing before the court, if the
19 court finds that the record supports the order.

20 (9) An emergency admission commitment to a residential facility may not continue for longer than
21 30 days without subsequent proceedings after placement in the residential facility unless a petition for an
22 extended commitment to the residential facility has been filed before the court.

23 (10) The residential facility screening team may recommend that the respondent under a petition
24 for emergency commitment be committed by court order to the residential facility on an extended basis."

25
26 **Section 16.** Section 53-20-130, MCA, is amended to read:

27 **"53-20-130. Patient transfers from mental health facilities.** If ~~any~~ a person is a patient in a mental
28 health facility and the professional person, as defined in 53-21-102, in charge of the patient determines
29 that the patient is suffering from a developmental disability rather than mental illness and should more
30 properly be ~~admitted~~ committed to a residential facility or an appropriate less restrictive alternative, then

1 the professional person shall commence proceedings to effect ~~such admission~~ a commitment, consistent
 2 with the procedures set forth in this part for ~~admissions~~ commitments generally."

3
 4 **Section 17.** Section 53-20-133, MCA, is amended to read:

5 **"53-20-133. Residential facility screening team -- referral by court -- membership -- rules.** (1) When
 6 the district court ~~considers a person~~ receives a petition for commitment to a residential facility under this
 7 part, the court, prior to proceeding, shall refer the person respondent to the residential facility screening
 8 team for screening to determine whether placement and habilitation in a residential facility are appropriate
 9 for the person respondent.

10 (2) A court may not commit a person respondent to a residential facility under 53-20-125,
 11 53-20-128, or 53-20-129 unless the residential facility screening team determines that placement and
 12 habilitation in a residential facility are appropriate for the person respondent.

13 (3) The residential facility screening team may not determine that placement and habilitation in
 14 a residential facility are appropriate on an extended basis unless the residential facility screening team
 15 determines that the person respondent is seriously developmentally disabled.

16 (4) The residential facility screening team shall provide the court and the county attorney with the
 17 social and placement information relied upon by the residential facility screening team in making its
 18 determination.

19 (5) For purposes of this part, the department of social and rehabilitation services and the
 20 department of corrections and human services shall adopt rules providing for the membership and terms
 21 of the members of the residential facility screening team and setting forth the criteria and procedures to
 22 govern the determinations made by the residential facility screening team."

23
 24 **Section 18.** Section 53-20-146, MCA, is amended to read:

25 **"53-20-146. Right not to be subjected to certain treatment procedures.** (1) Residents of a
 26 residential facility have a right not to be subjected to ~~any~~ unusual or hazardous treatment procedures
 27 without the express and informed consent of the resident, if the resident is able to give consent, and of
 28 ~~his~~ the resident's parents or guardian or the responsible person appointed by the court after opportunities
 29 for consultation with independent specialists and legal counsel. ~~Such proposed~~ Proposed procedures must
 30 first have been reviewed and approved by the mental disabilities board of visitors before consent is sought.

1 (2) Physical restraint may be employed only when absolutely necessary to protect the resident
2 from injury ~~to himself~~ or to prevent injury to others. Mechanical supports used to achieve proper body
3 position and balance that are ordered by a physician are not considered a physical restraint. Restraint may
4 not be employed as punishment, for the convenience of staff, or as a substitute for a habilitation program.
5 Restraint may be applied only if alternative techniques have failed and only if the restraint imposes the least
6 possible restriction consistent with its purpose. Use of restraints may be authorized by a physician, a
7 developmental disabilities professional ~~person~~, or a qualified mental retardation professional. Orders for
8 restraints must be in writing and may not be in force for longer than 12 hours. Whenever physical restraint
9 is ordered, suitable provision must be made for the comfort and physical needs of the ~~person~~ resident
10 restrained.

11 (3) Seclusion, defined as the placement of a resident alone in a locked room for nontherapeutic
12 purposes, may not be employed. Legitimate "time out" procedures may be ~~utilized~~ used under close and
13 direct professional supervision as a technique in behavior-shaping programs.

14 (4) Behavior modification programs involving the use of noxious or aversive stimuli must be
15 reviewed and approved by the mental disabilities board of visitors and may be conducted only with the
16 express and informed consent of the affected resident, if the resident is able to give consent, and of ~~his~~
17 the resident's parents or guardian or the responsible person appointed by the court after opportunities for
18 consultation with independent specialists and with legal counsel. ~~Such~~ These behavior modification
19 programs may be conducted only under the supervision of and in the presence of a qualified mental
20 retardation professional who has had proper training ~~in such techniques~~.

21 (5) A resident may not be subjected to a behavior modification program that attempts to extinguish
22 socially appropriate behavior or to develop new behavior patterns when ~~such~~ the behavior modifications
23 serve only institutional convenience.

24 (6) Electric shock devices are considered a research technique for the purpose of this part. ~~Such~~
25 Electric shock devices may be used only in extraordinary circumstances to prevent self-mutilation leading
26 to repeated and possibly permanent physical damage to the resident and only after alternative techniques
27 have failed. The use of ~~such~~ electric shock devices is subject to the conditions prescribed by this part for
28 experimental research generally and may be used only under the direct and specific order of a physician
29 and the superintendent of the residential facility."
30

1 Section 19. Section 53-20-161, MCA, is amended to read:

2 "53-20-161. Maintenance of records. (1) Complete records for each resident must be maintained
3 and must be readily available to persons who are directly involved with the particular resident and to the
4 mental disabilities board of visitors. All information contained in a resident's records must be considered
5 privileged and confidential. The parents or guardian, the responsible person appointed by the court, and
6 any person properly authorized in writing by the resident, if the resident is capable of giving informed
7 consent, or by ~~his~~ the resident's parents or guardian or the responsible person must be permitted access
8 to the resident's records. Information may not be released from the records of a resident or former resident
9 of the residential facility unless the release of the information has been properly authorized in writing by:

10 (a) the court;

11 (b) the resident or former resident if ~~he~~ the resident is over the age of majority and is capable of
12 giving informed consent;

13 (c) the parents or guardian in charge of a resident under the age of 12;

14 (d) the parents or guardian in charge of a resident over the age of 12 but under the age of majority
15 and the resident if the resident is capable of giving informed consent;

16 (e) the guardian of a resident over the age of majority who is incapable of giving informed consent;

17 (f) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
18 of a resident over the age of majority who is incapable of giving informed consent and for whom no legal
19 guardian has been appointed;

20 (g) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
21 of a resident under the age of majority for whom there is no parent or legal guardian; or

22 (h) the superintendent of the residential facility or ~~his~~ the superintendent's designee as custodian
23 of a resident of that facility whenever release is required by federal or state law or department of social
24 and rehabilitation services rules.

25 (2) Information may not be released by a superintendent or ~~his~~ the superintendent's designee as
26 set forth in subsection (1)(f), (1)(g), or (1)(h) less than 15 days after sending notice of the proposed release
27 of information to the resident, ~~his~~ the resident's parents or guardian, the attorney who most recently
28 represented the resident, if any, the responsible person appointed by the court, if any, the resident's
29 advocate, if any, and the court that ordered the admission. If any of the parties so notified objects to the
30 release of information, they may petition the court for a hearing to determine whether the release of

1 information should be allowed. Information may not be released pursuant to subsection (1)(f), (1)(g), or
 2 (1)(h) unless it is released to further some legitimate need of the resident or to accomplish a legitimate
 3 purpose of the facility that is not inconsistent with the needs and rights of the resident. Information may
 4 not be released pursuant to ~~these subsections~~ subsection (1)(f), (1)(g), or (1)(h) except in accordance with
 5 written policies consistent with the requirements of this part adopted by the facility. Persons receiving
 6 notice of a proposed release of information ~~shall~~ must also receive a copy of the written policy of the
 7 facility governing release of information.

8 (3) These records must include:

9 (a) identification data, including the resident's legal status;

10 (b) the resident's history, including but not limited to:

11 (i) family data, educational background, and employment record;

12 (ii) prior medical history, both physical and mental, including prior institutionalization;

13 (c) the resident's grievances, if any;

14 (d) an inventory of the resident's life skills, including mode of communication;

15 (e) a record of each physical examination that describes the results of the examination;

16 (f) a copy of the individual habilitation plan and any modifications ~~thereto to the plan~~ and an
 17 appropriate summary ~~that will~~ to guide and assist the resident care workers in implementing the resident's
 18 ~~program~~ habilitation plan;

19 (g) the findings made in monthly reviews of the habilitation plan, ~~which findings must include~~
 20 including an analysis of the successes and failures of the habilitation program and ~~direct~~ whatever
 21 modifications are necessary;

22 (h) a copy of the postinstitutionalization plan that includes a statement of services needed in the
 23 community and any modifications ~~thereto to the postinstitutionalization plan~~ and a summary of the steps
 24 that have been taken to implement that plan;

25 (i) a medication history and status;

26 (j) a summary of each significant contact by a qualified mental retardation professional ~~person~~ with
 27 a resident;

28 (k) a summary of the resident's response to ~~his~~ the resident's habilitation plan, prepared by a
 29 qualified mental retardation professional involved in the resident's habilitation and recorded at least
 30 monthly. Wherever possible, ~~such~~ the response must be scientifically documented.

1 (l) a monthly summary of the extent and nature of the resident's work activities and the effect of
2 the activity upon the resident's progress in the habilitation plan;

3 (m) a signed order by a qualified mental retardation professional, ~~professional person~~, or physician
4 for any physical restraints;

5 (n) a description of any extraordinary incident or accident in the facility involving the resident, to
6 be entered by a staff member noting personal knowledge of the incident or accident or other source of
7 information, including any reports of investigations of the resident's mistreatment;

8 (o) a summary of family visits and contacts;

9 (p) a summary of attendance and leaves from the facility;

10 (q) a record of any seizures; illnesses; injuries; ~~and treatments thereof~~ of seizures, illnesses, and
11 injuries; and immunizations."

12
13 ~~Section 24. Section 53-20-501, MCA, is amended to read:~~

14 ~~"53-20-501. Primary function of Montana developmental center and Eastmont human services~~
15 ~~center. The primary functions of the Montana developmental center and the Eastmont human services~~
16 ~~center are the care, treatment, training, education, and necessary medical treatment of mentally retarded~~
17 ~~persons who have been determined to be seriously developmentally disabled."~~

18
19 NEW SECTION. Section 20. Repealer. Sections 53-20-105, AND 53-20-111, ~~53-20-502~~, MCA,
20 and Section 27, Chapter 381, Laws of 1991, are repealed.

21
22 NEW SECTION. Section 21. Phrase change -- directions to code commissioner. Wherever a
23 reference to a person who is developmentally disabled or to a developmentally disabled person appears in
24 the Montana Code Annotated or in legislation enacted by the 1995 legislature, the code commissioner is
25 directed to change the reference to a person with developmental disabilities. The phrase "seriously
26 developmentally disabled" should remain.

27
28 NEW SECTION. Section 22. Effective dates DATE. (1) ~~{Sections 3, 6 through 23, 25, 26,~~
29 ~~{SECTIONS 1 THROUGH 21 and this section}~~ are effective on passage and approval.

30 (2) ~~{Sections 1, 2, 4, and 24}~~ are effective January 1, 1997.

