

# State of South Dakota

SEVENTY-FOURTH SESSION  
LEGISLATIVE ASSEMBLY, 1999

400C0241

## SENATE BILL NO. 64

Introduced by: The Committee on Health and Human Services at the request of the Department of Human Services

1 FOR AN ACT ENTITLED, An Act to revise, repeal, and reenact certain provisions pertaining  
2 to persons with developmental disabilities.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 27B-1-1 be repealed.

5 ~~— 27B-1-1. The term "mentally retarded" as used in this title shall include any person with~~  
6 ~~significant subaverage general intellectual functioning and deficits in adaptive behavior.~~

7 Section 2. That § 27B-1-2 be repealed.

8 ~~— 27B-1-2. Terms used in this Title mean:~~

9 ~~— (1) "Adjustment training center," any private nonprofit organization which receives~~  
10 ~~financial assistance from the state or its political subdivisions and which is established~~  
11 ~~or organized for the purpose of providing evaluations, therapy, and intensive day and~~  
12 ~~residential training and support services to individuals with a diagnosed developmental~~  
13 ~~disability and which meets the adopted rules of the Department of Human Services~~  
14 ~~for adjustment training centers;~~

15 ~~— (2) "Administrator," the chief executive officer of a facility;~~

16 ~~— (3) "County board of mental retardation," the county board of mental illness provided for~~

1 in § 27A-7-1;

2 ~~— (4) — "Department," the Department of Human Services;~~

3 ~~— (5) — "Discharge," the official release of an individual from a facility by action of the facility~~  
4 ~~or a county board of mental retardation;~~

5 ~~— (6) — "Educational services," deliberate attempts to facilitate the development of an~~  
6 ~~individual;~~

7 ~~— (7) — "Facility," South Dakota Developmental Center ---- Redfield or any facility which is~~  
8 ~~operated by the state, which regularly admits developmentally disabled persons and~~  
9 ~~provides residential and other services;~~

10 ~~— (8) — "Habilitation," the process by which the staff of a facility assists a resident to acquire~~  
11 ~~and maintain those life skills which enable him to cope more effectively with the~~  
12 ~~demands of his physical, mental, and social efficiency. The term includes programs of~~  
13 ~~formal and structured education and treatment;~~

14 ~~— (9) — "Resident" and "patient," any individual who resides in a facility and receives services~~  
15 ~~therefrom;~~

16 ~~— (10) — "Responsible relative" or "legally responsible relative," the father, or mother, or both~~  
17 ~~for their child or children, the husband for his wife and the wife for her husband;~~

18 ~~— (11) — "Treatment," the prevention, amelioration, or cure of a resident's physical disabilities~~  
19 ~~or illnesses.~~

20 Section 3. That § 27B-1-3 be repealed.

21 ~~— 27B-1-3. Terms used in this title mean:~~

22 ~~— (1) — "Developmental disability," a disability attributed to mental retardation, cerebral palsy,~~  
23 ~~epilepsy, or other neurological impairment designated by the secretary of human~~  
24 ~~services, which originates during the developmental period or originates as a result~~  
25 ~~of injury occurring anytime during the life of an individual, which can be expected to~~

1 continue indefinitely, which constitutes a substantial handicap, and which requires  
2 services similar to those provided to mentally retarded persons;

3 ~~—(2)—"Developmentally disabled person," any person who suffers from a developmental  
4 disability.~~

5 Section 4. That § 27B-1-4 be repealed.

6 ~~—27B-1-4. As used in this title, the term "qualified developmental disabilities professional"  
7 means a person who has specialized training or one year of experience in treating or working  
8 with the mentally retarded and is one of the following:~~

9 ~~—(1)—A psychologist with at least a master's degree from an accredited program in  
10 psychology;~~

11 ~~—(2)—A physician licensed to practice medicine or osteopathy;~~

12 ~~—(3)—An educator with a bachelor's degree in education from an accredited program;~~

13 ~~—(4)—A social worker with a bachelor's degree in social work from an accredited program,  
14 or in a field other than social work and at least one year of social work experience  
15 under the supervision of a qualified social worker;~~

16 ~~—(5)—A physical or occupational therapist;~~

17 ~~—(6)—A speech pathologist or audiologist;~~

18 ~~—(7)—A registered nurse;~~

19 ~~—(8)—A therapeutic recreation specialist who is a graduate of an accredited program;~~

20 ~~—(9)—A rehabilitation counselor who is certified by the committee on rehabilitation  
21 counselor certification; or~~

22 ~~—(10)—A case manager, with a bachelor's degree from an accredited program.~~

23 ~~—Except as provided in § 36-4-20, each qualified developmental disabilities professional shall  
24 meet all licensing and certification requirements promulgated by the state of South Dakota and  
25 any state professional licensing board for persons engaged in the practice of the same profession~~

1 ~~in South Dakota.~~

2 Section 5. That § 27B-1-5 be repealed.

3 ~~—27B-1-5. No person shall be deemed incompetent to manage his affairs, to contract, to hold~~  
4 ~~professional or occupational or vehicle operator's licenses, to marry and obtain a divorce, to~~  
5 ~~register and vote, or to make a will, solely by reason of his admission or commitment to a facility~~  
6 ~~or because he was adjudicated mentally retarded.~~

7 Section 6. That § 27B-1-6 be repealed.

8 ~~—27B-1-6. A mentally retarded individual shall be admitted to a facility only pursuant to the~~  
9 ~~provisions of this title.~~

10 Section 7. That § 27B-1-7 be repealed.

11 ~~—27B-1-7. Any person who confines a person who is mentally retarded in any manner or in~~  
12 ~~any place other than is authorized by law, is guilty of a Class 1 misdemeanor.~~

13 Section 8. That § 27B-1-8 be repealed.

14 ~~—27B-1-8. Any officer required to perform an act, and any person accepting an appointment~~  
15 ~~under the provisions of this title, who shall intentionally refuse or neglect to perform his duty as~~  
16 ~~herein prescribed, shall be guilty of a Class 1 misdemeanor, besides being liable to an action for~~  
17 ~~damages.~~

18 Section 9. That § 27B-1-9 be repealed.

19 ~~—27B-1-9. The departments of health, education, social services, human services and other~~  
20 ~~agencies serving persons with developmental disabilities, shall collect data on the incidence and~~  
21 ~~prevalence of autism on all yearly developmental disability statistical studies, surveys and~~  
22 ~~disability tracking systems or counts reported by each of the departments.~~

23 ~~—Autism shall be individually listed on the tracking systems or counts, as are mental~~  
24 ~~retardation, deaf and visually handicapped.~~

25 ~~—The confidentiality of identifying data shall be protected under the provisions and procedures~~

1 ~~set forth at 34 CFR § 300.560 et seq. as in effect on July 1, 1988.~~

2 Section 10. That § 27B-1-10 be repealed.

3 ~~—27B-1-10. The Legislature hereby finds that:~~

4 ~~—(1)— Research does not support the long-term efficacy of aversive behavioral intervention;~~

5 ~~—(2)— The use of aversive or abusive treatment raises disturbing legal and ethical issues, and~~  
6 ~~may well deprive the recipient of constitutional or statutory rights and be outside the~~  
7 ~~ethical guidelines imposed upon the treatment professional;~~

8 ~~—(3)— Severely disabled persons have the same right to be treated with dignity and respect~~  
9 ~~as all other citizens; and~~

10 ~~—(4)— The use of aversive and abusive treatments on persons with disabilities diminishes the~~  
11 ~~dignity and humanity of the treatment professional and the disabled person.~~

12 Section 11. That § 27B-1-11 be repealed.

13 ~~—27B-1-11. Any agency, facility, school or person who provides services to persons with~~  
14 ~~developmental disabilities shall be prohibited from using the following practices:~~

15 ~~—(1)— Corporal punishment—physical or verbal abuse, such as shaking, screaming, swearing,~~  
16 ~~name calling or any other activity that would be damaging to an individual's physical~~  
17 ~~well-being or self-respect;~~

18 ~~—(2)— Seclusion—placement of an individual alone in a room or other area from which egress~~  
19 ~~is prevented;~~

20 ~~—(3)— Denial of food—preventing an individual from having access to a nutritionally~~  
21 ~~adequate diet as a means of modifying behavior. Persons enrolled in residential~~  
22 ~~programs or living units shall be expected to partake in meals at a predetermined~~  
23 ~~scheduled time;~~

24 ~~—(4)— An individual served disciplining other individuals enrolled; and~~

25 ~~—(5)— Medication shall not be used as punishment, for the convenience of staff, as a~~

1           ~~substitute for a program, or in quantities that interfere with an individual's~~  
2           ~~developmental program.~~

3           Section 12. That § 27B-1-12 be repealed.

4           ~~27B-1-12. All agencies providing treatment to persons with developmental disabilities shall~~  
5           ~~review their treatment procedures to ensure compliance with §§ 27B-1-10 and 27B-1-11.~~

6           Section 13. That § 27B-1-13 be repealed.

7           ~~27B-1-13. This legislation shall be enforced by the appropriate state department by assuring~~  
8           ~~adequate monitoring of, staffing of, and technical assistance to all agencies, schools or persons~~  
9           ~~providing services to those with developmental disabilities.~~

10          Section 14. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read  
11          as follows:

12          The purposes of this title are to enhance environments and provide supports to enable  
13          persons with developmental disabilities to achieve and maintain physical well-being, personal and  
14          professional satisfaction, participation as community members, and safety from abuse, neglect,  
15          and exploitation; and to promote and safeguard the human dignity, constitutional and statutory  
16          rights, social well-being, and general welfare of all persons with developmental disabilities in the  
17          state.

18          Section 15. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read  
19          as follows:

20          The Department of Human Services shall develop, adopt, approve, coordinate, monitor,  
21          evaluate, and administer state and federally funded services for persons with developmental  
22          disabilities and their families within South Dakota in cooperation with all governmental and  
23          private resources and organizations concerned with developmental disabilities.

24          Within the limits of available resources, the department shall:

25          (1) Carry out all functions and duties required by statute through collaboration and

1 consultation with persons with developmental disabilities, their families, guardians,  
2 community resources, organizations, and people who provide services throughout the  
3 state;

4 (2) Develop and maintain a statewide system of community-based services that reflect the  
5 choices and needs of persons with developmental disabilities and their families;

6 (3) Facilitate or provide technical assistance to community service providers in planning,  
7 developing, and implementing services and supports for persons with developmental  
8 disabilities;

9 (4) Cooperate with federal agencies in the administration of the federal statutes and acts  
10 relating to developmental disabilities programs, accept the benefits of such federal  
11 statutes and acts subject to chapter 4-8B, and comply with the requirements thereof;

12 (5) Conform the state plans to the federal requirements and submit them to the federal  
13 agencies; and

14 (6) Maintain a data collection system on the prevalence of developmental disabilities,  
15 including autism, based on the needs of persons with developmental disabilities in the  
16 current service delivery system.

17 Section 16. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The Department of Human Services may establish and use state, regional, or local boards or  
20 councils to assist in the planning and implementation of community services.

21 Section 17. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Terms used in this title mean:

24 (1) "Adjustment training center," a nonprofit facility which is certified by the department  
25 to provide prevocational or vocational training, and other supports and services as

- 1 needed by persons with developmental disabilities;
- 2 (2) "Behavior intervention program," a written set of instructions for changing or  
3 modifying the behavior of a person with a developmental disability that specifies  
4 behavior objectives for completion, procedures, and data collection procedures and  
5 written to increase desirable behaviors or decrease undesirable behaviors;
- 6 (3) "Community services provider," any person or entity, whether for-profit or not-for-  
7 profit, which receives compensation for providing services to persons with  
8 developmental disabilities;
- 9 (4) "Danger to others," behavior which supports a reasonable expectation that the person  
10 will inflict serious physical injury upon another person in the very near future. Such  
11 behavior shall be evidenced by recent acts which constitute a danger of serious  
12 physical injury for another person. Such acts may include a recently expressed threat  
13 if the threat is such that, if considering its context or person's recent previous acts, it  
14 is substantially supportive of an expectation that the threat will be carried out;
- 15 (5) "Danger to self," recent behavior or related physical conditions which show there is  
16 a danger of serious personal harm in the very near future as evidenced by an inability  
17 to provide for some basic human needs such as food, clothing, shelter, physical health,  
18 or personal safety;
- 19 (6) "Department," the Department of Human Services;
- 20 (7) "Director," the director of the South Dakota Developmental Center or an adjustment  
21 training center;
- 22 (8) "Facility," the South Dakota Developmental Center in Redfield, South Dakota;
- 23 (9) "Informed consent," consent voluntarily, knowingly, and competently given without  
24 any element of force, fraud, deceit, duress, threat, or other form of coercion, after  
25 explanation of all information that a reasonable person would consider significant to

1 the decision in a manner reasonably comprehensible to general lay understanding;

2 (10) "Least restrictive," an intervention in the life of a person with a developmental  
3 disability that is the least intrusive and disruptive to the person's life and represents the  
4 least departure from normal patterns of living that can be effective in meeting the  
5 person's developmental needs;

6 (11) "PASARR" or "Preadmission Screening/Annual Resident Review," a federally  
7 mandated review of the application to a skilled nursing facility by a person with a  
8 known or suspected mental illness and/or developmental disability in order to  
9 determine if the skilled nursing facility or another community service provider can  
10 appropriately serve the person's needs;

11 (12) "Qualified mental retardation professional," any person with at least one year of  
12 experience working directly with mental retardation or other developmental  
13 disabilities and is either a doctor of medicine or osteopathy, a registered nurse, or a  
14 person who holds at least a bachelor's degree in a professional category;

15 (13) "Sterilization," a medical procedure or treatment designed to render a person unable  
16 to produce children, specifically including hysterectomy, tubal ligation, and  
17 vasectomy.

18 Section 18. That chapter 27B-1 be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 A developmental disability is any severe, chronic disability of a person that:

21 (1) Is attributable to a mental or physical impairment or combination of mental and  
22 physical impairments;

23 (2) Is manifested before the person attains age twenty-two;

24 (3) Is likely to continue indefinitely;

25 (4) Results in substantial functional limitations in three or more of the following areas of

1 major life activity: self-care; receptive and expressive language; learning; mobility;  
2 self-direction; capacity for independent living; and economic self-sufficiency; and

3 (5) Reflects the person's need for an array of generic services, met through a system of  
4 individualized planning and supports over an extended time, including those of a life-  
5 long duration.

6 Section 19. That § 27B-2-1 be repealed.

7 ~~—27B-2-1. The department of human services shall consider, determine and establish policy  
8 and exercise such coordination and programs for developmental disabilities; develop, maintain  
9 and operate programs for mental retardation, and coordinate the work of the state departments  
10 involved in programs of consultation, care and training and carry out the duties imposed in this  
11 title, or as otherwise authorized and assigned to the department by law.~~

12 Section 20. That § 27B-2-2 be repealed.

13 ~~—27B-2-2. The department of human services shall develop, adopt, approve and administer  
14 state plans of coordination in the field of developmental disabilities for the state of South Dakota  
15 in cooperation with all governmental and private departments, resources and organizations  
16 concerned with mental retardation.~~

17 Section 21. That § 27B-2-3 be repealed.

18 ~~—27B-2-3. The department of human services shall cooperate with federal agencies in the  
19 administration of the federal statutes and acts relating to developmental disabilities programs,  
20 accept the benefits of such federal statutes and acts subject to chapter 4-8B, and comply with the  
21 requirements thereof.~~

22 Section 22. That § 27B-2-4 be repealed.

23 ~~—27B-2-4. The department of human services shall conform the state plans and the federal  
24 requirements and submit them to the federal agencies in order to qualify for grants available to  
25 the state of South Dakota in the field of mental retardation.~~

1 Section 23. That § 27B-2-5 be repealed.

2 ~~—27B-2-5. The department of human services shall coordinate the utilization of existing~~  
3 ~~facilities, state departments, boards or commissions involved in the field of mental retardation.~~

4 Section 24. That § 27B-2-6 be repealed.

5 ~~—27B-2-6. The department of human services may receive, acquire, have charge of, and~~  
6 ~~operate all properties for the purposes authorized herein. The department may receive gifts and~~  
7 ~~contributions from public and private sources and acquire other properties as an agency of the~~  
8 ~~state of South Dakota and hold and use the same for purposes herein. However, it may not~~  
9 ~~purchase, lease anything except office quarters as approved by the state commissioner of~~  
10 ~~administration, sell, encumber or alienate any real property without the specific consent and prior~~  
11 ~~approval of the Legislature.~~

12 Section 25. That § 27B-2-7 be repealed.

13 ~~—27B-2-7. It is the purpose of this chapter to provide that all developmentally disabled persons~~  
14 ~~residing within this state may voluntarily receive appropriate services provided by the department~~  
15 ~~of human services. A developmentally disabled person from another state or territory who enters~~  
16 ~~this state for the purpose of receiving care, treatment, education or training shall retain the~~  
17 ~~residence of his parent, guardian or agency standing in the place of parent or guardian.~~

18 Section 26. That § 27B-2-8 be repealed.

19 ~~—27B-2-8. The department of human services may, from existing department funds or special~~  
20 ~~funds appropriated by the Legislature, establish and maintain contact with, and coordinate~~  
21 ~~services for, developmentally disabled individuals and their families in order to assure that~~  
22 ~~appropriate services are being received by disabled individuals and that anticipated or~~  
23 ~~unanticipated changes in needs of such individuals, arising from any crisis, are recognized and~~  
24 ~~appropriately met.~~

25 Section 27. That § 27B-2-9 be repealed.

1 ~~— 27B-2-9. A developmentally disabled individual or any interested person may make~~  
2 ~~application for department services by contacting in person or in writing any official state or field~~  
3 ~~office of the department of human services, and submitting to an examination of his mental,~~  
4 ~~physical and educational condition so that the department may determine whether he is in need~~  
5 ~~of appropriate services.~~

6 Section 28. That § 27B-2-10 be repealed.

7 ~~— 27B-2-10. A developmentally disabled individual or his parent or guardian may refuse~~  
8 ~~services provided to them by the department of human services. If the developmentally disabled~~  
9 ~~individual or his parent accepts services by the department, the department, parent, or disabled~~  
10 ~~individual may terminate the services at any time.~~

11 Section 29. That § 27B-2-11 be repealed.

12 ~~— 27B-2-11. The secretary of human services may adopt reasonable and necessary rules~~  
13 ~~establishing standards for adjustment training centers and other nonpublic facilities and services~~  
14 ~~for the mentally retarded and other developmentally disabled persons and for services to be~~  
15 ~~provided by the department of human services under this title. Such rules may be adopted in the~~  
16 ~~following areas:~~

17 ~~— (1) — Staff requirements;~~

18 ~~— (2) — Administration, audit requirements, and record keeping;~~

19 ~~— (3) — Services provided;~~

20 ~~— (4) — Client rights and safety;~~

21 ~~— (5) — Facility fire safety and sanitation requirements; and~~

22 ~~— (6) — Such other standards and requirements as are necessary for federal financial~~  
23 ~~participation.~~

24 Section 30. That § 27B-2-12 be repealed.

25 ~~— 27B-2-12. The department of human services shall consider the needs in the field of~~

1 ~~developmental disabilities and make recommendations to the Legislature and the Governor for~~  
2 ~~changes in existing legislation.~~

3 Section 31. That § 27B-2-13 be repealed.

4 ~~—27B-2-13. This chapter shall not be construed as repealing chapter 34-7, but shall be held and~~  
5 ~~construed separate and in addition thereto.~~

6 Section 32. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 The Department of Human Services shall coordinate the utilization of existing facilities, state  
9 departments, boards, or commissions involved in the field of developmental disabilities.

10 Section 33. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 The Department of Human Services may receive, acquire, have charge of, and operate all  
13 properties for the purposes authorized by statute. The department may receive gifts and  
14 contributions from public and private sources and acquire other properties as an agency of the  
15 State of South Dakota and hold and use them for statutory purposes. However, it may not  
16 purchase, lease anything except office quarters as approved by the state commissioner of  
17 administration, sell, encumber, or alienate any real property without the specific consent and  
18 prior approval of the Legislature.

19 Section 34. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 A person with a developmental disability from another state or territory who enters this state  
22 for the purpose of receiving services or education shall retain the residence of that person's  
23 parent, guardian, or agency standing in the place of the person's parent or guardian.

24 Section 35. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
25 as follows:

1 Any person with a developmental disability or any other interested person may make  
2 application for department services by contacting in person or in writing any official state or field  
3 office of the Department of Human Services, and participating in an evaluation which may  
4 include mental, physical, and educational assessments so that the department may determine if  
5 services are needed.

6 Section 36. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 A person with a developmental disability or that person's parent or guardian may refuse  
9 services offered by the Department of Human Services. If the person with a developmental  
10 disability or that person's parent or guardian accepts services from the department, the  
11 department, that person's parent or guardian, or the person with a developmental disability may  
12 terminate the services at any time.

13 Section 37. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The secretary of the department may promulgate, pursuant to chapter 1-26, reasonable and  
16 necessary rules governing the procedure and conduct of contested cases, including notification  
17 of the denial of services. Such rules shall be consistent with the procedure required by chapter  
18 1-26.

19 Section 38. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 The secretary of the Department of Human Services may promulgate, pursuant to chapter  
22 1-26, reasonable and necessary rules establishing standards for adjustment training centers, South  
23 Dakota Developmental Center - Redfield, and other nonpublic facilities, services, and supports  
24 for persons with developmental disabilities and for services and supports to be provided or

1 purchased by the Department of Human Services under this title. Such rules may be adopted in  
2 the following areas:

- 3 (1) Staff requirements;
- 4 (2) Administration, audit requirements, and record keeping;
- 5 (3) Services and supports provided;
- 6 (4) Client rights and safety;
- 7 (5) Facility fire safety and sanitation requirements;
- 8 (6) Respite care;
- 9 (7) Family support;
- 10 (8) Preadmission Screening/Annual Resident Review (PASARR);
- 11 (9) Such other standards and requirements as are necessary for federal financial  
12 participation; and
- 13 (10) Any other services and supports necessary to implement this title.

14 Section 39. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 The Department of Human Services shall consider the needs in the field of developmental  
17 disabilities and shall make recommendations to the Legislature and the Governor for changes in  
18 existing legislation.

19 Section 40. That chapter 27B-2 be amended by adding thereto a NEW SECTION to read  
20 as follows:

21 This chapter may not be construed as repealing chapter 34-7, but shall be held and construed  
22 separate and in addition to chapter 34-7.

23 Section 41. That § 27B-3-1 be repealed.

24 ~~—27B-3-1. The facility for the mentally retarded as located and established upon the lands  
25 donated therefor and conveyed to this state at Redfield, Spink county, shall be known as the~~

1 ~~"South Dakota developmental center -- Redfield," and is under the control and supervision of~~  
2 ~~the department of human services.~~

3 Section 42. That § 27B-3-2 be repealed.

4 ~~— 27B-3-2. The South Dakota developmental center -- Redfield shall be maintained for the~~  
5 ~~purpose of providing treatment, training, instruction, care, habilitation, and support of~~  
6 ~~developmentally disabled persons of this state.~~

7 Section 43. That § 27B-3-4 be repealed.

8 ~~— 27B-3-4. The ultimate aim of each facility shall be to foster those behaviors that maximize~~  
9 ~~the human qualities of each resident, increase the self-direction of his behavior, enhance his~~  
10 ~~ability to cope with his environment, and return him to the community.~~

11 Section 44. That § 27B-3-5 be repealed.

12 ~~— 27B-3-5. The secretary of human services shall appoint a competent administrator for the~~  
13 ~~South Dakota developmental center -- Redfield, who shall serve at the pleasure of the secretary.~~

14 Section 45. That § 27B-3-6 be repealed.

15 ~~— 27B-3-6. Such administrator shall have the supervision of the care, treatment, and education~~  
16 ~~of the patients of such institution, under the direction of the secretary of human services and in~~  
17 ~~accordance with the rules established by the department of human services.~~

18 Section 46. That § 27B-3-7 be repealed.

19 ~~— 27B-3-7. Under the advice and consent of the secretary of human services, the administrator~~  
20 ~~shall appoint instructors meeting the qualifications required of teachers of comparable work in~~  
21 ~~the public schools of this state for the education of all patients, and other necessary employees~~  
22 ~~for the management of such institution.~~

23 Section 47. That § 27B-3-8 be repealed.

24 ~~— 27B-3-8. The administrator may receive and accept from any persons, organization or estate,~~  
25 ~~gifts of money or personal property on behalf of the South Dakota developmental center --~~

1 ~~Redfield, or the patients therein, and use such gifts for the purposes specified by the donor if~~  
2 ~~such use is consistent with the law. In the absence of a specified purpose, the administrator shall~~  
3 ~~use such money or personal property for the benefit of the South Dakota developmental center~~  
4 ~~-- Redfield or for the general benefit of the patients therein. The administrator shall keep an~~  
5 ~~accurate record of the amount or kind of gift, the date received, manner expended, and the name~~  
6 ~~and address of the donor. Any increase resulting from such gift may be used for the same~~  
7 ~~purpose as the original gift.~~

8 Section 48. That § 27B-3-9 be repealed.

9 ~~— 27B-3-9. Pursuant to reasonable rules adopted by the department of human services, the~~  
10 ~~administrator of the South Dakota developmental center -- Redfield may receive a person for~~  
11 ~~examination, evaluation and treatment, for the existence of mental retardation or the suitability~~  
12 ~~of the subject for institutional care and training for a period not to exceed sixty days, upon the~~  
13 ~~receipt of a written application by the parents or guardian, and upon payment in advance of one~~  
14 ~~month's charge at the rate established pursuant to this chapter. The sixty-day limitation is not a~~  
15 ~~limitation on the length of a voluntary admittance. Whenever the administrator accepts a person~~  
16 ~~for examination, evaluation and treatment or accepts a person on a voluntary admission, he shall~~  
17 ~~immediately notify the county board and county commissioners of the person's county of~~  
18 ~~residence.~~

19 Section 49. That § 27B-3-9.1 be repealed.

20 ~~— 27B-3-9.1. Every person voluntarily or involuntarily entering the facility shall prior to~~  
21 ~~admission, be required to present to the administrator, certification from a licensed physician that~~  
22 ~~he has received a test or tests for tuberculosis and is free from a contagious form of this disease~~  
23 ~~and he has received or is in the process of receiving immunization against poliomyelitis,~~  
24 ~~diphtheria, measles, pertussis, tetanus, or any other diseases as deemed necessary by the licensed~~  
25 ~~physician in charge of immunizations at the facility, by such means of immunizations as are~~

1 approved by the state board of health, or in the way of an alternative to such requirement shall  
2 present:

3 ~~—(1)— Certification from a licensed physician stating the physical condition of the person  
4 would be such that a test and immunization would endanger his life or health; or~~

5 ~~—(2)— A written statement signed by one parent or guardian that the person is an adherent  
6 to a belief whose teachings are opposed to such test and immunization; or~~

7 ~~—(3)— A written statement signed by one parent or guardian requesting that the local health  
8 department or the facility give the test and immunization because the parents or  
9 guardians lack the means to pay for such tests and immunization; or~~

10 ~~—(4)— A written statement from a licensed physician requesting that the person not be  
11 immunized.~~

12 Section 50. That § 27B-3-9.2 be repealed.

13 ~~—27B-3-9.2. The facility shall provide the test or tests for tuberculosis and the immunizations  
14 required to such residents as are not provided therewith by their parents or guardians and who  
15 have not been exempted.~~

16 Section 51. That § 27B-3-10 be repealed.

17 ~~—27B-3-10. A resident in a state facility may be transferred to any other facility, or to a  
18 hospital operated by the state if the transfer would be in the best interest of the resident; the  
19 administrator of the sending facility approves the transfer; and the administrator of the receiving  
20 facility approves the transfer.~~

21 Section 52. That § 27B-3-11 be repealed.

22 ~~—27B-3-11. The resident and his nearest relative or guardian shall be notified at least seven  
23 days prior to any transfer pursuant to § 27B-3-10, except that a transfer may be effected earlier  
24 if necessitated by an emergency. In addition, the resident may designate two other persons to  
25 receive the notice.~~

1 ~~— If a transfer is effected due to an emergency, the required notices shall be given as soon as~~  
2 ~~possible, but not later than twenty-four hours after the transfer.~~

3 Section 53. That § 27B-3-12 be repealed.

4 ~~— 27B-3-12. The department of human services shall consult with the immediate family of any~~  
5 ~~proposed transferee under chapter 27A-6 and, in the case of a proposed transferee from an~~  
6 ~~institution of this state to an institution in another state, take no final action without approval of~~  
7 ~~the county board of mental retardation.~~

8 Section 54. That § 27B-3-13 be repealed.

9 ~~— 27B-3-13. If any patient of the South Dakota Developmental Center ---- Redfield dies~~  
10 ~~leaving less than three hundred dollars in money on deposit with the administrator, such money~~  
11 ~~shall be transferred by the administrator to the recreation fund of such institution. If the money~~  
12 ~~on deposit is the sum of three hundred dollars or more, the administrator shall hold it for the~~  
13 ~~benefit of the county legally obligated for the care of the patient for the purpose of satisfying any~~  
14 ~~lien of the county against the estate of the patient.~~

15 ~~— The administrator shall give timely notice of such deposit to the county auditor and to the~~  
16 ~~clerk of courts of the county and the amount of money held. If the county has waived or fails to~~  
17 ~~commence proceedings on its lien, or if no proceedings for probate or administration of the~~  
18 ~~estate have commenced within six months from the time of giving the notice to the clerk of~~  
19 ~~courts, or if in the course of administration it is found that there are no heirs to the estate, then~~  
20 ~~the amount of the deposit shall, notwithstanding § 29A-3-914, escheat to the recreation fund.~~

21 ~~— Any indebtedness, not in excess of one hundred dollars, incurred by the facility prior to the~~  
22 ~~patient's death for the benefit of the patient may be paid by the facility from the deceased~~  
23 ~~resident's funds on deposit with the administrator. This liability shall take precedence over the~~  
24 ~~county lien.~~

25 Section 55. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 The facility located and established upon lands donated and conveyed to this state at  
3 Redfield, Spink County, shall be known as the South Dakota Developmental Center. The  
4 supports and services provided by the South Dakota Developmental Center shall be under the  
5 control and supervision of the Department of Human Services.

6 Section 56. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 The South Dakota Developmental Center shall provide supports and services for persons  
9 with developmental disabilities and other persons who may benefit from those supports and  
10 services offered by the South Dakota Developmental Center. The South Dakota Developmental  
11 Center may provide onsite and offsite additional supports and services in order to increase the  
12 self-direction of each person with a developmental disability's behavior, and to enhance each  
13 person with a developmental disability's ability to live in the least-restrictive environment.

14 Section 57. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 Every person with a developmental disability voluntarily or involuntarily admitted to the  
17 facility shall be free from communicable diseases as deemed necessary by a licensed physician in  
18 charge of tests and immunizations at the facility, by such means of tests and immunizations as  
19 are approved by the Department of Health or shall present:

20 (1) Certification from a licensed physician stating the physical condition of the person  
21 with a developmental disability would be such that a test and immunization would  
22 endanger the person's life or health; or

23 (2) A written statement signed by a parent or guardian of the person with a  
24 developmental disability that the person is adherent to a belief whose teachings are  
25 opposed to such test and immunization; or

1 (3) A written statement signed by a parent or guardian of the person with a  
2 developmental disability requesting that the local health department or the facility give  
3 the test and immunization because the parent or guardian lacks the means to pay for  
4 such tests and immunization; or

5 (4) A written statement from a licensed physician requesting that the person with a  
6 developmental disability not be immunized.

7 Section 58. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The facility shall provide the test and the immunizations required to such persons with  
10 developmental disabilities as are not provided by a parent or guardian and who have not been  
11 exempted pursuant to section 57 of this Act.

12 Section 59. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 The secretary of the Department of Human Services shall appoint a director to act as the  
15 chief executive officer of the South Dakota Developmental Center. The director shall supervise  
16 the supports, services, and education of the persons served at the facility, under the direction of  
17 the secretary of the Department of Human Services.

18 Section 60. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 No person may be admitted to the South Dakota Developmental Center other than as  
21 authorized by law. Any person who detains a person with a developmental disability in any other  
22 manner or in any other place than as authorized by law is guilty of a Class 1 misdemeanor.

23 Section 61. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 Any person with a developmental disability may be admitted to the South Dakota

1 Developmental Center if the county review board orders commitment pursuant to the process  
2 provided in this title.

3 Section 62. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 Any person who is eighteen years of age or older and who has a developmental disability may  
6 be admitted to the South Dakota Developmental Center on a voluntary admission basis in  
7 accordance with procedures established by the Department of Human Services if an application  
8 for admission has been executed by the person with a developmental disability, if the person is  
9 competent to do so, or by the person's guardian.

10 Section 63. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 Any person who is under the age of eighteen years and who has a developmental disability  
13 may be admitted to the South Dakota Developmental Center on a voluntary admission basis in  
14 accordance with procedures established by the Department of Human Services if an application  
15 for admission has been executed by the person's parent, guardian, or, in the absence of a parent  
16 or guardian, a person in loco parentis.

17 Section 64. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 If it is determined that any other person would benefit from supports and services offered at  
20 the South Dakota Developmental Center that person may be admitted on a voluntary admission  
21 basis in accordance with procedures established by the Department of Human Services.

22 Section 65. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
23 as follows:

24 Each person admitted to the South Dakota Developmental Center shall receive and complete  
25 a comprehensive evaluation within thirty days of admission to determine the appropriateness of

1 continued supports and services at the facility. The appropriateness of continued supports and  
2 services shall be reviewed at least annually.

3 Section 66. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 Upon accepting a person for admission to the South Dakota Developmental Center, the  
6 county auditor of the person's county of residence shall be notified by the facility's director.

7 Section 67. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 Notwithstanding chapter 25-7, when any person is admitted to a facility only the admittee  
10 is responsible for the cost of supports and services to the extent and in the manner provided by  
11 this chapter. If the cost of supports and services is a proper charge of the federal government,  
12 the costs shall be assessed against the appropriate agency of the federal government.

13 Section 68. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The Department of Human Services shall collect and process fees due to the state for the  
16 cost of supports and services for persons with developmental disabilities.

17 Section 69. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The secretary of the Department of Human Services shall periodically determine the  
20 individual cost of supports and services provided to persons in the facility.

21 Section 70. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Any person in the facility who is determined by the secretary of the Department of Human  
24 Services to be financially able to pay shall be charged the per diem rate.

25 Section 71. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 Any person in the facility may apply to the secretary of the Department of Human Services  
3 to pay less than the per diem rate. On receipt of such application, the secretary shall determine  
4 the ability of the person in the facility to pay all or a part of the applicable charge.

5 Section 72. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 Upon receipt of all information desired by the secretary of the Department of Human  
8 Services, the secretary shall determine, based upon the financial ability of the person in the  
9 facility, whether the person shall be charged with the full amount or a lesser amount. If a person  
10 in the facility or county where the person in the facility resides, disagrees with the determination  
11 of the secretary of the Department of Human Services, a grievance may be filed with the  
12 secretary within thirty days from the date of such determination. However, such a grievance may  
13 not be filed more than once each every six months. The decision of the secretary is final.

14 Section 73. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
15 as follows:

16 If any person in the facility refuses or fails to make such payments, the charges may be  
17 collected by a civil action brought in the name of the State of South Dakota. The state may  
18 commence an action against such person for payments due, and any judgment obtained shall be  
19 a lien upon the real property of such person, and shall be collected as other judgments. Any claim  
20 arising under section 67 of this Act has the same force and effect against the real and personal  
21 property of a deceased person as other debts of a decedent and shall be ascertained and  
22 recovered in the same manner.

23 Section 74. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 The statute of limitations upon any claim of the state for the care of a person in the facility

1 is three years and does not commence to run until the death of the person, but an action may be  
2 commenced at any time during the life of the person.

3 Section 75. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 Each county shall be assessed sixty dollars per month for each person receiving supports and  
6 services at the South Dakota Developmental Center unless the responsibility therefore has been  
7 placed upon the state at large. In the event of a dispute as to that person's residence, no payments  
8 made by any county constitute an admission that the person in the facility is a resident of such  
9 county. The procedures for determining the county of residence shall be that described in  
10 sections 77 and 78 of this Act. These moneys shall be used to match federal funds which may be  
11 made available under the provisions of Title XIX of the Social Security Act as amended, or its  
12 successors, at the South Dakota Developmental Center.

13 Section 76. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 If a person with a developmental disability has been placed under the control of a child  
16 welfare agency as defined by § 26-6-1 for adoption, and prior to adoption is found to have a  
17 developmental disability, then the county board of mental retardation may direct that the  
18 expenses for the care, education, and maintenance of such person be borne by the state at large  
19 in which event no finding as to the county being legally obligated to support such person shall  
20 be made. The board shall forthwith notify the board of social services who may petition for  
21 letters of guardianship. For minors in the custody of the state, the county is not legally obligated  
22 to pay for such person. Expenses for such person shall be borne by the state at large.

23 Section 77. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 If the administrator of a facility has cared for or maintained a person with a developmental

1 disability from a county and the state's attorney or the county commissioners of the county claim  
2 that the person is not a proper charge against the county, the state's attorney or the county  
3 commissioners shall notify the attorney general that the person in the facility is a proper charge  
4 against another county, or against the state at large if the person in the facility is not a resident  
5 of the state. The attorney general shall notify the county auditor of the county to file any proof  
6 within thirty days from the date of such notification. Upon receipt of such, the attorney general  
7 shall investigate the location of the residence of the person in the facility to determine if a county  
8 and which county should be charged. The attorney general shall notify the county auditor and  
9 the director of the South Dakota Developmental Center of the determination. Thereafter, the  
10 administrator shall charge for supports and services according to the determination of the  
11 attorney general.

12 Section 78. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
13 as follows:

14 If any county is dissatisfied with the determination of the attorney general, the county may  
15 appeal to the circuit court.

16 Section 79. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 Expenses paid by one county, on behalf of any person at the South Dakota Developmental  
19 Center whose residence is in another county, shall be refunded with lawful interest by the county  
20 of residence.

21 Section 80. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 All charges to a county under section 35 of this Act shall be certified each month by the  
24 secretary of the Department of Human Services to the county auditor. The billing shall include  
25 an itemized listing of charges. The billing shall be sent to county auditors no later than the fifth

1 day of the month. Upon receiving the billing, the county shall pay the amount due to the state  
2 remittance center within the time period established by chapter 4-3.

3 Section 81. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 All payments made in accordance with this chapter for the supports and services of persons  
6 at the South Dakota Developmental Center shall be deposited in the general fund.

7 Section 82. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 Any person in a state facility may be transferred to any other state or private facility if the  
10 person would benefit from the treatment offered at the facility. A transfer may only be made with  
11 the mutual consent of both facilities or agencies. No transfer may occur until all reasonable  
12 efforts have been made to consult with the person and the person's nearest relative or guardian.  
13 However, the transfer may be effected earlier if necessitated by an emergency. If an emergency  
14 situation arises, the required notice shall be given as soon as possible thereafter.

15 Section 83. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 The Department of Human Services, upon recommendation of the person's interdisciplinary  
18 team, shall consult with the person with a developmental disability and that person's immediate  
19 family or guardian regarding any proposed transfer from a facility of this state to a facility of  
20 another state pursuant chapter 27A-6.

21 Section 84. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Every person voluntarily entering a facility for persons with developmental disabilities shall  
24 be given oral and written notice of release procedures upon admission. All persons voluntarily  
25 entering the facility, regardless of age, have the right to discharge within twenty-four hours after

1 request.

2 Section 85. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 A facility may temporarily detain a voluntarily admitted person with a developmental  
5 disability for twenty-four hours after the request for discharge to initiate emergency commitment  
6 procedures, pursuant to section 163 of this Act, if the person's interdisciplinary team determines  
7 that the person presents an immediate danger to self or others as defined in section 162 of this  
8 Act.

9 Section 86. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 The director, based upon the recommendation of the person's interdisciplinary team, may at  
12 any time discharge a voluntarily admitted person. If a person with a developmental disability was  
13 voluntarily admitted by a parent or guardian, the director shall notify the parent or guardian of  
14 the discharge ten days prior to the person's release and shall notify the parent or guardian of  
15 other supports and services available in an alternative setting.

16 Section 87. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 Any person with a developmental disability admitted to the facility pursuant to this title who  
19 leaves the facility without authorization or fails to return to the facility while on an authorized  
20 leave or other authorized absence from the facility, may be returned to the facility.

21 Section 88. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 The South Dakota Developmental Center shall notify the Spink County Sheriff of any  
24 unauthorized absence from the facility. Any law enforcement officer knowing the whereabouts  
25 of any person absent from the facility shall detain the absent person and immediately notify both

1 the South Dakota Developmental Center and the Spink County Sheriff. The South Dakota  
2 Developmental Center shall arrange for the return of the person with a developmental disability  
3 to the facility within forty-eight hours thereafter.

4 Section 89. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 If the director of a facility determines that a person eighteen years of age or older with a  
7 developmental disability receiving services and supports from the facility requires a guardian or  
8 conservator and there is no one qualified and willing to petition for letters of guardianship or  
9 conservatorship, the director shall inform the secretary of the Department of Human Services.

10 Section 90. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 Six months prior to the eighteenth birthday of each person with a developmental disability  
13 in the facility, the person shall be evaluated by the facility to determine whether the person is  
14 competent to execute an application for voluntary admission.

15 Section 91. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 If the facility determines after evaluation pursuant to section 90 of this Act, that the person  
18 with a developmental disability is not competent to execute an application for voluntary  
19 admission or that the person otherwise requires the protective services of a guardian, that  
20 person's parent, or if none, another interested person or entity shall be notified and requested to  
21 file a petition for the appointment of a guardian. If no petition is filed, the director shall inform  
22 the secretary of the Department of Human Services.

23 Section 92. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 The director may receive and accept from any person, organization, or estate gifts of money

1 or personal property on behalf of the South Dakota Developmental Center or any person with  
2 developmental disabilities residing in the center, and use such gifts for the purposes specified by  
3 the donor if such use is consistent with law. In the absence of a specified purpose, the director  
4 shall use such money or personal property for the benefit of the South Dakota Developmental  
5 Center or for the general benefit of the persons with developmental disabilities residing in the  
6 center. The director shall keep an accurate record of the name and address of the donor, the gift,  
7 the date received, and the manner expended. Any increase resulting from such gift may be used  
8 for the same purpose as the original gift.

9 Section 93. That chapter 27B-3 be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 If any person with a developmental disability at the South Dakota Developmental Center dies  
12 leaving less than three hundred dollars in money in deposit with the director, the director may  
13 transfer the sum to the recreational fund of that facility. If the amount in deposit exceeds three  
14 hundred dollars, the director shall hold the funds for the county responsible for the care of the  
15 person for the purpose of satisfying any lien the county has on the estate of the deceased person.

16 The director shall give timely notice of the amount of this deposit to the county auditor and  
17 to the clerk of courts of the county. If the county does not commence proceedings on its lien,  
18 or if no proceedings for probate or administration of the estate are commenced within six months  
19 from the date of such notice to the clerk of courts, or if, in the course of administration, it is  
20 found that the decedent has no heirs pursuant to § 29A-2-103, then the amount of the deposit  
21 shall return to the recreation fund of the South Dakota Developmental Center notwithstanding  
22 § 29A-3-914. Any indebtedness, not in excess of one hundred dollars incurred by the facility in  
23 care of the deceased shall be paid from the deceased's funds in deposit with the director, and the  
24 debt takes precedence over the county lien.

25 Section 94. That § 27B-4-1 be repealed.

1 ~~— 27B-4-1. The department of human services may establish community services specifically~~  
2 ~~designed to meet the needs of the developmentally disabled.~~

3 Section 95. That § 27B-4-2 be repealed.

4 ~~— 27B-4-2. The department of human services may establish and use state, regional, or local~~  
5 ~~boards or councils to assist in the planning and implementation of this chapter.~~

6 Section 96. That § 27B-4-3 be repealed.

7 ~~— 27B-4-3. Each county shall annually budget and appropriate funds for the establishment,~~  
8 ~~support or operation of community developmental disability services. The amount appropriated~~  
9 ~~may not be less than ten cents per capita nor more than fifty cents per capita of the population~~  
10 ~~of such county as shown by the most recently published federal-state cooperative program for~~  
11 ~~population estimates printed by the United States department of commerce. The appropriation~~  
12 ~~shall be made pursuant to § 27A-5-9.~~

13 Section 97. That § 27B-4-4 be repealed.

14 ~~— 27B-4-4. County funds generated by this chapter shall be utilized for approved projects~~  
15 ~~within the regions in which the counties are located. Regions, or counties may, in their discretion,~~  
16 ~~utilize all or a portion of the funds available to them to purchase services from without their~~  
17 ~~region. Designated state funds shall be utilized to match the county and municipality funds at a~~  
18 ~~rate to be determined by the secretary of human services and to fund community services of a~~  
19 ~~statewide nature.~~

20 Section 98. That § 27B-4-5 be repealed.

21 ~~— 27B-4-5. Funds generated by this chapter shall be used for the purposes of providing~~  
22 ~~individual services, group services, or arranging for purchase of services in facilities approved~~  
23 ~~by the department of human services.~~

24 Section 99. That § 27B-4-6 be repealed.

25 ~~— 27B-4-6. Facilities and services receiving financial assistance from funds under this chapter~~

1 shall be approved by the department of human services and meet all applicable standards adopted  
2 by the department.

3 Section 100. That § 27B-4-8 be repealed.

4 ~~27B-4-8. All rules, regulations, and standards relating to the implementation of this chapter~~  
5 ~~will be established using the procedures set forth in chapter 1-26.~~

6 Section 101. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 Each county may annually budget and appropriate funds for the establishment, support, or  
9 operation of community developmental disability services pursuant to § 27A-5-9.

10 Section 102. That chapter 27B-4 be amended by adding thereto a NEW SECTION to read  
11 as follows:

12 Funds budgeted and appropriated under this chapter shall be used by community service  
13 providers approved by the Department of Human Services.

14 Section 103. That § 27B-5-1 be repealed.

15 ~~27B-5-1. An individual may be temporarily admitted to a facility for appropriate purposes,~~  
16 ~~including respite care, if an application for temporary admission is executed by a person legally~~  
17 ~~empowered to make the application and if it is determined by the administrator of the facility that~~  
18 ~~the individual is suitable for admission. The services to be provided to the individual shall be~~  
19 ~~determined by mutual agreement between the facility and the person making the application,~~  
20 ~~except that no individual may be temporarily admitted for more than thirty days.~~

21 Section 104. That § 27B-5-2 be repealed.

22 ~~27B-5-2. An individual with a developmental disability other than mental retardation is~~  
23 ~~eligible for temporary and voluntary admission pursuant to §§ 27B-5-1 to 27B-5-6, inclusive,~~  
24 ~~but is not eligible for board-ordered admission.~~

25 Section 105. That § 27B-5-3 be repealed.

1 ~~— 27B-5-3. An individual eighteen years of age or older may be admitted to a facility on a~~  
2 ~~voluntary admission basis pursuant to § 27B-5-1 if an application for his admission is executed~~  
3 ~~by the individual himself if he is competent to do so, or by his guardian if he is not competent to~~  
4 ~~do so, and if it is determined that he is suitable for admission.~~

5 Section 106. That § 27B-5-4 be repealed.

6 ~~— 27B-5-4. An individual under eighteen years of age may be admitted to a facility on a~~  
7 ~~voluntary parental or guardian admission basis pursuant to § 27B-5-1 if an application for his~~  
8 ~~admission is executed by his parent, guardian, or, in the absence of a parent or guardian, a person~~  
9 ~~in loco parentis, and if it is determined that he is suitable for admission.~~

10 Section 107. That § 27B-5-5 be repealed.

11 ~~— 27B-5-5. The application for admission pursuant to § 27B-5-1 shall contain the facts which~~  
12 ~~are the basis for the assertion that the individual meets the criteria of a developmentally disabled~~  
13 ~~person, names and addresses of any witness to the facts, and if known the name and address of~~  
14 ~~the nearest relative or guardian of the individual.~~

15 Section 108. That § 27B-5-6 be repealed.

16 ~~— 27B-5-6. An application for voluntary parental or guardian admission shall contain in large~~  
17 ~~type and simple language the substance of §§ 27B-5-7 to 27B-5-16, inclusive. At the time of~~  
18 ~~admission, the rights set forth in the application shall be explained to the resident if he is at least~~  
19 ~~thirteen years of age and to the person who executed the application for his admission. In~~  
20 ~~addition, a copy of the application shall be given to the aforementioned persons and to one other~~  
21 ~~person if designated by a resident who is at least thirteen years of age. If the resident was not~~  
22 ~~thirteen years of age at the time of his admission, the rights mentioned above shall be explained~~  
23 ~~to him upon his thirteenth birthday.~~

24 Section 109. That § 27B-5-7 be repealed.

25 ~~— 27B-5-7. Prior to the voluntary admission of an individual, the individual may be received~~

1 by a facility for up to sixty days in order for a preadmission examination to be conducted. No  
2 individual may be voluntarily admitted unless he has been given a preadmission examination by  
3 the facility for the purpose of determining his suitability for admission.

4 Section 110. That § 27B-5-8 be repealed.

5 ~~— 27B-5-8. The preadmission examination shall include mental, physical, social, and~~  
6 ~~educational evaluations, and shall be conducted under the supervision of a qualified~~  
7 ~~developmental disabilities professional. The results of the examination shall be contained in a~~  
8 ~~report to be made part of the individual's records, and the report shall also contain a statement~~  
9 ~~indicating the least restrictive alternatives for treatment of the examined individual.~~

10 Section 111. That § 27B-5-9 be repealed.

11 ~~— 27B-5-9. Objections to the admission of any voluntarily admitted resident, may be filed with~~  
12 ~~the board of mental retardation for the county in which the individual is a resident or the county~~  
13 ~~in which the facility is located by any person found suitable by the county board or by the~~  
14 ~~resident himself if he is at least thirteen years of age. An objection may be made not more than~~  
15 ~~thirty days after admission of the resident, but may be subsequently at any twelve-month interval~~  
16 ~~following the date of the original objection or, if an original objection was not made, at any~~  
17 ~~twelve-month interval following the date of admission.~~

18 Section 112. That § 27B-5-10 be repealed.

19 ~~— 27B-5-10. Any objection to the admission of a voluntarily admitted resident shall be made~~  
20 ~~in writing, except that if made by the resident, it may be communicated to the chairman of the~~  
21 ~~board of mental retardation by any means, including but not limited to oral communication or~~  
22 ~~informal letter. If the resident informs the facility that he desires to object to his admission, the~~  
23 ~~facility shall assist him in submitting his objection to the board.~~

24 Section 113. That § 27B-5-11 be repealed.

25 ~~— 27B-5-11. Upon receiving notice of an objection to the admission of a voluntarily admitted~~

1 ~~resident, the board of mental retardation shall schedule a hearing to be held within seven days,~~  
2 ~~excluding Sundays and holidays. The board shall notify the person who objected, the resident,~~  
3 ~~the person who executed the application, and the administrator of the facility of the time and~~  
4 ~~place of the hearing.~~

5 ~~— The hearing shall be governed by those provisions of §§ 27B-7-2 to 27B-7-16, inclusive, that~~  
6 ~~the board deems necessary to ensure that all relevant information is brought to its attention, and~~  
7 ~~by the provisions of §§ 27B-5-12 to 27B-5-14, inclusive. Every resident shall be entitled to be~~  
8 ~~represented by counsel.~~

9 Section 114. That § 27B-5-12 be repealed.

10 ~~— 27B-5-12. The board of mental retardation shall sustain an objection to the admission of a~~  
11 ~~voluntarily admitted resident and order the discharge of the resident if the resident is not in need~~  
12 ~~of the care and treatment which is available at the facility or if an alternative to care and~~  
13 ~~treatment in a facility is available and adequate to meet the resident's needs.~~

14 Section 115. That § 27B-5-13 be repealed.

15 ~~— 27B-5-13. Unwillingness or inability of the parent, guardian, or person in loco parentis to~~  
16 ~~provide for a voluntarily admitted resident's management, care, or residence shall not be grounds~~  
17 ~~for refusing to sustain the objection and order discharge, but in that event the board of mental~~  
18 ~~retardation may cause a proceeding to be convened in an appropriate court to ensure that~~  
19 ~~suitable management, care, or residence for the resident is provided after his discharge.~~

20 Section 116. That § 27B-5-14 be repealed.

21 ~~— 27B-5-14. Unless the board of mental retardation sustains an objection and orders the~~  
22 ~~discharge of a voluntarily admitted resident, the facility may continue to provide residential and~~  
23 ~~other services to the resident.~~

24 Section 117. That § 27B-5-15 be repealed.

25 ~~— 27B-5-15. At least once annually each voluntarily admitted resident shall be reexamined to~~

1 ~~determine whether he is still suitable for residential habilitation.~~

2 Section 118. That § 27B-5-16 be repealed.

3 ~~—27B-5-16. A facility may detain a voluntarily admitted resident for a period not exceeding~~  
4 ~~seven days from the time that the person who executed the application for the resident's~~  
5 ~~admission gives written notice to the facility of his intention that the resident leave the facility.~~

6 Section 119. That § 27B-5-17 be repealed.

7 ~~—27B-5-17. Every person voluntarily entering a mental retardation facility shall be given a~~  
8 ~~separate written notice of release procedures and be orally informed of release procedures.~~  
9 ~~Detailed release procedures for voluntary admittance shall be permanently and prominently~~  
10 ~~displayed in every ward. All persons voluntarily entering the facility regardless of age shall have~~  
11 ~~the right to discharge upon request, as provided in § 27B-5-16.~~

12 Section 120. That § 27B-5-18 be repealed.

13 ~~—27B-5-18. The administrator of a facility may at any time, discharge a voluntarily admitted~~  
14 ~~resident whom the administrator deems suitable for discharge. If a resident was admitted on a~~  
15 ~~voluntary parental or guardian admission basis, the administrator shall notify the parent or~~  
16 ~~guardian of the discharge ten days prior to the resident's release. If board proceedings are~~  
17 ~~pending, the administrator shall notify the county board of mental retardation of the discharge.~~  
18 ~~In all discharges, the administrator shall notify the county auditor.~~

19 Section 121. That § 27B-6-1 be repealed.

20 ~~—27B-6-1. The county board of mental retardation shall make investigations of any complaints~~  
21 ~~made by a responsible individual who alleges that a person is mentally retarded and not receiving~~  
22 ~~proper care or education. If the county board determines that a person is mentally retarded, not~~  
23 ~~receiving proper care and education, and there is no responsible relative to take custody of the~~  
24 ~~person or petition for guardianship, the board shall notify the secretary of human services.~~

25 Section 122. That § 27B-6-2 be repealed.

1 ~~—27B-6-2. For the purposes of such investigation and examination as required in this chapter,~~  
2 ~~each county board of mental retardation shall have access to the school records of any case under~~  
3 ~~investigation, and all school superintendents, are hereby required to furnish such records upon~~  
4 ~~demand. It shall be the duty of the department of social services, to assist the county board of~~  
5 ~~mental retardation in making its investigations as provided in § 27B-6-1.~~

6 Section 123. That § 27B-6-3 be repealed.

7 ~~—27B-6-3. If any resident of a facility eighteen years of age or older, does not have a guardian~~  
8 ~~or conservator and there is no one qualified and willing to petition for letters of guardianship or~~  
9 ~~conservatorship, and the administrator of the facility determines that the resident requires the~~  
10 ~~protective services of a guardian or conservator, the administrator shall inform the secretary of~~  
11 ~~human services.~~

12 Section 124. That § 27B-6-4 be repealed.

13 ~~—27B-6-4. Six months prior to the eighteenth birthday of each resident in a facility, the~~  
14 ~~resident shall be evaluated by the facility for the purpose of determining whether he is competent~~  
15 ~~to execute an application for voluntary admission.~~

16 Section 125. That § 27B-6-5 be repealed.

17 ~~—27B-6-5. If it is determined by the facility after evaluation pursuant to § 27B-6-4 that the~~  
18 ~~resident is not competent to execute an application for voluntary admission or that the resident~~  
19 ~~otherwise requires the protective services of a guardian, the resident's parent, or if none, another~~  
20 ~~interested person or entity, shall be so notified and requested to file a petition for the~~  
21 ~~appointment of a guardian. If no petition is filed, the administrator shall inform the secretary of~~  
22 ~~human services.~~

23 Section 126. That § 27B-7-1 be repealed.

24 ~~—27B-7-1. A board of mental retardation may order the admission to a facility of an individual~~  
25 ~~who is mentally retarded and is not able, unassisted, to properly manage or care for his person~~

1 so as to make it necessary or advisable for him to be under care.

2 Section 127. That § 27B-7-2 be repealed.

3 ~~—27B-7-2. Any person may file with a board of mental retardation a verified petition which~~  
4 ~~asserts that an individual meets the criteria for board-ordered admission as specified in~~  
5 ~~§ 27B-7-1.~~

6 Section 128. That § 27B-7-3 be repealed.

7 ~~—27B-7-3. If a petition filed pursuant to § 27B-7-2 appears on its face to be sufficient, the~~  
8 ~~board of mental retardation shall order that the individual be examined and reports be prepared.~~  
9 ~~The board shall appoint a qualified person who may be an employee of the state or the county~~  
10 ~~to make the examination and to prepare a report containing the information required by~~  
11 ~~§ 27B-7-6. The board shall give written notice of the petition to the department of human~~  
12 ~~services which shall prepare a report containing a review of the individual's service needs and a~~  
13 ~~recommendation as to appropriate service locations. The reports shall be filed within sixty days~~  
14 ~~from the receipt of the written notice from the board ordering the examination and reports.~~

15 Section 129. That § 27B-7-4 be repealed.

16 ~~—27B-7-4. If in the judgment of the board of mental retardation it becomes apparent that the~~  
17 ~~individual will not comply with an order of examination, the board may seek the assistance of a~~  
18 ~~peace officer to take the individual into protective custody and transport him to a facility or other~~  
19 ~~suitable place for the ordered examination. It will be procedural in these circumstances that no~~  
20 ~~record of arrest be charged against the individual.~~

21 Section 130. That § 27B-7-5 be repealed.

22 ~~—27B-7-5. After examination pursuant to § 27B-7-3 the individual shall be allowed to return~~  
23 ~~home unless in the judgment of the board of mental retardation he requires immediate admission~~  
24 ~~to a facility for the protection of himself or others pending the hearing, in which case the board~~  
25 ~~shall enter an order to that effect.~~

1 Section 131. That § 27B-7-6 be repealed.

2 ~~—27B-7-6. The report required by § 27B-7-3 shall contain:~~

3 ~~—(1)—Evaluations of the individual's mental, physical, social, and educational condition;~~

4 ~~—(2)—A conclusion as to whether the individual meets the criteria for board-ordered~~  
5 ~~admission specified in § 27B-7-1;~~

6 ~~—(3)—A list of available forms of care and treatment which may serve as an alternative to~~  
7 ~~admission to a facility;~~

8 ~~—(4)—A recommendation as to the most appropriate living arrangement for the individual;~~  
9 ~~and~~

10 ~~—(5)—The signatures of a physician or psychologist who performed an examination serving~~  
11 ~~in part as the basis of the report.~~

12 Section 132. That § 27B-7-7 be repealed.

13 ~~—27B-7-7. The petition shall be dismissed by the board of mental retardation unless a physician~~  
14 ~~or a psychologist concludes, and that conclusion is stated in the report, that the individual meets~~  
15 ~~the criteria for board-ordered admission.~~

16 Section 133. That § 27B-7-8 be repealed.

17 ~~—27B-7-8. Upon receipt of a petition and reports as provided for in §§ 27B-7-2 and 27B-7-3,~~  
18 ~~the board of mental retardation shall:~~

19 ~~—(1)—Fix a date for a hearing within ten days, excluding Saturdays, Sundays and holidays~~  
20 ~~of the board receipt of the reports;~~

21 ~~—(2)—Fix a place for a hearing, either in a facility or other convenient place, within or~~  
22 ~~without the county;~~

23 ~~—(3)—Give five days written notice of the time and place of any hearing to the petitioner, to~~  
24 ~~the individual asserted to meet the criteria for board-ordered admission, to the~~  
25 ~~individual's attorney, to the prosecuting attorney or other attorney as specified in §~~

1           ~~27B-7-10, to the administrator of any facility to which the individual is admitted, and~~  
2           ~~to the secretary of human services; and~~

3     ~~(4) After the hearing, give copies of all orders to the persons identified in subdivision (3).~~

4     Section 134. That § 27B-7-9 be repealed.

5     ~~27B-7-9. Hearings convened to determine whether an individual meets the criteria for~~  
6     ~~board-ordered admission shall be governed by §§ 27B-7-1 to 27B-7-16, inclusive, except that~~  
7     ~~they shall not perforce be applicable to the hearing provided for in §§ 27B-5-9 to 27B-5-14,~~  
8     ~~inclusive.~~

9     Section 135. That § 27B-7-10 be repealed.

10    ~~27B-7-10. The state's attorney of the county in which a board of mental retardation is~~  
11    ~~meeting shall participate, either in person or by assistant, in hearings convened by the board of~~  
12    ~~his county under this chapter, except that a state's attorney need not participate in or be present~~  
13    ~~at a hearing whenever a petitioner or some other appropriate person has retained private counsel~~  
14    ~~who will be present before the board and will present to the board the evidence for a finding that~~  
15    ~~the individual meets the criteria for board-ordered admission.~~

16    Section 136. That § 27B-7-11 be repealed.

17    ~~27B-7-11. The individual asserted to meet the criteria for board-ordered admission shall be~~  
18    ~~represented by counsel, such representation not being subject to waiver, and is entitled:~~

19    ~~(1) To be present at the hearing;~~

20    ~~(2) To obtain a continuance in order to adequately prepare a case;~~

21    ~~(3) To present documents and witnesses;~~

22    ~~(4) To cross-examine witnesses;~~

23    ~~(5) To require testimony in person from one physician or one psychologist who has~~  
24    ~~personally examined him as provided in §§ 27B-7-3 and 27B-7-6; and~~

25    ~~(6) To waive the hearing, in which case the board of mental retardation may make a~~

1           ~~finding of fact and judgment based upon the written and other evidence before it.~~

2           Section 137. That § 27B-7-12 be repealed.

3           ~~—27B-7-12. Counsel appointed for an individual pursuant to this title shall be compensated in~~  
4           ~~a reasonable and just manner for such services and for necessary expenses and costs incident to~~  
5           ~~the proceedings in an amount to be fixed by the circuit judge. The costs described shall be~~  
6           ~~allowed and paid out of the county mental retardation fund by the county treasurer or, if there~~  
7           ~~is not a sufficient amount in said fund, they may be paid out of the general fund.~~

8           Section 138. That § 27B-7-13 be repealed.

9           ~~—27B-7-13. If the board of mental retardation finds that an individual does not meet the~~  
10           ~~criteria for board-ordered admission, the board shall enter a finding to that effect, shall dismiss~~  
11           ~~the petition, and shall direct that the individual be discharged if he has been admitted to a facility~~  
12           ~~prior to the hearing.~~

13           Section 139. That § 27B-7-14 be repealed.

14           ~~—27B-7-14. Prior to ordering a course of care and treatment pursuant to § 27B-7-15, the~~  
15           ~~board of mental retardation shall consider ordering a course of care and treatment which is an~~  
16           ~~alternative to admission to a facility. To that end the board shall review the report submitted to~~  
17           ~~it pursuant to § 27B-7-3.~~

18           Section 140. That § 27B-7-15 be repealed.

19           ~~—27B-7-15. If the individual is found to meet the criteria for admission, the board of mental~~  
20           ~~retardation may order the individual to:~~

21           ~~—(1)— Be admitted to a facility designated by the department of human services;~~

22           ~~—(2)— Be admitted to any facility or private treatment center;~~

23           ~~—(3)— Be placed under the control and care of the department of human services for~~  
24           ~~placement in appropriate programs; or~~

25           ~~—(4)— Receive care and treatment other than admission to a facility for a period of one year.~~

1 Section 141. That § 27B-7-16 be repealed.

2 ~~—27B-7-16. If the board of mental retardation finds that a program of care and treatment other~~  
3 ~~than admission to a facility is adequate to meet the individual's care and treatment needs, the~~  
4 ~~board shall order the individual to receive whatever care and treatment is appropriate pursuant~~  
5 ~~to § 27B-7-15.~~

6 Section 142. That § 27B-7-17 be repealed.

7 ~~—27B-7-17. A person providing alternative care and treatment to an individual pursuant to~~  
8 ~~§ 27B-7-15 may terminate the alternative care and treatment to an individual whom the provider~~  
9 ~~thereof deems suitable for discharge and shall terminate the alternative care and treatment when~~  
10 ~~the individual no longer meets the criteria for board-ordered admission.~~

11 ~~—Upon termination of alternative care and treatment, the board shall be so notified by the~~  
12 ~~provider thereof.~~

13 Section 143. That § 27B-7-18 be repealed.

14 ~~—27B-7-18. If at any time during the one-year period, provided for in subdivision (4) of~~  
15 ~~§ 27B-7-15, it comes to the attention of the board of mental retardation either that an individual~~  
16 ~~ordered to undergo a program of alternative care and treatment is not complying with the order~~  
17 ~~or that the alternative care and treatment is not sufficient, the board may without a hearing and~~  
18 ~~based upon the record and other available information:~~

19 ~~—(1)—Consider other alternatives to admission to a facility, modify its original order, and~~  
20 ~~direct the individual to undergo another program of alternative care and treatment for~~  
21 ~~the remainder of the one-year period; or~~

22 ~~—(2)—Enter a new order pursuant to § 27B-7-15 directing the individual be admitted to a~~  
23 ~~facility. If the individual refuses to comply with this order, the board may direct a~~  
24 ~~peace officer to take the individual into protective custody and transport him to that~~  
25 ~~facility.~~

1 Section 144. That § 27B-7-19 be repealed.

2 ~~—27B-7-19. The Department of Social Services may not order the admittance of an individual~~  
3 ~~to the Redfield Developmental Center.~~

4 Section 145. That § 27B-7-20 be repealed.

5 ~~—27B-7-20. Prior to ordering the admission of an individual, the board of mental retardation~~  
6 ~~shall inquire into the adequacy of care and treatment to be provided to the individual by the~~  
7 ~~facility to which the individual is to be admitted. Admission may not be ordered unless the facility~~  
8 ~~can provide the individual with care and treatment which is adequate and appropriate to the~~  
9 ~~individual's condition. No mentally retarded person may be admitted to the Redfield~~  
10 ~~Developmental Center on civil commitment if suitable services and programs are available in the~~  
11 ~~individual's community.~~

12 Section 146. That § 27B-7-21 be repealed.

13 ~~—27B-7-21. Preference between a state facility and other community centers shall be given to~~  
14 ~~the facility which is located nearest to the individual's residence, except when the individual~~  
15 ~~requests otherwise or there are other compelling reasons for an order reversing the preference.~~

16 Section 147. That § 27B-7-22 be repealed.

17 ~~—27B-7-22. The administrator of a facility shall discharge a resident admitted by a board order~~  
18 ~~when the resident no longer meets the criteria for board-ordered admission. The administrator~~  
19 ~~shall notify the county board of mental retardation and the county auditor of the discharge.~~

20 Section 148. That § 27B-7-23 be repealed.

21 ~~—27B-7-23. If, upon the discharge of an individual admitted by board of mental retardation~~  
22 ~~order or termination of alternative care and treatment to an individual receiving care and~~  
23 ~~treatment pursuant to § 27B-7-15, it is determined that he would benefit from the receipt of~~  
24 ~~further care and treatment, the facility or provider of alternative care and treatment may offer~~  
25 ~~appropriate care and treatment to him on an outpatient basis, or may aid him to obtain care and~~

1 ~~treatment from another source.~~

2 Section 149. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 Each county shall form a county review board which shall hear involuntary commitment  
5 hearings and review continued commitments of persons with developmental disabilities in  
6 accordance with sections 162 and 164 of this Act. The county review board shall consist of two  
7 people appointed by the board of county commissioners for a three-year term and a magistrate  
8 judge or lawyer appointed by the presiding circuit judge of the circuit in which the county is  
9 situated. The two members appointed by the county commission shall be residents of the county.  
10 The member appointed by the presiding circuit judge need not be a resident of the county. The  
11 members of the county review board who are appointed by the board of county commissioners  
12 may be appointed to more than one term, but may not serve more than two consecutive terms.  
13 The law-trained magistrate or lawyer shall serve as the chair of the county review board. The  
14 state's attorney for the county may not serve on the county review board. Each appointing  
15 authority may also appoint alternates. Pursuant to chapter 1-24, two or more counties may  
16 jointly contract to establish a county review board to serve all contracting counties.

17 Section 150. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 Before entering upon the duties of office, each member of a county review board shall take  
20 and subscribe an oath or affirmation to support the Constitution of the United States and the  
21 Constitution of this state, and to discharge faithfully all official duties according to law, which  
22 oath shall be filed in the office of the county auditor.

23 Section 151. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 The county review board has jurisdiction over all applications or petitions for involuntary

1 commitment or for the safekeeping of persons subject to involuntary commitment within its  
2 county, except in cases otherwise specially provided for. The board may issue subpoenas and  
3 compel obedience thereto, and do any act of a court necessary and proper for the purpose of  
4 discharging the duties required of it.

5 Section 152. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 Any interested person may file with the chairperson of the county review board a verified  
8 petition which asserts that a person meets the criteria for board-ordered commitment as specified  
9 in section 162 of this Act. If any person is alleged to have a developmental disability and to be  
10 in such condition that immediate intervention is necessary for the protection from the physical  
11 harm of self or others, any person, eighteen years of age or older, may petition the chairperson  
12 of the county review board where such person with an alleged developmental disability is found,  
13 stating the factual basis for concluding that such person is developmentally disabled and in  
14 immediate need of intervention. The petition shall be upon a form and be verified by affidavit.  
15 The petition shall include the following:

- 16 (1) A statement by the petitioner that the petitioner believes, on the basis of personal  
17 knowledge, that such person is a danger to self or others;
- 18 (2) The specific nature of the danger;
- 19 (3) A summary of the information upon which the statement of danger is based;
- 20 (4) A statement of facts which caused the person to come to the petitioner's attention;
- 21 (5) The address and signature of the petitioner and a statement of the petitioner's interest  
22 in the case; and
- 23 (6) The name of the person to be evaluated, the address, age, marital status, and  
24 occupation of the person, and the name and address of the person's nearest relative.

25 Section 153. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 If a petition filed pursuant to section 152 of this Act appears on its face to be sufficient, the  
3 chairperson of the county review board shall order that a psychiatric or psychological evaluation  
4 be performed and a report of the findings and recommendations be completed. The board shall  
5 appoint a licensed psychologist or psychiatrist to make the examination and to prepare a report  
6 within five working days from the date the petition is filed, containing the information required  
7 in section 156 of this Act. If it appears, based upon the foregoing evaluation, the criteria for  
8 commitment is met, a copy of the report shall be provided to Department of Human Services.  
9 If the person desires an independent psychiatric or psychological evaluation, the person may  
10 obtain one at that person's own expense.

11 Section 154. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 The chairperson of the county review board shall give written notice of the petition to the  
14 Department of Human Services which shall prepare a report containing a review of the person's  
15 supports and service needs and a recommendation as to appropriate service locations. The  
16 reports shall be filed with the county review board within forty-five calendar days from receipt  
17 of the written notice from the board ordering the examination and report.

18 Section 155. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 If requested, information shall be disclosed:

- 21 (1) Pursuant to orders or subpoenas of a court of record or subpoenas of the Legislature  
22 or chairperson of the county review board;
- 23 (2) To a prosecuting or defense attorney or to a qualified mental retardation professional  
24 as necessary for participation in a proceeding governed by this title;
- 25 (3) To an attorney representing a person who is presently subject to the authority of this

1 title or who has been discharged when that person has given consent;

2 (4) If necessary in order to comply with another provision of law;

3 (5) To the Department of Human Services if the information is necessary to enable the  
4 Department of Human Services to discharge a responsibility placed upon it by law;

5 or

6 (6) To a states attorney or the attorney general for purpose of investigation of an alleged  
7 criminal act either committed by or upon a person with a developmental disability.

8 Section 156. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
9 as follows:

10 The report required by section 153 of this Act shall contain:

11 (1) Evaluations of the person's mental, physical, and emotional status, and review of  
12 social and educational history; and

13 (2) A statement as to whether the person meets the criteria for board-ordered  
14 commitment specified in section 162 of this Act.

15 Section 157. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 If the county review board finds that a person meets the criteria in section 162 of this Act,  
18 the board shall enter a finding, based on the criteria in § 28-13-3, of the county of residence of  
19 the person or a finding that the person is a nonresident of this state.

20 Section 158. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 Upon receipt of a petition and reports as provided for in sections 152, 153, and 156 of this  
23 Act, the chairperson of the county review board shall:

24 (1) Fix a date, time, and place for a hearing within five days, excluding Saturdays,  
25 Sundays, and holidays, of the board's receipt of the reports;

1 (2) Provide five days written notice, excluding Saturdays, Sundays, and holidays, of the  
2 time, date, and place of the hearing to the petitioner, to the person alleged to meet the  
3 criteria for board-ordered commitment, to the psychologist or psychiatrist completing  
4 the report, to the person's attorney, or other attorney as specified in section 160 of  
5 this Act, to the director of any facility in which the person is being served, and to the  
6 secretary of the Department of Human Services; and

7 (3) Following the hearing, provide copies of all orders to the persons identified in  
8 subdivision (2).

9 Section 159. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 Hearings convened to determine whether a person meets the criteria for board-ordered  
12 commitment shall be governed by sections 152 to 168, inclusive, of this Act.

13 Section 160. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 The state's attorney of the county in which a county review board is meeting shall participate,  
16 either in person or by assistant, in hearings convened by the board under this chapter.

17 Section 161. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 The petition shall be dismissed by the chairperson of the county review board unless the  
20 evaluating psychiatrist or psychologist concludes, in writing, that the person meets the criteria  
21 for board-ordered commitment. If the county review board finds that a person does not meet the  
22 criteria for board-ordered commitment, the board shall enter a finding to that effect, shall dismiss  
23 the petition, and shall direct that the person be immediately discharged if the person has been  
24 admitted to a community service provider prior to the hearing.

25 Section 162. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

1 as follows:

2 A county review board may order the involuntary commitment of a person with a  
3 developmental disability who poses a danger of physical injury to self or others making it  
4 necessary or advisable to receive appropriate supports and services. If the person is found to  
5 meet the criteria for involuntary commitment, the county review board may order the person to  
6 be placed under the control and care of the Department of Human Services for placement in  
7 appropriate programs. If the person refuses to comply with this order, the board may direct a  
8 peace officer to take the person into protective custody.

9 Section 163. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
10 as follows:

11 The county review board may issue a detention order and direct a peace officer to  
12 immediately take the person to a community service provider or facility recommended by the  
13 Department of Human Services to be detained for purposes of an examination if the county  
14 review board finds from the petition, from other statements under oath, or from reports of  
15 physicians, psychiatrists, psychologists, or other qualified mental retardation professionals that  
16 there is reasonable basis to believe that the person to be committed poses an immediate danger  
17 of physical injury to self or others.

18 If the county review board issues a detention order based on a petition that did not include  
19 a recommendation for detention by a psychiatrist or psychologist, the person shall be examined  
20 by a psychiatrist or psychologist within forty-eight hours of the issuance of the detention order,  
21 excluding Saturdays, Sundays, and legal holidays. The results shall be reported to the county  
22 review board. If the report is not received by the county review board within forty-eight hours,  
23 excluding Saturdays, Sundays, and legal holidays, the person shall be released from placement  
24 with the community service provider. The report shall include:

25 (1) Whether the person may be diagnosed as having a developmental disability;

- 1       (2)   Whether the person is capable of giving informed consent and whether the person has
- 2            agreed to voluntary admission;
- 3       (3)   Whether supports and services are available and appropriate in lieu of county review
- 4            board proceedings; and
- 5       (4)   Whether the person continues to pose an immediate danger of physical injury to self
- 6            or others.

7       Upon receipt of the report by the county review board, if it is determined that the person

8 continues to pose an immediate danger of physical injury to self or others, placement with a

9 community service provider shall continue while the commitment process is pending. If the

10 person does not continue to pose an immediate danger of physical injury to self or others, the

11 person shall be released from placement with the community service provider pending further

12 proceedings. No record of arrest may be charged against the person.

13       Section 164. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read

14 as follows:

15       The county review board shall review the commitment order and accompanying information

16 on at least an annual basis to make a determination of the continued need and supporting

17 justification for commitment. Prior to the annual review, the developmental disability community

18 service provider shall provide information to the county review board that issued the original

19 commitment order regarding the person's supports, services, and progress. Following ten days

20 notice to the person, the person's attorney, and the Department of Human Services, the county

21 review board shall hold a review hearing. The review hearing shall include participation by the

22 state's attorney, Department of Human Services, the community service provider, and the

23 person's attorney. The rights and procedures applicable during an initial commitment hearing are

24 applicable to review hearings. A petition pursuant to section 59 of this Act need not be filed. At

25 the conclusion of the review hearing, the county review board may issue an order of continued

1 commitment or immediately discharge the person from involuntary commitment if the conditions  
2 in section 162 of this Act justifying commitment no longer exist.

3 Section 165. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 The Department of Human Services shall notify the chairperson of the county review board  
6 of the death of any person with a developmental disability committed by the review board.

7 Section 166. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The person alleged to meet the criteria for board-ordered commitment shall be represented  
10 by counsel, such representation not being subject to waiver, and is entitled:

- 11 (1) To be present at the hearing;
- 12 (2) To obtain a continuance in order to adequately prepare a case;
- 13 (3) To present documents and witnesses;
- 14 (4) To cross-examine witnesses; and
- 15 (5) To require testimony in person from the psychiatrist or psychologist who performed  
16 the evaluation required in section 153 of this Act.

17 Section 167. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
18 as follows:

19 Counsel appointed for a person pursuant to this title shall be reasonably compensated for  
20 such services and for necessary expenses and costs incident to the proceedings in an amount to  
21 be fixed by the circuit judge. The costs described shall be allowed and paid out of county funds  
22 and may not be assessed against the person with a developmental disability.

23 Section 168. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 Costs of proceedings pursuant to this title, including costs for transportation and any

1 incidental costs of the person with a developmental disability, shall be reasonably compensated  
2 in an amount to be determined by the county auditor. The costs described shall be allowed and  
3 paid for out of county funds and may not be assessed against the person with a developmental  
4 disability.

5 Section 169. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
6 as follows:

7 No person is incompetent to manage his or her affairs, to contract, to hold professional or  
8 occupational or vehicle operator's licenses, to marry and obtain a divorce, to register and vote,  
9 or to make a will solely by reason of a diagnosis of a developmental disability, or by reason of  
10 a commitment by a county review board.

11 Section 170. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 A person may within thirty days appeal a final order of a county review board pursuant to  
14 any hearing or review conducted under this title. In the case of a minor, or a person for whom  
15 a guardian has been appointed, such right to appeal may be exercised on behalf of the person.  
16 The person shall be advised both verbally and in writing of this right at the conclusion of any  
17 proceedings. The appeal shall be conducted in accordance with the provisions of chapter 1-26.

18 Section 171. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 Upon exhaustion of all administrative remedies, a person has the right to file an appeal in the  
21 appropriate circuit court pursuant to chapter 1-26.

22 Section 172. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
23 as follows:

24 Any person involuntarily committed by a county review board and any person confined or  
25 in any manner detained or restrained is entitled to the benefit of a writ of habeas corpus. If the

1 court finds that the criteria in section 162 of this Act are met, the court may authorize continued  
2 involuntary commitment. Such authorization is not a bar to the issuing of the writ the second  
3 time if it is alleged that the criteria in section 162 of this Act are no longer met.

4 Section 173. That chapter 27B-7 be amended by adding thereto a NEW SECTION to read  
5 as follows:

6 The secretary of the Department of Human Services may, pursuant to chapter 1-26, adopt  
7 reasonable and necessary rules to carry out the duties of the department as assigned by law.

8 Section 174. That § 27B-8-1 be repealed.

9 ~~—27B-8-1. The individual privacy and dignity of each person affected by this title shall be~~  
10 ~~respected at all times and upon all occasions, including any occasion when the person is taken~~  
11 ~~into custody, detained or transported in accordance with the provisions of this title.~~

12 Section 175. That § 27B-8-2 be repealed.

13 ~~—27B-8-2. Any person in a facility, if otherwise qualified, shall have the right to:~~

14 ~~—(1) Refuse drugs, electric shock, insulin shock, psychosurgery, to participate in any~~  
15 ~~research projects, work for the institution, or be photographed or fingerprinted;~~

16 ~~—(2) Remain silent and fully clothed;~~

17 ~~—(3) Be allowed access to toilet facilities upon request, to have limited access to his own~~  
18 ~~money unless a conservator has been appointed and keep as much money in his~~  
19 ~~personal possession as he deems necessary, to purchase personal articles such as~~  
20 ~~variety store items, and at least two hours of physical exercise each day;~~

21 ~~—(4) Receive any visitors during regular visiting hours, send and receive uncensored and~~  
22 ~~unopened mail and be given adequate writing paper, pencils, envelopes and stamps,~~  
23 ~~and have access to a telephone between the hours of 9:00 a.m. and 8:00 p.m. Local~~  
24 ~~calls shall be allowed without charge and the person shall be allowed long distance~~  
25 ~~calls if he is able to pay the institution for them or can charge them to another number;~~

1 ~~— (5) — Be given a copy of the statutes under which he is being held upon request; and apply~~  
2 ~~for habeas corpus and be given detailed written instructions on how to apply therefor;~~

3 ~~— (6) — Wear his own clothes and keep his own toilet articles, and have adequate storage~~  
4 ~~space for his personal effects; and~~

5 ~~— (7) — Vote, and hold a driver's license.~~

6 ~~— Reasonable limitations may be placed on these rights if each limitation is essential in order~~  
7 ~~to prevent the resident from violating a law or to prevent substantial and serious physical or~~  
8 ~~mental harm to the resident or other residents, and if each limitation is documented in the~~  
9 ~~patient's record and approved by the administrator or his designee.~~

10 Section 176. That § 27B-8-3 be repealed.

11 ~~— 27B-8-3. A written copy of the rights contained in § 27B-8-1 shall be distributed to every~~  
12 ~~person admitted to a facility and shall also be prominently displayed on every ward.~~

13 Section 177. That § 27B-8-4 be repealed.

14 ~~— 27B-8-4. Nothing in this title shall prevent the filing of or deprive any individual of the~~  
15 ~~benefits of a writ of habeas corpus. All persons confined or in any manner detained as mentally~~  
16 ~~retarded shall be entitled to the writ, and the question of mental retardation shall be decided at~~  
17 ~~the hearing.~~

18 Section 178. That § 27B-8-5.1 be repealed.

19 ~~— 27B-8-5.1. Except for behavior modification programs provided for in § 27B-8-5.5, the use~~  
20 ~~of physical restraints on residents in state institutions for the mentally retarded is governed by~~  
21 ~~the following:~~

22 ~~— (1) — The facility may allow the use of physical restraint on a resident only if absolutely~~  
23 ~~necessary to protect the resident from injuring himself or others or as part of an~~  
24 ~~approved behavioral program;~~

25 ~~— (2) — The facility may not use physical restraint as punishment, for the convenience of the~~

1           staff, or as a substitute for activities or treatment;

2   ~~— (3) — The facility must have a written policy that specifies how and when physical restraint~~  
3           ~~may be used, the staff members who must authorize its use and the method for~~  
4           ~~monitoring and controlling its use;~~

5   ~~— (4) — An order for physical restraint may not be in effect longer than twelve hours;~~

6   ~~— (5) — Appropriately trained staff must check a resident placed in physical restraint at least~~  
7           ~~every thirty minutes and must keep a record of these checks; and~~

8   ~~— (6) — A resident who is in a physical restraint must be given an opportunity for exercise and~~  
9           ~~motion for a period of not less than ten minutes during each two hours of restraint.~~

10       Section 179. That § 27B-8-5.2 be repealed.

11   ~~— 27B-8-5.2. Mechanical devices used for physical restraint shall be designed and used in a way~~  
12   ~~that causes the resident no physical injury and the least possible physical discomfort. For~~  
13   ~~purposes of this section, a totally enclosed crib or barred enclosure is physical restraint, while~~  
14   ~~mechanical supports used to achieve proper body positions and balance are not physical~~  
15   ~~restraints.~~

16       Section 180. That § 27B-8-5.3 be repealed.

17   ~~— 27B-8-5.3. The facility may not use chemical restraint excessively, as punishment, for the~~  
18   ~~convenience of staff or as a substitute for activities or treatment.~~

19       Section 181. That § 27B-8-5.4 be repealed.

20   ~~— 27B-8-5.4. Terms used in §§ 27B-8-5.5 to 27B-8-5.7, inclusive, mean:~~

21   ~~— (1) — "Aversive stimuli," things or events that the resident finds unpleasant or painful that~~  
22           ~~are used to immediately discourage undesired behavior;~~

23   ~~— (2) — "Time out," a procedure designed to improve a resident's behavior by removing~~  
24           ~~positive reinforcement when his behavior is undesirable.~~

25       Section 182. That § 27B-8-5.5 be repealed.

1 ~~—27B-8-5.5. Behavior modification programs involving the use of aversive stimuli or time out~~  
2 ~~devices shall be:~~

3 ~~—(1)— Reviewed and approved by the Human Rights Committee;~~

4 ~~—(2)— Conducted only with the consent of the affected resident's parents or guardian; and~~

5 ~~—(3)— Described in written plans that are kept on file.~~

6 Section 183. That § 27B-8-5.6 be repealed.

7 ~~—27B-8-5.6. A physical restraint used as a time out device may be applied only during~~  
8 ~~behavior modification exercises and only in the presence of the programmer.~~

9 Section 184. That § 27B-8-5.7 be repealed.

10 ~~—27B-8-5.7. For time out purposes, time out devices and aversive stimuli may not be used for~~  
11 ~~longer than one hour, and then only during the behavior modification program and only under~~  
12 ~~the supervision of the programmer.~~

13 Section 185. That § 27B-8-6 be repealed.

14 ~~—27B-8-6. Subject to reasonable rules of the facility, each resident in a facility shall have the~~  
15 ~~right to communicate freely and privately with persons residing outside the facility by mail,~~  
16 ~~telephone and in person unless such communication is limited, in writing, with the approval of~~  
17 ~~the administrator because such limitation is essential to prevent substantial and serious physical~~  
18 ~~or mental harm to the resident.~~

19 Section 186. That § 27B-8-7 be repealed.

20 ~~—27B-8-7. A resident shall be able to communicate with his attorney or private physician~~  
21 ~~without limitations subject to the facilities' normal access restrictions.~~

22 Section 187. That § 27B-8-8 be repealed.

23 ~~—27B-8-8. Religious services shall be made available to residents on a voluntary basis in~~  
24 ~~accordance with their needs, desires and capabilities and also in accordance with their basic right~~  
25 ~~of freedom of religion.~~

1 Section 188. That § 27B-8-9 be repealed.

2 ~~—27B-8-9. A medical examination by a licensed physician shall be made within forty-eight~~  
3 ~~hours, excluding Saturdays, Sundays and holidays, of a resident's admission to a facility. A~~  
4 ~~psychological and intellectual evaluation shall be made within seventy-two hours after admission,~~  
5 ~~if such examination has not previously been made.~~

6 Section 189. That § 27B-8-10 be repealed.

7 ~~—27B-8-10. Within one month after a resident's admission to a facility, a qualified~~  
8 ~~developmental disabilities professional shall:~~

9 ~~—(1)—Review and update the preadmission evaluation;~~

10 ~~—(2)—Make a prognosis that can be used for programming and placement;~~

11 ~~—(3)—Give a comprehensive evaluation; and~~

12 ~~—(4)—Formulate an individual habilitation plan as provided in § 27B-8-11.~~

13 Section 190. That § 27B-8-11 be repealed.

14 ~~—27B-8-11. Each resident shall have the right to the implementation of an individualized~~  
15 ~~habilitation program which includes establishment, maintenance, and implementation of those~~  
16 ~~programs that will ensure the optimal development or restoration of him physically,~~  
17 ~~psychologically, socially, and vocationally. Specific habilitation services shall focus on the~~  
18 ~~maximum achievement of self-help skills, social confidence including communication skills,~~  
19 ~~vocational confidence and independent living. A habilitation program shall not consist solely of~~  
20 ~~chemical or drug therapy.~~

21 Section 191. That § 27B-8-12 be repealed.

22 ~~—27B-8-12. Each resident shall have the right to a comprehensive individualized program for~~  
23 ~~education and training. Educational services shall be available to all residents regardless of~~  
24 ~~chronological age, degree of handicapping condition, or accompanying disabilities or handicaps.~~

25 Section 192. That § 27B-8-13 be repealed.

1 ~~— 27B-8-13. Each resident shall have the right to physical and occupational therapy services~~  
2 ~~in order to facilitate his optimal development and enable him to be a contributing and~~  
3 ~~participating member of society.~~

4 Section 193. That § 27B-8-14 be repealed.

5 ~~— 27B-8-14. Each resident shall have the right to the least restrictive setting for his treatment.~~

6 Section 194. That § 27B-8-15 be repealed.

7 ~~— 27B-8-15. Every resident admitted by board of mental retardation order shall have an annual,~~  
8 ~~adequate review of his current status as a person meeting the criteria for board-ordered~~  
9 ~~admission. The review shall be conducted by all relevant personnel including the staff working~~  
10 ~~within his living unit. This review shall include a review of:~~

11 ~~— (1) — The resident's need for remaining in the facility;~~

12 ~~— (2) — Consideration of the advisability of a less restrictive setting for treatment;~~

13 ~~— (3) — The need for guardianship of the resident; and~~

14 ~~— (4) — Restrictions imposed on the resident's legal rights.~~

15 Section 195. That § 27B-8-16 be repealed.

16 ~~— 27B-8-16. The results of each periodic review pursuant to § 27B-8-15 shall be made part of~~  
17 ~~the resident's record, and shall be filed within five days of the review in the form of a written~~  
18 ~~report with the board of mental retardation which ordered the resident's admission, and within~~  
19 ~~said five days, notice of the results of the review shall be given by the facility to the resident, his~~  
20 ~~attorney, if any, and his nearest relative or guardian.~~

21 Section 196. That § 27B-8-17 be repealed.

22 ~~— 27B-8-17. If the report prepared pursuant to § 27B-8-16 concludes that the resident~~  
23 ~~continues to meet the criteria for board-ordered admission, and the resident or someone on his~~  
24 ~~behalf objects to that conclusion, he shall have the right to a hearing and all other rights~~  
25 ~~expressed or implied in §§ 27B-7-12 to 27B-7-23, inclusive, and § 27B-8-24, and may petition~~

1 ~~the board of mental retardation for discharge. The petition for discharge shall be presented to the~~  
2 ~~chairman of the board or a representative of the facility within seven days, excluding Sundays~~  
3 ~~and holidays, after the report is received. If the petition is presented to a representative of the~~  
4 ~~facility, he shall transmit it to the board forthwith.~~

5 Section 197. That § 27B-8-18 be repealed.

6 ~~—27B-8-18. Each patient shall have the right to be protected from physical injury and shall~~  
7 ~~receive prompt, adequate medical treatment for any physical illness or injury he may incur.~~

8 Section 198. That § 27B-8-19 be repealed.

9 ~~—27B-8-19. Surgery and any other medical procedures may be preformed without consent or~~  
10 ~~court order only if the life of the resident is threatened and there is not time to obtain consent or~~  
11 ~~a court order. Documentation of the necessity for the surgery shall be entered into the record of~~  
12 ~~the resident as soon as practicable.~~

13 Section 199. That § 27B-8-20 be repealed.

14 ~~—27B-8-20. Patients shall not be the subject of experimental research, any hazardous~~  
15 ~~procedure, surgery, or electroconvulsive therapy unless informed consent is obtained from:~~

16 ~~—(1)—The resident, if he is eighteen years of age or over and competent to consent;~~

17 ~~—(2)—The guardian of the resident, if the guardian is legally empowered to execute such~~  
18 ~~consent; or~~

19 ~~—(3)—The parent of the resident, if the resident is less than eighteen years of age.~~

20 ~~—If psychosurgery or electroconvulsive therapy or any other procedure intended to produce~~  
21 ~~convulsions or coma is deemed advisable for the resident and no one eligible to consent can be~~  
22 ~~found after diligent effort, the circuit court may upon petition and after hearing consent to the~~  
23 ~~performance of the procedure.~~

24 Section 200. That § 27B-8-21 be repealed.

25 ~~—27B-8-21. No resident may be the subject of any experimental research or hazardous~~

1 ~~procedure unless such research or procedure shall be approved and conducted in the manner~~  
2 ~~prescribed by the secretary of human services.~~

3 Section 201. That § 27B-8-22 be repealed.

4 ~~—27B-8-22. Nothing in this Title or in any rule or regulation adopted pursuant thereto shall~~  
5 ~~be construed to deny treatment by spiritual means through prayer for any person detained for~~  
6 ~~evaluation or treatment who desires such treatment, or to a minor if his parent or guardian~~  
7 ~~desires such treatment but not in conflict with § 27A-12-3.1.~~

8 Section 202. That § 27B-8-23 be repealed.

9 ~~—27B-8-23. A resident may perform labor which contributes to the operation and the~~  
10 ~~maintenance of the facility for which the facility would otherwise employ someone only if the~~  
11 ~~resident voluntarily agrees to perform the labor and he is compensated appropriately and in~~  
12 ~~accordance with all applicable state and federal labor laws, or if such labor is required as an~~  
13 ~~integral part of therapy in an individualized treatment plan.~~

14 ~~—In no event shall discharge or privileges be conditioned upon the performance of any such~~  
15 ~~labor.~~

16 Section 203. That § 27B-8-24 be repealed.

17 ~~—27B-8-24. All leaves or absences from a facility other than release or discharge shall be~~  
18 ~~governed by rules or procedures established by the facility; except that a resident who has been~~  
19 ~~admitted by a board of mental retardation order and who has been on an authorized leave or~~  
20 ~~absence from the facility for a continuous period of one year shall be discharged. Upon such~~  
21 ~~discharge, the board shall be notified by the facility.~~

22 Section 204. That § 27B-8-25 be repealed.

23 ~~—27B-8-25. An individual is subject to being returned to a facility if he was admitted to a~~  
24 ~~facility on an application executed by someone other than himself or by board of mental~~  
25 ~~retardation order, and he has left the facility without authorization or has refused a lawful request~~

1 ~~to return to the facility while on an authorized leave or other authorized absence from the facility.~~

2 Section 205. That § 27B-8-26 be repealed.

3 ~~—27B-8-26. The facility may notify any law enforcement officers that an individual is subject~~  
4 ~~to being returned to the facility. Upon such notification, a law enforcement officer who~~  
5 ~~encounters the individual shall take him into protective custody and return him to the facility~~  
6 ~~unless contrary directions have been given by the facility.~~

7 Section 206. That § 27B-8-27 be repealed.

8 ~~—27B-8-27. A complete statistical and medical record shall be kept current for each resident~~  
9 ~~of a facility. The record shall, at least, include information pertinent to the services provided to~~  
10 ~~the resident, pertinent to the legal status of the resident, required by this chapter or other~~  
11 ~~provision of law, and required by rules or policies.~~

12 Section 207. That § 27B-8-28 be repealed.

13 ~~—27B-8-28. Information in the record of a resident, and other information acquired in the~~  
14 ~~course of providing services to a resident, shall be kept confidential and shall not be open to~~  
15 ~~public inspection. The information may be disclosed outside the facility or licensed private~~  
16 ~~treatment center only in the circumstances and under the conditions set forth in §§ 27B-8-29 to~~  
17 ~~27B-8-34, inclusive.~~

18 Section 208. That § 27B-8-29 be repealed.

19 ~~—27B-8-29. If requested, information shall be disclosed:~~

20 ~~—(1)—Pursuant to orders or subpoenas of a court of record, or subpoenas of the Legislature;~~

21 ~~—(2)—To a prosecuting attorney as necessary for him to participate in a proceeding~~  
22 ~~governed by this Title;~~

23 ~~—(3)—To an attorney for the resident, if the resident, or his guardian, has given consent;~~

24 ~~—(4)—If necessary in order to comply with another provision of law; or~~

25 ~~—(5)—To the departments of social services or human services when the information is~~

1           ~~necessary to enable either department to discharge a responsibility placed upon it by~~  
2           ~~law.~~

3           Section 209. That § 27B-8-30 be repealed.

4           ~~—27B-8-30. If the holder of the record and the recipient and his parents if he is a minor, or his~~  
5           ~~guardian consent, information may be disclosed to providers of mental retardation services to~~  
6           ~~the resident; or the resident or any other person or agency, provided, that in the judgment of the~~  
7           ~~holder, the disclosure would not be detrimental to the recipient or others.~~

8           Section 210. That § 27B-8-31 be repealed.

9           ~~—27B-8-31. Information may be disclosed in the discretion of the holder of the record when~~  
10           ~~necessary for the resident to apply for or receive benefits, or necessary for the purposes of~~  
11           ~~evaluation and accreditations.~~

12           Section 211. That § 27B-8-32 be repealed.

13           ~~—27B-8-32. Any release of information by the holder of the record shall be approved by the~~  
14           ~~administrator of the facility holding the records. The holder of the record shall be responsible for~~  
15           ~~keeping a record of what information was released, to whom, the dates of release and the~~  
16           ~~purpose for such release.~~

17           Section 212. That § 27B-8-33 be repealed.

18           ~~—27B-8-33. When information is disclosed, the identity of the individual to whom it pertains~~  
19           ~~shall be protected and shall not be disclosed unless it is germane to the authorized purpose for~~  
20           ~~which disclosure was sought; and, when practicable, no other information shall be disclosed~~  
21           ~~unless it is germane to the authorized purpose for which disclosure was made.~~

22           Section 213. That § 27B-8-34 be repealed.

23           ~~—27B-8-34. Any person receiving information made confidential by § 27B-8-28 shall disclose~~  
24           ~~the information to others only to the extent consistent with the authorized purpose for which the~~  
25           ~~information was released.~~

1 Section 214. That § 27B-8-35 be repealed.

2 ~~—27B-8-35. The rights enumerated in this title for the benefit of residents shall not be~~  
3 ~~construed as replacing or limiting any other rights, benefits or privileges afforded any person~~  
4 ~~pursuant to other provisions of law, the Constitution of South Dakota and the Constitution of~~  
5 ~~the United States.~~

6 Section 215. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
7 as follows:

8 Unless modified by court order, a person with a developmental disability has the same legal  
9 rights and responsibilities guaranteed to all other persons under the federal and state  
10 constitutions and federal and state laws.

11 Section 216. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 No person with a developmental disability may be required to perform any act or be subject  
14 to any procedure which is contrary to the person's religious beliefs, and each person has the right  
15 to practice personal religious beliefs and be accorded the opportunity for religious worship. No  
16 person may be coerced into engaging in or refraining from any religious activity, practice, or  
17 belief.

18 Section 217. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 Every person with a developmental disability has the right to receive publicly supported  
21 educational services in accordance with federal and state education laws.

22 Section 218. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
23 as follows:

24 Every person with a developmental disability has access to appropriate dental and medical  
25 care and treatment for any physical ailments and for the prevention of illness or disability.

1 Section 219. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
2 as follows:

3 Surgery and any other medical procedures may be performed without consent or court order  
4 only if the life of the person with a developmental disability is threatened and there is not time  
5 to obtain consent or a court order. Documentation of the necessity for the surgery shall be  
6 entered into the record of the person as soon as practicable.

7 Section 220. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 No person with a developmental disability is subject to any experimental research or  
10 hazardous treatment procedures without the consent of:

- 11 (1) The person with a developmental disability, if eighteen years of age or over and  
12 capable of giving informed consent;
- 13 (2) The guardian of the person with a developmental disability, if the guardian is legally  
14 empowered to execute such consent; or
- 15 (3) The parent or guardian of the person with a developmental disability, if the person  
16 with a developmental disability is less than eighteen years of age.

17 No person with a developmental disability who is subject to an order of guardianship may  
18 be subjected to experimental research or hazardous treatment procedures without prior  
19 authorization of the circuit court.

20 Section 221. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
21 as follows:

22 No person with a developmental disability may be sterilized without the person's informed  
23 consent or court order as set out in this chapter.

24 Section 222. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
25 as follows:

1 No person with a developmental disability who is over eighteen years of age and has the  
2 capacity to participate in the decision-making process regarding sterilization may be sterilized  
3 without that person's informed consent. No minor may be sterilized without a court order. Any  
4 person with a developmental disability over eighteen years of age who has given informed  
5 consent has the right to be sterilized, subject to the following:

6 (1) Prior to the procedure, capacity to give informed consent and assurance that such  
7 consent is voluntarily and freely given shall be evaluated by:

8 (a) A psychiatrist, psychologist, or physician who does not provide services or  
9 supports to the person with a developmental disability, and who has consulted  
10 with and personally interviewed the person with a developmental disability; and

11 (b) A qualified mental retardation professional who does not provide services or  
12 supports in which the person participates, and who has consulted with and  
13 interviewed the person with a developmental disability;

14 (2) The professionals who conducted the evaluation pursuant to subdivision (1) shall  
15 consult with the physician who is to perform the procedure concerning each  
16 professional's opinion in regard to the capacity of the person with a developmental  
17 disability to give informed consent regarding sterilization.

18 Any person with a developmental disability whose capacity to give informed consent is  
19 challenged by the qualified mental retardation professional or the physician may file a petition  
20 with the court to determine competency to give consent.

21 Section 223. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 A person with a developmental disability who has been determined to be incompetent to give  
24 informed consent, the person's legal guardian, or the person's parent, if a minor, may petition the  
25 court for a hearing to determine whether consent for the sterilization procedure should be

1 authorized. The petition shall set forth the following:

2 (1) The name, age, and residence of the person with a developmental disability to be  
3 sterilized;

4 (2) The name, address, and relationship of the petitioner to the person with a  
5 developmental disability;

6 (3) The name and address of any parent, spouse, legal guardian, or custodian of the  
7 person with a developmental disability;

8 (4) The mental condition of the person with a developmental disability to be sterilized;

9 (5) A statement by a physician and a psychologist or psychiatrist that the sterilization is  
10 medically necessary to preserve the life or physical or mental health of the person with  
11 a developmental disability, including a short and plain description of the reasons  
12 behind the determination of medical necessity; and

13 (6) A statement by a physician and a psychologist or psychiatrist that other less intrusive  
14 measures were considered and the reasons behind the determination that less intrusive  
15 means would not protect the interests of the person with a developmental disability.

16 Section 224. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
17 as follows:

18 Prior to authorizing the sterilization procedure, the court shall find by clear and convincing  
19 evidence:

20 (1) That the person with a developmental disability lacks the capacity to effectively  
21 participate in the decision-making process regarding sterilization, or is a minor with  
22 a developmental disability;

23 (2) That the court has heard from the person with a developmental disability regarding  
24 that person's desires, if possible, and that the court has considered the desires of the  
25 person with a developmental disability;

- 1 (3) That the person with a developmental disability lacks the capacity to make an  
2 informed decision regarding sterilization and that the person's capacity to make such  
3 a decision is unlikely to improve in the future;
- 4 (4) The person with a developmental disability is capable of reproduction and is likely to  
5 engage in activities at the present or in the near future which could result in  
6 pregnancy;
- 7 (5) That a recommendation regarding the appropriateness and medical necessity of the  
8 sterilization has been obtained from a physician and a psychologist or psychiatrist  
9 neither of whom provide services to the person with a developmental disability, and  
10 that these professionals have consulted with and interviewed the person with a  
11 developmental disability;
- 12 (6) That the sterilization is medically necessary to preserve the life or physical or mental  
13 health of the person with a developmental disability, including a short and plain  
14 description of the reasons behind the determination of medical necessity; and
- 15 (7) That other less intrusive measures were considered and the reasons behind the  
16 determination that less intrusive means would not protect the interests of the person  
17 with a developmental disability.

18 Section 225. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 The person with a developmental disability shall be represented by counsel throughout the  
21 proceedings. Upon filing of the petition the court shall notify the person with a developmental  
22 disability of the right to counsel.

23 Section 226. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
24 as follows:

25 The cost of the proceedings to obtain a court order authorizing sterilization, including the

1 cost of counsel for the person with a developmental disability, is the responsibility of the  
2 petitioner.

3 Section 227. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
4 as follows:

5 The receipt of services and supports pursuant to this chapter does not operate to deprive any  
6 person with a developmental disability of any other rights, benefits, or privileges, does not cause  
7 the person with a developmental disability to be declared legally incompetent, and may not be  
8 construed to interfere with the rights and privileges of parents or guardians regarding their minor  
9 child. No agency, facility, school, or person who receives public funds and provides services to  
10 persons with developmental disabilities may engage in the following practices:

- 11 (1) Corporal punishment - physical or verbal abuse, such as shaking, screaming, swearing,  
12 name calling, or any other activity that would be damaging to a person's physical  
13 well-being or self-respect;
- 14 (2) Seclusion - placement of a person alone in a room or other area from which egress is  
15 prevented;
- 16 (3) Denial of food - preventing a person from having access to a nutritionally adequate  
17 diet as a means of modifying behavior.

18 No person with a developmental disability receiving services may discipline other persons  
19 with developmental disabilities receiving services, and no community service provider may  
20 mistreat, exploit, neglect, or abuse any person with a developmental disability.

21 Section 228. That chapter 27B-8A be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 No community service provider may retaliate against any staff who reports in good faith  
24 suspected abuse, neglect, or exploitation, or against any person with a developmental disability  
25 with respect to any report. An alleged perpetrator cannot self-report solely for the purpose of

1 claiming retaliation. There exists a rebuttable presumption of retaliation for any adverse actions  
2 taken within ninety days of a report of abuse, neglect, or exploitation. Adverse action means only  
3 those adverse actions arising solely from the filing of an abuse report. For the purposes of this  
4 chapter, adverse action means any action taken by a community service provider against the  
5 person making the report or against the person with a developmental disability because of the  
6 report and includes:

- 7 (1) Discharge or transfer from the community service provider except for clinical reasons;
- 8 (2) Discharge from or termination of employment;
- 9 (3) Demotion or reduction in remuneration for services; or
- 10 (4) Restriction or prohibition of access to services and supports or the persons served.

11 Section 229. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
12 as follows:

13 Any person who knowingly engages in conduct with the intent to deprive persons with  
14 developmental disabilities of any right as set forth in this title is guilty of a Class 1 misdemeanor.

15 Section 230. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
16 as follows:

17 Each person with a developmental disability receiving services from an adjustment training  
18 center or facility, and if applicable, their parents or guardian, shall have their rights explained,  
19 both verbally and in writing, in a manner understandable to them, upon commencement of  
20 services and at least annually thereafter.

21 Section 231. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
22 as follows:

23 Each person with a developmental disability receiving services from an adjustment training  
24 center or facility has the right to:

- 25 (1) Communicate freely and privately with others of the person's own choosing;

- 1       (2)    Receive and send sealed, unopened correspondence. No person's incoming or
- 2            outgoing correspondence shall be opened, delayed, held, or censored by any person;
- 3       (3)    Receive and send packages. No person's outgoing packages may be opened, delayed,
- 4            held, or censored by any person;
- 5       (4)    Reasonable access to telephones, both to make and to receive calls in privacy, and
- 6            reasonable and frequent opportunities to meet with visitors; and
- 7       (5)    Suitable opportunities for interaction with persons of their own choice.

8       Section 232. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
9 as follows:

10       Each person with a developmental disability receiving services from an adjustment training  
11 center or facility shall have an individualized plan developed by the person's interdisciplinary  
12 team. Each individualized plan shall be reviewed at least annually and modified as necessary or  
13 appropriate. A review shall include the determination by the interdisciplinary team as to whether  
14 the needs of the person with a developmental disability are accurately reflected in the plan,  
15 whether the services and supports provided pursuant to the plan are appropriate to meet the  
16 person's needs, and what actions are necessary for the plan to be achieved.

17       Section 233. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
18 as follows:

19       A complete record shall be kept current for each person with a developmental disability  
20 receiving services from an adjustment training center or facility. All records kept pursuant to this  
21 chapter are confidential and not open to public inspection. The information may be disclosed  
22 outside the adjustment training center or facility only in the circumstances and under the  
23 conditions set forth in sections 234 to 236, inclusive, of this Act.

24       Section 234. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
25 as follows:

1        If the adjustment training center or facility and the person with a developmental disability and  
2        the person's parent, if a minor, or the person's guardian consent, information may be disclosed  
3        to providers of supports and services to the person with a developmental disability, or to the  
4        person with a developmental disability, or to any other person or agency, if, in the judgment of  
5        the adjustment training center or facility, the disclosure would not be detrimental to the person  
6        with a developmental disability.

7        Section 235. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
8        as follows:

9        If information is disclosed, the identity of the person to whom it pertains shall be protected  
10       and may not be disclosed unless it is germane to the authorized purpose for which disclosure was  
11       sought. If practicable, no other information may be disclosed unless it is germane to the  
12       authorized purpose for which disclosure was made.

13       Section 236. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
14       as follows:

15       Any person receiving information made confidential by section 238 of this Act shall disclose  
16       the information to others only to the extent consistent with the authorized purpose for which the  
17       information was released.

18       Section 237. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
19       as follows:

20       The rights of persons with developmental disabilities receiving services from an adjustment  
21       training center or facility may only be restricted as a result of due process in accordance with  
22       statute and the rules of the Department of Human Services. The rights of any person with a  
23       developmental disability as specified in this chapter may be suspended to protect that person  
24       from endangering self or others. In order to provide specific services or supports to the person  
25       with a developmental disability, such rights may be suspended only by due process that will

1 promote the least restriction on the person's rights.

2 Section 238. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
3 as follows:

4 Each person with a developmental disability in an adjustment training center or facility has  
5 the right to the least restrictive and most appropriate setting in which to receive supports and  
6 services subsidized by public funding.

7 Section 239. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
8 as follows:

9 The use of any highly restrictive procedures at an adjustment training center or facility,  
10 including restraints and time-out, shall be described in written behavior intervention programs.  
11 Behavior intervention programs may only be implemented following the completion of a  
12 comprehensive functional analysis if alternative nonrestrictive procedures have been proven to  
13 be ineffective, and only with the informed consent of the person with a developmental disability  
14 or the person's parent or legal guardian. Behavior intervention programs shall be developed in  
15 conjunction with the interdisciplinary team and implemented in accordance with section 237 of  
16 this Act, in a manner that does not violate due process in accordance with section 237 of this  
17 Act.

18 Section 240. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
19 as follows:

20 Use of restraints at an adjustment training center or facility shall be applied only in an  
21 emergency if alternative techniques have failed and only in conjunction with a behavior  
22 intervention program. Physical restraint intended to restrict the movement or normal functioning  
23 of a portion of a person's body through direct contact by staff, shall be employed only if  
24 necessary to protect the person with a developmental disability from immediate injury to self or  
25 others. Physical restraint may not be employed as punishment, for the convenience of staff, or

1 as a substitute for a program of services and supports. Physical restraint shall be applied only  
2 after alternative techniques have failed and only if such restraint is imposed in the least possible  
3 restriction consistent with its purpose. Mechanical restraint using mechanical devices intended  
4 to restrict the movement or normal functioning of a portion of a person's body is subject to  
5 special review and oversight, as defined in department rules. Any mechanical restraint shall be  
6 designed and used so as not to cause physical injury to the person with a developmental disability  
7 and so as to cause the least possible discomfort. Chemical restraint and medication may not be  
8 used excessively, as punishment, for the convenience of staff, as a substitute for a program, or  
9 in quantities that interfere with a person's developmental program. In accordance with statute  
10 and the rules of the department, due process shall be assured pursuant to section 237 of this Act  
11 for the use of physical, mechanical, or chemical restraints, including their use in an emergency  
12 or on a continuing basis.

13 Section 241. That chapter 27B-8B be amended by adding thereto a NEW SECTION to read  
14 as follows:

15 At an adjustment training center or facility, time out rooms used for separating a person with  
16 a developmental disability from other persons receiving services and group activities may be  
17 employed only under close and direct staff supervision and only as a technique in behavior  
18 intervention programs. Time-out rooms may not be used in emergency situations. Behavior  
19 intervention programs utilizing a time-out procedure may be implemented only if it incorporates  
20 a positive approach designed to result in the acquisition of adaptive behaviors.

21 Section 242. That § 27B-9-1 be repealed.

22 ~~27B-9-1. Notwithstanding chapter 25-7, when any person is admitted to a facility only the~~  
23 ~~resident shall be liable for the cost of his care, support, maintenance, and treatment to the extent~~  
24 ~~and in the manner provided by this chapter. If the cost of the resident's care, support,~~  
25 ~~maintenance and treatment is a proper charge of the federal government, the costs shall be~~

1 ~~assessed against the appropriate agency of the federal government.~~

2 Section 243. That § 27B-9-2 be repealed.

3 ~~—27B-9-2. The department of human services is responsible for the collection and processing~~  
4 ~~of fees due to the state for the care of patients in the facility.~~

5 Section 244. That § 27B-9-3 be repealed.

6 ~~—27B-9-3. The secretary of human services shall periodically determine the individual cost,~~  
7 ~~exclusive of the cost of education, for the care, support, maintenance, and treatment of the~~  
8 ~~patients in each facility. In making such determinations, the secretary may use averaging methods~~  
9 ~~for each facility if, in the secretary's judgment, it is not practicable to compute the cost for each~~  
10 ~~patient. The cost of capital expenditures and capital construction may not be included in making~~  
11 ~~such determinations.~~

12 Section 245. That § 27B-9-4 be repealed.

13 ~~—27B-9-4. Any patient who is judged by the secretary of human services, subject to the~~  
14 ~~provisions for the method of investigation used by the department of human services as set down~~  
15 ~~in §§ 27B-9-8 and 27B-9-9, to be financially able to pay the per diem rate on an indefinite basis,~~  
16 ~~shall continue to be charged the per diem for each day of continuous patient status.~~

17 Section 246. That § 27B-9-8 be repealed.

18 ~~—27B-9-8. Any patient may apply to the secretary of human services for permission to pay less~~  
19 ~~than the applicable charge. On receipt of such application, the secretary shall request an~~  
20 ~~investigation, to determine the ability of the patient to pay all or a part of the applicable charge.~~  
21 ~~Consideration in such determination shall be given to the following factors, and such other~~  
22 ~~factors as the secretary shall agree are reasonable: net income, net worth, number of dependents,~~  
23 ~~and existing obligations. Additional investigation by the state department of human services of~~  
24 ~~the ability of the patient to pay may be required by the secretary of human services.~~

25 Section 247. That § 27B-9-9 be repealed.

1 ~~—27B-9-9. Upon receipt of all information desired by the secretary of human services, the~~  
2 ~~secretary shall determine, based upon the financial ability of the patient, whether the patient shall~~  
3 ~~be charged with the full amount or a lesser amount. If a patient, or county where the patient~~  
4 ~~resides, disagrees with the determination of the secretary, an appeal may be filed within thirty~~  
5 ~~days from the date the patient or responsible relative receives notice of such determination, for~~  
6 ~~a rehearing with the secretary. However, such an appeal may not be filed more than once each~~  
7 ~~six months.~~

8 Section 248. That § 27B-9-10 be repealed.

9 ~~—27B-9-10. The secretary of human services may review and change any determination for~~  
10 ~~applicable charges and may, if necessary, request further investigation by the state department~~  
11 ~~of human services.~~

12 Section 249. That § 27B-9-11 be repealed.

13 ~~—27B-9-11. If a patient refuses or fails to make such payments, the charges may be collected~~  
14 ~~by a civil suit brought in the name of the state of South Dakota. The state may sue such patient~~  
15 ~~for payments due, and any judgment obtained shall be a lien upon the real property of such~~  
16 ~~patient, and shall be collected as other judgments. Any claim arising under § 27B-9-1 has the~~  
17 ~~same force and effect against the real and personal property of a deceased person as other debts~~  
18 ~~of a decedent, and shall be ascertained and recovered in the same manner.~~

19 Section 250. That § 27B-9-13 be repealed.

20 ~~—27B-9-13. The statute of limitations upon any claim of the state for the care of a~~  
21 ~~developmentally disabled person shall not commence to run until the death of the~~  
22 ~~developmentally disabled person, but an action may be begun at any time during the life of the~~  
23 ~~developmentally disabled person.~~

24 Section 251. That § 27B-9-16 be repealed.

25 ~~—27B-9-16. Each county shall be assessed sixty dollars per month for each individual served~~

1 by the Redfield Developmental Center unless the responsibility therefor has been placed upon  
2 the state at large. In the event of a dispute as to a patient's residence, no payments made by any  
3 county constitute an admission that the patient has residence within such county. The procedures  
4 for determination of county of residence shall be that described in §§ 27B-9-19 to 27B-9-21,  
5 inclusive. These moneys shall be used to match federal funds which may be made available under  
6 the provisions of Title XIX of the Social Security Act as amended, or its successors, at the  
7 Redfield Developmental Center.

8 Section 252. That § 27B-9-17 be repealed.

9 —27B-9-17. If a mentally retarded person has been placed under the control of a child welfare  
10 agency as defined by § 26-6-1 for adoption, and prior to adoption is found to be mentally  
11 retarded, then the county board of mental retardation shall have the power to direct that the  
12 expenses for the care, education and maintenance of such person be borne by the state at large  
13 in which event no finding as to the county legally obligated to support such person shall be made;  
14 and then, said board shall forthwith notify the board of social services who may petition for  
15 letters of guardianship.

16 Section 253. That § 27B-9-19 be repealed.

17 —27B-9-19. If the administrator of a facility has cared for or maintained a patient from a  
18 county and the state's attorney or county commissioners of the county claim that the patient is  
19 not a proper charge against the county, and notify the attorney general that the patient is a proper  
20 charge against another county or against the state at large because the patient is not a resident  
21 of the state, the attorney general shall notify the county auditor of the county to file any proof  
22 he may have within thirty days from the date of such notification. Thereupon the attorney general  
23 shall investigate the location of the residence of the patient, to determine if and which county  
24 should be charged. The attorney general shall notify the county auditor and the administrator of  
25 the human services center of the determination. Thereafter the administrator shall charge for

1 ~~treatment according to the determination of the attorney general.~~

2 Section 254. That § 27B-9-20 be repealed.

3 ~~—27B-9-20. If the attorney general shall find that such patient is not a proper charge against~~  
4 ~~any county in the state, such patient shall thereafter be regarded as a proper charge against the~~  
5 ~~state at large until returned to the state of his residence.~~

6 Section 255. That § 27B-9-21 be repealed.

7 ~~—27B-9-21. If any county shall be dissatisfied with the determination of the attorney general,~~  
8 ~~such county may appeal to the circuit court, serving a notice of appeal upon the attorney general~~  
9 ~~and upon one of the members of the board of county commissioners of the county adversely~~  
10 ~~interested, within thirty days from the date of such finding and thereupon it shall be the duty of~~  
11 ~~the circuit court to determine the residence of such patient and determine against what county~~  
12 ~~he is a proper charge, and such determination shall be conclusive unless an appeal shall be taken~~  
13 ~~therefrom, in the manner provided by law for appeal in civil actions.~~

14 Section 256. That § 27B-9-22 be repealed.

15 ~~—27B-9-22. Expenses paid by one county, on behalf of persons whose residence is in another~~  
16 ~~county, shall be refunded with lawful interest thereon by the county of residence. The expenses~~  
17 ~~and interest shall be presented to the board of commissioners of the county of residence and shall~~  
18 ~~be allowed and paid the same as other claims.~~

19 Section 257. That § 27B-9-23 be repealed.

20 ~~—27B-9-23. When the administrator of a facility has been duly notified that a patient sent to~~  
21 ~~the facility from one county has a residence in another county, he shall thereafter hold and keep~~  
22 ~~the patient as if he were from the latter county. Such holding shall apply to expenses already~~  
23 ~~incurred in behalf of such patient which remain unadjusted.~~

24 Section 258. That § 27B-9-25 be repealed.

25 ~~—27B-9-25. It shall also be the duty of the administrator of the facility to furnish at once to the~~

1 ~~chairman of the county board of mental retardation, the county auditor of each county wherein~~  
2 ~~the residence is found to be, and the guardian, if a child welfare agency, the name of each patient~~  
3 ~~discharged, whether recovered, paroled, or on visit, and also in the case of escape or death.~~

4 Section 259. That § 27B-9-26 be repealed.

5 ~~— 27B-9-26. All charges to a county under § 27B-9-16 shall be certified each month by the~~  
6 ~~secretary of human services to the county auditor. The certification shall include a listing of~~  
7 ~~charges by patient name. The certification shall be sent to county auditors no later than the fifth~~  
8 ~~day of the month. Upon receiving the certification, the county shall pay the amount due to the~~  
9 ~~state remittance center within the time period established by chapter 4-3.~~

10 Section 260. That § 27B-9-27 be repealed.

11 ~~— 27B-9-27. All payments made for the treatment and maintenance of residents in accordance~~  
12 ~~with this chapter, shall be deposited in the general fund.~~