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LOU ALEKSICH, JR., Clerk

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Deputy Clerk

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IN THE UNITED STATES DISTRICT COURT  
DISTRICT OF MONTANA  
HELENA DIVISION

TRAVIS D., by his mother and next friend Leslie Barry;  
ALLEN K., by his parents and guardians Michael and  
Earlene K.;  
VIRGINIA L., by her sister and next friend Barbara Mercer;  
ISIDOR S., by his next friend Nancy Staigmiller;  
KIMBERLY B., by her next friend Dawn DeVor;  
CORIE B., by his sister and next friend Lilly Westby;  
TIFFANY M., by her next friend Johnelle Howanach;  
LYLE H., by his parents and guardians Martha and Ervin H.;  
JUDY M., by her next friend Nancy Staigmiller;  
ALVIN W., by his next friend Gay Moddrell.

Plaintiffs,

vs.

EASTMONT HUMAN SERVICE CENTER and  
MONTANA DEVELOPMENTAL CENTER;  
PETER BLOUKE, Director, Montana Department of  
Public Health and Human Services;  
ROBERT ANDERSON, Administrative Services  
Division, Department of Corrections;  
JOE MATTHEWS, Director, Disability Services Division,  
Department of Public Health and Human Services;  
DAN ANDERSON, Administrator, Mental and Addictive  
Disorders Division, Department of Public Health and  
Human Services;  
JENNIFER PRYOR, Superintendent, Montana  
Developmental Center;  
SYLVIA HAMMER, Superintendent, Eastmont Human  
Service Center;  
CARL KEENER, Medical Director, Montana State Hospital;  
RON BALAS, Superintendent, Montana Mental Health  
Nursing Care Center; and  
STATE OF MONTANA.

Defendants.

CIVIL ACTION

No. *CV-96-63 -H-CC*

CLASS ACTION  
COMPLAINT

## I. INTRODUCTION

1  
2 1. This is a civil rights action for declaratory judgment and to enjoin responsible officials of  
3 Montana from continuing unnecessarily to segregate people with developmental disabilities in state  
4 institutions, confining and isolating them there, and from failing to provide to them effective, family-sized  
5 residential and other services in the community which will enable them to grow and learn and earn and  
6 thrive and be productive.

7 2. This action is brought by ten individuals with developmental disabilities who are segregated  
8 and confined in state institutions, who sue by their parents, family members and next friends, on behalf of  
9 themselves and all others similarly situated, to redress violations of the laws and Constitution of the  
10 United States.

11 3. Named plaintiffs and class members (hereinafter referred to collectively as "plaintiffs") have  
12 been or are at risk of being involuntarily committed to the Montana Developmental Center (MDC or  
13 Boulder) at Boulder, Montana; Eastmont Human Service Center (Eastmont) at Glendive, Montana; and a  
14 few of them at two other state institutions, Montana State Hospital (MSH) at Warm Springs, Montana;  
15 and Montana Mental Health Nursing Care Center (MMHNCC) at Lewistown, Montana. Approximately  
16 175 persons with developmental disabilities are confined at these institutions currently.

17 4. Small, individualized, family-sized community residential programs and other community  
18 support services are necessary to meet the developmental needs of plaintiffs, as well as to afford to them  
19 the normal human experience of being part of the community. Montana has established a comprehensive  
20 community-based service system which provides treatment, habilitation, vocational, residential and other  
21 support services to people with developmental disabilities in community settings. However, plaintiffs are  
22 denied these living arrangements and support services for reasons having nothing to do with their  
23 individual needs.

## 24 II. JURISDICTION AND VENUE

25 5. This being an action for declaratory and injunctive relief arising under the Americans with  
26 Disabilities Act, 42 U.S.C. §12101 *et. seq.*; and under 42 U.S.C. §1983 to redress the deprivation under  
27 color of state law of rights secured to plaintiffs by Title XIX of the Social Security Act, 28 U.S.C. §1396  
28 *et. seq.*, and by the Fourteenth Amendment to the United States Constitution, this Court has subject

1 matter jurisdiction pursuant to 28 U.S.C. §§1331 and 1343. Appropriate declaratory relief is authorized  
2 by 28 U.S.C. §§2201 and 2202.

### 3 III. PLAINTIFFS

4 6. Individual plaintiffs, each of whom is a qualified individual with a disability within the  
5 meaning of the Americans with Disabilities Act, are eligible for federally funded services within the terms  
6 of Title XIX of the Social Security Act but have been involuntarily committed to a state institution by the  
7 State of Montana.

#### 8 Travis D.

9 7. Travis D. is a 19 year old young man who is mildly retarded and has been involuntarily  
10 confined at Montana Developmental Center (MDC) in Boulder for two years, since August 1994. He  
11 brings this action by his mother and next friend, Leslie Barry.

12 8. Prior to his confinement at MDC and during visits home from the institution, Travis D.  
13 worked in competitive jobs in his home community of Columbia Falls. During one of those visits with  
14 his family in 1995, Travis D. worked on a ranch bucking hay and as a cook at a local pizza parlor. When  
15 defendants denied his request for discharge from the institution so that he could live with his mother and  
16 continue his employment, Travis D. was forced to quit his job and return to the institution. During visits  
17 in April 1996 and again in June and July 1996, Travis D. operated his own lawn care business and  
18 performed other odd jobs. Travis D. is an articulate young man who opposes his current placement,  
19 which he likens to being in jail.

20 9. Defendants' own developmental disabilities professionals have determined that Travis D. can  
21 and should be supported in the community. However, defendants have failed to make the necessary  
22 community services available to him. His individual treatment planning team recommends placement in  
23 supported living (an apartment of his own, with staff support) and supported employment (competitive  
24 employment in the community with supportive assistance, such as a job coach) for Travis D. and has  
25 referred him to Montana's long waiting list for community services. The team believes Travis has the  
26 skills to live fairly independently in the community, and to thrive there, provided he has adequate  
27 residential, vocational and other supportive services. Members of the team believe Travis D. must leave  
28 the institution soon, before he becomes "institutionalized" in his behavior and loses the skills to live in a

1 normal, integrated community setting.

2 Allen K.

3 10. Allen K. is a 25 year old man who has been involuntarily confined at MDC for seven years,  
4 since 1989. He brings this action by his parents and guardians, Earlene and Michael K.

5 11. Allen K. has had a traumatic brain injury. A tumor was removed from his brain when he  
6 was 11 yrs. old. The injury has affected Allen K.'s vision, personality, behavior and ability to control  
7 emotions, and he has been diagnosed as mildly retarded. Allen K. has retained many skills which were  
8 developed prior to his brain injury, including some reading, writing and math skills. He can converse in  
9 German and uses sign language.

10 12. Allen K. is a social and very caring individual who thrives on companionship and who would  
11 like to live near his family. His parents and three siblings all live in Great Falls. By segregating Allen  
12 K. in a state institution over 100 miles from his home, defendants are preventing him from experiencing,  
13 on a tangible, day to day basis, the loving support of his family and the opportunity to participate in  
14 normal family and community activities. His parents want to be able to take him to church on Sundays  
15 and have him over for Sunday dinner. So long as Allen K. is segregated and isolated at MDC, family  
16 activities such as these are not possible. Visits to the distant institution do not provide family interactions  
17 of the quality or quantity that Allen K. and his family want and need.

18 13. Defendants' own developmental disabilities professionals have determined that Allen can and  
19 should be supported in the community. However, defendants have failed to make the necessary  
20 community services available to him. His individual treatment planning team recognizes that appropriate  
21 community services can meet Allen K.'s need for structure and close supervision and has referred him to  
22 Montana's long waiting list for community services. Montana has long provided "intensive" community  
23 services to individuals with needs similar to Allen K.'s. "Intensive" community services are characterized  
24 by a high level of structure and supervision. Allen K. has applied for six separate intensive group home  
25 openings last year, but each time, defendants denied him the services and provided them to others,  
26 thereby continuing to relegate Allen K. to the confines of MDC.

27 Virginia L.

28 14. Virginia L. is a 49 year old woman who is profoundly retarded and has been involuntarily

1 confined at one state institution or another for forty years, since she was 9. She was committed to  
2 Montana State Hospital (MSH) at Warm Springs in 1956, MDC at Boulder in 1957, and since 1979,  
3 Eastmont Human Service Center (Eastmont) at Glendive. She brings this action by her sister and next  
4 friend, Barbara Mercer.

5 15. Virginia L. enjoys listening to music, going for walks and community outings and socializing.  
6 She does not speak, but she does communicate through vocalizations, gestures and physical prompting.  
7 Defendants have failed to provide Virginia L. with any of the now common assistive communication  
8 devices available to enable non-verbal disabled people to communicate effectively.

9 16. Virginia L.'s brother and sister recall her as an affectionate person who became distant and  
10 withdrawn after she was institutionalized. Because defendants have kept Virginia L. segregated at a state  
11 institution, away from her home community, she has been deprived of the ongoing support and  
12 involvement of her family. Virginia L.'s family would like her to live in Billings, where her father and  
13 sister live and where other family members visit.

14 17. Defendants' own developmental disabilities professionals have determined that Virginia L.  
15 can and should be supported in the community. However defendants have failed to make the necessary  
16 community services available to Virginia L. Her individual treatment planning team not only  
17 recommends community placement, but believes she is at risk of losing more life skills, opportunities and  
18 independence if she remains the institutional setting. The team believes that because of her institutional  
19 confinement, Virginia L. is not realizing her potential and that, given the opportunity to live in a family  
20 like community setting, she could learn and use many more skills.

21 Isidor S.

22 18. Isidor S. is a 74 year old man who has been involuntarily confined in successive state  
23 institutions since 1927 when he was 4 years old, a time when Montana law commanded the detention of  
24 the "feeble-minded, idiot and epileptic" in isolated institutions "for life" to prevent them from being a  
25 "menace to the state." Isidor S. was first confined at MSH, transferred to Galen in 1956, MDC in 1977,  
26 and Eastmont in 1979. Isidor S. is profoundly retarded. Isidor S.'s parents are presumed deceased and  
27 there is no record of contact by any sibling. He brings this action by his next friend Nancy Staigmilller.

28 19. Isidor S. is alert, active and aware of his environment. He has a sense of humor; he will

1 smile and chuckle if he feels he has "gotten" someone. He makes baskets, does jigsaw puzzles, runs  
2 simple errands, crushes cans and stuffs envelopes. Isidor S. communicates his wishes and hopes, likes  
3 and dislikes, by reaching for items, making facial expressions and pushing items away. Defendants have  
4 not provided Isidor S. with any of the assistive communication devices now commonly available to enable  
5 non-verbal people to communicate effectively.

6 20. Isidor S. is in the senior retirement program at Eastmont, which consists mostly of leisure  
7 activities, but he chooses also to attend some vocational activities.

8 21. Defendants' own developmental disabilities professionals have determined that Isidor S. can  
9 and should be supported in the community. However, defendants have failed to make the necessary  
10 community services available to him. Isidor S.'s individual treatment planning team recommends a  
11 senior group home and day program in a community setting. The team believes Isidor S. risks losing  
12 more skills if he remains in the institutional setting. The team also believes he would benefit greatly from  
13 increased opportunities to participate in community life and activities.

14 Kimberly B.

15 22. Kimberly B. is a 28 year old woman who is profoundly retarded and has cerebral palsy and  
16 epilepsy and who has been involuntarily confined at Eastmont for 13 years. She brings this action by her  
17 next friend Dawn DeVor.

18 23. Kimberly B. has lived most of her life in the community, where she also attended public  
19 school. At the age of four months following the administration of a diphtheria vaccination, Kimberly B.  
20 began to experience developmental problems. She lived with her family in the family home in Nebraska  
21 until she was about 2 ½ years old, when she was placed at the Beatrice State Home in Beatrice, Nebraska  
22 where she resided for approximately two years. When Kimberly B. was almost five years old, she was  
23 provided a community group home and other community services. Kimberly B. lived in the community  
24 group home for ten years, until she was 15 years old. In 1983, after her parents' relocation to Montana  
25 and because of the unavailability of community resources, she was committed to Eastmont.

26 24. Kimberly B. uses a non-motorized wheelchair part of the time, but prefers to walk with a gait  
27 trainer (walker). She is aware of her environment and notices when a stranger enters the room. She  
28 enjoys going off campus for van rides and other excursions. She especially enjoys swimming and

1 bowling. For vocational activities, Kimberly B. crushes cans and folds washcloths, however she could  
2 and should be involved in a more challenging and productive vocational program.

3 25. Kimberly B. communicates by smiling, making intermittent eye contact, intentionally  
4 avoiding eye contact, laughing and other vocalizations. She also knows some sign language. Defendants  
5 have failed to provide Kimberly B. with any of the assistive communication devices now commonly  
6 available to enable non-verbal people to communicate effectively.

7 26. Defendants' own developmental disabilities professionals have determined that Kimberly B.  
8 can and should be supported in the community. However, defendants have failed to make the necessary  
9 community services available to her. Her individual treatment planning team strongly recommends  
10 community placement and has referred Kimberly B. to Montana's long waiting list for community  
11 services. The team recognizes that, as a result of having lived in a community group home for ten years  
12 of her life, Kimberly B. has experienced daily home living activities, normalized settings, life styles and  
13 other benefits which simply cannot be matched in the institutional setting. They believe Kimberly B.  
14 should be with other young adults and should be supported in an integrated community setting.  
15 Additionally, Kimberly B. displays some disadvantageous behaviors which her team believes result from  
16 boredom and lack of challenge and the lack of an appropriate peer group in the institutional setting.  
17 Kimberly B.'s treatment team notes that while in the community and public school setting in the past, she  
18 did not engage in the disadvantageous behaviors observed in the institutional setting. Most importantly,  
19 Kimberly B. was happier in an integrated community environment.

20 Corie B.

21 27. Corie B. is a 31 year old man who is profoundly retarded and has been involuntarily  
22 confined at MDC since 1985. He brings this action by his sister and next friend, Lilly Westby.

23 28. Corie B. was committed to Montana Developmental Center "temporarily" for management of  
24 an eating disorder in which he rejects non-liquid foods. This has been managed by mixing liquid into his  
25 food and giving him nutritional supplements, an approach any community service provider can utilize  
26 successfully.

27 29. Corie B. is the youngest of eight children and is a member of the Confederated Salish and  
28 Kootenai Tribes. He has two sisters and a brother who live in Polson, all of whom would like Corie B.

1 to live on or near the Flathead reservation, where he would be close to his family and his native culture.  
2 The Confederated Tribes actively follow Corie B.'s progress; a tribal social worker attends his annual  
3 treatment planning meetings. Tribal representatives also desire Corie B.'s placement on or near the  
4 reservation.

5 30. Corie B. uses a wheelchair for ambulation, but moves it with slowness and difficulty.  
6 Defendants have not provided Corie B. with an electric wheelchair, despite the fact that an electric  
7 wheelchair would enable him to move about more easily, readily and independently. At times, Corie B.  
8 walks using a forearm walker or other external support. Corie B. does not speak, but he does interact  
9 with others by shaking hands, making eye contact, smiling and laughing. Defendants have not provided  
10 Corie B. with any of the assistive communication devices now commonly available to enable non-verbal  
11 people to communicate effectively.

12 31. Defendants' own developmental disabilities professionals have determined that Corie B. can  
13 and should be supported in the community. However, defendants have failed to make the necessary  
14 community services available to him. Corie B.'s individual treatment team has recognized that an  
15 appropriate community placement can meet his need for occupational therapy, physical therapy and  
16 nutritional and health care needs and has referred him to Montana's long waiting list for community  
17 services. The team also has recognized that an appropriate community placement can provide the 24 hour  
18 supervision Corie B. needs due to his seizures, inability to respond to emergencies and inability to care  
19 for himself.

20 32. In fact, defendants' own developmental disabilities professionals identified Corie B. as one of  
21 twelve individuals who are the "highest priority" for community placement under an MDC population  
22 reduction plan scheduled to have been implemented this summer but now abandoned. As part of that  
23 plan, Corie B. would have been placed in a community group home in Ronan, near his family and native  
24 culture. However, only three of the identified twelve MDC residents will actually be provided  
25 community services.

26 Tiffany M.

27 33. Tiffany M. is a 21 year old young woman who is mildly retarded and has been involuntarily  
28 confined at MDC since June 1995. She brings this action through her next friend Johnelle Howanach.



1           34. Tiffany M. was committed to MDC on a "temporary" basis to stabilize her diabetes and  
2 Prader-Willi syndrome (an eating disorder associated with retardation). At the time of her commitment to  
3 MDC, defendants were not providing any community based services to Tiffany M.

4           35. Tiffany M. has lived all of her life in community settings except for this past year. She lived  
5 at home with her family until 1993; then lived in community based residential services until March 1995;  
6 then lived independently, but without supportive services by defendants, for the months preceding her  
7 commitment. Over one year after her "temporary" admission to MDC, Tiffany remains confined against  
8 her will and against her individual treatment team's recommendation. Tiffany M. is very distressed over  
9 her institutional confinement and continually asks to be provided community services.

10           36. Tiffany M.'s treatment team describes her as an attractive, pleasant and cooperative young  
11 woman who is a consistent, dependable and self-motivated worker. She is helpful to others, makes and  
12 maintains friendships, reads and writes and is verbally articulate and expressive.

13           37. Defendants' own developmental disabilities professionals have determined that Tiffany M.  
14 can and should be supported in the community. However, defendants have failed to make the necessary  
15 community services available to her. Tiffany M.'s individual treatment team recognizes that an  
16 appropriate community placement can meet her need for structure, supervision and nutrition planning and  
17 oversight, while at the same time allowing her more independence and control over her own life. Tiffany  
18 M.'s team has referred her to Montana's long waiting list for community services. The team has  
19 observed that some behavioral incidents have occurred with Tiffany M. as a result of conflicts over  
20 control, some of which are inherent to the institutional environment.

21           38. Defendants' own developmental disabilities professionals have identified Tiffany M. as one  
22 of twelve individuals who are the "highest priority" for community placement under an MDC population  
23 reduction plan scheduled to have been implemented this summer but now abandoned. As part of that  
24 plan, Tiffany M. would have been placed in community services in Missoula. However, only three of the  
25 identified twelve MDC residents will actually be provided community services. Of the remaining nine  
26 residents whose community placements have been delayed indefinitely, Tiffany M. is ranked first for  
27 placement.

Lyle H.

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2           39. Lyle H. is a 47 year old man who has cerebral palsy and is profoundly retarded. He has  
3 been involuntarily confined at successive state institutions since 1969; now he is confined at Eastmont.  
4 He brings this action by his parents and guardians, Ervin and Martha H.

5           40. Lyle H. was born in Montana and lived with his family in the family home until he was 20  
6 years old. In 1969, he was committed to MDC. From 1974 to 1979, Lyle H. was transferred to various  
7 nursing homes, then in 1979 was committed to Eastmont where he has been confined for the past 17  
8 years.

9           41. Lyle H.'s family is seriously involved in his care and treatment planning and they visit as  
10 often as possible. Last year, for example, Lyle H. had visits from his aunt, sister and two brothers,  
11 although visits at the institution do not provide family interactions of a quality or quantity that Lyle H.'s  
12 family desires. Lyle H.'s parents want him to live in a smaller, family-scale, community-based setting,  
13 preferably in Billings, where his brother and other family members live and where his parents can visit  
14 him more easily from their new home in Arizona. If Lyle H. lived in Billings, he could be included in  
15 these family gatherings. Instead, by segregating Lyle H. in a state institution over 200 miles from  
16 Billings, difficult and expensive to reach with public transportation, defendants are preventing him from  
17 experiencing, on a tangible, regular basis, the loving support of his family and the opportunity to  
18 participate in normal family and other community activities.

19           42. Lyle H. uses a non-motorized wheelchair to move around the living unit, visiting with staff  
20 and peers. He is a social person who often tries to engage the attention of others. He enjoys being  
21 outside and, on the few occasions allowed, going off the institution grounds. He does not like big  
22 crowds. Although Lyle H. is non-verbal, he has not been provided any of the assistive technology  
23 devices now commonly available to enable him to communicate effectively.

24           43. Defendants' own developmental disabilities professionals have determined that Lyle H. can  
25 and should be supported in the community. However, defendants have failed to make the necessary  
26 community services available to him. Lyle H.'s treatment planning team believes he has many abilities  
27 which are not being, and cannot be, developed in his current institutional setting. The team believes that  
28 keeping Lyle H. in the institutional setting puts him at risk of loss of skills and opportunities and

1 independence. The team believes community placement would provide Lyle H. with the added challenge  
2 he needs, as well as more choices and activities directed at working with his physical disabilities. The  
3 team also believes Lyle H. would benefit from the increased staff attention and interaction in a smaller,  
4 community-based setting. The team has referred Lyle H. to Montana's long waiting list for community  
5 services.

6 Judy M.

7 44. Judy M. is a 46 year old woman who is profoundly retarded and has been confined at  
8 successive state institutions since she was 5 or 6 years old; now she is confined at Eastmont. She brings  
9 this action by her next friend Nancy Staigmiller.

10 45. Judy M. was one of ten children and an apparent victim of early infancy neglect and  
11 malnutrition, according to institution records. After an initial placement in foster care, Judy M. was  
12 committed to MSH in 1955, transferred to MDC in 1957 and to Eastmont in 1990. Judy M.'s parents are  
13 deceased and she has no family contact.

14 46. Judy M. does not speak but she does communicate through such means as gestures and  
15 physical prompting. Defendants have not provided her with any of the assistive communication devices  
16 now commonly provided to enable non-verbal people to communicate effectively.

17 47. Defendants' own developmental disabilities professionals have determined that Judy M. can  
18 and should be supported in the community. However, defendants have failed to make the necessary  
19 community services available to her. Judy M.'s individual treatment planning team not only recommends  
20 community placement, but believes that her institutional placement is causing a regression of skills, in that  
21 it fosters "trainer dependency." The team believes Judy M. would benefit from the greater challenge and  
22 independence of a community placement. The team also believes placing Judy in a smaller setting where  
23 she could receive more individual attention would better meet her needs, reducing or eliminating some  
24 "attention seeking" behaviors.

25 Alvin W.

26 48. Plaintiff Alvin W. is a 40 year old man who is profoundly retarded and has been  
27 involuntarily confined at MDC for 27 years, since he was 13. Alvin has no known family. He brings  
28 this action by his next friend Gay Moddrell.



1 Human Services (DPHHS), an agency of the State of Montana created under Art. XII, Section 3(3) of the  
2 Montana Constitution and operating under MCA §2-15-2201. DPHHS is charged by Montana law to  
3 provide services to Montanans with developmental disabilities and, in particular, "to do so whenever  
4 possible in a community-based setting," [MCA §53-20-101], and to "make every attempt to move  
5 residents from more to less structured living, larger to smaller facilities, . . . group to individual  
6 residences, segregated from the community to integrated into the community living," [Section 53-20-  
7 148(2)]. Defendant Blouke is charged with directing, organizing and executing the responsibilities of  
8 DPHHS, which include: responsibility for care, treatment, habilitation, discharge planning and transition  
9 services for individuals committed to MDC, Eastmont, MSH and MMHNCC; responsibility for the  
10 creation and administration of community services in a comprehensive community developmental  
11 disabilities service system, for the admission of persons to that system, and for the care, treatment and  
12 habilitation of all individuals in the community service system, including tribal members; and,  
13 responsibility for the administration of Title XIX services, which include both institutional and  
14 community-based services. Defendant Blouke is responsible also for ensuring that individuals with  
15 developmental disabilities receive the services to which they are entitled under the Constitution and laws  
16 of the United States and Montana. He is sued in his official capacity.

17 54. Defendant Joe Matthews is the director of the Disability Services Division, a division of  
18 DPHHS. Defendant Matthews is charged with directing, organizing and executing the responsibilities of  
19 the Disabilities Services Division, which include: responsibility for care, treatment, habilitation,  
20 discharge planning and transition services for individuals committed to the two state developmental  
21 disabilities institutions, MDC and Eastmont; responsibility for the creation and administration of  
22 community services in a comprehensive community developmental disabilities service system, for the  
23 admission of persons to that system, and for the care, treatment and habilitation of all individuals in the  
24 community service system, including tribal members; and, responsibility for the administration of Title  
25 XIX services, which include both institutional and community-based services. Defendant Matthews is  
26 responsible for ensuring that individuals with developmental disabilities receive the services to which they  
27 are entitled under the Constitution and laws of the United States and Montana. He is sued in his official  
28 capacity.

1           55. Defendant Dan Anderson is the director of the Mental and Addictive Disorders Division, a  
2 division of DPHHS. Defendant Dan Anderson is charged with directing, organizing and executing the  
3 responsibilities of the Mental and Addictive Disorders Division, which include: responsibility for care,  
4 treatment, habilitation, discharge planning and transition services for individuals committed to the two  
5 state mental health institutions, MSH and MMHNCC. Although MSH and MMHNCC were designed to  
6 serve persons with mental illness, not persons with developmental disabilities, many persons with  
7 developmental disabilities are committed there. Defendant Dan Anderson is responsible for ensuring that  
8 residents at those institutions receive the services to which they are entitled under the Constitution and  
9 laws of the United States and Montana. He is sued in his official capacity.

10           56. Defendant Robert Anderson has had responsibility for the operation of Montana's  
11 developmental disabilities and mental health institutions and for care, treatment and habilitation of  
12 residents at those state institutions at relevant times in the recent past and continuing through the  
13 transition of a reorganized state government. Currently, he has responsibility for facility management  
14 within the Administrative Services Division of the newly formed Department of Corrections. Defendant  
15 Robert Anderson was the administrator of the Special Services Division of the former Department of  
16 Corrections and Human Services, which until 1995 had responsibility for all state institutions. Until July  
17 1995, responsibility for providing services to people with disabilities in institutions was consigned to the  
18 same state agency responsible for the incarceration of convicted criminals. Defendant Robert Anderson  
19 is sued in his official capacity.

20           57. Defendant Jennifer Pryor is the Superintendent of the Montana Developmental Center in  
21 Boulder. Defendant Pryor is responsible for care, treatment, habilitation and discharge planning for  
22 residents at MDC. She supervises the professional staff who have recommended placement in integrated,  
23 community settings for MDC residents. She is responsible for carrying out the laws Constitution of the  
24 United States and Montana. Defendant Pryor is sued in her official capacity.

25           58. Defendant Sylvia Hammer is the Superintendent of Eastmont Human Service Center in  
26 Glendive. Defendant Hammer is responsible for care, treatment, habilitation and discharge planning for  
27 residents at Eastmont and supervises the professional staff who have recommended placement in  
28 integrated, community settings for Eastmont residents. She is responsible for carrying out the laws

1 Constitution of the United States and Montana. Defendant Hammer is sued in her official capacity.

2 59. Defendant Carl Keener is the Medical Director for the Montana State Hospital in Warm  
3 Springs. Montana State Hospital (MSH) is a state owned and operated institution for persons with mental  
4 illness. It is operated by DPHHS under MCA §Section 53-1-602. It is located in Warm Springs,  
5 Montana on the same campus as Montana prison facilities. Although never a developmental disability  
6 institution, approximately 10 individuals with developmental disabilities are involuntarily committed  
7 there. Defendant Keener is responsible for care, treatment, habilitation and discharge planning for  
8 residents at MSH. He is responsible for carrying out the laws Constitution of the United States and  
9 Montana. He is sued in his official capacity.

10 60. Defendant Ron Balas is the Superintendent for the Montana Mental Health Nursing Care  
11 Center in Lewistown. The Montana Mental Health Nursing Care Center (MMHNCC) is a state owned  
12 and operated institution for persons with mental illness who have skilled nursing care needs. It is  
13 operated by DPHHS under MCA §53-1-602. MMHNCC is located in Lewistown, Montana, at the  
14 geographic center of the state. Although never a developmental disability institution, approximately 10  
15 individuals with developmental disabilities are involuntarily committed there. Defendant Balas is  
16 responsible for care, treatment, habilitation and discharge planning for residents at MMHNCC. He is  
17 responsible for carrying out the laws Constitution of the United States and Montana. Defendant Balas is  
18 sued in his official capacity.

19 61. The State of Montana is a political entity created and governed for and by the people of the  
20 State.

## 21 V. CLASS ACTION ALLEGATIONS

22 62. Pursuant to Federal Rule of Civil Procedure 23 (a) and (b)(2), individual named plaintiffs  
23 bring this action on behalf of the following class: All persons with developmental disabilities who, on or  
24 after the date of filing of this Complaint, are confined or will be confined at the Montana Developmental  
25 Center, Eastmont Human Service Center, Montana State Hospital or Montana Mental Health Nursing  
26 Care Center, have been transferred out of said institutions yet remain under defendants' custody and  
27 control or otherwise remain defendant's responsibility, or who are at risk of being confined in said  
28 institutions at some future date.

1 63. The plaintiff class is so numerous that joinder of all its members is impracticable. The class  
2 is in excess of 175 persons. Approximately 106 people are confined at MDC, 50 at Eastmont, 10 at MSH  
3 and 10 at MMHNCC. There are approximately 1300 people with developmental disabilities on the  
4 community waiting list who are at risk of involuntary commitment to state institutions.

5 64. There are questions of law and fact common to the class. All members of the class are  
6 persons with developmental disabilities who need habilitation and other support services, but who are  
7 segregated and confined at state institutions involuntarily or who are at risk of such confinement. Each  
8 class member is capable of living and thriving in an integrated, community setting with appropriate  
9 support services. All members are, or are at risk of, being denied integrated community services and are  
10 being discriminated against because of their disability.

11 65. The claims of the named plaintiffs are typical of those in the class. Named plaintiffs' claims  
12 are typical because they arise from the same pattern or practice: defendants' unlawful segregation and  
13 confinement of plaintiffs in state institutions and defendants' failure, despite requirements of the laws and  
14 Constitution of the United States, to provide services in integrated community settings. The claims are  
15 based on the same legal theories. Defendants have acted or refused to act on grounds generally applicable  
16 to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as  
17 a whole.

18 66. These named plaintiffs will fairly represent and adequately protect the interests of members  
19 of the class as a whole. The named plaintiffs do not have interests antagonistic to those of other class  
20 members. Plaintiffs' counsel are qualified, experienced and generally able to conduct the proposed  
21 litigation.

## 22 VI. THE LAW

23 67. Plaintiffs bring this action to redress violations of the laws and the Constitution of the United  
24 States, as follows.

### 25 1. The Americans with Disabilities Act

26 68. The Americans with Disabilities Act, 42 U.S.C. §12101, *et. seq.* was enacted by Congress in  
27 the exercise of its "power to enforce the Fourteenth Amendment" and signed by President Bush in 1990.  
28 The Act is based upon findings that:



- 1 • "individuals with disabilities . . . have been . . . subjected to a history of
- 2 purposeful unequal treatment, and relegated to a position of political
- 3 powerlessness in our society, based on characteristics that are beyond the control
- 4 of such individuals and resulting from stereotypic assumptions not truly indicative
- 5 of the individual ability of such individuals to participate in, and contribute to,
- 6 society." 42 U.S.C. §12101(a)(7).
- 7 • that "despite some improvements," historically-imposed isolation and segregation
- 8 "continue to be a serious and pervasive social problem." 42 U.S.C. §12101(a)(2).
- 9 • that "to isolate and segregate individuals with disabilities" are "forms of
- 10 discrimination against [them]." *Id.*

11 69. The Act declares as its purpose to end "discrimination faced day-to-day by people with

12 disabilities." 42 U.S.C. §12101(b)(4).

13 70. The Act at Title II prohibits discrimination by any public entity against any qualified

14 individual with a disability and prohibits such an individual's exclusion from participation in or denial of

15 the benefits of public services, programs or activities. 42 U.S.C. §12131.

16 71. As set forth in authoritative and binding regulation, required to implement the Act, 42 U.S.C.

17 12134, and promulgated in 1991 by the Attorney General of the United States, the Americans with

18 Disabilities Act requires that:

19 A public entity shall administer services, programs and activities in the most integrated

20 setting appropriate to the needs of qualified individuals with disabilities. 28 C.F.R.

21 §35.130(d) (*emphasis added*).

22 72. The Act forbids affording to qualified individuals with disabilities or to any class of

23 individuals with disabilities any aid, benefit or service:

- 24 • which is "not equal to that afforded others," 28 C.F.R. §35.130(b)(1)(ii),
  - 25 • which is not "not as effective . . . to reach the same level of achievement," 28 C.F.R.
  - 26 §35.130(b)(1)(iii),
  - 27 • which is different or separate, 28 C.F.R. §35.130(b)(1)(iv), or
  - 28 • which "otherwise limits [the individual] in the enjoyment of any right, privilege,
- advantage or opportunity enjoyed by others receiving the aid, benefit or service." 28 C.F.R. §35.130(1)(vii). (*emphasis added*)

73. The Attorney General in his 1991 comments to the statutorily commissioned regulation wrote:

The public entity must administer services, programs and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities, i.e., in a setting that enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible. 28 C.F.R. at page 461 (1995 ed.) (*emphasis added*).

See Helen L. v. DiDario, 46 F.3d 323 (3d Cir. 1995), *cert. denied sub nom. Secretary of the Department of Public Welfare of Pennsylvania v. Idell S.*, 116 S.Ct. 64 (1995).

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2. Title XIX of the Social Security Act

74. Title XIX of the Social Security Act, 42 U.S.C. §1396, *et. seq.*, was enacted "for the purpose of enabling each State to . . . furnish . . . rehabilitation and other services to help [disabled] individuals attain or retain capability for independence or self-care." 42 U.S.C. §1396.

75. Title XIX authorizes Federal financial assistance for "ICF/MR"s and for Home and Community-Based Services for retarded and relatedly disabled persons, and sets the conditions for State participation therein.

76. Montana has chosen to participate in Title XIX. The federal financial share of Montana expenditures under Title XIX is 70.8%. The State financed share is 29.2%.

77. Title XIX requires that, for each person "whose needs could be met by alternative services that are currently unavailable, the facility must . . . look for alternative services." 42 C.F.R. §456.371 (*emphasis added*).

78. Title XIX was enacted "for the purpose of enabling each State to . . . furnish . . . rehabilitation and other services to help [disabled] individuals attain or retain capability for independence or self-care," 42 U.S.C. at §1396, and requires for each retarded and relatedly disabled person in an "institution":

• "active treatment . . . aggressive, [and] consistent . . . , directed toward . . . as much self-determination and independence as possible [and] the prevention . . . of regression or loss of current optimal function status," *Id.* at §1396(d)(2); 45 C.F.R. §1483.440 (a) (1955) ("Conditions of Financial Participation").

periodic review — "by professional personnel who are not themselves directly responsible for the care . . . and who do not have a significant financial interest in the institution and are not . . . employed by the institution providing the care involved "whether it is feasible to meet the persons needs through "alternative . . . noninstitutional services," . . . "to safeguard against unnecessary utilization . . . and to assure that payments are consistent with efficiency, economy and quality of care." 42 U.S.C. at §1396a(a)(30) & (31) and by 42 C.F.R. §456.609(a) and (b).

a plan for discharge 42 C.F.R. §456.380 (b)(b), and

for each person "whose needs could be met by alternative services that are currently unavailable, the facility must . . . look for alternative services." 42 C.F.R. at §456.371 (*emphasis added*).

Handwritten notes on the left margin: "316 gone", "IPR in CA", "UFT", "1396(a)(31)(b)", "5th", "Program abolished", "Severing (30)", "1396(a)(31)(b)", "14", "NMM 1987", "a b -", "7. not count, only look for", "check".

1     **3. The Equal Protection Clause of the Fourteenth Amendment**

2           79. The Equal Protection Clause of the Fourteenth Amendment presumptively insists that the  
3     organized society treat each individual as a person, one who is worthy of respect, one who "belongs," and  
4     presumptively forbids the organized society to treat an individual either as a member of an inferior or  
5     dependent caste or as a non-participant. See City of Cleburne, Texas v. Cleburne Living Center, 473 U.S.  
6     432 (1985).

7     **4 The Due Process Clause of the Fourteenth Amendment**

8           80. The Due Process Clause of the Fourteenth Amendment which, in relevant particular, requires  
9     community placement for involuntarily confined disabled persons whenever a lack of community  
10    placement would be a substantial departure from prevailing standards of professional practice. See,  
11    Youngberg v. Romeo, 457 U.S. 307, 323 (1982).

12  
13                           **VII. THE FACTS**

14           81. A developmental disability is a disability manifested at birth or during a person's childhood  
15    or youth — irrespective of its cause — which substantially limits functioning in one or more major life  
16    areas. Retardation is the most prevalent developmental disability and is characterized by an impairment in  
17    general intellectual functioning and deficits in adaptive behavior. Epilepsy and cerebral palsy are also  
18    developmental disabilities and frequently occur with retardation. It is now established and professionally  
19    accepted that persons with developmental disabilities are developing individuals who, when properly  
20    taught, trained and supported in integrated community settings, can gain significant adaptive, self-care,  
21    social and productive vocational skills.

22           82. Nevertheless, in the first decades of this century Montana, like nearly every other state,  
23    driven by fear of the new immigration and the eugenic scare, established by state law remote, self-  
24    contained, custodial institutions to segregate "feeble-minded, idiot and epileptic" people from society and  
25    to isolate them there for "life"; and by state law provided also for their compulsory sterilization.

26           83. By Act 137 (1909), entitled "An Act . . . Relating to the Admission, Care and Rerention of  
27    Persons and Children in the Montana School for the Deaf, Blind and Feeble Minded at Boulder,  
28    Montana," the State Legislature provided that "All feeble-minded persons . . . shall be admitted into [the

1 Montana School for . . . the Feeble Minded at Boulder]" and directed its officers:

2 "to retain in the care of said school for life such feeble-minded pupils as have passed the age of  
3 twenty-one and are not fit mentally to make their way or become useful members of society. . . .  
4 to establish a Farm Colony for the feeble-minded on the ranch belonging to the school [where t]he  
adults feeble-minded shall be required, by their labor, to contribute as far as possible to their own  
support of the school." (*emphases added*)

5 84. Another act, strengthening the charge, followed in 1919. In Act 102, entitled, "An Act  
6 Relating to the Admission, Care and Retention of Feeble-Minded Persons and Also Person Afflicted with  
7 Epilepsy . . .," the State Legislature provided:

8 "There is hereby established at Boulder . . . a Montana Training School for Feeble-  
9 Minded Persons for the training and detention of epileptics and feeble-minded minors and  
adults." (*emphasis added*).

10 85. In 1923 the State Legislature adopted Act 164 (1923), entitled "An Act to Prevent the Procreation  
11 of Hereditary Idiots, Feeble-minded, Insane, and Epileptics Who Are Inmates of State Custodial Institutions, by  
12 Authorizing and Providing for Eugenical Sterilization for Said Inmates." The State Legislature defined state  
13 "custodial institutions" as a "habitation which provides food, lodging, restraint, treatment, care or residents for  
14 inmates declared mentally delinquent through constituted legal channels," established the State Board of  
15 Eugenics, and declared as its purposes "for the betterment of the physical, mental, neural or psychic  
16 condition of said inmate, or to protect society from the menace of procreation by said inmate and not in  
17 any manner as a punitive measure." (*emphasis added*)

18 86. The 1927 Biennial Report of the State Board of Charities and Reform declared of the Boulder  
19 institution: "To keep these people happy and well cared for and prevent them from being a menace to the  
20 State, is the utmost that can be hoped for." (*emphasis added*).

21 87. The Report of the Survey of the Feeble Minded in Montana (January 1919), commissioned by  
22 the legislature in 1917, sets forth the animus and the stereotypes which activated these Acts.

23 88. Montana now maintains two distinct systems for retarded and otherwise developmentally  
24 disabled persons:

- 25 • one, with small, community-based, family-sized residences where people are integrated  
26 into their communities, where consistent individualized attention and support is possible  
27 and can be sustained, and where people with developmental disabilities work productively  
28 and earn in the community, serve as citizen volunteers, participate actively in religious,  
associational and family life of the community, and throughout, thrive, growing in skills,  
including the life skills of self-care, self-direction and productivity;

- the other — part of the legacy of state imposed segregation — at the self-same “school” in Boulder, at Eastmont institution in Glendive and also at state mental hospitals, segregated, isolated, congregate-care facilities where people with disabilities live a self-contained, inactive, artificial life, seldom gain and often lose life skills and are deprived of the learning, earning and associational opportunities present in the community.

89. More than 1300 individuals with developmental disabilities are supported in the community residential service system, ranking Montana among the highest of the fifty states in the proportion of people with retardation supported in small community integrated residences.

90. But at least 175 people with developmental disabilities — about 106 at MDC, 50 at Eastmont, 10 at MSH and 10 at MMHNCC — are still confined in institutions, and have been confined there, on average, for some 20 years. Many of these individuals were committed there as children, when institutionalization was thought to be the only alternative.

91. Montana officials have said and written that those persons retained in institutions are those who are severely disabled, itself an unlawful discrimination. In fact, among the more than 1300 people with developmental disabilities receiving community residential services and living and thriving in the Montana communities, including many who were once confined in institutions, are persons whose disabilities are just as severe as those of people still in the institutions. These functional disability “twins” in the community have disabilities and support needs which match the disabilities and needs of each of the 175 people still confined by defendants in the institutions. For example, Montana’s community service system already serves 135 adults with profound retardation, 106 people who use wheelchairs and 607 people who take anti-seizure medication.

92. Both the community service system and the institutional system are funded under Title XIX of the Social Security Act. In both, federal dollars pay 70.8% of the cost with the State paying 29.2% (FY 1995).

93. The annual combined federal and state expenditure for institutional placement averages approximately \$118,000 per person at MDC and \$80,000 per person at Eastmont.

94. The annual average per person cost for people with similar developmental disabilities currently being served in the Montana community-based service system is approximately \$33,000. In defendants’ 1994 plan, defendants calculated the annual cost in FY96 and FY97 of necessary and appropriate community services for 66 institutionalized individuals to be \$30,000 per person and the

1 annual cost in FY98 for another 7 institutionalized individuals to be \$66,000 per person. In the recent  
2 MDC reduction plan, defendants appropriated \$57,000 per person for 12 institutionalized individuals.

3 95. Montana spends Federal Medicaid dollars on community-based services for people with  
4 developmental disabilities under the authority of a Home and Community-Based Services Waiver,  
5 pursuant to Title XIX of the Social Security Act and MCA §53-6-402. Title XIX allows, and indeed  
6 requires, that Title XIX expenditures in institutions be moved to community services to support in the  
7 community those individuals who do not require placement in an ICF/MR. Essentially, the HCBS waiver  
8 allows Title XIX funds to be used to support a variety of home and community-based services for  
9 discharged ICF/MR residents and for those at risk of ICF/MR placement.

10 96. Given the respective costs of institutional and community placement, for each person moved  
11 from Boulder to the community, at least one and as many as three additional individuals with similar  
12 disabilities can be appropriately served in the community; for each person discharged from Eastmont to  
13 the community, possibly one and as many as two additional individuals with similar disabilities can be  
14 appropriately served in the community.

15 97. Extensive experience in Montana as well as extensive experience nation-wide  
16 shows that each person with a developmental disability, including especially those with the most severe  
17 developmental disabilities, can be served — and served more effectively — and, in fact, are served — in  
18 integrated settings in the community. Systematic professional studies nationwide of what happens to  
19 institutional residents when they move to the community, including Montana studies and surveys  
20 conducted by defendants and their agents, show strong improvements in skills and quality of life in  
21 practically every area that is measurable. These studies show significant improvements in adaptive  
22 behavior, in the skills of daily living, self-direction, productivity, integration (actual interaction with non-  
23 disabled persons) and in satisfaction with their lives in the community.

24 98. Four states similar in demographics to Montana — Maine, New Hampshire, Rhode Island and  
25 Vermont — have now achieved a community service system which serves people with developmental  
26 disabilities without needing or using an institution. Other states, including Alaska, Colorado, Hawaii,  
27 New York, Michigan and Wyoming are moving toward replacing their state institutions for people with  
28 developmental disabilities with complete community service systems.

1           99. In Montana, defendants have admitted that the demand for institutional services has  
2 significantly declined and will continue to decline. Defendants have closed institutional admissions to  
3 children. Eastmont has had no admissions from the community for at least six years. Montana's  
4 executive officials acknowledge there is no appropriate mission for Eastmont and that it should close.  
5 Having experienced access to the public schools and other community services as well, Montanans say, in  
6 surveys conducted by defendants, that they do not want institutional services for their children when they  
7 become adults.

8           100. As long ago as 1981, responsible Montana officials announced their intention to replace  
9 Montana's institutions for people with developmental disabilities with a comprehensive community service  
10 system.

11           101. For some time and still, Montana has provided by statute as follows:

12           A. In the Montana Long Term Care Reform Act, Ch. 384, L-1995; MCA §53-6-602:

13           (1) The legislature finds that in keeping with the traditional concept of the inherent  
14 dignity of the individual in a democratic society, . . . persons with disabilities should be  
able to live as independently as possible.

15           (2) The legislature further finds that: (a) the ability to continue to live in a person's own  
16 residence or in the least restrictive setting best serves the health and dignity of . . .  
persons with disabilities. . . .

17           (3) The legislature declares that the policy of this state is to: (a) respect the dignity of  
18 persons in the provision of state-sponsored and state-funded services for . . . persons with  
19 disabilities by seeking to maintain the maximum level of independence possible for those  
persons receiving services; (b) foster the development of community services that allow a  
person to choose to remain in a person's own residence or in the least restrictive setting.

20           B. MCA §53-19-101: The legislature, in recognition of the needs of persons with severe  
21 disabilities and of the desirability of meeting those needs on a community level to the  
22 extent of available funding and in order to reduce the need for institutional care settings,  
23 establishes by this part a community program to assist persons with severe disabilities to  
live and function independently. This program implements Title VII of the federal  
Rehabilitation Act of 1973 (29 U.S.C. 796, *et. seq.*) as may be amended, for persons with  
severe disabilities in Montana.

24           C. MCA §53-20-101: The state recognizes that its purpose is to "secure for each person  
25 . . . with developmental disabilities such treatment and habilitation as will be suited to the  
26 needs of the person and to assure that such treatment and habilitation are skillfully and  
humanely administered with full respect for the person's dignity and personal integrity;"  
and to "accomplish this goal whenever possible in a community-based setting."

27           D. MCA §53-20-148(2): Institutional facilities in Montana are required to "make every  
28 attempt to move residents from more to less structured living, larger to smaller facilities,  
. . . group to individual residences, segregated from the community to integrated into the

1 community living."

2 102. Defendants have adopted as their standard the principle of normalization, which they define  
3 as follows: "Normalization means making available to all persons with developmental disabilities the  
4 patterns of life and conditions of everyday living which are as close as possible to the regular  
5 circumstances and way of life and society."

6 103. In 1994, Montana's responsible officials carefully prepared and proposed a plan to provide  
7 community residential and other services to almost half the institutional population, for 66 individuals --  
8 49 from Eastmont and 17 from MDC or the community waiting list -- to be provided in 1996, and for an  
9 additional 12 individuals from MDC or the community waiting list to be provided in 1998. At the time,  
10 defendants identified 73 institutionalized individuals who were to be provided community services without  
11 delay.

12 104. Defendants have not, however, carried out their plans and commitments described in the  
13 foregoing paragraphs [¶¶ 99-103]. They have not done so, not for reasons grounded in the needs of the  
14 individuals with developmental disabilities or in any professional judgment, but for reasons entirely  
15 extraneous to the needs of the individuals with developmental disabilities and contrary to the laws and  
16 Constitution of the United States. Indeed, they have not done so in the teeth of their own professionals'  
17 judgment; five 1994 "individual treatment plans," characteristic of the needs of all the institutionalized  
18 plaintiffs, are appended to this complaint and incorporated here as if fully set forth herein.

19 105. Nor have they not done so because sufficient funds were unavailable. To the contrary,  
20 sufficient funds were, and are now, available to responsible Montana officials under Title XIX of the  
21 Social Security Act and Montana's Home and Community Based Services (HCBS) Waiver thereunder, to  
22 provide effective community services to each of the 175 institutionalized individuals who need them and  
23 to an additional two to three times as many individuals with developmental disabilities who have not yet  
24 suffered institutionalization, all within current annual expenditure totals and on the 70.8% federal share  
25 and 29.2% state share of funds obtained under Title XIX for Montana.

26 106. Defendant Montana officials have been on notice that their actions and inactions with  
27 respect to Montanans with disabilities violate the laws and Constitution of the United States. Most  
28 recently, on or about June 7, 1996, an advisory from the United States Health Care Financing



1 Administration, which administers Title XIX of the Social Security Act states, with regard to Montana's  
2 plan for mental health managed care for people with mental illness, that:

3 Under the ADA and regulations written at 28 C.F.R. 130(d), a State must not place or  
4 keep in an institutional facility any person who could be served more appropriately in a  
5 community-based setting. The State is further obligated to create the community-based  
6 services to serve these individuals. The court cases of Helen L. vs. DiDario (1995) and  
7 Charles Q. vs. Houston (April 1996) have determined that a State's argument that no  
8 community-based services currently exist is not a permissible argument for keeping  
9 individuals in institutional settings when they would more appropriately be treated in a  
10 community setting. (*emphasis added*).

11 107. Montana's executive officials abandoned their plan to place some 66 to 73 institutionalized  
12 individuals in community services by FY98, in part, because they were unable to obtain the legislative  
13 approval required by MCA §53-1-602. Under that plan, defendants would have transferred the funds  
14 supporting one state institution, Eastmont, to create the community services so desperately needed to  
15 implement the treatment decisions of defendants' own developmental disabilities professionals.

16 108. The provisions of two Montana statutes also have contributed to the aforementioned  
17 derelictions; they burden and inhibit implementation of the federal laws and the United States  
18 Constitution. One, MCA 53-20-132 (En. Sec. 1, Ch. 417, L. 1987; amd. Sec. 15, Ch. 381, L. 1991;  
19 amd. Sec. 21, Ch. 255, L. 1995) is entitled, "Court-ordered placement in community-based services  
20 prohibited," provides that:

21 Nothing in this part may be construed as authorizing the placement and delivery of services to  
22 persons with developmental disabilities in community-services by court order. Placement of  
23 persons in community-based services is governed by 53-20-209.

24 Montana limits state court orders to institutional settings, MCA 53-20-125, even when the state court has  
25 determined that the individual could and should be habilitated in a community setting. Section 53-20-  
26 125(8) allows the court to "refer" persons found to need community services to the State Department of  
27 Public Health and Human Services and, together with Section 53-20-132, confides entirely to the  
28 unreviewable discretion of the executive branch whether or not the individual will get the needed  
community services and singularly deprives persons with developmental disabilities of any resort to state  
courts to secure needed community services as provided by law or to enforce professional judgments and  
judicial determinations that such are needed. Montana's commitment laws offer no protection against  
unnecessary institutionalization.

1           209. The second statute which burdens and inhibits implementation of the federal laws and the  
2 United States Constitution, MCA 53-20-214 (En. 71-2414 by Sec. 8, Ch. 239, L. 1975; amd. Sec. 6, Ch.  
3 559, L. 1977; R.C.M. 1947, 71-2414(2); amd. Sec. 17, Ch. 361, L. 1983; amd. Sec 7, Ch. 151, L.  
4 1985; amd. Sec 1, Ch. 262, L. 1991; amd. Sec. 477, Ch. 546, L. 1995.) provides:

5           Funds appropriated to the ... Montana developmental center may be transferred by budget  
6 amendment as provided in appropriation acts and with the approval of the governor to the  
7 department of public health and human services for comprehensive developmental disability  
8 system [sic] if residents of any of those institutions are transferred to a comprehensive  
9 developmental disability system resulting in less expenditures at that institution than allowed by  
10 legislative appropriation. (*emphasis added*).

11           210. Defendant Montana officials have not transferred the funds necessary to implement their  
12 1994 plan to provide effective community services to some 73 institutionalized people with developmental  
13 disabilities, in part because of the barriers imposed by Section 53-20-214. They have declined to seek a  
14 budget amendment as required by Section 214 on the grounds that the legislature has already decided the  
15 issue.

16           211. Under limitation of the first statute, additional developmentally disabled persons continue to  
17 be committed and confined to these institutions despite their isolation, segregation, and ineffectiveness,  
18 despite the individuals' non-need for such a setting, despite professional judgment that they need  
19 community services, despite judicial determinations that they need community services, despite the  
20 requirements of federal law, the United States Constitution and of other contradictory provisions of state  
21 law, and despite the fact that the number of persons confined to the institutions has for some time  
22 exceeded their "rated capacity."

23           212. Under limitation of the second statute, the defendants are prevented from moving funds  
24 dedicated to Montana Developmental Center to creation of needed additional community-based services  
25 for plaintiffs who could be effectively and appropriately served in more integrated settings without first  
26 having such funding transfers approved by the legislature which has previously denied such funding  
27 transfer for the 80 persons mentioned above. This statutory limitation is in marked contrast to MCA 53-  
28 19-101 (En. Sec. 1, Ch. 713, L. 1985; amd. Sec. 3, Ch. 514, L. 1987; amd. Sec. 1, Ch. 330, L. 1989;  
amd. Sec. 3, Ch. 326, L. 1993.), entitled, Services and Community Homes, which directs the executive  
branch to assure that services and programs provided under this statute are coordinated with other

1 programs and services funded under the Rehabilitation Act of 1973 and which provides:

2 The legislature, in recognition of needs of persons with severe disabilities and of the desirability  
3 of meeting those needs on a community level to the extent of available funding and in order to  
4 reduce the need for institutional care settings, establishes by this part a community program to  
5 assist persons with severe disabilities to live and function independently. This program  
6 implements Title VII of the Rehabilitation Act of 1973 (29 U.S.C. 796, et seq.), as may be  
7 amended, for persons with severe disabilities in Montana.

8 This statute specifically allows the executive branch, without a budget amendment, to do the following:

9 (2) ...consolidate services under Title 53 with other programs and services in order to maximize  
10 coordination of services as required in subsection (1) and to prevent overlapping and duplication  
11 of services within state government.

12 (3) The governor may transfer employees, appropriations, and spending authority necessary to  
13 accomplish the coordination of services as mandated by this section. The authority contained in  
14 this subsection is limited to the programs and services described in Subsection (1).

15 Montana implemented the above statute to insure it was in compliance with requirements of the  
16 Rehabilitation Act. In contrast, Montana's implementation of MCA 53-20-132 and MCA 53-20-214  
17 violates plaintiffs' rights under other federal laws and the United States Constitution. In fact, granting  
18 executive discretion to shift funds under the above statute affecting programs and services for a group of  
19 individuals with certain disabilities while restricting the same discretion with respect to programs and  
20 services affecting plaintiffs who have developmental disabilities is itself a violation of federal law and the  
21 United States Constitution.

## 22 VIII. THE HARM

23 113. Day to day, plaintiffs confined at the institutions continue to suffer deprivation of the  
24 benefits, advantages and opportunities of a real community setting and community services appropriate to  
25 their needs, namely: gains in learning and earning, in adaptive behavior and in the achievement of  
26 significant new life skills and opportunities for associations of all kinds, including friendship, familial,  
27 religious, vocational and citizenship associations, all of which include "interactions with non-disabled  
28 persons." All of these benefits and opportunities flow from the consistency, individualization and richness  
of interactions which are possible and are achieved in and from small, family-sized community-based  
residences and other supportive community services.

114. In addition, plaintiffs have suffered and will suffer other harms imposed upon them day to  
day by their confinement at the state institutions, among them the following:

a. Plaintiffs recurrently suffer regression (*i.e.*, the loss of adaptive behaviors and life skills which

1 they had previously achieved).

2 b. Plaintiffs are disengaged throughout their days and not engaged in meaningful activities.  
3 Much of their time is dead time. They spend long periods "waiting" to go from one activity to  
4 another, thumbing through magazines, milling around, dozing or simply doing nothing, or trying  
5 to ignore or escape the chaotic environment around them.

6 c. Plaintiffs have, and can secure, very little privacy.

7 d. As defendants' own employees have found year after year in their annual Title XIX surveys of  
8 MDC and Eastmont, plaintiffs do not receive active treatment: for many there are no programs of  
9 active treatment; for many there are only programs randomly begun and randomly ended and only  
10 sporadically engaged; programs are not consistently monitored or changed when change is  
11 indicated; and, programs are not implemented in a timely manner.

12 e. Counseling services by a qualified professional are not provided to plaintiffs with an identified  
13 need for such services.

14 f. Psycho-active medications are over-used; integrated program plans and active treatment  
15 programs to diminish the use of psycho-active medications are not provided; and, psychiatrists  
16 prescribe the administration of medications from a distance, without personally meeting and  
17 interacting with the individual.

18 g. Modern aids to mobility and communication are not provided.

19 h. Physical injuries — broken bones, muscle strains, cuts and large, vivid bruises — occur more  
20 frequently in the institutional setting. Defendants' own records show a marked decrease in  
21 physical injuries suffered by the same person after he or she moves to community-based services.

22 i. Routine, as well as critical, medical services are often uncertain and untimely because they are  
23 thirty or more miles away and require a major excursion, to Butte, Helena or Billings where  
24 comprehensive preventive and primary as well as acute and specialized medical care is available.

25 j. There are no employment opportunities outside the institution, even for those residents who  
26 were gainfully employed in the community prior to commitment. Institution residents live and  
27 work with the same people, day after day.

28 k. Because of the remote and isolated location of the state's institutions, plaintiffs are deprived of  
29 necessary and appropriate support services. Services such as speech therapy, medical treatment,  
30 psychological counseling and employment opportunities are more readily available in other  
31 communities in the state.

32 l. Plaintiffs live a self-contained and narrow life, rarely interact with anyone other than a paid  
33 staff member and other people with disabilities, with no opportunity to go for walks or for "rolls"  
34 in a wheelchair in the neighborhood, to pet their neighbor's dog, to shop for weekly groceries, to  
35 invite friends for dinner or even to prepare, and to choose, their own meals.

36 115. Individuals with severe disabilities — those with profound or severe retardation, with  
37 multiple disabilities including communication and mobility deficits, with complex medical needs, and with  
38 maladaptive behaviors which are often aggravated and increased at the institution — fare the least well in  
39 large congregate-care settings. They suffer most from the harms set forth in the preceding paragraphs and

1 have the most to gain from the individually-focused structure and consistency of smaller settings. For  
2 example, systematic studies show that individuals with challenging behaviors have made the most  
3 significant improvements in behavior when moved to smaller, supported living models.

4 116. Developmental disabilities professionals, including defendants' own professionals, now  
5 generally believe the task of the service system is to support people in normal, integrated residential and  
6 work settings, in or near their home communities, in homes they choose themselves, where they can live  
7 with people with whom they want to live and work where they want to work. This approach is called  
8 "the support model." The supported living approach is based on the values of individual choice,  
9 independence, productivity, integration and inclusion of citizens with disabilities. It also recognizes that  
10 people with retardation, whose disability inhibits their ability to "transfer" skills learned in one setting to  
11 another, should learn daily living skills in the real community where they will be using those skills.

12 117. Montana families recognize the harms suffered at institutions and support the provision of  
13 services in integrated community settings. Defendants' own surveys show:

14 (a) Families of former institutional clients transferred to community settings within the preceding  
15 four years, after experiencing both service settings, now prefer community services, in contrast to  
16 their initial satisfaction with institutional services and opposition to community placement prior to  
17 the community placement. In fact, respondents expressed higher levels of satisfaction with  
18 community based services than with institutional services on every item.

19 (b) Parents of children with developmental disabilities overwhelmingly prefer small, home-like  
20 environments for their children when they reach adulthood. Parents responding to the survey  
21 consider institutional housing the least favorable of all options; some respondents considered that  
22 form of housing totally unacceptable.

23 118. Professional recommendations for community placement and discharge from the institution  
24 are not made and/or not acted upon because of the "unavailability" of community services, an  
25 unavailability created by defendants' own actions in supporting costly, segregated institutions instead.  
26 Institutionalized individuals who are recommended for community placement by their individual treatment  
27 planning teams are placed on the community waiting list and often languish there for years.

28 119. DPHHS's developmental disabilities professionals have limited their recommendations for  
community placement to institutionalized individuals with less severe disabilities, unlawfully excluding  
and discriminating against classes of institutionalized individuals based on the type and severity of their  
disabilities. In conducting the 1994 assessments of institution residents to determine which individuals

1 were a priority for community placement, defendants established criteria which excluded classes of  
2 individuals with disabilities from consideration, including those with physical disabilities requiring the use  
3 of a gastrostomy tubes or jejunostomy tubes, those with "total care needs," and those with medical or  
4 behavioral needs which require a very intensive staffing level.

5 120. Plaintiffs have suffered and continue to suffer irreparable harm from defendants' actions and  
6 inactions. Plaintiffs have no adequate remedy at law to secure redress of their rights; monetary damages  
7 are inadequate. Accordingly, injunctive relief is necessary.

### 8 VIII. CAUSES OF ACTION

#### 9 Count I: The AMERICANS WITH DISABILITIES ACT

10 121. All plaintiffs are "qualified individuals" under the Americans with Disabilities Act (ADA).

11 122. Defendants, by their actions and inactions set forth above, have violated rights of the  
12 plaintiffs secured by Title II of the ADA, 42 U.S.C. Section 12131 *et seq.*, and 28 C.F.R. Part 35, by:

13 (a) failing to provide public services, programs, and activities to plaintiffs "in the most integrated  
14 setting appropriate to the needs of the qualified individual with disabilities," including "in a setting that  
15 enables individuals with disabilities to interact with non-disabled persons to the fullest extent possible," as  
16 required by 42 U.S.C. §12132 and 28 C.F.R. §35.130(d);

17 (b) denying plaintiffs participation in integrated services and programs by failing to "make  
18 reasonable modifications in policies, practices and procedures when the modifications are necessary to  
19 avoid discrimination on the basis of disability," as required by 28 C.F.R. §35.130(b)(7) and by 28 C.F.R.  
20 §35.105(a) and (b);

21 (c) failing to undertake a programmatic "self-evaluation" of its current services, policies and  
22 practices for programmatic discrimination and failing to make the necessary modifications required as a  
23 result of the self-evaluation, as required by 28 C.F.R. §35.105(a) and (b);

24 (d) denying plaintiffs the opportunity to participate in public services and programs that are as  
25 effective and meaningful as those delivered to others, as prohibited by 28 C.F.R. §35.130(b)(1)(iii);

26 (e) denying plaintiffs the opportunity to participate in public services and programs that are not  
27 separate or different, as required by 28 C.F.R. §35.130(b)(2);

28 (f) unnecessarily excluding certain individuals because of the severity and type of their disabilities

1 from fully and equally using and enjoying integrated, community-based public services, programs and  
2 activities, thereby providing different and separate benefits and services to a class of individuals with  
3 disabilities than is provided to others, as prohibited by 28 C.F.R. §35.130(b)(1)(iv); and

4 (g) otherwise limiting plaintiffs "in the enjoyment of any right, privilege, advantage and  
5 opportunity enjoyed by others receiving the aid, benefit or service," as prohibited by 28 C.F.R.  
6 §35.130(b)(1)(vii).

7 123. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of  
8 Montana courts and precluding them from ordering community residential and other services for people  
9 with developmental disabilities when the facts show that is what they need and what federal and state law  
10 otherwise requires, violates the Americans with Disabilities Act and thereby, the Supremacy Clause of  
11 Article VI of the United States Constitution.

12 124. MCA §53-20-214, as applied by defendants, by singularly prohibiting without rational  
13 basis, except upon budget amendment by the Montana state legislature, the transfer of appropriations,  
14 employees and spending authority, authority which is otherwise available to the executive, only as to  
15 institutionalized people with developmental disabilities who have been historically subjected by the State  
16 to a tradition of disfavor; and by precluding people with developmental disabilities from benefiting as  
17 others can from the ordinary conduct of government, violates the Americans with Disabilities Act and  
18 thereby, the Supremacy Clause of Article VI of the United States Constitution.

19 **Count II: The SOCIAL SECURITY ACT**

20 125. Defendants, by their actions and inactions described above, have violated Title XIX of the  
21 Social Security Act, 42 U.S.C. § 1396, et seq., by:

22 (a) failing to conduct regular individual determinations to determine whether institutional  
23 "services" are necessary and desirable for plaintiffs and whether it is feasible to meet habilitation needs  
24 through "alternative...noninstitutional services" which are "consistent with efficiency, economy and  
25 quality of care" and to implement them, as required by 42 U.S.C. §1396a(a)(30) and (31) and by 42  
26 C.F.R. 4566.609(a) and (b); and

27 (b) failing to provide such alternative community services and a plan for discharge to the plaintiffs  
28 as to whom they have found institutional services unnecessary and undesirable and community services to

1 provide greater independence and self-determination, less risk of regression and loss of function, and  
2 otherwise to meet their needs. *Id.*; 42 U.S.C. §1396(d)(2), and 42 C.F.R. §§456.371, 456.380, 1483.440,  
3 and 456.609(a)(b) and (c).

4 **Count III: The EQUAL PROTECTION CLAUSE**

5 126. Defendants have violated the Equal Protection Clause of the Fourteenth Amendment of the  
6 United States Constitution by excluding, separating and segregating persons with developmental  
7 disabilities from the rest of society without any rational basis.

8 127. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of  
9 Montana courts and precluding them from ordering community residential and other services for people  
10 with developmental disabilities when the facts show that is what they need and what federal and state law  
11 otherwise requires, violates the Equal Protection Clause in that it perpetuates, without rational basis, the  
12 tradition of disfavor toward institutionalized developmentally disabled citizens and the historical link  
13 between state court commitment and institutional confinement exclusively, a link which was originated  
14 and established by state action in the first decades of this century based on stereotypic assumptions. *See,*  
15 City of Cleburne, Texas v. Cleburne Living Center, 1055 S.Ct. 3249, especially at 3261 (1985) (opinion  
16 of Justice Stevens and the Chief Justice).

17 128. MCA §53-20-214, as applied by defendants, by singularly prohibiting without rational  
18 basis, except upon budget amendment by the Montana state legislature, the transfer of appropriations,  
19 employees and spending authority, authority which is otherwise available to the executive, only as to  
20 institutionalized people with developmental disabilities who have been historically subjected by the State  
21 to a tradition of disfavor; and by precluding people with developmental disabilities from benefitting as  
22 others can from the ordinary conduct of government, violates the Equal Protection Clause.

23 **Count IV: The DUE PROCESS CLAUSE**

24 129. Defendants have violated the Due Process Clause of the Fourteenth Amendment by failing  
25 to provide community services to institutionalized persons with developmental disabilities when sound  
26 professional judgment would require it. *See, Youngberg v. Romeo*, 457 U.S. 307, 323 (1982)).

27 130. MCA §53-20-132, as applied by defendants, by singularly constraining the authority of  
28 Montana courts and precluding them from ordering community residential and other services for people



1 with developmental disabilities when the facts show that is what they need and what federal and state law  
2 otherwise requires, violates the Due Process Clause of the Fourteenth Amendment to the United States  
3 Constitution, in that it unconstitutionally strips the hearing tribunal of its authority to afford relief.

#### 4 PRAYER FOR RELIEF

5 WHEREFORE, plaintiffs respectfully request that this honorable Court:

- 6 1. Exercise its subject matter jurisdiction of this case.
- 7 2. Determine that plaintiffs may maintain this action as a class action pursuant to Federal Rule of  
8 Civil Procedure 23.
- 9 3. Declare that the Americans with Disabilities Act requires:
  - 10 (a) that each plaintiff and class member must be served in the most integrated setting appropriate  
11 to the needs of each;
  - 12 (b) that each plaintiff and class member must be served in a setting that enables each to interact  
13 with non-disabled people to the fullest extent possible;
  - 14 (c) that the State must not place or keep in an institutional facility any person with developmental  
15 disabilities who could be served appropriately in a community-based setting; and
  - 16 (d) that the State is obligated to make available to each plaintiff and class member the community-  
17 based services necessary to appropriately serve each.
- 18 4. Declare that the Equal Protection Clause prohibits the unnecessary segregation of people with  
19 developmental disabilities.
- 20 5. Declare that the Due Process Clause of the Fourteenth Amendment to the United States  
21 Constitution prohibits the retention of people with developmental disabilities in state institutions when  
22 such retention is a substantial departure from professional judgment.
- 23 6. Declare that defendants have unconstitutionally applied MCA §53-20-132 and MCA §53-20-  
24 214 and, if necessary, enjoin them from continuing to do so.
- 25 7. Declare that plaintiffs are entitled under Title XIX of the Social Security Act to receive  
26 "alternative...noninstitutional services" in the community which meet their individual needs.
- 27 8. Enjoin defendants to complete a self-evaluation of DPHHS policies and practices as required  
28 by the Americans with Disabilities Act (ADA), and to modify its services, policies and practices as  
necessary to meet the requirements of the ADA.

1 9. Enjoin defendants to propose and, after court hearing and approval, to implement a plan to:

2 (a) promptly arrange and conduct independent evaluations, by qualified and independent  
3 developmental disability professionals not employed by defendants, of the individual needs of all  
4 individuals who are residents of MDC, Eastmont, MSH and MMHNCC on or after the date of  
5 filing this Complaint, according to criteria agreed upon by the parties and which does not  
6 discriminate on the basis of severity of disability, whether a community setting is the most  
7 integrated setting appropriate to each individual's needs; and

8 (b) ensure that each plaintiff and class member for whom it is determined that the most integrated  
9 setting appropriate to his or her needs is a community setting is promptly provided the necessary  
10 community services in such setting.

11 9. Enjoin defendants to actually provide to each plaintiff and class member for whom it is  
12 determined that the most integrated setting appropriate to his or her needs is a community setting  
13 effective, person-centered, community-based residential, vocational and other support services appropriate  
14 to the needs of each.

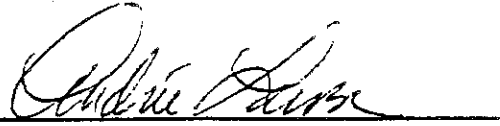
15 10. Enjoin defendants from admitting individuals with developmental disabilities who could be  
16 served appropriately in community-based services to the Montana Developmental Center, Eastmont  
17 Human Service Center, Montana State Hospital and Montana Mental Health Nursing Care Center.

18 11. Award plaintiffs their costs, expenses and reasonable attorneys' fees pursuant to 42 U.S.C.  
19 Section 12205 and 42 U.S.C. Section 1988.

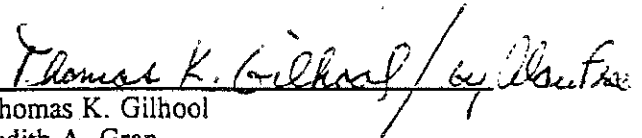
20 12. Grant such other and further relief as the Court deems just and proper.  
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1 Respectfully submitted this 33<sup>rd</sup> day of August, 1996.

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## APPENDIX A

(Incorporated into Paragraph 102 of the Complaint  
as if fully set forth therein.)

1. From a February 17, 1994 Individual Treatment Plan (ITP) document from Eastmont:

"It is felt that she is at risk of loss of skills and independence, experiences lack of opportunities and insufficient challenge in her current setting. She has the ability to do many things and appears to be able to learn much more that, due to her current placement in a large facility, is hindered. She is very responsive to community outings and experiences and would benefit from much more opportunity to engage in these sort [sic] of experiences.

She would benefit most from placement in an intensive group home and day program. Her parents live in (Town name) and it is the team's feeling that placements which would maintain close family proximity should be considered first. However, community setting outweighs the need to be close to her family. Thus, if a placement is found that could appropriately meet her needs, it should be considered, regardless of where it is located in the state."

2. From a February 1994 ITP document from Eastmont:

"He is felt to possess potential to learn and engage in some home care type skills in which he has no opportunity to engage, due to his current setting. He is also seen as someone who could benefit from the opportunity to more regularly engage in community activities. He would benefit from increased attention and it would appear that he could more effectively gain this in a smaller living and day program setting."

3. From a May 1994 ITP document from Eastmont:

"It was felt that she has many skills and potential abilities in all activities of daily living, i.e., dressing, bathing, toileting, grooming, home care, assistance with food preparation, etc., that are not challenged, and in some cases, not fostered in her current setting.

She is someone who actively chooses to have things done for her she is capable of doing for herself. She is also noted to manipulate situations negatively, to elicit staff doing something for her. It was felt, given her abilities and her nature, that she might do better in a setting where more individual and intensive attention and training were available. A smaller group home setting might provide her with more attention. This sort of setting might also be better able to focus on her positive strengths and reward her for those sorts of abilities, instead of providing her with the attention she seeks via negative or problematic behaviors."

4. From an April 1994 ITP document from Eastmont:

"It is felt that he is at risk of loss of choices/opportunities and independence in his current setting. (Name) needs to have the opportunity to participate in more senior age appropriate activities and settings. It is felt that he would be best served in a senior group home and day program setting that offers the staff ratio typical of intensive settings."

5. From a November 1994 ITP document from Eastmont:

"The team continues to feel that she is in need of alternative community placement. It is felt she has some unchallenged and underdeveloped due to the environment in which she lives. It is also clear that she does best in smaller and quieter settings, which may be more readily provided in a smaller group home setting. She could benefit from increased opportunities to participate in community activities. The team feels that she is in need of an intensive group home setting."